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'The British Empire'

WORDS are the reflections of facts. Take a familiar phrase like 'the British Empire' and trace its history. Each new shade of meaning it acquired sprang out of the political conditions of a particular moment. According to the *New English Dictionary* the word 'empire' meant in Henry VIII.'s time 'a country of which the sovereign owes no allegiance to any foreign superior.' In this sense Parliament employed it when they shook off the supremacy of the Pope, and declared in the Statute of Appeals 'This realm of England is an empire.'[1] A little later the word came to signify a composite state formed by the union of two or more states. When the Protector Somerset projected the union of England and Scotland, he talked of the two peoples as 'knit into one nation,' and spoke of making 'of one isle one realm.' To meet the objections of Scottish nationalists he proposed that the names England and English, Scotland and Scottish, should be abolished, and that the United Kingdom should be called the Empire and its sovereign the Emperor of Great Britain.[2]

Somerset's dream was realised in 1603 by the union of the crowns when James I. became King of England. The state formed by this union was at once described as an 'empire.' A pamphlet calls the union 'the beginning of the happiest empire

[1] Froude, *History of England*, i. 428.

[2] Pollard, *England under Protector Somerset*, pp. 148, 150, 163, 165, quoting Ode de Selve's *Correspondence Politique*, p. 268.

that ever was.'[1] James himself in his speech on March 31, 1607, twice uses the word. 'My meaning in seeking union is only to advance the greatness of your Empire seated here in England,' and again, referring to the argument that certain English trading towns would lose by the union, he says 'If the Empire gain, and become the greater, it is no matter.'[2]

King James wished to give the new state a new name and call it 'Greater Brittany,' but the objections of the lawyers obliged him to withdraw the proposal. 'I avowe the name of Britanny,' he said. . . . 'I am not ashamed of my project, neither have I deferred it out of a liking of the judges reasons or yours. . . . But I have remitted the name till after the thing be done, lest quirks in law might take other hold than is meant.' Nevertheless without waiting for the completion of the negotiations for an incorporating union, he issued a proclamation on November 15, 1604, declaring that 'our imperial monarchy of these two great kingdoms' was to 'keep in all ensuing ages the united denomination of the invincible Monarchy of Great Britain,' and assuming himself 'by force of our royal prerogative' the title of King of Great Britain.[3]

The new name was not popular at first, save with courtiers and poets.

> Shake hands with Union, O thou mighty state,
> Now thou art all Great Britain, and no more
> No Scot, no English now, nor no debate;
> No borders but the ocean and the shore,

sang Samuel Daniel in his *Panegyric Congratulatory* to the King.[4] The name gradually made its way into use, but two other names also were occasionally applied to the composite state. One was 'British Empire.' John Dee, in a petition to James I. presented on June 5, 1604, styled him 'the most blessed and triumphant monarch that ever this Britysh Empire enjoyed.'[5] The other was 'Britannic Empire.' Milton closed his pamphlet *Of Reformation in England*, printed in June, 1641, with this invocation to God, 'O thou that . . . didst build up this Britannick Empire to a glorious and enviable heighth with all

[1] *The Happy Union of England and Scotland*, 1604, Anon.

[2] *His Majesties Speech to Both the Houses of Parliament*, etc. 1607.

[3] Bruce, *Report on the Union*, appendix, pp. xxxv, xlvii, lxxi; Spedding, *Life and Letters of Bacon*, iii. 191-200, 206, 225, 235, 239.

[4] Published in 1603, *Works*, ed. Grosart, i. 143. [5] Hearne's *Collections*, i. 64.

her Daughter Islands about her, stay us in this felicity.'[1] By these 'daughter islands' Milton meant the Isle of Man, the Channel Islands, and perhaps Ireland, which was regarded as a British colony; but it is clear that he did not mean the new colonies in the West Indies, and still less those on the American mainland.

The question to be solved is when these colonies came to be included in the phrase 'British Empire' or 'Britannic Empire'? Who first employed it in this sense? Edward Littleton of Barbados speaks of 'the English Empire' in 1689,[2] and in 1708, a few months after Great Britain became the legal denomination of the two kingdoms of England and Scotland (May 1, 1707), John Oldmixon published a book entitled *The British Empire in America, containing the History of the Discovery, Settlement, Progress and present state of all the British Colonies on the Continent and Islands of America.* In it he several times speaks of them not as an appendage to the Empire, but as part of it. In one passage he computes their population at 350,000 persons, and 'the rest of the subjects of the British Empire' at eight millions. In another he says: 'Our Colonies in America are so far from being a loss to us, that there are no hands in the British Empire more usefully employed for the profit and glory of the commonwealth.'[3] However, the phrase was not used officially, nor was it part of the common political vocabulary of the day. I have searched in vain for it in the writings of Bolingbroke, the speeches of Walpole and the Parliamentary debates of the early part of the eighteenth century. It did not come into general use till the reign of George III.

At the close of the Seven Years' War in 1763 the people of Great Britain numbered about eight millions; there were some two million British subjects in Ireland, and two or two and a half million more in our American colonies; to these the treaty of Paris added some 60,000 or 70,000 Frenchmen in Canada, while perhaps twenty million natives of India had passed directly or indirectly under British rule. The eight millions began to realise that Great Britain had become a world state, and that it was, in Burke's phrase, 'part of a great empire extended by our virtue and our fortune to the farthest limits of the east and the west.'[4] Pownall, the late governor of Massachusetts, in a book on the

[1] Milton's *Works*, ed. Mitford, 1851, iii. 69.

[2] *The Groans of the Plantations*, p. 26. [3] Vol. i. pp. xxx, xxxvii.

[4] *Speech at Bristol*, 3 Nov. 1774; *Works*, iii. 237.

Administration of the Colonies,[1] urged that Great Britain should 'be no more considered as the kingdom of this Isle only with many appendages of provinces colonies, settlements and other extraneous parts,' but rather 'as a grand marine dominion consisting of our possessions in the Atlantic and in America united into a one empire in a one centre, where the seat of government is.' As the consciousness of these facts spread, politicians needed a term to describe this aggregate of states and races, and the phrase 'British Empire,' hitherto uncommon, passed into general use.

The controversy about the right of Great Britain to tax the American colonies for imperial purposes did more than anything else to familiarise people with the two words. Lord Mansfield, for instance, in the debate on the repeal of the Stamp Act, on February 10, 1766, declared: 'The British legislature as to the power of making laws, represents the whole British Empire, and has authority to bind every part.' Echoing Mansfield the House of Commons in their address of November 8, 1768, promised to maintain entire and inviolate the supreme authority of the legislature of Great Britain over every part of the 'British Empire.'[2] Lord Hillsborough, the Secretary for the Colonies, in his circular letter of May 13, 1769, announced that it was not the king's intention to lay any further taxes on the colonies, and spoke of restoring the mutual confidence between them and Great Britain 'upon which the safety and glory of the British Empire depends.'[3]

With more hesitation George III. himself adopted the phrase. In his speech to Parliament on November 25, 1762, he spoke of 'an immense territory added to the Empire of Great Britain,' but after that he relapsed into talking of 'my kingdoms' (Nov. 15, 1763), or 'my dominions' (Jan. 10, 1765), and it was not till November 30, 1774, that he used the words 'British Empire.'[4] In Chatham's speeches the phrase is first used on January 14, 1766, and it is employed again May 1, 1771, and February 1, 1775.[5] Burke's *Short Account of a late Short Administration*, published in 1766, opens with the statement that Rockingham's government, by repealing the Stamp Act, had composed 'the distractions of the British Empire,' and the speech on Conciliation

[1] 2nd Ed. 1768, p. 9. The book was originally published in 1765.

[2] *Parliamentary History*, xvi. 174, 474. [3] Grafton, *Memoirs*, p. 233.

[4] *Parliamentary History*, xv. 1234, 1331; xvi. 2, 80, 235; xviii. 34.

[5] Williams, *Life of Chatham*, ii. 192, 305; *Parliamentary History*, xvii. 220; xviii. 199, 203.

with America, delivered on March 22, 1775, is entirely devoted to the exposition of his ideas concerning the general policy of the 'British Empire.' He defines it there as 'the aggregate of many states under one common head,' and as 'a great political union of communities.' To Burke, too, we owe the elaboration of the distinction between Parliament as 'the local legislature of this island' and Parliament in 'her imperial character,' which was set forth in his speech on American taxation on April 19, 1774.[1]

More instances could be added, but it is sufficiently clear that between 1765 and 1775 the phrase came into general use, and that it was made familiar by the disputes about the taxation of the American colonies.

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[1] *Works*, iii. 1, 221, 242, 263.

James I., Bishop Cameron, and the Papacy

THROUGHOUT the reign of James I., almost from the very beginning of his active rule, there was a quarrel between the Crown and the Papacy which has not received the attention due to its significance in the development of events between the Schism and the Reformation. Indeed, our historians have never given any intelligible explanation of the controversy. This neglect can be traced primarily to an assumption by Lord Hailes, accepted and perpetuated by the authority of Joseph Robertson. In the preface to his *Statuta Ecclesiae Scoticanae* Robertson collected materials for the history of the quarrel; but he failed to see, as he might have done, that the cause he assigned to it was not only insufficient but actually mistaken.

He tells us that a Provincial Council seems to have met during a Parliament at Perth in the summer of 1427. This Parliament passed an ordinance 'curtailing the cost and abridging the forms of process in civil causes against churchmen in the spiritual courts; and, as if the Church had only to register the decree, ordained that it should be forthwith enacted by the Provincial Council.' The ground of the last assertion is the final clause of the act—*et quod istud statuatur de presenti auctoritate Consilii Provincialis.*[1] Sir George Mackenzie says that 'this Act . . . seems to have been first made in a Provincial Synod'; while Lord Hailes, with what Robertson regards as 'a truer appreciation of the circumstances,' attributes the statute to laymen, and ventures to brand certain expressions as 'not ecclesiastical Latin.'[2] Robertson then states that 'the boldness of the Scottish legislature, in thus dealing with ecclesiastical affairs, appears to have startled the Papal Court,' and he traces the ensuing controversy to this enactment. It is interesting to observe that Bishop Dowden, referring incidentally to the affair, is more or less conscious of a difficulty, and points out that the allusion to the Provincial Council was some recognition of its claim to be consulted.[3]

[1] *Statuta*, i. 81. [2] *Ibid.*

[3] *Medieval Church in Scotland*, 207; in *Bishops of Scotland*, 320, Robertson's account is accepted. Dr. MacEwen's *History of the Church in Scotland*, 338, perpetuates the misconception: his subsequent narrative is unsatisfactory.

Sir George Mackenzie was right. The clause just quoted can scarcely mean 'that this be statute forthwith by the authority of the Provincial Council': it means 'that this be statute as now authorised by the Provincial Council.'[1] This was no case of interference by the civil power with the courts spiritual. The trouble began over matters much more likely to arouse alarm at Rome, matters which bring the history of the Scottish Church into relation with tendencies and events elsewhere.

The Schism had one very practical effect in the department of finance. The French cardinals elected Clement VII., and subjected their country to exactions all the more distressing by reason of the narrowed field within which they must be levied. It was in the minds of the French that the project of a General Council gradually matured. Benedict XIII., who succeeded Clement as Antipope, would not resign. French obedience was withdrawn in 1398: restored in 1403, when it was seen that the Crown aspired to usurp the position of exorbitant power vacated by the Papacy: withdrawn again before resort was had, in 1409, to the Council of Pisa. That assembly was predominantly French. The Council of Constance (1415) was, on the other hand, representative of western nationality: it voted by nations: national divisions actually proved to be its undoing. Henry V. of England was about to invade France, and the French ranged themselves with the Italians. Reformation was postponed for the election of a Pope. Amid the rejoicings prompted by the healing of the Schism, Martin V. was able to adopt the rules of Chancery which it had been one of the main purposes of the Council to purify, and weakened the general demand for reform by entering into separate concordats. 'Thus it was no longer Christendom, no longer the whole Church, no longer the Council, the representative of the Church, which was confronted with the Pope. Each kingdom stood alone to make the best terms in its power.'[2]

In 1418 and 1422 France prohibited the sending of money to the Roman Court; but in 1425 the Pope prevailed upon the youth of Charles VII. in order to obtain the recognition of his authority. As for England, though she had national statutes, the

[1] The writer was led to question the interpretation put upon the Latin by the fact that the story as told by Robertson and repeated by Dowden, MacEwen, and other writers, is not very intelligible, leaves the obviously important and insistent acts against 'barratry' quite in the air, and does not explain the protracted vigour of the controversy.

[2] Milman, *Latin Christianity*, viii. 317.

infancy of Henry VI. weakened her defence. In 1426 Martin urged the repeal of the acts of provisors and praemunire. Chichele was peremptorily bidden oppose and ignore them. His conduct, like that of Parliament, was evasive rather than courageous; so that the Papacy gained successes which could hardly have been achieved under the eye of a vigorous ruling monarch.

Scotland withdrew her obedience from Benedict XIII. and transferred it to Martin V. a few months after he issued from the Council of Constance. Our information regarding the state of matters in the years before 1418 is scanty; but it would appear that, while Benedict was not the man to relax his claims and miss his opportunities during a regency, the Schism itself encouraged or permitted action derogatory of the papal power. In 1401 Parliament enacted that appeals in cases of excommunication should be from the Bishop through the Conservator to the Provincial Council, which was to be the final court so long as the Schism should endure.[1] It is worthy of notice that in 1398 and 1408, when France withdrew from any obedience, a Provincial Council was accepted there as the ultimate resort. Scotland, though adhering to Benedict, was tending towards nationalism. In 1417, on a vacancy in the Priory of St. Andrews, the majority of the canons seemed to believe that the Pope chosen at Constance would recognise the right of free election for which the Gallican Church had been contending.[2]

There is no trace of a concordat between Martin V. and the Scots. Before the return of James I. the civil power had neither the will nor the ability to fight: after he began to rule, papal policy does not seem to have been such as to provoke a battle over the prelacies. When James III. in 1487 obtained a definite right to nominate candidates for provision, it was not so much a new and unwonted privilege as the recognition, under specific conditions, of a practice which had already prevailed.[3] At present the trouble was that the general system of reservations had a disintegrating effect throughout the national Church, and had financial consequences for the whole realm. In the situation which confronted James I. in 1424 finance was a very important factor. The country had suffered from maladministration during the regency; and now a large sum was required for ransom. The *Liber Pluscardensis* indicates the difficulty there was in finding

[1] *Statuta*, i. 78. [2] *Sc. Hist. Rev.* xiii. 321 ff.
[3] *Archbishops of St. Andrews*, i. 157.

money: Bower devotes a whole chapter to the question of taxation. The King had the expense of domestic enterprises to consider, and to provide himself, as his policy developed, against a quarrel with England. Any serious drain of Scottish money to Rome, when even the spiritual returns were problematical, demanded the attention which similar evils had long been receiving elsewhere.[1]

The practice of reservation, upon which the controversy developed, need not be explained at length. A glance at the subject-index of the *Calendar of Papal Registers* is sufficient to illustrate the various devices by which benefices were swept into the net. Under the stimulus of competition the sums offered by candidates in annates or first fruits tended to rise, and there were also the expenses of the incessant litigation at Rome; while the ordinaries saw themselves deprived of their power. The trade might have its attractions when a man's career was in the making: it could wear a different aspect when surveyed from an episcopal see.

The Parliament of 1424 began by declining to tolerate a pension purchased from the Pope out of the deanery of Aberdeen.[2] This reflection on proceedings at Rome was followed by an act forbidding clerks to pass or send procurators over sea without royal sanction: they were not to purchase or levy any pension. As a preventive measure a heavy duty was imposed upon exported money. In March, 1425-6, the question of this duty again came up, and the act was renewed. John Cameron, the King's secretary, seems to have got into trouble, no doubt over these acts, and incurred the charge of infringing ecclesiastical liberty.[3] Meanwhile Glasgow had become vacant; and Martin V. consented to provide Cameron (April, 1426) only after receiving a promise that he would mend his ways; but before his consecration Parliament ordained that clerks going to the Continent should make exchange for their expenses and certify the Chancellor (Cameron himself) of their proceedings. The tendency of the legislation became clearer

[1] The Rolls of the English Parliament allude constantly to the export of money: see especially iii. 126 (1381-2), for the opinions of the officers of the Mint on the part played by the Court of Rome.

[2] Cf. *Cal. of Papal Registers*, vii. 262. Dismembering of benefices by pension was an evil which the Crown failed to eradicate and ended by propagating: it was the 'purchase' at Rome that offended.

[3] *Statuta*, i. 85 n. 2: this is a point in his evidence which Robertson overlooked: Cameron was under a cloud *before* the supposed transgression of the Parliament in 1427.

still in March, 1427-8, when clerks were required to explain satisfactorily to their ordinaries and the Chancellor the objects of their journey, undertake to do no 'barratry,' and obtain letters of licence. 'Barrators' were to underly the act relating to those who took money out of the realm; and that act was to apply to clerks already under conviction, who were not to be furnished with means while they remained abroad.

At Rome Cameron was held responsible for the promulgation of these statutes. We must suppose, too, that the Lords of Council, of whose acts we have no record, took steps to deal with 'barrators,' as they did in later times. Encouraged by the King and supported by some of the prelates, the Chancellor ventured to ignore certain papal reservations and, as Bishop of Glasgow, to collate to reserved benefices. Martin V. ordered two cardinals to report upon the facts; and it was decided to cite the offender.[1]

The emissary chosen was William Croyser, Archdeacon of Teviotdale. He had been regent in the new University of St. Andrews, and in 1414 he left for Paris to study theology. Any one who has the curiosity to follow his career as displayed in the *Calendar of Papal Registers* will find ample illustration of the abuses now in question. It is not surprising that in 1426 his complicated operations involved him in a charge of crimes against the Camera. King James petitioned in his favour; but the papal restoration of his benefices, which had been taken from him, and a quarrel with Cameron over his archidiaconal jurisdiction, must have contributed to make him an instrument of Roman policy.[2] In the summer of 1429 Croyser passed northwards on his mission.[3] Cameron was at present engaged in diplomacy with the English, and could not be spared. James sent a bishop and an archdeacon to explain his grievances, to excuse his Chancellor's non-appearance, and to take all necessary steps in the interests of the realm.[4] He intended to fight. His minister had been cited to Rome: he would retaliate by summoning the papal messenger before a national court for some specific infringement of the acts against 'barratry.' The envoys carried a formal citation which etiquette or nervousness prevented them from delivering in person. They handed it to a resident Scottish priest, who was told that it was the King's order and must be executed. The unfortunate man had to obey, was reported to the papal authorities, and found himself committed to prison. The royal envoys were requested to see that the citation

[1] *C.P.R.* vii. 18.
[2] *Ibid.* 464; *Reg. Glasg.* ii. 319.
[3] *Rot. Scot.* June 20.
[4] *Statuta*, i. 82-3.

was annulled, and were apparently informed that this must be a condition, if proceedings against Cameron were to be relinquished.[1] The Bishop of Glasgow, who promised to seek the abolition of the objectionable statutes, was pardoned on May 6, 1430.[2] By granting him a faculty to reserve fifty benefices of any patronage for collation to persons to be named by the King, Martin V. doubtless prided himself on having bought off the opposition without giving up the papal claim of right.[3]

With the accession of Eugenius IV. the quarrel was immediately renewed. The Archdeacon of Lothian died, and the Pope invited controversy by granting the benefice to Croyser.[4] In May, 1431, that ecclesiastic was exempted from the jurisdiction of his ordinaries, received a mandate to exact his fruits, and was taken under the papal protection.[5] This was a challenge to the King and the Bishop of Glasgow. Croyser was to enjoy the emoluments of two archdeaconries, not to speak of other benefices, and was to be retained at Rome in the Pope's service.

Eugenius began his career as Pope with the determination to dissolve the reforming Council of Basel: not until December, 1433, was the bull of dissolution revoked. In the circumstances it was natural that James should gravitate towards the side of the Council. He did not, however, take immediate action, hoping, it may be, for a diplomatic success. In 1432 Cameron obtained safe-conducts from England to proceed to Basel and, in the second instance, to Rome;[6] but the journey does not seem to have been undertaken. In the following spring Croyser and Turnbull, the future Bishop of Glasgow, were sent as nuncios to Scotland.[7] Turnbull, who appears to have been trusted by James,[8] probably went in support of the unpopular archdeacon; but, as they carried a citation for the Chancellor, the visit served only to commend the cause of the Council. James wrote to Basel, promising to send representatives, and explaining that hitherto he had been prevented by difficulties.[9] A summons was issued ordering Croyser to appear before Parliament on the charge of treason; and the fruits of his benefices were sequestrated on his failure to comply.[10] It may have been at this stage that Eugenius again sent Turnbull, who was the King's procurator at the Roman Court and is

[1] *C.P.R.* viii. 344. [2] *Ibid.* vii. 18. [3] *Ibid.* viii. 203-4, 398.
[4] *Ibid.* 422. [5] *Ibid.* 333-4. [6] *Rot. Scot.* June 6 and Nov. 30.
[7] *C.P.R.* viii. 281; *Rot. Scot.* April 29. [8] *C.P.R.* viii. 510.
[9] June 22, 1433; *Statuta*, ii. 248. [10] *Statuta*, i. 84.

described as having already undertaken arduous and expensive labours in negotiation, to attempt a settlement.[1] The effort did not succeed : Croyser was publicly condemned as a traitor, and his goods were declared escheat.[2]

The movements of Cameron, in the meantime, are obscure. He had a safe-conduct through England for a journey to Rome on October 13, 1433.[3] It is stated that he appeared at the Council of Basel along with other Scottish representatives :[4] it is certain that he reached the papal court. When next we catch sight of him there has been a most remarkable transformation. The Scottish Chancellor, so long in ill odour, had become a papal *referendarius*, whose duty it would be to report confidentially on the favours sought by petitioners. He was now regarded as suitably disposed for a return to Scotland. On May 15, 1435, he received a safe-conduct, possibly as the forerunner of Croyser, whose safe-conduct was issued a few days later.[5] On June 12 Eugenius wrote to the Scottish Privy Seal, pointing out that Croyser had lost the archdeaconry of Teviotdale because he had defended ecclesiastical liberty and the rights of the Roman See, and hoping that the King would be persuaded to change his policy. Similar letters were directed to the papal collector in Scotland, to the three estates, and to the Cardinal of Santa Croce, who was acting as legate for the pacification of France.[6]

Cameron reached Bruges, where we find him in the company of the Abbot of Arbroath. Instructions had come from James to ask the Pope for a special legate to settle ecclesiastical affairs in Scotland, and the two prelates undertook to pay 1000 gold florins for expenses.[7] The sequence of diplomatic events is not easy to detect.[8] In the Council at Basel the extremists had gained the upper hand—in June, 1435, they carried the abolition of annates, thus declaring war on the Pope—and the King of Scots may have been inclined to an accommodation with Eugenius. Something, however, in Cameron's conduct had annoyed him : acceptance of office at the papal court, weakness in the affair of Croyser, or the large sum promised to finance the mission. The

[1] *C.P.R.* viii. 510. [2] *Statuta*, i. 84. [3] *Rot. Scot.*

[4] Robertson, *History of the Christian Church*, viii. 82 ; cf. *Statuta*, ii. 248.

[5] *C.P.R.* viii. 282, 284. [6] *Ibid.* 234, 284.

[7] *Statuta*, i. 86 ; *C.P.R.* viii. 289-90.

[8] It is possible that Cameron delivered the request for a legate when he was at the papal court, before the middle of May ; but the promise of money for expenses was probably made on the return journey.

Cardinal of Santa Croce judged it advisable to send his secretary, Aeneas Sylvius, to Scotland. An object of his journey was, as he himself tells us, 'to restore a certain prelate to the King's favour.'[1] International politics further complicated the situation. There was a well-founded suspicion in England that more was on foot than the composing of a quarrel between James and the Pope. France was recovering herself: Philip of Burgundy was on the eve of the Treaty of Arras, by which he deserted the English and allied himself with the French: the King of Scots and his merchants were deeply interested in the Flanders trade, and could not be indifferent to the new situation: a Scottish princess, too, was about to marry the Dauphin. Aeneas was not suffered to pass, returned to Bruges, and found his way to the north direct from the Continent.[2]

He did not succeed, apparently, in removing the King's irritation with Cameron, or in persuading him to abandon his attitude to the Archdeacon of Teviotdale. On March 8, 1435-6,[3] the Pope recounted the history of the case, insinuated that the blame really lay with the Bishop of Glasgow and his supporters, announced that the proceedings of the civil courts were annulled by Apostolic authority, and intimated the penalties of disobedience. Again, on April 2, Eugenius wrote, dwelling more emphatically on the sinister part played by Cameron, representing James as more sinned against than sinning, urging him to repeal the objectionable acts of Parliament and quash the sentences against Croyser.[4] The two letters indicate that the Pope was trying to manipulate the situation so that the Bishop of Glasgow should be forced to separate himself from the King.

A month or two later Eugenius, writing from Bologna, where troubles in Rome had compelled him to establish his residence,

[1] *Statuta*, i. 91. Primrose, *Medieval Glasgow*, 68 f., regards Aeneas as an intercessor for Croyser. He was undoubtedly acting also on Cameron's behalf, as the sequence of events indicates. MacEwen (341) states that 'the relations of Aeneas to the papacy at that time make it impossible to believe that he was despatched by Eugenius on Cameron's business.' As a matter of fact, he was sent by his master, Santa Croce, probably from France; and the Cardinal was one of those charged by Eugenius to see that Croyser was reinstated (cf. *C.P.R.* viii. 234, 284). MacEwen also says 'it can scarcely be doubted' that Aeneas visited Scotland as agent of the antipapalists in the Council of Basel. The additional business was international and political.

[2] *Statuta*, i. 91.

[3] *Ibid.* 84. This is the true date, not May, 1435; *C.P.R.* viii. 286.

[4] *Statuta*, i. 85.

explained to James how he had been prevented by distractions from appointing a legate, and announced that he was sending the Bishop of Urbino as nuncio to reform ecclesiastical affairs in Scotland. The tone of the letter was significantly benevolent. James had acted like 'a good prince and a devout' in making his request.[1] On the same day, July 10, the Bishop of Glasgow and the Abbot of Arbroath were empowered to levy from the Scottish clergy the 1000 ducats which, under the Pope's order, they had already delivered to Urbino. Eugenius desired, he said, to provide for their indemnity, lest they should pay out of their own pockets for what was to be a blessing to the whole realm. This language reveals the situation. James had been forced to ask for papal intervention; but the Pope was in no great hurry to be gracious. He desired a tangible diplomatic return in the withdrawal of proceedings against Croyser: not 'distractions' but calculations of policy had been the cause of delay; and he sought to enlist the interest of Cameron and Panter by giving them a heavy stake in the success of the mission, for it was a condition that the mandate to recover the money should become operative only when the 'visitation and reformation' had been completed.[2] Cameron was in a most uncomfortable position; and it was probably with mixed feelings he learned that he was not to return to Scotland without permission from the Pope or Urbino.

We are not precisely informed as to what Urbino was to achieve. One writer speaks of 'restoring ecclesiastical discipline and composing other matters of the most extreme gravity.'[3] James and his councillors were determined regarding the export of money. The last recorded parliamentary act of the reign, a few weeks before the nuncio arrived, absolutely prohibited the taking out of gold and silver, coined or uncoined. After the murder of the King, which prevented Urbino's formal reception, Eugenius wrote as if the objects of the mission might still be promoted.[4] It seems to have been internal disorder which compelled James to seek the papal intervention; and the Pope used the opportunity to insist upon the withdrawal of sentences against Croyser. The quarrel of the protagonists must have stirred controversy among the clergy, and must have produced differences such as became marked later in the century, between the supporters of a national policy and those who preferred to acknowledge the

[1] *Statuta*, *i.* 86. [2] *Ibid.* 87; *C.P.R.* viii. 289-90.
[3] *Statuta*, i. 86. [4] *Ibid.* 87-8.

Roman claims. These differences were further complicated by the struggle of Pope and Council, destined to end in the setting up of the rival Felix V. In France the Crown and the prelates availed themselves of a train of events damaging to the prestige of the Papacy: the Pragmatic Sanction of Bourges, in 1438, was to be a decisive success for the Gallican Church. In Scotland, James and a number of his churchmen had been tending in the same direction. But there was less unanimity. The ignoring of papal mandates for collation, in which Cameron had been the leading offender, can only have added to the squabbling and confusion which the system of reservation had already caused. Export of money by 'barrators' was an impoverishment of the realm: the attractions of the Roman market were disastrous to the ecclesiastical efficiency which James really had at heart; but there must have been those who feared the domination of the Crown, and whose reverence for the Holy See prepared them to abide by the evils they knew. Moreover, the Council of Basel had not yet come to an open rupture with Eugenius; and there were many, as it afterwards appeared, who looked to the action of the Council to secure a papal reform and maintain the nationality of the Scottish Church under a catholic and constitutional authority.

The part which Cameron played is in some respects clear. He was an antipapalist; and while he was in Scotland he neither sought nor gained from the Pope the personal rewards which fell to the complaisant. As Chancellor he was the minister and adviser of the Crown: as Bishop of Glasgow he sought to vindicate what appeared to be the rightful liberties of the Church. That he was supporting James merely in order to defeat the exorbitant claims of the Pope would be an assumption unsupported by direct evidence; yet it is the conclusion suggested by the circumstances of the case. He probably looked to the Council of Basel in the expectation of reform, and was disappointed. His proceedings on the Continent, were they fully known, would reveal his character and explain his career.[1] Why did he accept office at the papal court and incur the resentment of his King? Was it from self-interest? Or was it on grounds of ecclesiastical policy? The former alternative is difficult to reconcile with the rest of his conduct; and we may prefer to suppose that he was acting, in an almost impossible situation, for what seemed the interest of the Scottish Church.

[1] We do not know, for instance, whether it was on his advice that James asked for a legate.

Cameron was not to return home without permission. It is unlikely that he spoke with James again. Even if proceedings against Croyser had not been abandoned as the condition of Urbino's visit, the death of the King inevitably decided this round in the struggle between the Crown and the Papacy. Yet Cameron did not immediately cease to be Chancellor. The Earl of Douglas, when he took up the government, retained the services of the man who in 1423 had been his secretary.[1] There is good reason to suppose that the bishop reverted to his old attitude of hostility to the papal claims. A nuncio passed into Scotland in 1438 on an errand which is not stated.[2] On May 3, 1439, if the record may be trusted, Cameron was acting as Chancellor at Stirling;[3] next day, at Newark, Crichton was with the Earl as avowed holder of the office.[4] The death of Douglas in June was soon followed by a visit from the familiar William Croyser. He was armed with a faculty to absolve the Bishop of Glasgow from excommunication, even for neglect of papal mandates, and from perjury incurred by breaking promises he had sworn to perform. Croyser was also to receive an oath of fealty to the Pope and the Roman Church.[5]

Thus ended Cameron's career, so far as this controversy was concerned. The next great churchman whose activities dominated Scottish ecclesiastical history, James Kennedy, was of a different way of thinking, and had matters of internal policy to absorb his energies. Eugenius, too, was indulgent, and ran no risk of arousing enmity.

As for Croyser, he cuts a somewhat poor figure. Adhering to the Council of Basel, he was rewarded with a French priory by Felix V.: lost Teviotdale: repented: was rehabilitated, probably by Kennedy; and lived to settle, in 1452, the relation of his jurisdiction to that of the Bishop of Glasgow, now William Turnbull, his old colleague and fellow-traveller.[6]

R. K. Hannay.

[1] *Statuta*, i. 82. [2] *Rot. Scot.* Nov. 19. [3] *R.M.S.*

[4] *Douglas Book*, iii. 424.

[5] *C.P.R.* viii. 294; *Rot. Scot.* Feb. 28, 1439-40.

[6] *C.P.R.* ix. 174; x. 529; viii. 238; *Reg. Glasg.* ii. 394.

The Haunting of Blantyre Craig

'UPON ane precipice close unto Clyde among pleasant woods just opposite to the Castle of Bothwell' still stand fragments of the ancient Priory of Blantyre. Founded in the thirteenth century as a house of the Canons Regular of St. Augustine the Priory and its possessions fell, at the Reformation, into the hands of Walter Stewart, son of Sir John Stewart of Minto, and, through his mother, nearly related to the recalcitrant Commendator of Crossraguel whom the Kennedys roasted in the Black Vault of Dunure.

This Walter Stewart, who was a man of much importance in his time, also acquired from the Dunbars of Enterkin, the temporal barony of Blantyre, and was in 1606 created Lord Blantyre.

He died in 1617, and in 1641 his representative was his grandson, Alexander 4th Lord Blantyre.

The ordinary peerage writers tell but little of this Alexander. He married, while still under age, Margaret Shaw, daughter of the Laird of Greenock. He took part in the engagement, that attempt to save King Charles which so greatly incensed the extreme party among the Presbyterians, and only escaped serious consequences by pleading his youth and giving satisfaction to the General Assembly.

There is, however, ground for believing that Alexander 4th Lord Blantyre was a more interesting person than may be gathered from this discreet summary of his career, even though he can hardly be regarded as worthily representing his highly respectable grandfather.

In his 'Supplication to the Estates of Scotland anent the engagement,' he pleaded that he had been drawn into evil courses by 'perswasioune of perverse counsale and out of ane vane and chyldisch desyr to see the ordour and fashione of armes,' and in spite of passing years and of many warnings this 'vane and chyldisch desyr' continued to trouble him. In short, he seems to have been and to have remained a rolling stone.

o

Sometime about 1649 his marriage with Margaret Shaw took place, and for a while they seem to have lived happily together, though his means were so straitened that in 1650 he succeeded in securing exemption from 'lending of any soumes of money to the publick'—an indication that taxation by way of benevolences or forced loans was not confined to King Charles and the malignants. His restless spirit, however, led him to join the forces of Huntly, in whose capitulation to General Overton at Aberdeen in November 1651 he was included. And a couple of years later he and other west country gentlemen were about to join Glencairn when Lilburne swooped down and apprehended them. Thereafter, when the strong hand of Cromwell had made fighting impossible, Lord Blantyre took up sheep farming in the south country, where he suffered much molestation from moss troopers and got into further financial difficulties, with the result that the good old remedy of interdiction was put in force to prevent the ruin of the family. In 1659 he had a troop of horse under Monk, whom he accompanied into England, and after the Restoration he tried without success to obtain some post about the Court. In 1662 a new idea struck him, and along with a certain Sandy Hall he went to England as a horse couper—Sandy being put forward as the couper, while his Lordship posed as the couper's man! As usual the adventure was a financial failure.

For some time Lord Blantyre seems to have practically deserted his wife and four children, who lived at the Craig of Blantyre, as the old Priory had come to be called, under certain articles of agreement, while he lived at his other house at Cardonald. Such was the state of things in the summer of 1663.

The Craig of Blantyre was not a particularly attractive residence, for, as my lady complained 'besides the solitariness of it the most part of the rooms being underground makes the air of it exceedingly noxious,' and one of the children had died. But apparently Lady Blantyre had no other place to go to, while her husband spent his time partly at Cardonald and partly in the congenial society of the 'sojers' at Dumbarton. Then dreadful things happened.

On 14th July strange sounds began to be heard in the old Priory, and these were followed by 'the casting of stones, great and small, peats and coals (the doors and windows being all close), whereby the servants of the family and others that came in the night time and some that came in the day to bear them company, have gotten stroakes.' The confusion was further increased by 'apples and peers fleeing up and downe the house in daylight.'

And worst of all, one bright moonlight night, when the servants were sitting round a fire 'there came downe watter from a chimneyheid and almost slockened on the fire to the which chimneyheid none could hav gone without a long ladder and no ladder was neer it.' Little wonder that my lady packed up and fled the house with her children, and that the story went abroad that there was 'ane evil spirit or something of that kind' (note the Scots caution) 'turbulent in the Craig of Blantyre.'

When this startling intelligence reached Greenock, the Laird happened to be away in Edinburgh, so his doer, Mr. Christopher Morrison, was at once despatched to ascertain the truth for the information of my lady's friends. On his arrival, Mr. Christopher found things even worse than he had expected. The servants were all preparing to fly from the house. Not merely were they scared out of their wits by the apples and peers and other phenomena, but 'one of the women by one stroake on the heid by a great stone was strucken dead for a long time on Saturday last in the afternoon.' To reassure them, if possible, Mr. Christopher himself stayed in the house for a couple of days, but he had to admit that their terror was only too well founded.

All he could do was to persuade them to stay in the place during the day and at night take refuge in the neighbouring farm house of Mr. John Cruiks. He had as little doubt, moreover, of the cause as he had of the existence of the disturbances.

The idea of practical joking on the part of any living person is not suggested by Mr. Christopher, nor did his thoughts ever turn to the possible walking of some unquiet monk, annoyed by the profanation of his beloved priory. In their nature and origin he was clear that the disturbances were diabolical, and the only question was as to who could have been in negotiation with the enemy of mankind. With little hesitation Mr. Christopher points to a certain John Mathie as the villain of the piece. This John Mathie was the cook at Blantyre Craig, and had been so for some time. In discussing with the other servants the relations between my lord and my lady, he had expressed himself most disdainfully with regard to the latter—even calling her 'a waister.' He had also ventured to treat my lady with personal discourtesy, quite unbecoming his position as cook. He had, moreover, a certain dangerous flippancy of tongue, for when John Keiper, who had suffered badly from a 'stroake' enquired 'what garrt you gar your gaist hurt me with a stane?' he retorted 'that he had little to do where he was.' This was of course an open

and shameless avowal of guilt, and it was confirmed by the fact that when Lord Blantyre arrived at the Craig after his wife's departure there was no more casting of stones, the apples and peers ceased 'fleeing up and downe,' and things generally returned to their old tranquillity. John Mathie was furthermore a man with a past—'a most prophane godless rude and drunkensome fellow.' He professed skill in diseases, and once when a woman in Glasgow was only complaining of 'the each,' he gave her a belt to wear about the body, 'after the using whereof she died within a short time and very suddenly.' He was thus obviously a warlock, and a malevolent one forbye, at least so far as my lady was concerned.

After these distressing experiences Lady Blantyre raised an action for aliment against her husband, alleging many things against him, and in particular, that the house he had given her to live in 'is troubled with ane evill spirit or somewhat of the kynd so that the same is no ways habitable.' In the long run she got Cardonald as a residence and the Craig of Blantyre was left in peace.

What became of John Mathie does not appear. Probably he remained on at the Craig and cooked for my lord. But the view is strenuously urged that a man thus plainly having 'interassurance and conversation with familiar spirits and devills' ought not to be suffered 'to live amongst Christians, but should have his last tryall.'

J. R. N. Macphail.

The Appellate Jurisdiction of the Scottish Parliament

ANY inquiry regarding the history of the Scottish parliament is attended with many and great difficulties: and it seems to us that the method of attacking these difficulties which is most likely to succeed is to examine the functions exercised by parliament one by one, in the hope that such an examination will assist to a better understanding of the institution as a whole. In pursuance of this method we shall attempt in the following pages to trace the history of the appellate jurisdiction of parliament in civil causes. We shall seek for the origins of this jurisdiction in the twilight of a period when parliament as a representative assembly did not exist; and we shall have something to say in regard to the early procedure in appeal cases, as its forms seem to throw some light upon the main question.

I.

During the reigns of David I., Malcolm IV., and William the Lion the royal court of justice presented two outstanding features. Of these the first was that it was a migratory court. The king's frequent changes of residence appear to have been due mainly to two causes,—the calls of public business, of which the administration of justice was one and perhaps the most important, and the need of providing for the support of the royal retinue, composed of some, at all events, of the great officers of state, and of a numerous band of churchmen, nobles and courtiers, with their followers.[1] The charters of King David show how frequent these changes were;[2]—they were still more frequent in King William's reign;[3]—and the designations of the witnesses indicate that the

[1] C. Innes, *Scotland in the Middle Ages*, Edinburgh, 1860, p. 121. Of course, it is not suggested that the court ceased to be migratory until long after William's reign.

[2] A. C. Lawrie, *Early Scottish Charters prior to* A.D. 1153, Glasgow, 1905, *passim*.

[3] E. W. Robertson, *Scotland under her Early Kings*, Edinburgh, 1862, ii. 130; Innes, p. 120.

chancellor, constable and chamberlain were in constant attendance upon the royal person ;[1] while in King William's reign the local judges attended the king during his stay in their districts.[2]

The second characteristic of the court was that it served at once as a court of appeal and a court of first instance. In David's reign, the chancellor, justiciar, constable and chamberlain, the sheriffs, where sheriffs had been appointed,[3] and other royal judges,—such as 'Constantinus, Earl of Fife, a great judge in Scotland, and Meldoinneth son of Machedath, a judge worthy and discrete,'[4]—exercised jurisdictions as the king's representatives ; and churchmen, nobles, barons and other freeholders held their own courts. In addition, the king himself took a prominent part in the judicial work of the kingdom. We are told that he sat at his palace gate to hear the complaints of the poor and unprotected ;[5] while, in some of his grants to religious houses, he reserved to himself the 'royal justice,'[6] or provided that his judge should be present in the churchman's court to see that justice was done.[7] He conducted perambulations in person,[8] and is said to have made regulations for the conduct of such proceedings ;[9] and he prohibited the lieges from demanding anything of him or making any complaint to him, until they had made the demand of their lord, or unless the lord or his sheriff had failed in doing justice.[10] It is to be observed that it is of the king as judge that we hear rather than of a 'curia regis,' although the latter is mentioned in the 'assise' attributed to King David.[11]

[1] Lawrie, *ut sup. cit.* [2] *Assise Reg. Will.* c. 26.

[3] C. Innes, *Lectures on Scotch Legal Antiquities*, Edinburgh, 1872, p. 222.

[4] *Registrum Cartarum Prioratus S. Andree* (Bannatyne Club), Edinburgh, p. 117 ; Lawrie, pp. 66, 330.

[5] Fordun, v. 49.

[6] 'si abbas in curia sua aliqua negligentia de justicia deciderit' (*Registrum de Dunfermlyn* (Bannatyne Club), Edinburgh, 1842, No. 1).

[7] 'quod judex meus illius provincie cum hominibus qui illuc placitare venerint intersit ut placita et justicie juste tractentur' (*Registrum de Dunfermlyn*, No. 15). 'Judex meus' was probably the Earl of Fife (Lawrie, p. 346).

[8] *Registrum S. Marie de Neubotle* (Bannatyne Club), Edinburgh, No. 18. See *Liber S. Marie de Melros* (Bannatyne Club), i. 136, and Lawrie, p. 73.

[9] See *Liber de Aberbrothoc* (Bannatyne Club), pt. i. p. 229.

[10] or unless the matter in issue was one of the pleas of the crown ; *Ass. Reg. David*, c. 24.

[11] *Ass. Reg. David*, cc. 2, 15. 'Any court held in the king's name by any of the king's delegates is 'curia regis'' (F. Pollock and F. W. Maitland, *The History of English Law before the Time of Edward I.* 2nd ed. Cambridge, 1898, i. 153).

It is otherwise in William's reign. In the record of his 'curia' we find entries relating to cases decided in the presence of the king, the bishops and the king's 'probi homines,'[1] and to inquests conducted by the king, certain bishops and the king's good men;[2] and numerous notices of quitclaims, concords and settlements 'in presentia regis et curia,' or 'in plena curia,' or 'in presentia regis et optimatum suorum in plenaria curia sua.'[3]

Innes observes that 'the attendance, *in fact*, in the king's court seems to have consisted chiefly of a few churchmen, the great officers of state and a portion of the nobility and great barons'; and his observation is borne out by the lists of witnesses to some of the transactions in court.[4] It is true that all the king's tenants-in-chief, some of whom bore special titles, such as earl, bishop or abbot, under which they are generally referred to, were bound to give suit and presence in the royal court;[5] but in many cases they were freed from the obligation by the terms of their infeftments. The freeholder's infeftment often provided for attendance at the nearest local court in satisfaction of the burden incident to his tenure,[6] as, for example, in a grant by Robert I., where the burden was limited to the giving of one suit only in the court of the sheriffdom of Berwick at the head court held annually after Easter.[7] The giving of suit and service was regarded not as a privilege but as a burden, and exemption from it was always looked upon as a benefit and was sometimes granted as a reward.[8] And when we consider the difficulties and

[1] *Fol. Acts*, i. 386.

[2] *Fol. Acts*, i. 386-87.

[3] *Fol. Acts*, i. 386-90.

[4] *The Middle Ages in Scotland*, pp. 208 ff.

[5] J. H. Round, 'The House of Lords,' *The Antiquary*, x. 240. According to Pollock and Maitland (i. 233 note[3], see p. 258), in the thirteenth century, the term 'in capite' is merely equivalent to 'immediately,' 'sine medio.' In later days the term 'tenure in capite' was sometimes used as though it were equivalent to 'tenure in capite of the crown,' and even to 'tenure in capite of the crown by knight service' (see Round, *loc. cit.*). The use first mentioned and the former of the two uses last mentioned would include, apparently, the royal burgess or the holder by 'Scottish service' (see Robertson, ii. 445). As to 'Scottish service,' see *Highland Papers*, ed. J. R. N. Macphail (Scott. Hist. Society), Edinburgh, 1916, ii. 227 ff. As to the assimilation of such tenures to feudal forms, see W. F. Skene, *Celtic Scotland*, Edinburgh, 1876-80, iii. 236. Great tenants-in-chief sometimes used the term 'barones' for their under tenants (Round, x. 239; *Highland Papers*, ii. 241; Stubbs, i. 365 f.).

[6] *Ibidem.*

[7] *R.M.S.* i. No. 7.

[8] W. Stubbs, *The Constitutional History of England*, Oxford, 1875, i. 377 note; see p. 12 of the writer's article, 'The Suitors of the Sheriff Court,' *The Scottish Historical Review*, xiv.

dangers of travel in the Scotland of this period, and the length of time which a journey occupied, we shall not be surprised at the reluctance of the smaller freeholders to attend, except when their attendance was necessitated by their own interest.[1] Besides, even if they had attended, they would have had little influence in an assembly of magnates.[2] Insistence on the performance of the obligation was not as essential in the royal as in the inferior court. In the case of the former, 'debilite' of court, arising from an insufficiency of suitors, was hardly a pressing danger; and it seems not improbable that at many sittings of the royal court only those freeholders attended who were specially summoned, and only those were specially summoned whose presence was thought to be necessary or desirable.[3]

The record of the 'curia' of Alexander II. shows transactions of much the same character as in that of David. In the 'acta' of Alexander III., however, a change is observable. The expression 'curia regis' is replaced by that of 'consilium' or 'concilium' or 'colloquium';[4] and the nature of the business done suggests a council rather than a law-court. It is true that in the earlier reigns the 'curia' was something more than a court of justice, for its sittings were utilised for the transaction of business other than that of deciding cases. Thus in William's reign we find that the grant of the church of Molyn by the Earl of Atholl was made 'ipso rege presente, episcopis, abbatibus, comitibus et probis hominibus regni astantibus';[5] and Uchtred de Bingouere declared Malcolm, Earl of Fife, to be his heir in the king's presence and in his full court.[6] In short, the 'curia' served not only as a law-court but as a public register. But it was something more than these. It was, when business required, the seat of a council or parliament. 'Parliament,' according to its original meaning, was simply a consultation; 'and, when there was anything of sufficient impor-

[1] Cp. Pollock and Maitland, i. 537f., 543, 547.

[2] Cp. J. H. Round, 'The House of Lords,' *The Antiquary*, xi. 162.

[3] See c. 19 of the 'Quoniam Attachiamenta' (*Fol. Acts*, i. 651), which deals with the attendance of vassals at the courts of their lords. Where the diets at which attendance was required were specified in the vassal's charter, a summons to attend was, of course, unnecessary. A form of summons 'ad colloquium nostrum' (see next note), attributed to the reign of Robert I., is given in the *Folio Acts*, i. 102, see p. 54. See also Stubbs, i. 370.

[4] A 'colloquium' was held in the preceding reign (*Fol. Acts*, i. 408). In England, the term was frequently used of sessions of the national council (Stubbs, i. 570).

[5] *Fol. Acts*, i. 387. [6] *Fol. Acts*, i. 390.

tance to enact or consult about . . . a parliament or consultation was held,—sometimes, as in the reign of Alexander II., after the coronation ; occasionally in an assembly of both estates expressly convened ; but most frequently at the assizes, when the royal court was present at 'the county town' or capital of the sheriffdom.'[1]

The history of the national councils presents great difficulties. Such councils are said to have been held in the reigns of David, Malcolm and William ; but it is more than doubtful whether such a designation is really applicable to many of the assemblies to which it has been applied. In David's reign grants were made and concords were concluded in the presence of or with the affirmation of bishops, earls and barons ;[2] but neither the nature of the business done nor the position of the persons present suggests the meeting of a national conference. What they do suggest is a conclave of king and courtiers rather than a general council. Again, much importance has been attached to the use of certain words of style in some of the charters of King David and the four kings who followed him.[3] In them the king is said to make the grant 'auctoritate regia et potestate . . . episcoporum, comitum, baronumque regni mei confirmatione et testimonio, clero etiam adquiescente et populo,' and it has been argued that these words indicate the assent of a national council if not of a parliament. The words are those of a monkish scribe, using apparently a common form ; and it seems to us to be out of the question to accept them as conclusive evidence of a state of facts, unless they are corroborated by independent confirmatory evidence.[4]

King William's 'assise' bear to be made sometimes by earls, barons and judges of Scotland,[5] sometimes by the counsel of his great men,[6] and sometimes with the counsel of his kingdom.[7] On other occasions the legislators are said to be the prelates, earls, barons and freeholders,[8] or the bishops, abbots, earls, barons and all other 'gudemen' of the kingdom,[9] or the bishops, abbots, earls, barons, thanes and all the community of the kingdom.[10] Sometimes only the 'consilium communitatis'[11] is

[1] Robertson, ii. 148. [2] *Fol. Acts*, i. 359 ; Lawrie, pp. 140, 146, 400, 403.
[3] *Fol. Acts*, i. 357, 359, 363, 385, 406, 427.
[4] See Lawrie, pp. 323, 384. [5] *Ass. Reg. Will.* c. 10, cp. c. 21.
[6] *Ib.* c. 27. [7] *Ib.* cc. 25, 35. [8] *Ib.* c. 12, cp. cc. 36, 37.
[9] *Ib.* c. 16. 'Gude men,' 'probi homines,' mean either vassals or subjects (Innes, *Lectures on Scotch Legal Antiquities*, p. 36).
[10] *Ass. Reg. Will.* c. 20. [11] *Ib.* cc. 24, 29.

named. The last-mentioned form of expression is found in two 'assise,' of which one is entitled 'de terra data per dominum regem de dominico suo,'[1] and the other 'de seditione regis vel regni,'[2] and it would be remarkable indeed if ordinances relating to matters of this nature were made by the king and commons alone. It has been suggested that some light is thrown on the meaning of the term 'communitas' by the 'assisa de magnatibus jus facientibus de malefactoribus,'[3] which bishops, earls, thanes 'et tota communitas' swore firmly to maintain under a penalty which is thus expressed: 'et dominus rex curias suas in vadio posuit ut qui convictus fuerit et assisam hanc infregerit perpetuo curiam suam amittet'; and it has been inferred from the terms of this penal clause that by 'communitas' the body of the freeholders is indicated. The validity of the inference may be doubted, for the words may mean no more than that those who had courts and broke the assize should lose them. However this may be, the fact is worth noting that, except in one instance of later date,[4] there is, so far as we are aware, not a single case in which an enumeration which closes with the word 'communitas' mentions freeholders. In the exceptional case just referred to the words are 'comites, barones et libere tenentes ac tota communitas regni Scocie.' 'Communitas' is a 'large vague word,'[5] and is always to be construed according to the context in which it occurs. Sometimes it is used of freeholders, sometimes of burghs, sometimes of estates, and in many of the letters written by the guardians of the realm to the kings of France and England it means the whole Scottish people.[6]

When we turn to the 'statuta' of Alexander II. we find a similar diversity of expression. The councils of William and Alexander III. are not infrequently described as 'concilia magnatum,'[7] and Fordun refers to the three estates and to parliament,[8] and to the 'magnum concilium' of 1211,[9] in which, according to Lord

[1] *Ass. Reg. Will.* c. 24. [2] *Ib.* c. 29.

[3] *Ib.* c. 20. This point has been taken by Professor Rait, *The Scottish Parliament before the Union of the Crowns*, London, 1901, p. 16.

[4] See a letter to Pope John, dated 6th April, 1320 (*Fol. Acts*, i. 474).

[5] Pollock and Maitland, i. 494. See Stubbs, ii. 166 f.; Robertson, ii. 137; Innes, *Scotland in the Middle Ages*, p. 208, 211.

[6] *Fol. Acts*, i. 442, 454, cp. 459.

[7] See *Fol. Acts*, i. 64-9, where the references are given.

[8] ix. 1, 27. [9] viii. 73.

Hailes,[1] the 'burgenses' gave suit and presence; while, Wynton applies the term parliament, for the first time in his chronicle, to an assembly held at Scone in 1285, at which the 'statis off Scotland gadryd wase.'[2]

In 1289 the word parliament is used of the English parliament.[3] The record relating to the year 1293 refers to 'placita apud Scone . . . coram ipso rege et ejus consilio in parliamento';[4] and in 1295 King John appointed procurators, in reference to the marriage of his son, with the approval of bishops and nobles, the seals 'communitatum villarum de Aberdene, Perth, Strivelin, Edinburgensis, Rokysburgi et Berewici,' being appended to the document.[5] In the record of the parliaments of 1314, 1315, and 1318,[6] the 'tota communitas regni' or 'ceteri de communitate' are mentioned along with prelates, nobles and barons; and at Cambuskenneth on 15th July, 1326, 'cum comitibus, baronibus, burgensibus et ceteris omnibus liberetenentibus,' the burgesses, according to the view generally accepted on grounds which in our opinion have not been sufficiently examined, took their place in parliament for the first time and joined with the other estates in granting to the king the tenth penny on all rents, according to the old extent.[7]

In the parliamentary record of the reign of David II., we find notices of decrees in appeal cases decided by the parliament,[8] and entries giving the details of cases heard by the parliament as an appellate tribunal.[9] In the parliament held at Perth on 6th March, 1368-69,[10] committees were appointed, of which one was concerned solely with the consideration of appeals known as 'judicia contradicta';[11] and, in the following year, this committee's jurisdiction was extended to include 'questiones et querelas alias que per parlamentum debeant terminari.'[12] The 'questiones et querele' included not only complaints regarding irregularities of procedure, negligence and denial of justice in the inferior courts, but cases brought before the committee as a court of first instance; and a similar jurisdiction, except as regards 'falsing dooms,' was exercised by the king's council. In some of the later parliaments

[1] *Annals of Scotland*, Edinburgh, 1799, i. 154 note.
[2] Wynton, ed. D. Laing, Edinburgh, 1878, viii, 1 (Macpherson's note).
[3] *Fol. Acts*, i. 442. [4] *Fol. Acts*, i. 445. [5] *Fol. Acts*, i. 451-53.
[6] *Fol. Acts*, i. 464-65. [7] *Fol. Acts*, i. 475.
[8] *Fol. Acts*, i. 521. See *R.M.S.* i. 557-58 and p. xi. [9] *Fol. Acts*, i. 504 ff.
[10] *Fol. Acts*, i. 506. [11] *Ibidem*. [12] *Fol. Acts*, i. 507.

there were two committees, of which the one dealt with the 'judicia contradicta,' and the other with the 'questiones et querele.' Thus, in the record of parliament for 1542-43, 1543 and 1544,[1] we find entered a committee for the discussion of dooms, and a committee entitled 'auditores ad causas,' 'domini electi ad causas' or 'for the discussion of causes.' Of these the latter was, in the years mentioned, composed of the 'domini sessionis et collegii Justicie.' Although these committees were generally invested with the full power of parliament,[2] yet there are instances in which parliament reduced their decrees,[3] and in which cases of difficulty were referred by them to parliament.[4] After 1544 they disappear from the record.

It is difficult from the consideration of the evidence relating to assemblies so variously constituted to form any distinct notion of their specific characteristics, differences and limitations. We seem, however, to find, as early as the reign of David I., traces of the existence of three institutions: the king's personal council, the 'curia regis,' and the general council. Of these the first appears to have been composed of churchmen, the great officers of state, and selected members of the band of courtiers who were in constant attendance upon the king. It resembled a court rather than a council, and appears to have been the precursor of the secret or privy council.[5] In the 'curia regis' the king's tenants-in-chief were bound to give suit and presence, and it was to all appearance this body which formed the personnel of general councils, called into being by the exigencies of the moment and passing out of existence as soon as their work was completed.[6] In the reigns of William and Alexander II. the 'curia' was at once council and court of justice, while, in the following reign, this double function was exercised by 'colloquia' and 'concilia,' and the business done was, so far as recorded, appropriate to a council rather than to a court. Still, the court was the nucleus of the council, and gave to the composite body, of which each was an element, the distinctive character of a judicial institution. That such was its character

[1] *Fol. Acts*, ii. 411, 428, 446.

[2] *Fol. Acts*, ii. 114, 117, 122, 211; *Act. Dom. Aud.* 137, 141, 142, 144.

[3] *Fol. Acts*, ii. 132.

[4] *Ibidem.* The parliament's decision is given at p. 141. See the case of Kennedy of Blarquhen (*Act. Dom. Cons. et Sess.* vi. fol. 68; *Fol. Acts*, ii. 349).

[5] See *Fol. Acts*, i. 546-47; ii. 219; iv. 440.

[6] See J. H. Round, 'The House of Lords,' *The Antiquary*, x. 242.

is made very apparent by the record of parliament from the reign of James I. of Scotland to that of Charles I. It opens, in very many instances, with words appropriate to the sitting of a feudal court, of which the following may be taken as a sample: 'Quo die, vocatis omnibus et singulis dominis regni prelatis, episcopis, abbatibus, prioribus, et magnificis regni comitibus, baronibus, libere tenentibus et burgorum commissariis, absentes in rotulis sectarum designantur et in amerciamentis debitis judicantur.'[1] In the parliament held on 15th July, 1641, the entry runs: 'sectis vocatis et curia legitime affirmata';[2] and on and after 20th July of that year the style reads: 'the rolles called and prayeres said.'[3] Further, the judgment of parliament on the cases submitted to it was pronounced by its deemster;[4] and in a case decided in 1478 the deemster's doom is followed by these words: 'quod quidem judicium dominus noster rex suprascriptus in statu regali et loco tribunali sedens vive vocis oraculo affirmavit.'[5]

'The parliament of old,' writes Sir George Mackenzie,[6] 'was only the king's baron court, in which all freeholders were obliged to give suit and presence in the same manner that men appear yet at other head courts.' It was, Hume[7] observes, 'the paramount feudal court of the king and his freeholders.'

II.

When we examine what appear to be the earliest sources of the history of appeals we are confronted with an initial difficulty. We find an 'assisa' attributed to David I., of which the terms suggest that the king re-heard cases where the baron or sheriff had failed to do justice,[8] but we are in doubt whether it belongs to his reign. We know that in certain grants to churchmen he reserved to himself the royal justice,[9] but we do not know what procedure he followed. Skene ascribes to William the Lion an ordinance relating to 'judicia contradicta,' but the ascription is

[1] *Fol. Acts*, ii. 87. Similar words are used in the record of a general council held at Perth on 1st March 1427-28 (*Fol. Acts*, ii. 15).

[2] *Fol. Acts*, v. 308. [3] *Fol. Acts*, v. 314.

[4] See *Fol. Acts*, Index, *s.v.* 'Dempster of Parliament.' [5] *Fol. Acts*, ii. 117.

[6] *Works*, Edinburgh, 1722, ii. 281.

[7] *Commentaries on the Law of Scotland respecting Crimes*, Edinburgh, 1844, ii. 5, 9 note [1].

[8] See note 10, p. 206, and relative text.

[9] See note 6, p. 206, and relative text.

made on the authority of a single manuscript and conflicts with other and better authority.[1] Certain legal fragments provide for the punishment of the judge who maliciously delays justice or who has been convicted of giving false judgment, but they do not indicate the period to which they belong.[2] And when we come to the 'Regiam Majestatem' we find that its date is matter of controversy and uncertainty.[3] Upon the difficulty last mentioned some little light is thrown by the evidence which we are about to consider. The passage in the 'Regiam Majestatem' which refers to 'judicia contradicta' introduces trial by battle as part of the procedure. Trial by battle forms no part of the procedure as presented to us either by statutes, cases or treatises of the fourteenth and fifteenth centuries. And, accordingly, the inference is plain that the law relating to the falsing of dooms contained in the 'Regiam Majestatem,' if not the 'Regiam Majestatem' itself, belongs to an earlier period.

An examination of the evidence shows us that at least three forms of procedure were recognised in Scottish practice, all of which bore some resemblance to procedure by way of appeal. Recourse was had to the first where the judgment of an inferior court had been 'falsit' or 'againsaid' (contradicted); to the second when an inferior court had failed to do justice; and to the third when the assizers on an inquest had acted ignorantly or with 'partial malice.' The first form is spoken of by the Scottish writers who deal with it as an appeal; but it differed, as we shall see, in many respects from what is understood by that term in modern practice.

According to Germanic law, both on the continent and in England, a party who thought himself aggrieved by a judgment might impugn it.[4] In Anglo-Saxon law he was said 'dom forsacan';[5] while, on the continent, one of the most common expressions applied to his act was 'contradicere,' or its old French or low German equivalent. The constitution of the court seems

[1] 'Fragmenta Collecta,' cc. 4, 6, 10 (*Fol. Acts*, i. 260, 742).

[2] 'Fragmenta Collecta,' cc. 14, 15 (*Fol. Acts*, i. 743), 34 (*Ib.* i. 754).

[3] See G. Neilson, *Trial by Combat*, 1890, p. 104. Dr. Neilson adopts the 'working theory' that the 'Regiam Majestatem' or the law which it contains is to be assigned to the opening years of the thirteenth century.

[4] This subject receives full treatment from H. Brunner, *Deutsche Rechtgeschichte*, Leipzig, 1887-92, ii. 355 ff.

[5] *Ancient Laws and Institutions of England* (Record edition), 1840; 'Laws of Edgar,' i. 3; 'Laws of Cnut,' ii. 15.

to have been very similar to that of the early Scottish sheriff court. The sheriff and suitors had each their counterpart. There was the presiding officer ('der Richter') and there were those who made the judgment ('die Urteilfinder').[1] It was the duty of the latter to declare the law applicable to the cases conducted before them on the demand of the parties; and the contradiction of the judgment pronounced by them imported the charge that they had refused to comply with this demand and had refused of set purpose. The gravamen of the charge was not an assertion that they were ignorant of the law, but the assertion that they would not declare it,—that, in short, they refused to do justice. Frequently it was made matter of regulation that the contradiction must be made at once,—on the spot 'stante pede' or 'standes fusses e er hinder sich trede,'—or at any rate before the contradictor had retired from the judge's presence.[2] It was not sufficient for him to contradict the judgment; he was bound to propose a counter-judgment; and the contradiction resolved itself into a legal contest between the contradictor and the judges as to which was the better judgment. The party in whose favour the judgment was took no part in the proceedings; and generally the contest was decided by battle. The assizes of Jerusalem present an extreme case. According to their provisions, whoever falsified the judgment of the court was bound to do battle with all its members. If he vanquished them all in a single day, they were hanged; and he was hanged if he failed so to do.[3]

This mode of procedure is the subject of a passage of the 'Regiam Majestatem,'[4] reproduced from the work of Glanvill.[5] A court, it is said, is not bound to defend its record by battle, but it is bound to defend its judgment. If, therefore, a court is charged with making false judgment, and if he who delivered the judgment is ready to deny the charge, and if he who made the charge is ready to prove it, the matter is one which may very properly be decided by battle. The proper person to defend the judgment was, according to the same authorities, he who pronounced it; but Pollock and Maitland[6] favour the view that a champion was

[1] See article cited in note 8, p. 207.

[2] J. Grimm, *Deutsche Rechtsalterthümer*, 3rd Aufl. Göttingen, 1881, p. 866.

[3] *Les Assises de Jerusalem*, ed. M. le Comte de Beugnot, Paris, 1841, 'Assises de de la Haute Cour,' c. 110.

[4] iii. 21; *Fol. Acts*, i. 628. [5] viii. 9.

[6] ii. 667. Champions are mentioned in *Reg. Maj.* iii. 20; *Fragm. Coll.* cc. 28, 29 (*Fol. Acts*, i. 746); *St. Alex. II.* c. 8 (*Fol. Acts*, i. 400).

kept in the pay of the court to defend its judgments. Nothing is said in the 'Regiam Majestatem' as to the time when the contradiction was to be made; but we find in the ordinance, attributed by Skene on the authority of a single manuscript to King William, which deals with 'judicia contradicta,' a reproduction of the old German regulation: the contradiction must be made before the contradictor 'turnis the tais of his fet quhar the helis stud'; [1] and a somewhat similar provision found its way into a statute of 1429.[2]

In the acts of the reigns of Robert I. and David II. we find reports of cases of 'falsing dooms,' which throw some light upon the form of the proceedings. Thus, in 1321, judgment was given by the serjeant of Colybaynestoun in the justice court at Lanark in a process on a brieve of mortancestry. It was contradicted, and the contradictors found pledges before the king at Forfar 'ad falsandum judicium.' The justices were ordained to attach the serjeant by pledges to appear before the king and council to defend his judgment, to warn the contradictors of the time and place of the diet, and to attend themselves with the process and summonses. Further, they were directed to reseise the contradictors in their lands, seeing that they had found pledges.[3] Three cases were decided in 1368, of which that of John de Lyndesay shows that something more was required of the contradictor than a simple negation or denial. He was required to state the reasons upon which his contradiction was based.[4] From the case of William of Borthwic it appears that the parties or their prolocutors appeared in parliament, discussed their own and their opponents' pleas and submitted arguments; [5] and in one of the appeals heard in 1370 the parliament gave judgment in the absence of the parties, and fined them for non-appearance.[6]

In the parliament held at Perth on 6th March, 1368-69, regulations were made regarding the procedure in these appeals. They provided that the judicial parliamentary committee, to which we have referred above, should consider, in presence of the king and the parties, the latter's averments and arguments and should report their judgment to parliament in presence of the king on a day fixed for that purpose at its close.[7]

[1] See note 1, p. 214, and relative text.

[2] See note 2, p. 217, and relative text.

[3] *Fol. Acts*, i. 479. [4] *Fol. Acts*, i. 505. [5] *Ibidem*. [6] *Fol. Acts*, i. 536.

[7] *Fol. Acts*, i. 507. A similiar provision was enacted in the following year (*Ib.* i. 508).

In a case decided in 1383 the form of contradiction used stated that the judgment contradicted 'nullum est, si judicium dici debeat, in se putridum est et corruptum';[1] while, by an act of 1429, the contradictor was bound to affirm and give pledge that the judgment was 'falss stinkand and rottyn in the self,' and to make his contradiction before he removed out of the place where he stood when the judgment was pronounced. 'That salbe within the tyme that a man may gang esily xl payss, and that to be comptit eftir the consideracione of the Juge ande the courte.'[2] By the statute 1503, c. 46, the form was changed to 'I am grettumly hurt and injurit be the sade dume, therefore I appele,' etc.[3]

From the terms of a statute of 1471 we learn that this form of procedure applied not only to final but to interlocutory judgments. Accordingly, where a defender at the outset of the proceedings in the inferior court stated several dilatory or peremptory pleas or exceptions, the judgment upon each of these could be appealed from court to court.[4]

Several cases came before parliament in 1469, 1476 and 1478.[5] In one of these, where the appeal from a justice ayre had been sustained, it is stated that 'ilk soytour of the said dome and thar lordis ilk man be himself is in ane amerciament of the court of parliament sic as efferis to be takin in the said Justice ayer, and in ane unlaw of the said ayer for thaim, and in ane unlaw of the parliament amang thaim al sic as efferis of law';[6] and the decision was pronounced by the deemster of parliament[7] in presence of the king 'cum corona in capite suo et sceptro in manu sedentis in cathedra justicie parliamenti.'[8]

The mode of procedure in these appeals was finally regulated

[1] *Registrum Episcopatus Moraviensis* (Bannatyne Club), Edinburgh, 1837, p. 193. Some interesting particulars regarding procedure will be found at pp. 208, 210.

[2] c. 6 (*Fol. Acts*, ii. 18). See note 1, p. 214, and relative text.

[3] *Fol. Acts*, ii. 254.

[4] *Fol. Acts*, ii. 101. See Kaimes, *Historical Law Tracts*, Edinburgh, 1758, i. 389.

[5] *Fol. Acts*, ii. 94, 114, 117.

[6] *Fol. Acts*, ii. 114. 'The original assizours were thus amerced individually as 'temere jurantes,' and amerced collectively to the Court of the Justice, and the same to that of the Parliament' (J. Glassford, *Remarks on the Constitution and Procedure of the Scottish Courts of Law*, Edinburgh, 1812, p. 269 note [1]).

[7] The decision was pronounced by the deemster in all three cases.

[8] Cp. *Fol. Acts*, ii. 117.

by a statute of 1503-4,[1] which provided that when any doom was 'falsit' on dilatory or peremptory exceptions or otherwise in the pursuit of the brieve of right,[2] the contradictor should within fifteen days present the process to the justice clerk, that a justice ayre should be held forty days thereafter for discussing and 'ending' the doom, that the justice clerk should direct the sheriff to warn both the parties of the day fixed for holding the court, and that the freeholders and suitors should attend the court, and give judgment on the doom. If the doom were 'falsit' in the justice ayre, the contradictor was required to come within fifteen days to the clerk of the king's council, when the king deputed thirty or forty persons, more or less, with power 'as it war in ane parliament' to discuss the doom, and finally determine it. This diet also was on forty days *induciæ*; and the parties were required to give in their reasons within that period. If the doom had been 'falsit' before the provost and bailies of a burgh, the contradictor was required to bring the process to the chamberlain, who should fix a court of the four burghs within fifteen days for discussing and ending the doom. Similarly, when the doom had been 'falsit' before a baron or freeholder, the contradictor was required to come to the sheriff or immediate superior. If it had been 'falsit' in the court of the four burghs or in the sheriff court, the contradictor had 'like process to the court's immediate superior.'[3]

Erskine[4] observes that from the passing of a statute of 1487, to which we shall advert presently, this form of appeal fell gradually into disuse until it gave place to other methods of redress, namely, advocation, reduction and suspension. It is somewhat difficult to accept this view in face of the elaborate

[1] *Fol. Acts*, ii. 254.

[2] In a passage reproduced from Glanvill (vi. 8), the 'Regiam Majestatem' (ii. 13) provides for the transference of proceedings on a brief of right from the sheriff court to the king's court or the court of the justiciar. It is thought that in practice this transference took place by way of falsing the doom.

[3] As to the appeal to the court of the Bishop of St. Andrews, when a judgment given in the court 'domini præpositi Kelediorum seu alicujus baroniæ infra cursum apri' was contradicted,' see Lawrie, p. 432. 'Judicia contradicta' are dealt with in the 'Quoniam Attachiamenta,' c. 9 (*Fol. Acts*, i. 649). See also the 'Iter Camerarii,' c. 28 (*Ib.* i. 701). Further details are to be found in 'The Forme and Maner of Baron Courts, cc. 15, 17, 33 (Skene's edition), in several MS. treatises (referred to in *Fol. Acts*, i. 188, 190, 192, 197, 201, 202), and in Habakkuk Bisset's MS. 'Rolmentis of Courtis.'

[4] *Inst.* iv. 2. 39. See Stair, *Inst.* ii. 3. 63; Mackenzie, i. 182.

provisions of the act of 1503, and of the fact that a committee for the discussion of dooms was appointed as late as 1544.

The second form of which we have spoken made its appearance in enactments of which the aim was twofold. Their aim was to relieve the king's court of business appropriate to a court of first instance, and, at the same time, to secure that justice should not suffer. Thus, it was provided in a statute of 1424 that complaints should be determined by the judges to whose courts they properly belonged,—by the justiciar, chamberlain, sheriff, burgh bailie, baron or spiritual judge, as the case might be, and that, if the judge refused to do justice, the party aggrieved should have recourse to the king, who 'sall se rygorusly punyst sic jugis that it be ensampill till all utheris,'[1]—an enactment which recalls the assize of David I. referred to above.[2] In 1425 the session was established and empowered finally to dispose of all 'complayntis, causs and querellis that may be determynit befor the kingis consal';[3] and in 1457 its judgment was made final, 'bot ony remeide of appellacione to the king or to the parliament.'[4] Notwithstanding the statute of 1425 above referred to, matters of private right ('certa acta tangentia partes') continued to come before the parliament,[5] and in 1435 a committee 'ad causas' was chosen.[6] In 1469 it was enacted that if the judge ordinary failed to do justice or administered partial justice, he might be summoned by the party aggrieved before the king and council, with whom it lay to punish him if the charge were established, and, if the wrong were failure to do justice, to 'ger minster justice' to him.[7] By an act of 1487 it was declared that if any complaint of an officer's 'wrangwis and inordinat' proceedings were substantiated against him, he should be punished, and the process should be 'reducit and annullit';[8] and it was further provided that, notwithstanding anything contained in it, the process of falsing dooms should remain competent to those who preferred to employ it. In the following year these provisions, so far as they directed that all causes should pass before the judges ordinary, were repealed.[9]

The third form of procedure, which resembles an appeal, was

[1] *Fol. Acts*, ii. 8.

[2] See note 10, p. 206, and relative text.

[3] *Fol. Acts*, ii. 11.

[4] *Fol. Acts*, ii. 48.

[5] *Fol. Acts*, ii. 31. See Glassford, p. 211.

[6] *Fol. Acts*, ii. 22.

[7] *Fol. Acts*, ii. 94. See Kaimes, i. 396.

[8] *Fol. Acts*, ii. 177.

[9] *Fol. Acts*, ii. 183. See Kaimes, i. 390.

instituted in 1471,[1] in order to provide a remedy where the jurors on an inquest had erred either through ignorance or 'partial malice.' This remedy empowered the aggrieved party to summons the members of the inquest before the king and council; and if he established his complaint, the jurors were punished as 'temere jurantes super assissam.'[2] By the same statute this summons of error was made incompetent in the case of pleadable brieves;[3] and the determination of the inquest on proof of error was made void.[4]

III.

The statutes and cases which we have been considering show that this process of falsing dooms possesses two marked characteristics. Of these the first is that it proceeds on an adaptation of feudal principles; for in every case the judgment of the inferior court is submitted to the court next superior until, if the contradictor have sufficient perseverance, it eventually reaches the supreme court—the parliament. The second is that it proceeds by way of assize. The suitors of the sheriff court, justice court and chamberlain's court, and the freeholders in parliament are assizers. But the assizers in parliament differed in one most important respect from those in the inferior courts. The latter were, as we have seen, witnesses as well as judges. They made the judgment, but they were selected, not only for their legal capacity and acquirements, but because they best knew the facts and circumstances in dispute. It was impossible for the freeholders in parliament, save in exceptional cases, to have such local knowledge as that possessed by the men of the neighbourhood ('de vicineto'); and it was, perhaps, partly due to this fact, as well as to the feudal principles on which these courts were modelled, that the parliament, its judicial committees, the lords of the council, and the session and daily council, declined to entertain, as courts of first instance, pleas regarding fee and heritage. It is also to be kept in view that a practice had arisen of giving attendance

[1] *Fol. Acts*, ii. 100. See the Acts 1491, c. 18; 1496, c. 6; and 1617, c. 13 (*Fol. Acts*, ii. 227; ii. 238; iv. 544).

[2] See the passage in *Reg. Maj.* i. 13 (*Fol. Acts*, i. 602), reproduced from Glanvill, ii. 19.

[3] See Glassford, p. 217. A list of pleadable brieves is given in the 'Quoniam Attachiamenta,' c. 33 (*Fol. Acts*, i. 653).

[4] The complainer is thus restored to his original position. See Kaimes, i. 408 ff.

in parliament by proxy.[1] The proxy differed from the suitor entered in the sheriff court in that his attendance satisfied the obligation of giving suit and presence, and freed his principal from the necessity of giving either. And when, as in some cases,[2] the proxy appointed had no connection with the locality in which his principal resided, he was unable to contribute anything of local knowledge. If the distinction to which we have adverted made itself felt in the court of full parliament, it must have produced a still more pronounced effect in a committee limited to a chosen few. How the institution of the great assize in 1503 affected the judicial committee we are unable to say. The latter continued to be appointed from time to time; and we find in it traces of the form of an assize so long as the king or his deputy was present. But with their disappearance from its sittings, it tended to become a body of judges—a chamber separated from the parliament to which it owed its authority.

It will have been observed that the notion which lay at the root of all these modes of appeal was that there had been a failure of justice; and the aim of the act of 1487 seems to have been to provide that the party aggrieved should have two alternative remedies, of which the one,—the falsing of dooms,—climbed slowly from court to court, while the other reached the supreme court *per saltum*. It seems to have been an adaptation of this latter remedy which we find in later days in the form of 'protestation for remeid of law,'[3] by which it was sought to submit judgments of the court of session to the review of parliament. The right to appeal and its extent gave rise to difference of opinion at the time when Lord Stair wrote his *Institutes*, and became the subject of a dispute which was settled at the Revolution by the claim of right. Instances of such protestations are recorded, of

[1] The record of the parliament held at Scone on 12th June, 1368, shows that the practice was a recognised practice: 'Convocatis prelatis, proceribus et burgensibus qui tunc voluerunt et potuerunt personaliter interesse, aliis per commissarios comparentibus . . .' (*Fol. Acts*, i. 503). See an abbot's 'litera attornatus,' probably attributable to the reign of Robert I. (*Ib.* i. 54, 103). As to the subsequent enactments relating to this matter, see *Fol. Acts*, Index *s.v.* 'Parliament, Proxies in.'

[2] In 1633 the Bishop of Dunkeld attended for himself and as proxy of the Bishop of Caithness (*Fol. Acts*, v. 7, 11).

[3] 'The distinction between *protesting* for remeid of law and *appealing* consisted only in this, that in the one form process and execution still went on, while in the other all proceedings were stopt, until the appeal should be discussed' (*The Acts of Sederunt . . . in May, 1532, to January, 1538*, Edinburgh, 1811, Pref. by Sir Hay Campbell, p. xxxii).

which two belong to the years 1562 and 1567[1] respectively, while others are to be found in the pages of Fountainhall;[2] and a full account of the whole controversy is supplied by Sir George Mackenzie in his *Memoirs*.[3]

PHILIP J. HAMILTON-GRIERSON.

[1] *Books of Sederunt of the Lords of Council and Session*, ii. fol. 45; *Act. Dom. Conc. et Sess.* xxix. fol. 37.

[2] *e.g. Decisions*, Edinburgh, 1759, i. 508. There are numerous instances after 1595.

[3] A list of the authorities on the subject of this controversy will be found in Æ. J. G. Mackay, *The Practice of the Court of Session*, Edinburgh, 1877, i. 39 ff.

The Old Chapels of Orkney

II

ONLY after the first part of this paper[1] had gone to press did its writer turn to a source of information he ought to have thought of before, and consult the *New Statistical Account* (published in 1842). Two interesting and important additions to the existing literature on the subject came to light thereby. One, relating to the parish of St. Andrews, gives a second bit of direct evidence proving the relationship of chapels to urislands.

'In different parts of the parish,' says the minister, 'are to be found ruins, now almost levelled with the ground, which are called chapels. We could particularise at least four, each in a separate division of the parish, called an *ursland*, and situated near, or in the midst of a considerable extent of good ground.'

We have thus in the parish of St. Andrews direct positive proof that the lawrikmen were appointed to the urislands and that the chapels stood each in an urisland, and tradition remembers the burial districts under the name of urslands; and we further know their exact extent and that they were only approximately true urislands, and did not actually each contain 18 pennylands.

As the parish kirk is separately dealt with in the account, this passage also confirms my conjecture as to the existence of a fourth chapel (that of Sabay, now only indicated by the place-name 'Chapel Taing').

The other fresh information is contained in the account of Lady Parish, in Sanday, and gives a number of interesting facts. Most of them must be left till the North Isles can be overtaken, but the following passage may be quoted for its general import, and for its author's anticipation of my own views on the reasons for the choice of chapel sites:

'They (the chapels) are all surrounded by, or in the immediate vicinity of, good land, and generally near a well or fresh water loch. None of them are found on the moor or hill ground.

[1] See *S.H.R.* xv. 89.

Several have been built close by the ruins of other buildings; such situations may have been chosen for the ready access to stones which they afford, . . .'

Coming to the general conclusions to be drawn from this survey of the parishes over the greater part of Orkney, there can be no doubt now that the chapel districts, burial districts, and lawrikman or roithman districts were identical, and that they were based, as a rule anyhow, on the urislands.

But there seems to be another conclusion which follows just as certainly from the various facts, and this is that though the chapels were secular in their origin, and remained for the most part secular, yet they must have been used for public worship by the inhabitants of the district, and in all probability were intended for that purpose. Their very distribution seems to make this conclusion unavoidable. The presence of the burial-grounds confirms it. The fact that only in a very few cases is a chapel found in the same district as the parish kirk is significant. And, finally, we have a few surviving pieces of tradition which agree in regarding the ancient chapels as places of public worship for the neighbourhood.

There is, for instance, the statement of Low, already quoted, regarding their use for matins and vespers. We have also seen the tradition of the Kirk of Lian and its clergyman. And then there is a quaint tradition associated with the chapel of Beaquoy, in Birsay. They say that the 'priest' (that is what they still call him) occupied his leisure time in making 'caisies,' or straw baskets. He made a caisie, in fact, every day of the week, except Sunday. But he was a little absent-minded, and one day when busy at his usual employment he was astonished to see the people trooping towards the chapel. Hurriedly he counted his caisies—and found he was making his seventh!

Since writing these lines, yet another piece of evidence has come to light in the account of Lady Parish alluded to above. The writer states that 'none of these chapels have exceeded twelve feet in length, and from eight to nine in breadth,' dimensions much below the ordinary size of chapel on the mainland. Further, he names seven of these chapels, and seems to indicate that there were others still. Even seven (besides the parish kirk) is a very large number for a parish the size of Lady, and the conclusion seems obvious that the small dimensions were due to the large supply of kirks in proportion to the population, and that they were therefore built for public worship. And it is note-

worthy that the same feature of numerous chapels, of a very small size in the case of two out of the only three that can now be measured, has already been seen in Orphir.

A system, therefore, of privately built and owned chapels, each serving as the little church for the people of a small district, was then the old order of things in Orkney.

THE ORIGIN OF THE CHAPEL SYSTEM

When we seek for analogies to guide us in dealing with the unwritten constitutional and ecclesiastical history of Orkney, we turn naturally to two places: to the old mother country of Norway, and to the sister colony of Iceland. And, different as they were in certain features of their constitutions, yet in church matters both Norway and Iceland show us essentially the same design, so that it may safely be taken that this design will be found in the Orkneys likewise.

In Norway the state of the case about the year 1191 is very explicitly described in this passage from King Sverri's Saga (chap. 117): 'About this time much discussion arose between King Sverri and the Archbishop . . . one subject of dispute between them was the old law and practice by which the King and the bonder should build churches, if they wished, at their own homesteads and their own cost, and should themselves have control of the churches and appoint priests thereto. But the Archbishop claimed rule and authority in each church as soon as it was consecrated, and over all those whom he permitted to officiate there.' The dispute terminated in the Archbishop leaving the town 'in the utmost haste,' and fleeing to Denmark, where 'he abode in comfort for a long time.' Many a medieval monarch must have envied King Sverri his happy knack of handling the clergy.

It is clear, then, that in Norway at the end of the twelfth century the King and the landowners were still in the saddle, where they had been set 'by old law and practice.'

In Iceland we find the same system of the greater lay landowners building and continuing to control the churches, except that here the spiritual power eventually prevailed and secured not only the kirks, but the valuable estates with which they were endowed. In Iceland we also have some glimpses of the actual process of church building, which show how the laity were egged on by the early clerics to take the very steps which afterwards gave the Church so much leeway to make up.

Christianity crossed the North Atlantic and reached that sub-arctic island in the last years of the tenth century. After a brief conflict, the efforts of a few zealous missionaries conquered the commonwealth completely, and straightway the chieftains, who had hitherto been the priests and upholders of the heathen temples, took to church-building with the perfervid energy of proselytes. In this pious work they were given a very remarkable word of encouragement, for we read in *Eyrbyggia Saga*, 'This promise by the clergy made men very eager in church-building, (namely) that a man should have room in the Kingdom of Heaven for as many men as could stand in the church he had built.'

Thus inspired, they built so diligently that the *Saga* goes on to inform us, 'but there were no priests to perform hours at the churches, though they were built, for there were few in Iceland at that time.' In short, Christianity had arrived ahead of the clergy, and in consequence the churches were for a long time afterwards run very much as the old temples used to be, simply by the chief lay families.

Returning to Orkney, we know that Christianity was only introduced there in the year 1000; that the first bishop who apparently resided in the islands, certainly the first to be acknowledged by the chapter, only began his episcopate in the twelfth century; and that the influence of the Church and its effect on everyday affairs must have been small down to the thirteenth century, since the very detailed *Saga* which covers the whole twelfth century hardly mentions it as a factor. Yet before the end of that century Orkney had produced two lay saints.

A system of chapels founded and maintained by the leading laymen seems therefore to be the natural result of these conditions, exactly as it was in Norway and Iceland, and that it actually was the result is abundantly clear from the facts we have just surveyed.

GROWTH OF AN ECCLESIASTICAL SYSTEM

How the parish kirks arose and gradually supplanted the chapels, and the bishop obtained control of these and of all the clergy, is a problem on which the available data certainly do not throw enough light to enable one to give any sort of assured, much less dogmatic, answer. At the same time, they do give certain hints and suggestions which are well worth making some

brief reference to, if only to tempt some better qualified authority into the field. The following very tentative deductions apply necessarily only to the Mainland and South Ronaldsay, since for them alone any sufficient data are as yet available.

One factor that seems of decided importance is the existence of large bishopric estates in certain parishes at an early date. The two early rentals give one an idea of where these lay, simply through their not referring to them at all. In the case of most bishopric land the complaint is made that the scatts or duties were included in the earl's or king's 'auld rental,' and have been wrongfully withheld by the bishop and the 'kirkmen.' The 1492 rental is particularly specific on this question, giving lists of such lands at the end of each parish entry. Now, no such claim is ever made with regard to the large bishopric estates in Birsay and in the eastern half of St. Ola, so one may take it that these were original endowments first of the bishopric when established at Birsay and then at Kirkwall.

These parishes would naturally from the beginning be centres of strong Church influence, and in St. Ola I have so far found no trace of any secular chapels, while in Birsay a very large tract of country lay under the parish kirk, with chapels dotted only in the outlying districts.

In Evie and Deerness there were also large bishopric estates, and though the scatts of these were claimed by the king, lands so extensive must have taken a long time to accumulate, and the influence of the Church must probably be dated as early. In both cases we have seen that there were few chapel sites, and the peculiar connection of each site with bishopric land has been noted in Deerness.

The next circumstance that seems significant is the conjunction from the earliest known date (before the Reformation) of another parish with each of these (except St. Ola) to form a charge. Birsay had Harray, Evie had Rendall, and Deerness had St. Andrews. The suggestion which I venture to make is that the Church was content to extend her influence gradually and as opportunity arose into these conjoined parishes, finding perhaps a permanent habitation in one of the chapels at a comparatively late date.

In the mainland there were two other such conjoined charges, Stenness with Orphir, and Sandwick (North and South) with Stromness. Here again a peculiarity has already been noted in one parish of each of these couples: the large parish kirk districts

in both Stenness and North Sandwick, with the feature of the separate bailie in one case and the prebendary in the other. In both cases there is also another rather singular feature. In the other half of the parish—the chapel half—two of the largest landowning and most influential of the old native families had their seats; two such families in each instance, both owning allegiance, as it were, to the one chapel. Now, it seems at least very probable that in both cases these were two branches of some great family of 'gœðings' (chieftains holding office and rank under the earl), and it may well be that the relationship of the early bishops, William and Bjarni, to so many of these Orkney chieftains was used by them to obtain a Church establishment in the other half of the parish. Anyhow we have a certain conjuncture of circumstances which will at least bear that as a possible interpretation.

In South Ronaldsay we find the two parishes conjoined with the island parish of Burray, and only in two instances (apart from St. Ola, which included Kirkwall and its cathedral) did single parishes form a charge—Holm and Firth. There are no data for any explanation of these; nor, indeed, would one be justified in laying too much stress on any of the explanations I have attempted. They are only suggestions which can but claim to put the facts, so far as they are known, into some sort of relationship to one another.

Another little gleam of light (though it does not illumine very widely) is thrown by the two legacies of the lands on which the kirks of Evie and Stenness stood. In both these cases we know that the lands in question were odal, and yet that the churches on them actually were the parish kirks when the bequests were made, for they were given to 'The Kirk of Evie' and 'The Crose Kirk in Stanehous' respectively, and in each case the scatts were subsequently withheld by the parish vicar. And we can also get some rough idea of the dates at which these gifts were given. The Rental of 1502-03, in which both are recorded, states that the Evie land was bequeathed by 'Johne of Guendaleis grandsire (great grandfather) callit Guidbrand,' which puts the date as round about 1400; while in the Stenness case the fact that the benefactress was merely styled 'ane uthale woman' shows that she had lived and died so long previously that her name was no longer remembered by all and sundry. And this, so far as it goes, is consistent with the belief that those were two parishes in which the Church had established herself at an early date.

THE AGE OF THE PARISHES

All this implies that the parishes existed before there was any ecclesiastical system, and there is one pretty conclusive piece of evidence which proves that, though the chapels were antecedent to the ecclesiastical parishes, yet parishes as geographical units must have been older even than the districts. Again and again when we pass from one parish into another we pass likewise from one system of division into another. Going, for instance, from Firth with its quasi-urislands we come into Harray with its true urislands. Crossing from thence to Stenness we find two large divisions, while going over the Orphir border we get six small 'quarters,' and thus it always is as one passes from parish to parish. Obviously, therefore, parish boundaries existed before the districts were definitely arranged.

And this is backed by an argument from the true technical urislands, the eighteen pennylands laid out for the gathering of scatt. These fit into the parishes in such a way that it seems practically certain that the parishes were designed at least as early as scatt was laid upon the islands, and that takes one to the very beginnings of the Norse earldom.

What, then, were the parishes originally? The view that they were the units of representation when the early island lawthing was created has been treated in some detail in another essay on this subject,[1] and all the facts we have just reviewed go far to show that they can have been nothing else.

THE CHAPEL DISTRICTS

We have already seen that the provision of those early secular chapels was far from haphazard. They were attached to definite districts, and on the very interesting question of the origin and exact significance of these districts a few conclusions can be pretty safely drawn.

It has been shown that they were natural geographical areas as a general rule; yet their standard size in each parish and the frequent coincidence of this standard with the urisland of the scatt gatherer show that they must certainly have passed through the hands of some constitution-reforming ruler. No natural process could have given such results, and very possibly one passage in the *Orkneyinga Saga* may give the clue to the actual man.

[1] Introduction to *Records of the Earldom of Orkney*, Scot. Hist. Soc.

In chapter 55, under the date 1116-26, we learn that Earl Hakon Paulson 'set up in Orkney new laws (*lög*) which pleased the bonder much better than those which had been before.' The term *lög* meant 'law' in the wide sense, and was frequently used for 'constitution,' and it seems much more likely that this was its sense here, for all the evidence and probabilities are against the supposition that any change in the Orkney laws, sweeping enough to justify the above passage, took place at any time.

Further, we know that in parish after parish the districts were made identical with the urislands, and it is quite certain that the word 'urisland' was first used as a technical term for a given taxable area, and was then borrowed and applied to the district, simply as a district, which happened to coincide with it.

Now, a study of the urislands, quite apart from their connection with these districts, enforces the same geographical conclusion with regard to them. So long as it was not too glaringly inconsistent with equity, an *eyrir*, or ounce of silver, seems to have been laid on each group of adjacent townships (or on one town if it were large enough) simply for convenience sake. For such a plan would greatly simplify the work of assessment. And one proof that this actually was the case is to be seen in the subsequent wide difference in value between two urislands of the same type and in the selfsame parish; a difference often far too great to be accounted for on the theory of improvements effected in one of the cases by the primitive methods of agriculture then in use.

The probable root of the connection between districts and urislands would then seem to be thus: That when it came to defining the districts systematically the urislands (being themselves in so many cases natural areas) were taken as the standard wherever it was possible. Hence in numerous parishes they were identical, in others where the districts approximated more or less to urislands they took the name, and to-day the term urisland is only remembered as a district, and its original significance as an area of taxation has long since been absolutely forgotten.

All this throws a new light on that passage in *Hakon's Saga* often quoted as being the only early allusion to the Orkney urislands, a light which is reflected back on to the problem of the districts. The passage occurs in chapter 328, describing the king's winter in Orkney after the Largs expedition, and runs:

'King Hakon then made a list of the urislands (*eyris-lönd*) for his lendirmen and company chiefs for their support, to keep the bands that were with them, and so with all the urislands.' And

then a few lines later : ' but the other lendirmen and ship captains were in the country on those urislands which were allotted to them.'

It seems much more probable that the allusion is to the urislands as districts than to the urislands as taxable areas. For one thing the King of Norway had nothing to do with the minutiae of the Orkney fiscal arrangements, and for another there seems more practical point in his billeting his men on the districts.

That these districts were thus defined for the purpose of readjusting the representation of the bonder at the Lawthing and other chief courts seems to follow from their known connection with the lawrikmen or roithmen in subsequent centuries. And from the widely varying number of districts in different parishes we may conclude that in all probability the new system provided for only so many representatives per parish attending the head *thing* at any one time, however many or however few the districts in it were.

Finally, looking to the evidence of the roithmen's names in the extant decrees at the beginning of the sixteenth century, it would seem as though the theory of parish representation gradually fell into desuetude, and that though district representation still continued, only such districts as had odallers wealthy enough to leave home and constantly attend 'ogangs' and courts far and near actually contributed a roithman (except possibly to local courts).

This at least seems the likeliest interpretation of the course of events from the origin of districts to the final decay of the old constitution.

One thing more we can safely add. These little kirks were obviously built by the one man recognised as the proper person to build a kirk for the neighbourhood. And in a society based entirely on land this would obviously be the greatest landowner. But each odaller was but a sharer in the lands and redemption rights of his kin, and we know enough about the odal family estates in later times to be certain that in those earlier and palmier days the estate of a greater family would absorb the best part of an urisland (often far more than that). The districts may thus be looked upon as originally groups of landowning kinsmen, or as the spheres of influence of the *stórmenn* or magnates—the heads of houses.

From this it follows that districts of a sort—groups of odal kinsmen roughly expressed in land—must have existed from the very beginning, and what Earl Hakon (if it were he) presumably

did was to redress to some extent inequalities in these, and distribute the legislative and judicial power among a greater number of the 'best' families (for we find it was 'the best landed men' who represented these districts in later records). And in order to understand the popularity of such a measure it must be remembered that a 'best' family in that old Norse society included divers quite small portioners, not to speak of well-descended, impecunious gentlemen with remote redemption rights. It was, in fact, a miniature clan.

Following this clue of spheres of family influence, it seems probable that the larger districts found here and there, where one kirk supplied a considerably wider area than usual, were originally associated with outstanding chieftains. And as some confirmation of this conjecture, we actually find that as late as the end of the Norse régime every chapel or kirk in any of these extra large districts, which can be directly connected with a known family, was still associated with one of the most important and wide-acred surviving in Orkney. The instances I have in mind are the chapels of Ireland, Kirkness, and St. Thomas in Rendall, and the kirk of Paplay. When it is remembered that such larger kirk-areas are only very occasionally met with, and that six out of the ten largest landowning families are found within the bounds of these four districts, this bit of direct evidence acquires some significance.

Of the foregoing conclusions some are frankly tentative—deductions that appear reasonable, given the facts available (which are few enough, but still are indubitable facts). But that the chapels had the same secular origin as the early churches of Norway and Iceland, and were, like them, mostly founded and maintained by the chief landowners, that the chapel districts were intimately connected with the representation of the bonder at the Lawthing by those landowners, and that the districts were based, generally speaking, on the urislands; all these conclusions seem inevitable on the evidence.

J. Storer Clouston.

Old Kirks and Chapels in Orkney

O.S. = 6 inch to mile Ordnance Survey. Stat. Acc. = *Old* Statistical Account.
b.g. = Burial Ground marked in O.S. Comm.'s = Communicants in 1627.

A. SOUTH ISLES.

South Ronaldsay, North Parish.

	References.	*Adjacent Place-Names.*
Parish Church.		
St. Peter's, East Side.		
Chapels.		
1. St. Colm in Hoxay.	O.S., Report 1627.	
2. St. Margaret, Ronaldsvoe.	O.S., Report 1627.	
3. St. Colm, Grimness.	O.S., Report 1627.	
4. St. Ola, Widewall, b.g.	O.S., Report 1627.	
5. St. Ninian, Stows, East Side, b.g.	O.S., Report 1627.	No confirmation from place-names necessary.

South Ronaldsay, South Parish.

Parish Church.		
St. Mary, Burwick.		
Chapels.		
1. Rood, Sandwick, b.g.	O.S., Report 1627.	
2. St. Colm, Burwick, b.g.	O.S., Report 1627.	
3. Our Lady, Halcro, b.g.	O.S., Report 1627.	
4. St. Andrews, Windwick, b.g.	O.S., Report 1627.	

Total *dispersed* kirks = 10 (the two at Burwick being closely adjacent).
Communicants 1627, '5 or 6 hundred.'

Swona.

Chapel.

1. St. Peter's. O.S., Report 1627.

Pentland Skerries.

Chapel.

1. St. Peter's. Report 1627.

Burray.

Parish Church.

St. Lawrence. O.S.

No chapels discoverable. Communicants 1627 = 100.

	References.	*Adjacent Place-Names.*
FLOTTA.		
Parish Church.		
Dedication ? on Kirk Bay.	O.S.	Kirk Bay.

(The site of a chapel is marked on O.S., but so close to parish church as to suggest it was really the old parish kirk.)

WALLS.		
Parish Church.		
St. Columba, Osmond Wall.	O.S., Proc. of Soc. Antiq., xxxii. 50.	Kirk Hope.
Chapels.		
1. Red Kirk, in north of S. Walls.	O.S.	Burn of Redkirk.
2. Snelsetter.	Tradition only, see Moodie Book.	
3. Chapel at Brims, b.g.	O.S.	Kirkgeo.
4. Fara.	O.S.	Kirka Taing.

(St. John's at Seatter ? Was there an old dedication here ? The present dedication suggests it.)

Total kirks, 5 or 6. Comm.'s 1627 = 453.

HOY.

Parish kirk, but no sign of chapels.

GRAEMSAY.		
Chapels.		
1. St. Colm's, on N.W. point.	O.S.	
2. (St. Bride's) at Corrigall.	O.S.	Bride's Noust (hence dedication inferred: site only given in O.S.).

B. MAINLAND.

ST. ANDREWS.		
Parish Church.		
St. Andrews, Tankerness.		
Chapels.		
1. Essenquoy.	Records of Earl of Orkney, p. 240.	
2. St. Ninian, Tolhop.	O.S., St. Andrews Bailie Court Book (Kirkwall Record Room).	
3. Sabay, site not given, inferred from place-name.	O.S., place-name only.	Chapel Taing, under house of Sabay.
4. St. Peter's Kirk, Campston.	O.S.	St. Peter's Pool.

Total kirks, 5. Comm.'s 1627 = 325.

	References.	*Adjacent Place-Names.*
HOLM.		
Parish Church.		
St. Nicolas.		
Chapel.		
1. Lambholm.	O.S.	Kirk Point.
2. St. Nicolas near Graemshall.	O.S.	
Comm.'s 1627 = 200.		
DEERNESS.		
Parish Church.		
Sandwick.		
Chapels.		
1. Brough of Durness.	O.S., many records.	
2. Cornholm.	O.S.	
3. Newark.		
4. Kirbister.		
Comm.'s 1627 = 268.		
ST. OLA.		
Parish Church.		
St. Olaf and St. Magnus—no record of chapels.		
ORPHIR.		
Parish Church.		
Bu of Orphir.	O.S., remains still here.	
Chapels.		
1. Orakirk.	O.S., I. Omand, Orkney Herald, 29th Aug., 1906.	Orakirk.
2. Houton Head.	Omand (as above).	
3. Bay of Myre.	Omand (as above).	
4. Swanbistor, b.g.	O.S.	
5. Groundwater.	O.S.	Kirkshed.
6. Oback in Tuskbister.	Statistical Account and present tradition.	
7. Cava, b.g.	Barry, 2nd edition, p. 43.	
8. Kirk o' Lian in Kirbister.		
STROMNESS.		
Parish Church.		
In Innertown.	O.S., ruins still there.	
Chapels.		
1. Breckness, in Outertown, b.g.	O.S., Craven, ii. 166.	
2. St. Mary's, Quhome.	O.S.	
3. Kirbister.	O.S.	
4. Bu of Cairston.		
Total kirks, 4.	Comm.'s 1627 = 480.	

	References.	*Adjacent Place-Names.*
South Sandwick.		
No Parish Church apart from N. Sandwick.		
Chapels.		
1. Voy, b.g.	O.S.	
2. Lyking, b.g.	O.S.	
3. Tenston, St. Duthac's, b.g.	O.S., also on record.	Doehouse.
4. Yesnabie, b.g.	O.S.	
5. Skaill.	Craven, ii. 175.	
North Sandwick.		
Parish Church.		
St. Peter's, North Dyke.		
Chapels.		
1. Kirkness.	O.S., Ecclesiological Notes on Man.	Kirkness.

Total kirks in Sandwick, 7. Comm.'s 1627 = 700.

Birsay.		
Parish Church.		
Christ Kirk, Barony.		
Chapels.		
1. Marwick, b.g.	O.S.	
2. Ingsay.	O.S.	
3. Hundland.	O.S.	
4. Hillside.	O.S.	Burn of Kirkgeo.
5. Kirbister.	O.S.	
6. Beaquoy, b.g.	O.S.	
7. Greenay, b.g.	O.S.	
8. Chapel in Brough.	O.S., and many records.	
9. Etheriegeo.		
Harray.		
Parish Church.		
St. Michael's.	Many records.	
Chapels.		
1. Mary Kirk, Rusland.	O.S.	Kirkquoy.
2. St. Mary's, Grimeston.	O.S.	
3. In Corston.		
4. In Netherbrough.		
5. Kirk of Cletton.		

Total kirks (apart from Brough), 15. Comm.'s 1627 (combined parish) = 800.

	References.	*Adjacent Place-Names.*
STENNESS.		
Parish Church.		
Cross Kirk, Stenness.		
Chapel.		
1. Ireland.	O.S.	
Comm.'s 1627 = 140.		
FIRTH.		
Parish Church.		
Firth.		
Chapels.		
1. Burness.	O.S.	
2. Wasdale.	O.S.	
3. Redland.	Old Lore Miscellany, vol. iii. p. 155.	Kirk Sheed.
4. Grimbister.		
5. Black Chapel in Firth.		
Total kirks, 14. Comm.'s 1627 = 200.		
EVIE.		
Parish Church.		
St. Nicolas, in Stenso (or Garth).	O.S.	
Chapels.		
1. St. Peter's, Inner Costa, b.g.	O.S.	
2. Kirk of Norrensdale, Woodwick.	O.S.	
Comm.'s 1627 = 220.		
RENDALL.		
Parish Church.		
Gorsness.	O.S.	
Chapels.		
1. St. Thomas, Hall of Rendall.	O.S.	
2. St. Mary, Isbister.	O.S.	
3. The 'Kirk of Cot.'		
Comm.'s 1627 = 180.		

C. NORTH ISLES.

SHAPANSAY.		
Parish Church.		
Our Lady, Elwick.	O.S.	Kirk Banks.
Chapels.		
1. Linton.	O.S.	Kirton, Kirkhill, Kirkiber.
2. Ettiesholm.	O.S., Stat. Account.	Kirkgeo.

Comm.'s 1627 = 250. Old Stat. Acc. says, 'Several little chapels in various parts of the parish.'

	References.	*Adjacent Place-Names.*
ROWSAY.		
Parish Church.		
In Outer Westness.	O.S., ruins still there.	
Chapels.		
1. Frotoft.	O.S.	Church Knowe.
2. Knarston.	O.S.	Kirk Noust, Kirkgeo.
3. Scockness.	O.S.	
4. St. Colm's, Langskaill.	O.S.	
5. Brettaness, Loch of Wasbister.	O.S.	
6. Holm in Loch of Wasbister.	O.S.	
7. Corse Kirk, Wasbister.	O.S.	

N.B.—Of these, No. 2 and No. 7 seem to have been the other two 'kirks of old' enumerated in the old report on Orkney Kirks (Craven, ii. 232), but presumably must be counted as 'chapels' in Wallace's computation, for he only gives thirty-one parish kirks, which means only one in Rowsay. Nos. 5 and 6 are so close to 4 and 7 that they can scarcely have been separate places of public worship. This would leave six such places in Rowsay.

EGILSAY.

Parish Church.

St. Magnus Kirk.

WYRE.

Chapel.

1. Chapel of Wyre. O.S., still there.

ENHALLOW.

Chapel.

1. Chapel of Monastery. O.S., still there.

Total kirks, Rowsay, Egilsay, and Wyre, 8. Comm.'s 1627 = 400.

WESTRAY.

Parish Churches.		
A. St. Mary, Pierowall.	O.S., ruins still there.	
B. Cross, Tuquoy.	O.S.	
Chapel.		
1. Peterkirk, Rapness.	O.S.	Point of Peterkirk.

PAPA WESTRAY.

Parish Church.

In Benorth the Yard. Still in use (only instance apart from Cathedral).

Chapel.

1. St. Tredwall, Besouth the Yard. O.S., and many records.

Total kirks, 5 (Westray and Papa). Comm.'s 1627 = 498; indicating about two or three lost chapels.

	References.	*Adjacent Place-Names.*
North Ronaldsay.		
Parish Church.		
St. Ola, on present site.	O.S., Blaeu's Atlas (which gives the dedication).	
Chapels.		
1. Bride's Kirk.	O.S.	Bridesness.
2. Chapel just east of Loch of Garsow.	O.S.	Kirk Taing, near light-house.
Eday.		
Parish Church.		
Virgin Mary, East Side.	O.S., Stat. Acc.	Kirk Taing. Chapel Hill near by. (Was there a chapel too?)
Chapel.		
1. Hannah's Kirk, Greentoft.	O.S., Stat. Acc.	
Pharay.		
Chapel.		
1. Chapel on Pharay, b.g.	O.S., Stat. Acc. (which calls it a parish kirk).	
Stronsay.		
Parish Churches.		
A. St. Peter's, near Whitehall.	O.S.	
B. Lay Kirk, near Rothiesholm, b.g.	O.S.	
C. St. Nicolas Kirk at Holland.	O.S. (Dedication not given in O.S., but Blaeu's Atlas puts St. Nicolas Kirk on this site.)	Mells Kirk.
Chapels.		
1. Chapel at Well of Kildinguie.	O.S.	
2. St. Nicolas on Papa Stronsay.	O.S. and Stat. Acc.	
3. St. Bride's on Papa Stronsay.	O.S. and Stat. Acc.	
4. Auskerry.	O.S. and Stat. Acc.	
5. Linga Meikle.	Stat. Acc.	

N.B.—There were 'at least' two more chapels on Stronsay itself in 1790 (Stat. Acc.), giving six kirks, apart from those on Papa and Holms. Comm.'s 1627 = 637.

Sanday.—I. Burness.

Parish Church.		
St. Columba, near Scar.	Mackenzie's charts.	
Chapels.		
1. Holms of Ire.	O.S.	
2. Chapel on West Side, b.g.	O.S.	Kirkgeo.

Only two *practicable* kirks. Comm.'s 1627 = 210.

	References.	*Adjacent Place-Names.*
II. Cross.		
Parish Church.		
Cross Kirk, Backaskaill Bay.	O.S.	
Chapels.		
1. Lambaness.	O.S.	
2. Stove.	O.S. (Also records. Built in 1714, but very probably on older site. No other kirk near.)	
3. Chapel at Brough, not shown but inferred from place-name.	O.S.	Chapel Head.
Four kirks. Comm.'s 1627 = 260.		
III. Lady.		
Parish Church.		
Lady Kirk, at head of bay by Ellsness.	O.S.	
Chapels.		
1. Tresness, not shown, but inferred from place-names.	O.S.	Kirk Taing, Kirk Banks.
2. Clet, site not shown, but mentioned by Wallace. (Place-name shown in O.S.)	O.S., Wallace.	Kirk Taing.
3. St. Peter's, Sellibister.	O.S.	
4. Arstas.	O.S., Mackenzie.	
5. Lopness, inferred from burial ground, which alone is marked in O.S.	O.S.	
Kirks, 6. Comm.'s 1627 = 320.		

Note.—These make up the 102 mentioned early in this paper. The numbers of communicants in 1627 were originally included in the list in order to give some basis for calculating the probabilities of there being other chapels yet undiscovered. As the subject has developed, I question whether it is a safe basis. The figures are more instructive in parishes where all the chapels may be taken as found, when they give some idea of the proportion of kirks to population (it being always remembered that the figures are for the year 1627, while the chapels of course were pre-Reformation).

It may also be mentioned that a considerable number of the sites have been personally verified since the list was drawn up. This is the case in every instance where no authority is quoted.

J. Storer Clouston.

The Dennistouns of Dennistoun

'UPON the Grief lies the Barony of Dennistoun, of which the Castle of Finlaystoun was the principal messwage. When the Denzeltouns obtained their lands is not certain; but that from the proper name of their predecessor they assumed both sirname and designation is without all doubt.'[1] Thus Crawford, in his *History of Renfrew*. In support of his statement he refers to the original charter of the Barony of Houstoun (*temp.* Malcolm the IV. before 1165) which is there said to be bounded with 'the lands of Danziel.'[2] Hence the name de Danzielstoun, or Denzelstoun, subsequently modified into Dennistoun. Sir Hugh de Danzielstoun was witness to a charter from the Earl of Lennox, *temp.* Alexander III. and the same knight appears in the Ragman Roll as submitting to Edward I. in 1296. He was father of Janeta or Joanna, who married Sir Adam More of Rowallan: their daughter Elizabeth married Robert, the Steward of Scotland, afterwards Robert II., and was mother of Robert III. It was this connection with the Royal House of Stewart that gave rise to the boast of the Dennistouns, 'Kings from us, not we from Kings.' Sir John de Danzielstoun, son of Sir Hugh, was Sheriff of Perthshire in 1358, and of Dumbartonshire in the following year, an office he held till succeeded in it by his son Sir Robert. He was also for a number of years Keeper of Dumbarton Castle. He married Mary, daughter of Malcolm, Earl of Wigtown, by whom he had, with other children, his successor, Sir Robert de Danzielstoun, knight, who was one of the

[1] In the map in Crawford's *History*, which is stated to be copied from Blaeu's Atlas, Amsterdam, 1654, there are two Dennistouns marked: one close to Barlagow (Barlogan), a little to the S.E. of Kilmakoban (Kilmalcolm), the other 'Dennistoun Mil,' near the Gryfe, lying to the south of the first named. These seem to correspond to the North and South Dennistouns, given in the Ordnance Survey Map, on the modern road from Bridge of Weir to Kilmalcolm.

[2] *A General Description of the Shire of Renfrew, including an account of the Noble and Ancient Families, etc.*, by George Crawford, 2nd Edition, p. 94. Paisley: J. H. Crichton. 1818.

hostages, in 1357, for the payment to Edward III. of the ransom for the release of David II. He seems to have held various offices, including that of Sheriff of Levenax, and Keeper of Dumbarton Castle. On his death in 1399 he left two daughters, between whom his large estates were divided, viz., Margaret, who married Sir William Cunninghame of Kilmaurs, and brought into that family the lands and baronies of Danzielstoun and Finlaystoun in Renfrewshire, Kilmaronock in Dumbartonshire, and Glencairn in Dumfriesshire, from the last of which her descendants took the title of their Earldom. The other daughter, Elizabeth, married Sir Robert Maxwell of Calderwood, and succeeded to Mauldisly, Law, Kilcadzow, and Stanley. Owing to this alliance this family of Maxwells quartered the arms of the Danzielstouns, Argent, a bend azure, with their family coat.[1]

While the paternal estates were thus divided between the co-heiresses the male line of the family was carried on by William, afterwards Sir William de Danzelstoun, third son of Sir John, and first of Colgrain. He gives his consent to a grant made by his father, in 1377, in favour of the Church of Glasgow, in which he is designated 'Dominus de Colgrane et de Cambesescan.' He seems to have been of the household of Prince David, and in consideration of his services received a pension of twenty merks. It is supposed that by aid, or in lieu of this pension he acquired the lands of Cameron and Auchendennan, which were long held by his descendants. Of these Cameron was disposed of to the Laird of Luss in 1612, and it seems probable that Auchendennan was also sold about that time. John Dennistoun, who succeeded to Colgrain and the Camiseskans in 1638, was a devoted and influential Royalist, for which he suffered when Scotland was under the rule of the Commonwealth. He held a Commission under the Earl of Glencairn, and died in 1655 from the effects of a wound received in the Highland Expedition. As he left no son the estate of Colgrain fell to the representative of John Dennistoun, brother of his great grandfather. From this time on the property passed from father to son until 1836, when it was sold by Mr. James Dennistoun to Colin Campbell, a son of John Campbell, senior, of Morriston. He was a partner in the well known West India House founded by his father, and brother of Colonel Campbell of Possil.

[1] The Maxwell arms were blazoned as above, but the Dennistouns bear Argent, a bend *sable*.

The Dennistouns of Colgrain were at times closely connected with Glasgow. James Dennistoun, who succeeded to the estate in 1756, was one of the leading American merchants, and during the latter part of his life resided in Glasgow, where he died in 1796. His first wife was a daughter of John Baird of Craigton, merchant in Glasgow, one of their daughters marrying Andrew Buchanan of Ardenconnal. By his second wife, Mary Lyon, he had several children, two of whom were well known in this city, viz., Robert Dennistoun, merchant, who married a daughter of Archibald Campbell of Jura, and was father of James Robert Dennistoun ('Ruffy'), and grandfather of the late Admiral Peel Dennistoun, Mrs. John Guthrie Smith, and Mrs. John MacLeod Campbell of Saddell. The other was Richard Dennistoun, who resided at Kelvingrove House, only recently pulled down, and married a daughter of James Alston of Westerton. James Dennistoun, who succeeded his father in 1796, was convener of Dumbartonshire, and Colonel of the County Local Militia. He married (1) Margaret, daughter of James Donald of Geilston (brother of Robert Donald of Mountblow, Provost of Glasgow in 1776, 1777), by whom he had one son, and (2) Margaret, daughter of Robert Dreghorn of Blochairn, merchant in Glasgow. By her he had four daughters, co-heiresses of their maternal grandfather, and also of their uncle Robert Dreghorn of Ruchill, the well-known 'Bob Dragon.' In the privately printed *Account of the Family of Dennistoun and Colgrain* (Glasgow: 1906) it is stated that his second wife was daughter of *Allan* Dreghorn, but this seems to be a mistake. According to the *Glasgow Journal* of 25th October, 1764, Allan Dreghorn died on the 19th of that month, while the following paragraph appeared in the *Glasgow Mercury* of 20th October, 1785:—

'On Thursday the 13th inst. was married in this City, by the Revd. Mr. Taylor of St. Enoch's, James Dennistoun, Younger of Colgrain, Esq., to Miss Margaret Dreghorn (Bob's sister), daughter of the late Robert Dreghorn of Blochairn, Esq.'[1]

Mr. Dennistoun was succeeded by his only son, James, in 1816. He married Mary, daughter of George Oswald of Auchencruive, by whom he had thirteen children. In 1828 Mr. Dennistoun, having established his descent as heir male of Sir John de Danzielstoun (see above) was authorized by the Lord Lyon to bear the arms proper to the chief of his house, and thereupon assumed as his designation Dennistoun of Dennistoun.

[1] *Glasgow Past and Present*, vol. III. 89. (Glasgow, 1884).

The arms are blazoned, Argent, a bend sable. Supporters: Dexter, a lion gules, armed and langued azure; sinister, an antelope argent, unguled and horned or. Crest, a dexter arm in pale proper, clothed gules, holding an antique shield sable charged with a mullet or. His son, James Dennistoun of Dennistoun, (1803-1855), was well-known for his literary and antiquarian tastes, while he took a special interest in the genealogy of the old families connected with Dumbartonshire, the results of which were largely embodied in Irving's History of that County. He edited several of the publications of the Bannatyne and Maitland Clubs, including the *Cartularium Comitatus de Levenax*, the *Coltness Collection*, and the *Cochrane Correspondence*. Mr. Dennistoun, who married a daughter of James Wolfe Murray, Lord Cringletie, sold Colgrain and Camiseskan in 1836 to Mr. Colin Campbell, and afterwards purchased Dennistoun Mains in Renfrewshire, the property which gave name to his House. Subsequently he lived a good deal abroad, and devoted a great part of his time to art and art literature, publishing in 1852 the *Memoirs of the Dukes of Urbino*. He died in 1855, and was buried in the Grey Friars' Churchyard, Edinburgh. His manuscript collections, which filled eleven volumes, were left to the Library of the Faculty of Advocates, where they are now preserved.

As he left no children the representation of the family devolved on his death upon his nephew, James Wallis Dennistoun, only son of his brother George. He entered the Navy in 1854, and saw service in the Baltic under Admirals Sir Charles Napier and Sir Richard Dundas, retiring from the Navy with the rank of Commander in 1865. He married a daughter of Henry Gore Booth (second son of Sir Robert Gore Booth, Bart.), and his wife Isabella, daughter of James Smith of Jordanhill. By this marriage he had a daughter, who is married to the Right Revd. H. Hensley Henson, late Dean of Durham, and now Bishop of Hereford, and a son, James George Dennistoun of Dennistoun, Major in the Royal Artillery. This gentleman is now the representative of the old family of Dennistoun of Dennistoun and Colgrain.

T. F. Donald.

The Duke of Tuscany and his Shipwrecked Cargo

IN October, 1587, Ferdinand de Medici, laying aside the purple of the cardinal, succeeded his brother Francesco in the throne of Tuscany, and married Christine of Lorraine, granddaughter of Catharine de Medici. In 1591 he was invited to occupy the fortress of Château D'If in pledge for whatever Catholic king the French might choose, and accordingly Tuscan troops and stores were shipped from Leghorn, which served to frustrate the designs of Spain and Savoy. Possibly in connection with this venture the munitions and other goods mentioned in this inventory were purchased. The grand Duke was also interested in the Anglo-Dutch smuggling trade with the Indies, and later, when the finances of Florence became affected through the repudiation of that centre by the Spanish Crown, he found compensation by opening up active commerce with England and the Baltic provinces. This case of spoliation of a ship and goods of a friendly ruler was taken up by the Privy Council on 12th May, 1591, and their proceedings therein are recorded in the Privy Council Register under the following dates, 26th May, 4th Augt. and 29th Dec. 1591, 18th March 1594-5 and 29th Dec. 1595; and the Protestation here recorded is so far as known the closing act in the matter. It may be observed that the inventories in the Privy Council Register and the one here given vary in regard both to items and quantities.

JOHN MACLEOD.

INVENTORY.

Protestation by Robert Fleschour, William Rolok, Thomas Ogilvie, James Fleschour, and John Rotray merchandis and burgesses of Dundie that the day of compearance being past and none compearing to pursue they be not held to answer to the summons raised against them at the instance of Ambrosius Leiricei procurator for Ferdinand Great Duke of Tuscan for the spoliation by them in February 1590 of certain merchandice &c., furth of a ship of Danskine called the Great Jonas pertaining to certain burgesses of Danskine whereof Antonius Brighers was Master, the cargo of which was loaded at Danskine by the agents of the said Great

Duke for conveyance to the port of Lybrue in Italy for the use of himself and his subjects, but owing to storm of weather the vessel was driven on the coasts of Zetland where the protestors committed the said spoliation. In the summons it is declared that whether the defenders compear or not the Lords of Council will proceed to administer justice in the said matter because said Ferdinand Duke of Tuscan is ane stranger friend and confederate to our realme and ought to have summary process. The Lords admit the said protestation and find said Ambrosius liable in expenses.

The goods &c., taken from the said ship were 'Ane hundrith and fiftie lastis of quheit in girnal price of ilk last ane hundrith dolouris price of ilk dolour xlvj^{s} viij^{d} scotis money inde xxxv thowsand poundis scotis.

Item xxiiij barrellis of quheit price ane hundrith dolouris price of the dolour xlvj^{s} viij^{d} Inde ij^{c} xxxiij^{lib} xiij^{s} iiij^{d} scotis money.

Item twa peices of brasin ordinance weand xxvj^{c} lxj pound wecht Danskene wecht price of the saidis peices with thair carieg and furnitouris ane hundrith dolouris price of the dolour xlvj^{s} viij^{d} Inde ane thowsand twa hundrith xiij^{lib} vj^{s} viij^{d} scotis money.

Item xx lastis of boutit flour comptane xii barrellis for the last price of ilk last xlv dolouris price of ilk dolour xlvj^{s} viij^{d} Inde ij^{m} j^{c} lib scotis.

Item xxvij greit hundrith of plait copper price of ilk hundrith xx dolouris price of ilk dolour xlvj^{s} viij^{d} Inde j^{m} ij^{c} lx^{lib} scotis money.

Item thrie hundrith xxxviij peices of swanis copper maid in seruice iiij mik tyild stanes weand lxxx twae great hundrith price of ilk ane hundrith dolouris price of ilk dolour xlvj^{s} viij^{d} Inde thrie thowsand twa hundrith lij^{lib} xiij^{s} iiij^{d} scotis money.

Item twa hundrith Danskyne wecht of sindrie sortis of yron bullotis of Artailzearie price of ilk hundrith v dolaris and ane half inde ij^{m} viij^{c} xxiij^{lib} v^{s} viij^{d} scotis money.

Item twa hundrith stane Danskyne wecht of mader to lit rid price viij^{c} and xx dolouris price of ilk dolour xlvj^{s} viij^{d} Inde ij^{m}ix^{c} xiij^{lib} vj^{s} viij^{d} scotis money.

Item twa pakis of lint price thairof ane hundrith and ten dolouris price of ilk dolour xlvj^{s} viij^{d} Inde ij^{c} vj^{lib} xiij^{s} iiij^{d} scotis money.

Item ane great Ely vertue quharin was v^{c} bukskinis and schamdenis iiij elan skinis or buffill hydis ane fair great beasene and ane lawer baith fyne schillell work set aff with personages and historeis and thrie dussane bord knyffis heftit with fyne lammer price of all vj^{c} dolouris price of ilk dolour xlvj^{s} viij^{d} Inde j^{m}iiij^{c} poundis scotis money.

Item ane beir trie quhairin was pactit xliiij latine buikis bound in parschment treiting of the genealogeis of the kingis of Poll with certane historeis of the Kingis of Moscouia and Tartaria price of the haill j^{c} ten dolouris price of ilk dolour xlvj^{s} viij^{d} Inde ij^{c} lvj^{lib} xiij^{s} iiij^{d}.

Item twa barrellis ane fullit with holene scheise and the uther full of butter price thairof xv dolouris price of ilk dolour xlvj^{s} viij^{d} Inde xxxv^{lib} scotis money.'

Register of Acts and Decreets Volume 159 *folio* 215 23*rd June* 1596.