

## James I. of Scotland and the University of St. Andrews

ALTHOUGH the main facts regarding the foundation of the University of St. Andrews have long been generally known, a good deal still remains to be discovered as to its actual origin and early history. The story of its beginning was first told by a contemporary writer,<sup>1</sup> whose brief and simple narrative was long afterwards transformed into one of the most picturesque and oft-quoted passages to be met with in Scottish history.<sup>2</sup> This well-known account of the University's inauguration is quite satisfactory, so far as it goes, and its terse and graphic language could scarcely be improved upon. But it fails to answer many of the questions that arise in the mind of a serious inquirer into the genesis of so venerable and illustrious an institution. One would like to know, for example, what special circumstance, or set of circumstances, led to its foundation at that particular time;<sup>3</sup> who started the idea of founding it; who took the first step towards its realisation; what body or bodies of men deliberated upon its constitution and organisation; and what precisely were the stages through which the negotiations passed that culminated in its erection and confirmation. To such questions

<sup>1</sup> Walter Bower, Abbot of Inchcolm, in his continuation of Fordun's *Scottichronicon*, lib. xv. cap. xxii.: 'De fundatione universitatis Sancti Andreae.'

<sup>2</sup> Tytler, *History of Scotland*, 1864 ed. vol. ii. p. 43.

<sup>3</sup> In the absence of definite information, the conjecture may be hazarded that the immediate cause of the opening of a University at St. Andrews in 1410 was the action of the Council, or Synod, of Pisa in deposing Popes Gregory XII. and Benedict XIII., and electing Alexander V., in 1409. As Scotland continued to adhere to Benedict, Scottish students became schismatics in practically every University they had been accustomed to frequent. Their position was thenceforth to be as uncomfortable in France and elsewhere as it had previously been in England. Hence the urgent need for a University at once easily accessible and located within the obedience of the Pope to whom Scotsmen remained steadfast.

as these written history gives no definite answer. To the facts recorded by Bower, writers like Boece, Buchanan, and Spottiswoode add practically nothing. For further insight one must have recourse to contemporary documents, but, unluckily, these are not so numerous as they might have been, and probably once were.

So far as is known only one original contemporary document connected with the founding of the University is still in existence. It is one of the six papal bulls granted by Peter de Luna, as Pope Benedict XIII., on 28th August, 1413. The five other bulls granted by him on the same date exist in chartulary copies only.<sup>1</sup> The charter granted by Bishop Wardlaw on 28th February, 1411-12, has not been preserved, but it is quoted *in extenso* in the bull just mentioned, and there are chartulary copies of it also. The records of the Faculty of Arts commence in 1413, immediately after the receipt of the papal confirmation (*ab initio studii Sancti Andreae fundati et privilegii per Benedictum papam*), but they make no allusion to events of earlier date. This may possibly have been done in the *Acta Rectorum*, the earliest volume of which, however, is lost.

Bower states quite explicitly that the 'general study of the University in the city of St. Andrew of Kylrymonth in Scotland began in 1410, after the feast of Pentecost [11th May], in the time of Henry of Wardlaw, bishop, and of James Biset, prior.' As Bower had ample means of knowing the facts, there is no reason to doubt the general accuracy of his statement. It is indeed substantially confirmed by the charter subsequently granted by Bishop Wardlaw, who refers to the University as already praiseworthy begun (*jam laudabiliter inchoata*) by the Doctors and others to whom the charter is addressed. Curiously enough Bower is silent as to who was the founder of the University.<sup>2</sup> He gives the date of its beginning and the names of its first teachers; he duly chronicles the arrival of the papal bulls and the festivities that

<sup>1</sup> The bulls were twice printed by the University Commissioners of 1826, and may be read in the volume of 'Evidence' relating to St. Andrews published in 1837, pp. 171-6. A facsimile of the one which is still preserved, along with a transcript and a translation, will be found in part ii. of the *National Manuscripts of Scotland*.

<sup>2</sup> In an earlier section of the *Scotichronicon* (lib. vi. cap. xlvii.), probably also written by Bower, Wardlaw is described as 'Hic vir mansuetus . . . qui in civitatem Sancti Andreae primus fundator Universitatem introduxit.'

followed thereon; but he takes no notice of Bishop Wardlaw's charter. Wardlaw and Biset are only casually named as the bishop and the prior who happened to be in office when these events happened. But Wardlaw, in his charter of 1411-12, claims to have *de facto* instituted and founded the University, and in that document he proceeds to found it over again (*ex abundantii*), with the consent of his chapter, and to confer upon it various immunities and privileges. The prior and convent of St. Andrews likewise ordained the bishop's concession of privileges to be observed throughout their respective baronies. In the absence of any other document, this composite charter of 28th February, 1411-12, must be held to be the foundation charter of the University. If any earlier writing of a similar nature ever existed, no trace of it can now be found.

Papal confirmation of the foundation being essential to enable the new University to become effective, and especially to confer degrees carrying with them the *jus ubique docendi*, Henry Ogilvy, a Master of Arts of the University of Paris and a priest of the diocese of St. Andrews, appears to have been despatched to the Court of Benedict XIII., the pope to whom Scotland at that time adhered, to procure the indispensable bull. He carried with him the customary petition, addressed to the pope in name of the king of Scotland, and the bishop, prior, archdeacon and chapter of St. Andrews; and it was in response to it that the six bulls already referred to were issued.<sup>1</sup> For more reasons than one, I have long been anxious to see the full text of this petition, and quite recently I caused a search to be made for it in the Vatican archives. The petition itself could not be found, but the substance of it has been preserved in the papal registers in a form which seems to indicate that nothing essential has been omitted and that the *ipsissima verba* of the original have for the most part been retained. An abstract of this document, in English, has long been at the Record Office in London, and was printed in 1896.<sup>2</sup> I have thought it worth while to procure a com-

<sup>1</sup> The issue of so many bulls to the same University on the same day is probably a unique event in academical history. It arose from the somewhat unusual form of the petition and the consequent necessity of dealing with some of its clauses in separate documents. An almost parallel case is the University of Cahors, which obtained an equal number of bulls from Pope John xxii. in 1332, but they were not issued simultaneously.

<sup>2</sup> Calendar of Papal Registers. *Petitions*, vol. i. p. 600.

plete transcript of it, and append it to this article as a hitherto unpublished document of some importance affecting the inception of the University.<sup>1</sup>

It will be observed that the movement to found a Scottish University was a national one. The proposal was discussed not only in the Chapter House at St. Andrews but also in the Scottish Parliament, and it had received the imprimatur of the Three Estates, while King James himself is named as one of the petitioners for its confirmation. The king, as is well known, was at the time a prisoner in England and so was prevented from taking any active part in promoting the scheme in his own country; but he appears to have been made acquainted with it by those who had occasional access to him, and to have given it his hearty commendation and support. Bower indeed, in recounting James's many virtues, credits him with carrying on a vigorous correspondence on behalf of the University, including letters to the Pope on the subject of its privileges.<sup>2</sup>

The various clauses of the petition have been transferred to one or other of the six papal bulls, sometimes almost word for word. But there is one striking exception affecting a no less important office than that of the Chancellorship. According to the Rev. C. J. Lyon, 'We have still the foundation-charter of the University, dated 1411, in which the bishop fixes its constitution, settles its discipline, confers various privileges upon its professors and members; and invests the government of it in the Rector, subject to an appeal to himself and his successors, whom he creates its perpetual chancellors.'<sup>3</sup>

This is rather a loose statement to be made by a historian who had closely examined the charter and relative bulls and published summaries of them in English. To refer to one point only, the word Chancellor is entirely absent from Wardlaw's charter, nor does it occur once in Benedict's half dozen bulls. In the petition, the pope was quite plainly asked to

<sup>1</sup> Appendix A.

<sup>2</sup> 'Ipse etenim non solum erat naturali ingenio callens, sed et morali philosophia multis etiam clarae scientiae viris praeditus et praedoctus, qui in tantum philosophiam et ceteras artes liberales in regno suo introduci affectans, quod, ad ipsius instantiam, multiplicatis intercessionibus, et diversis literis propria manu cancellatis et signatis, cum tamen ipse pro tunc in captivitate fuerat detentus, pro privilegiis Universitatis in ipso regno fiendae summo pontifici scripsit et obtinuit.' *Scotichronicon*, lib. xvi. cap. xxx.

<sup>3</sup> *History of St. Andrews*, vol. i. p. 203.

ordain that the Bishop of St. Andrews should preside over the University as Chancellor, and that, with the consent of the Faculties, he should have power to regulate the manner of conferring degrees, and to make laws and regulations for the government of the University. But this request is not given effect to in the bulls, and the only passage in them bearing upon the office of Chancellor (which is never named) is one ordaining that graduands in the different Faculties are to be presented to the Bishop of St. Andrews, or to his vicar-general, whom failing, to some other suitable and duly accredited person, for their degrees. In drafting the principal bull Benedict adhered pretty closely to the phraseology employed by him in the one he had issued in favour of Turin on 27th October, 1404 (which in turn had been modelled on Urban VI.'s bull of 21st May, 1388, in favour of Cologne), and so avoided the formal appointment of a Chancellor.<sup>1</sup>

He probably disliked the innovation, and in particular the request to confer upon the Bishop of St. Andrews the right of taking part in the general management of the University, and thus of encroaching upon the functions of the Rector.<sup>2</sup> In other respects the prayer of the petition was fully given effect to, either in the principal bull or in the supplementary bulls.

The papal bulls arrived in St. Andrews on Saturday,

<sup>1</sup> It may be noted that in acting thus Benedict simply followed the long-established practice of the papal chancery. I do not remember to have seen a foundation bull of the fourteenth century in which the title of Chancellor was conferred upon any archbishop, bishop, provost, or other ecclesiastical dignitary to whom the power of conferring degrees was committed. On the other hand, with a few exceptions, this title was regularly conferred by the papal bulls of the fifteenth century. The practice was probably inaugurated by Alexander V., who introduced the following clause into his Bull of 9th September, 1409, founding the University of Leipsic: 'Et insuper dictum episcopum Merseburgensem existentem pro tempore huiusmodi studii cancellarium auctoritate prefata constituimus et etiam deputamus.' *Urkundenbuch der Universität Leipzig*, p. 3.

<sup>2</sup> At Louvain, for example, the Provost of the Collegiate Church of St. Peter, who had been created Chancellor by Martin V. in 1425, had no administrative powers. 'Summum et unum est Academiae caput, seu Princeps unus: hunc Rectorem appellamus. Ejus dignitas omnino magna est.' . . . 'Secundus in Academia Honor est Cancellarii, isque perpetuus. Eius officium est, titulos et honores Academicos Magisterii, Licentiae, Doctoratus, exactis Studiorum spatiis, auctoritate Pontificia, conferre more in Academiis recepto. Jurisdictionem nullam exercet; habet vero in publicis consessibus omnibus proximum a Rectore locum.' *Nicolai Vernulaei Academia Lovaniensis*, 1667, pp. 11, 19.

3rd February, 1413-14,<sup>1</sup> and were presented to Bishop Wardlaw at nine o'clock on the following morning in the Refectory of the Priory, where they were read in presence of a solemn assembly of clergy. A religious service in the Cathedral followed, and thereafter amid much 'boisterous enthusiasm,' the University started upon its career as a fully privileged *Studium Generale*.

The king does not appear to have been directly represented on this auspicious occasion, nor is there any authentic record of his connexion with the University until some time after his return to Scotland. Notwithstanding this, modern writers have followed each other closely in attributing to King James various forms of activity with respect to the University and its members in the period immediately succeeding his coronation by Bishop Wardlaw, at Scone, on 21st May, 1424. Thus Dr. M'Crie, writing in 1819, says:

'James I., who, in recompence of his long captivity, had received a good education in England, patronised the newly-erected University after his return to Scotland. Besides confirming its privileges by a royal charter, he assembled those who had distinguished themselves by teaching, and by the progress which they had made in their studies, and after conversing familiarly with them, and applauding their exertions, rewarded them according to their merit with offices in the state or benefices in the church.'<sup>2</sup>

Twenty-four years afterwards, Lyon had discovered some additional particulars and was able to expand this statement a little, as follows:

'One of his first cares, after [his return], was to sanction and encourage the infant University. From the Continental universities he invited many learned theologians, and particularly, it is added, some Carthusian monks, to assist in following up his undertaking. The public disputations of the students he countenanced with his presence, and ordered that the Professors should recommend none for ecclesiastical preferment but such

<sup>1</sup> They had thus been five months on the way. Following Archbishop Spottiswoode, Dean Stanley, Principal Cunningham, and others have represented these bulls as coming from Rome. But it was only metaphorically that they emanated from the Eternal City. As a matter of fact, they came from Pefiscola, a rocky fortress on the east coast of Spain, to which Benedict had retired after the Council of Pisa.

<sup>2</sup> *Life of Andrew Melville*, vol. i. p. 217.

as were skilful in their several faculties, as well as virtuous in their lives. He likewise enacted, that all commencing Masters of Arts should swear to defend the Church against her enemies, and particularly against all adherents of the heretical sect then denominated Lollards.<sup>1</sup>

Later still, in 1883, Principal Shairp, without getting much beyond Lyon, contrived to tell a slightly different story to an Oxford audience :

‘But the king, as soon as he was restored to his throne, made it, we are told, one of his earliest cares to resort with his queen to St. Andrews, and lodge with Henry Wardlaw in his episcopal residence in the old sea-fort. He visited, accompanied by the Bishop, the rising schools, and was present at the disputations held there by the students. He did all he could to encourage the growth of the university. He invited from foreign universities many learned theologians to come and teach in the young Paedagogium, and especially monks of the Carthusian order. And he ordered the regents or professors to recommend to him for ecclesiastical preferment none but students of proved capacity and learning and of virtuous life.’<sup>2</sup>

There is doubtless a certain amount of truth in some of these assertions, which have been gathered from Bower, Boece, Buchanan, and Spottiswoode. But the statements of these writers are very general, and some of them can have no reference to St. Andrews at all. There is no documentary proof for any of them in the possession of the University, nor indeed do its records give any indication of the king’s interest in its welfare between 1424 and 1432. It can, on the other hand, be quite clearly shown that Lyon was wrong in attributing the oath against Lollardism to King James. It was as early as 6th June, 1416, that the Faculty of Arts prescribed the form of oath to be taken, in the hands of the Bedellus, by those about to incept. It consisted of eight clauses—the fifth being in these terms :

‘Item jurabitis quod ecclesiam defendetis contra insultum Lollardorum et quibuscumque eorum secte adherentibus pro posse vestro resistetis.’

With Laurence of Lindores, ‘inquisitor of heretical pravity,’

<sup>1</sup> *History of St. Andrews*, vol. i. p. 208.

<sup>2</sup> *Sketches in History and Poetry*, pp. 264-5.

as Dean of the Faculty, and Robert, Duke of Albany, as Governor of the Kingdom—a man who

‘wes a constant Catholike;  
All Lollard he hatyt and heretike,’<sup>1</sup>

it surely did not require an injunction from the exiled king to stir up the University to exact from its graduates a solemn promise to defend the faith of the Church.

All the same, it may readily be believed that, after his liberation, James was no stranger to St. Andrews, and that he found in its University an institution worthy of his fostering care. But it now transpires that before long he formed the opinion that it was not located in the safest and most suitable place, and that he even went the length of applying to Pope Martin V. for permission to transfer it from St. Andrews to Perth. This hitherto unrecorded fact is learned from a papal missive of which the text is here published for the first time.<sup>2</sup> This application was made within two years of the king’s coronation, and he seems to have been alone responsible for it. Charters under the great seal issued from St. Andrews in 1426 would seem to indicate that James was there in January, February, April, and July of that year.<sup>3</sup> His views and intentions must have been known to the officers of the Crown who accompanied him, as well as to Bishop Wardlaw and the Rector and Masters of the University; but his letter to the Pope, like some of those earlier ones referred to by Bower, had been transmitted by his own authority and under his own sign manual.

Only two reasons were given in the king’s petition to the Pope for the removal of the University from its original site. First, that St. Andrews, being situated on the sea-coast, was rather close to England, between which country and Scotland there were frequent wars and dissensions; and second, that Perth being situated in the centre of the Kingdom, and having a better climate and a more abundant supply of provisions than other places in Scotland, offered all the advantages required by those resorting to a university. James had no doubt other reasons for the scheme he had in hand. Perth was still the

<sup>1</sup> Wyntoun, Book IX. chap. xxvi.

<sup>2</sup> Appendix B. I am indebted to Professor Enrico Celani, of the Officio Bibliografico in Rome, whom I had employed to search for the Petition, for drawing my attention to the existence of this important letter.

<sup>3</sup> *Registrum Magni Sigilli*, vol. ii. pp. 6-10.

capital of Scotland and had long been the ordinary meeting-place of Parliaments and General Councils. James's first Parliament had met there on 26th May, 1424, and had been followed by others on 12th March, 1424-25, and 11th March, 1425-26. In the last mentioned year James was also negotiating for the foundation of a Carthusian monastery at Perth. His aim appears to have been to make Perth the principal city of his Kingdom—the centre of legislation, religion, and learning.

The scheme was a bold one considering that the University had been so recently founded, and that it was located in the ecclesiastical metropolis of the country. But even then it was not without precedent. Almost at the very same time the University of Turin had been actually removed to Chieri; while two centuries earlier a contract was prepared for transferring the University of Padua to Vercelli.<sup>1</sup> In one sense the removal of the University from St. Andrews to Perth would have been attended with no great difficulty. It was at the time entirely unendowed, and had no material possessions of any kind in St. Andrews, with the exception of a small building with a narrow strip of ground attached, which had been gifted to it in 1418 by a certain Robert of Montrose for the purpose of founding a College in honour of St. John the Evangelist. The public meetings of the University were held in the different churches and religious houses, and its teaching was carried on in halls or pedagogies opened by the various masters. The students lived in rooms throughout the town just as they do now, although the Faculty of Arts had favoured 'collegiate' living as early as 1414.

Martin V.'s answer to the king's petition was eminently discreet and cautious. While not unwilling to grant the royal request, the Pope felt that he had not sufficient knowledge of the circumstances to warrant his giving effect to the prayer of the petition without careful inquiry. He accordingly referred the whole matter to the Bishops of Glasgow and Dunblane, directing them to examine diligently into the truth of the statements set forth in the petition and to make certain that the University and its members would be invested with such royal privileges and liberties as seemed to them to be useful and necessary for its favourable growth and preservation. If the two bishops were able to satisfy themselves that the statements

<sup>1</sup> Rashdall, *The Universities of Europe in the Middle Ages*, vol. ii. pp. 57, 12; *Scot. Hist. Rev.* vol. iii. p. 53.

were true, and that Perth was in all respects a suitable place for a university, they were empowered, by apostolic authority, to transfer the University of St. Andrews thither, along with its masters, doctors, and scholars, but in such a manner and under such conditions that the University and all connected with it should continue to enjoy in the town of Perth exactly the same privileges and immunities that they enjoyed in the city of St. Andrews.

What the two bishops did in the matter, it is impossible meantime to say.<sup>1</sup> So far as I can discover, no further notice of the transaction exists. The University records that have come down to us give no hint whatever that any such proposal was ever made. It was a scheme which could not fail to excite considerable opposition, especially in St. Andrews, and if it had been persevered in some notice was almost bound to have been taken of it in contemporary documents. The probability is that the king found that it would be inexpedient to press the matter and so allowed it to drop. Be that as it may, it probably had the effect of stirring up the University authorities, including Bishop Wardlaw himself, to do something to make its position more stable at St. Andrews. Thus we find the Faculty of Arts on 9th March, 1429-30, voting forty shillings from its funds towards the expenses of the Rector and some other deputies who had gone to the Parliament then sitting in Perth, to endeavour to obtain certain privileges for the University. To add dignity to their mission they were also allowed to have with them the Faculty mace.<sup>2</sup> Then, in the very same month, Bishop Wardlaw, who had so far done nothing towards endowing the University, announced his intention of handing over a tenement situated beside the Chapel of St. John for the purpose of erecting a College for the Faculty of Arts, provided the Faculty would

<sup>1</sup> As 'St. Andrews men' they were probably not much in favour of the scheme. John Cameron, Provost of Lincluden, who had just been elected to the See of Glasgow, is understood to be the Johannes de Camera whose name appears among the Bachelors of Arts of the University in 1416, and among the Licentiates in 1419. He was appointed Official of Lothian by Bishop Wardlaw in 1422, and had been at St. Andrews, in the capacity of Keeper of the Privy Seal, several times in 1426. William Stephen, Bishop of Dunblane, was one of the first Masters in the Faculty of Theology and Canon Law at St. Andrews.

<sup>2</sup> On 21st January, 1436-37, a further grant of five merks was made 'pro expensis faciendis per rectorem et ceteros deputatos apud Perth pro nostris privilegiis servandis,' but it is not clear to what particular mission this refers.

make a grant from its common purse towards the construction of the building. The Faculty cordially agreed to do so, and several of its members also promised contributions from their own resources. The charter of donation was completed on 9th April, 1430, and on the day of infestment there was much mutual congratulation and speechmaking, while the ceremony itself was witnessed by the Bishop of Caithness, the Rector of the University, and a goodly company of other dignitaries. Fully five years elapsed before the building was first used as a meeting place for the Faculty of Arts. It was at first known as the 'Magna Scola Collegii,' and afterwards as the 'Nova Scola Facultatis.'

Nothing more is recorded of the visit of the deputation to Perth in 1430, but it may be assumed it was not altogether in vain, for by a charter under the great seal, dated at Perth 20th March, 1431-32, the king took the University and all its members under his firm peace, custody, defence and maintenance, and declared them to be exempt from all taxations and burdens of every kind imposed within the Kingdom of Scotland. In granting these privileges the king expressed his ardent desire for the welfare of the University (which he called his 'beloved daughter'), and his earnest hope that it would produce men distinguished for knowledge, lofty counsel, and upright life, through whom the orthodox faith would be defended and justice and equity maintained. This was the first of a lengthy series of royal charters issued on behalf of the University by the Scottish sovereigns. It was immediately followed by another charter, also under the great seal, dated at Perth 31st March, 1432, confirming the privileges which had been granted to the University by Bishop Wardlaw. Among the local witnesses to these two charters were Bishop Wardlaw, Laurence of Lindores, Rector of the University, James Haldenston, Prior of St. Andrews, and Thomas Arthur, Provost of St. Andrews.<sup>1</sup>

The University had now obtained all the patronage and protection it required. Fortified with episcopal, papal, and royal charters, its autonomy was complete, and it required no more help from without except endowments and a continuous supply of students. But it was founded in a turbulent age, and peace did not always reign within its borders. Rival pedagogies had almost from the first been a source of strife

<sup>1</sup> *Evidence*, p. 178; *Reg. Mag. Sig.*, vol. ii. p. 46.

among the masters and the cause of insubordination among the students. Pecuniary and other purely mundane troubles likewise cropped up now and then: hence we read in one place that *de isto computo non fuit concordia inter dictos deputatos*. The king no doubt knew all this, and having taken the University under his royal protection, and conferred upon it every possible privilege, he next tried to bring about law and order among its members. On 21st November, 1432, the Faculty of Arts met to consider an 'Appunctamentum' which had been received from William de Foulis, Keeper of the Privy Seal, and formerly one of the first teachers in the University. This decree had been drawn up, or approved, by the king<sup>1</sup> for transmission to the Faculty in the expectation that it would be accepted and its injunctions duly complied with. But the Faculty was an independent body and had already declined to acknowledge the jurisdiction of the University in the disposal of its revenues. The meeting evidently did not relish the interference of the king in the internal affairs of the Faculty, but after deliberation a way out of the difficulty was found. It was resolved that the 'Appunctamentum' should not be made into a statute, but that it should have the force of one, so that it should not be lawful for any master or scholar to infringe or disobey it, unless perchance it were first of all revoked in whole or in part. This 'Appunctamentum' is a somewhat lengthy document of eleven clauses. It provides, among other things, that the Dean of the Faculty be held in becoming reverence by its members and his orders obeyed; that the Dean should pay a weekly visit to the different pedagogies and take note of the manner in which they were conducted; that the Dean should have the assistance of three of the senior masters in the performance of his duties; that students wishing to pass from one pedagogy to another should give satisfactory reasons before being allowed to do so; that the masters and scholars of the various pedagogies should frequent each other's weekly disputations with a view to mutual intercourse and friendship; and that means should be taken to restrain the students from excesses.<sup>2</sup>

With this well-meant endeavour to promote peace and concord in the Faculty of Arts, King James's efforts on behalf of the University appropriately closed. At any rate no other direct

<sup>1</sup> As transcribed into the Faculty Register it is initialled I. R.

<sup>2</sup> The full text of this document will appear among the *Acta Facultatis Artium*, which are at present being prepared for publication.

reference to his connexion with the University has been met with in contemporary sources of information. As already noted, the University would appear to have been concerned about its privileges in the beginning of 1437, but by that time the king's tragic end was drawing near, and nothing more is heard of the matter. His interest in the University probably never flagged, and he may have done more for it than the meagre records that have survived might lead one to suppose. The University of St. Andrews was singularly fortunate in its founders and early patrons. Henry Wardlaw was one of the best of Scottish bishops, and James I. was one of the most cultured of Scottish kings. James Biset, the prior, 'was like a well-grafted shoot of a true vine that grew into a choice tree'; while Laurence of Lindores, its first Rector, was a churchman of outstanding ability and learning. Equally distinguished for learning and culture was Benedict XIII., who, as a pope, 'failed through intellectual rather than moral faults.' It is not surprising that the University prospered and attracted students from all parts of the country as well as from all ranks of society. The actual numbers have doubtless been greatly exaggerated, but that the University justified its foundation, even in the early decades of its existence, there can be no reasonable doubt.

The documents appended to this article are printed exactly in accordance with the copies received. The transcripts were made by Dr. Vincenzo Nardoni, of the Vatican Secret Archives; they have been carefully collated and are certified to correspond in every respect with the papal registers.

J. MAITLAND ANDERSON.

#### APPENDIX A.

Beatissime pater pro parte devotorum filiorum vestrorum Jacobi regis Scotorum illustris, Henrici episcopi, prioris et capituli ac archidiaconi Sancti Andree exponitur S. V. quod cum ipsi nuper de consilio et consensu ac communi tractatu trium statuum seu brachiorum regni Scotie pie devocionis et sinceritatis fidei fervore accensi, considerantes quamplura discrimina et pericula clericis sue dictionis in facultatibus theologie, juris canonici, civilis, medicine et liberalium artium cupientibus erudiri propter viarum transitum quotidie imminere, ac guerras et capturas ipsorum et rixas in ipsorum transitu per scismaticos eorum perfidos inimicos enormiter perpetrari ac etiam quia multi in regno predicto dociles existentes propter viarum discrimina et expensas et onera supradicta verentur ad studia litterarum accedere etiam propter defectum expensarum, et in ipsis facultatibus erudiri, qui si in regno predicto generale studium existeret de facili

instrui et doceri, et sic dicti regni inhabitatores viris scientiarum peritis possent luculenter decorari in civitate Sancti Andree ad hoc habili et ydonea reputata, generale studium seu universitatem studii generalis institui et fundari proponerent, auctoritate sedis apostolice mediante. Et propterea rex, episcopus, prior, capitulum et archidiaconus prelibati propter zelum et fervorem ipsius universitatis seu studii generalis, et ut clerici ipsius regni cupientes dictis facultatibus insudare, et in scientiis proficere litterarum, ut fructum in Dei ecclesia afferant peroptatum, et in ipso studio melius valeant insistere seu vacare, ipsam universitatem vestra auctoritate apostolica fundandam et instituendam ac studentes in eadem certis privilegiis, immunitatibus et libertatibus immuniendos atque dotandos ac a diversis oneribus, collectis, vigilliis, muneribus, tributis et exactionibus liberandos ac bedellis, scutiferis, familiaribus et servientibus ac aliis dicte universitatis officariis privilegia concedenda secundum quod in publico instrumento sigillis episcopi et capituli predictorum munito plenius designatur ad S. V. occurrunt humiliter supplicantes et devote quatenus E. S. sua benignitate apostolica dictum studium cum singulis facultatibus in dicta civitate Sancti Andree designatum perpetuis temporibus duraturum instituat, corroboret et confirmet. Statuentes ut episcopus Sancti Andree, qui pro tempore fuerit, et vacante sede suus vicarius in spiritualibus ibidem presint, ut dicti studii cancellarius qui habeant circa regimen dicti studii cum consensu facultatum in dicto studio degentium, circa promovendos in eodem et alia que occurrunt ad regimen dicti studii, laudabiles ordinationes, constitutiones et conservaciones facere valeant imponere et ordinare. Item quod viri habiles ad dictum studium convolantes etiam beneficiati per totum regnum petita sui ordinarii licentia, licet non obtenta, in prefato studio per decenium insistere valeant, et fructus recipere suorum beneficiorum, elapsoque decennio si in antedicto studio regere vellint in scollis publice legendo hujusmodi fructus in absentia percipere valeant, quamdiu hujusmodi lecturis publice perinsistunt. Item quod rector dicti studii per hujusmodi facultates assumendus seu eligendus, graduatus existat et infra sacros constitutus. Item quod singuli studentes in dicto studio secundum ordinationem sacrorum canonum libere testamentum condere valeant quod suus ordinarius seu officialis quicumque occasione prefati testamenti aliquid exigere minime valeant seu a suis executionem aliquammodo vendicare. Ita quod singula privilegia per episcopum, priorem, capitulum et archidiaconum in publico instrumento designata, ac suis sigillis roborata, ad eorum instantiam per V. S. confirmentur, et perpetuis temporibus roborentur. Item ut omnia et singula perpetuis temporibus observentur de benignitate ejusdem sedis apostolice dictis studentibus conservatoriam concedere dignemini vestra de gratia ampliori. Et insuper pro augmentatione dicti studii inchoandi quod bacallarii seu licentiati in aliis studiis de presenti scismaticis in dicto studio suos cursos perficere valeant et eorum gradus recipere. Juramentis in contrarium prestitis non obstantibus quibuscumque.

Fiat et instituimus ac fundamus, confirmamus, statuimus et concedimus ut supra continetur. L. S.

Datum Paniscole Dertzensis diocesis quinto kal. Septembris anno decimonono. Expedita loco, die et anno predictis.<sup>1</sup>

#### APPENDIX B.

Martinus etc. Venerabilibus fratribus Glasguensi et Dumblanensi episcopis salutem etc. In apostolice dignitatis specula licet immeriti constituti ad singula

<sup>1</sup> *Archiv. Vatic. Ben. XIII. antip. Reg. suppl.* vol. 88, fol. 197.

paterne considerationis aciem extendentes et actente prospicientes quod per litterarum studia viri efficiantur ydonei quorum salutaris disciplina Dei letificat civitatem instruuntur rudes, provecti ad altiora concrescunt, justitia colitur tam publica quam privata, inducimur non indigne ut ad ea que pro studiorum hujusmodi, et illis insistentium commodis, utilitate et tranquillitate oportuna fore conspicimus efficaces opem et operam impendamus. Exhibita siquidem nobis nuper pro parte carissimi in Christo filii nostri Jacobi regis Scotorum illustris peticio continebat quod ipse generale studium per quondam Petrum de Luna in ejus obedientia de qua partes ille tunc erant nuncupatum in civitate Sancti Andree in Scocia fundatum et erectum ad villam Sancti Johannis Sanctiandree diocesis ipsius regis regali dominio subiectam et in medio regni Scocie situatam tum propter guerras et discidia inter Anglie cui ipsa civitas propter maris propinquitatem satis vicina existit ac predictum Scocie regna frequenter suscitata, tum etiam propter aeris temperiem ac victualium quorumlibet copiam et opulentiam quibus ipsa villa pre ceteris dicti regni Scocie locis habundare dinoscitur pro commodo utilitate et tranquillitate ad studium hujusmodi confluencium transmutari atque transferri desiderat. Quare pro parte dicti regis nobis fuit humiliter supplicatum ut studium hujusmodi de prefata civitate ad dictam villam transferre et alias super hiis oportune providere de benignitate apostolica vigneretur. Nos igitur de premissis certam noticiam non habentes hujusmodi, supplicationibus inclinati fraternitati vestre de qua in hiis et aliis specialem in Domino fiduciam obtinemus per apostolica scripta committimus et mandamus quatenus de premissis omnibus et eorum circumstantiis universis auctoritate nostra vos diligenter informetis et inquiratis diligentius veritatem, et si per informationem hujusmodi ea vera esse, dictamque villam aeris temperie refertam, victualibus opulentam ac pro hujusmodi studio alias aptam, fertilem et accommodam fore reppereritis ipseque rex studium ipsum et ad illud pro tempore confluentes illique insistentes suis regniis privilegiis et libertatibus decorare voluerit postquam rex ipse rectori et scholaribus in dicto studio pro tempore residentibus oportuna privilegia et libertates que vobis pro felici incremento et conservacione dicti studii utilia et necessaria videbuntur concesserit, super quibus omnibus vestras conscientias oneramus dictum studium de prefata civitate ad dictam villam auctoritate apostolica transferatis ac una cum universitate magistris, doctoribus et scollaribus sub illis modis, formis, clausulis et conditionibus quibus generale studium in dicta civitate institutum fuit et erectum in ipsa villa eadem auctoritate instituatis et etiam erigatis. Ita quod de cetero in ipsa villa generale in facultate qualibet prout hactenus in dicta civitate fuit sit studium illudque ibidem perpetuis temporibus vigeat et observetur, quodque universitas, magistri, doctores et alii scolares qui in illo pro tempore residebunt, postquam ad prefatam villam translatum fuerit, ut prefertur, omnibus et singulis privilegiis, exemptionibus, libertatibus, franchisiis et indultis tam apostolica quam ordinaria auctoritate ac per ipsum regem et predecessores suos aut alias quovis modo eis concessis, quibus in prefato studio in dicta civitate gaudent et potiuntur de presenti ex tunc etiam in dicta villa uti valeant pariter et gaudere. Non obstantibus constitutionibus et ordinationibus apostolicis ac statutis et consuetudinibus dicti studii, juramento, confirmatione apostolica vel quacunque firmitate alia roboratis, ceterisque contrariis quibuscumque. Datum Genezani Penestrine diocesis kal. Augusti anno nono.<sup>1</sup>

<sup>1</sup> *Archiv. Vatic. Reg. Lateranen. Mart. V. an. IX. vol. 260, fol. 146<sup>v</sup>.*

## The Early History of the Scots Darien Company

### ORGANISATION IN LONDON \*

THE London merchants who had sent Paterson's draft to Scotland anxiously awaited news of the passage of the Act. They felt fairly confident, nevertheless, that it would go through with slight modification, and went so far as to engage a secretary for the Company that was still in embryo.<sup>1</sup> Roderick Mackenzie, scrivener, had just passed his thirtieth year. Faithful to his employers, and extremely loyal to the Company, he continued to serve as its secretary until its dissolution.<sup>2</sup>

As soon as the welcome news arrived, a correspondence began between William Paterson and the Lord Provost of Edinburgh, which is of great interest as showing the former's attitude of mind, and the dilatory methods of the Edinburgh patentees. On the 4th of July, 1695, he wrote expressing his belief in the great importance of their undertaking, which nothing but prudent management could bring to a successful issue. He cautions them that the principal designs were only to be disclosed as they were executed. The latter part of October is suggested as a time for the first meeting of the patentees. The London promoters suggested a capital stock of 360,000 pounds. They thought also that subscriptions ought to be canvassed for. Here was the method suggested: 'As for reasons we ought to give none but that it is a fund for the African and Indian Company, for if we are not able to raise the fund by our reputation, we shall hardly do it by our reasons.'<sup>3</sup> The resemblance to cer-

\* See *Scottish Historical Review*, vol. iii. p. 210, for the earlier stages of the History of the Scots Darien Company.

<sup>1</sup> *State of Mr. Paterson's Claim upon the Equivalent*, 1712, p. 5.

<sup>2</sup> *Ibid.* pp. 4-6.

<sup>3</sup> Letter from William Paterson to the Lord Provost of Edinburgh, *Dar. Pap.* 3.

tain modern companies that have been floated on the reputation of the promoters is very marked. Satisfaction is expressed with the choice of patentees in Edinburgh. The general tone of the letter is hopeful and extremely tactful, but it is interesting to note this premonition of the evil that was to come.

Five days later he wrote again, urging that as great a number as possible of the patentees should meet in London to settle the constitution of the Company. Evidently the Scots promoters wished the first meeting to be in Edinburgh; for Paterson says: 'It's needful the first meeting should be in London, because without the advice and assistance of some gentlemen here it will not be possible to lay the foundation as it ought, either to counsel or money.'<sup>4</sup> Fears are expressed that the Parliament of England might take unfavourable notice of the Company in the ensuing Session, which was expected shortly.

The English Parliament was not sitting at the time of the passage of the Act, and in fact was not to meet until the latter part of November. In the meantime much might be done, and the Company fairly launched before it was interfered with by the powerful chartered companies that had Parliamentary influence. The London promoters however had not realised how unbusinesslike their Edinburgh colleagues could be. The Scots were so patriotic and felt that they had already accomplished so much by securing the passage of the Act that they were in no haste to acknowledge the leadership of the London patentees, and in fact were in no haste to do anything. The opportunities which the Act gave for establishing a large trade were clearly seen in London, together with the necessity for engaging 'some of the best heads and purses for trade in Europe therein.'<sup>5</sup> Opposition from the English and Dutch companies was expected, which was another reason for keeping the design secret.

Paterson continued to urge the Scots to make no distinction of parties in this great undertaking, but if a man were a member of the Company, to look upon him as of the same interest as they, no matter of what nation or religion he might be. He knew the habits of his countrymen, and foresaw that very disunion and bad management which eventually brought the undertaking to grief. In fact, he is almost prophetic when he writes: 'We may be sure, should we only settle some little colony or

<sup>4</sup> Letter from William Paterson to the Lord Provost of Edinburgh, *Dar. Pap.* 4.

<sup>5</sup> Same to same, *Dar. Pap.* 3.

plantation, and send some ships, they<sup>6</sup> would look upon them as interlopers, and all agree to discourage and crush us to pieces.' His ideas of the way things were likely to go were based on examples of the failure of the French, Danish, and Prussian companies. 'We ought to expect no better success if our designs be not well grounded and prudently managed.'<sup>7</sup>

A month later he wrote again in no very happy frame of mind, for they had heard nothing from Edinburgh since the news of the passage of the Act, and had as yet received no authentic copies of it. He reminds them 'that the life of all commerce depends upon a punctual correspondence.'<sup>8</sup> Evidently the promoters had been at work interesting possible subscribers, but could do nothing definite until they knew the wording of the Act. In the meantime, on the 17th of June, the Scots Parliament had adjourned, but not without passing an act to enable the administrators of the public funds of boroughs to invest in the Company.<sup>9</sup> Even trust funds were to be imperilled to favour the new project.

On the 14th of August the London promoters received a letter from Edinburgh, which encouraged them to prepare for a general meeting of the corporation in October or November. The next day Paterson wrote that at least three of the persons named in the Act must come from Scotland, for two of the London promoters had been misnamed, so that three more would be needful to make up the requisite majority until the mistaken names could be rectified. They were much chagrined to find printed copies of the Act in the hands of their enemies before they had any. The Edinburgh directors do not appear to have had much business sense or caution. London merchants were already becoming alarmed as they came to appreciate the large powers granted to the Company. Secrecy was no longer of any value, but haste became absolutely essential to success.

The first regular meeting 'of the gentlemen concerned in the company' occurred on the 29th of August. None had arrived from Scotland, but all of the London patentees were present, except the two whose names were incorrectly given in the Act, and one other who seems to have dropped out of the corporation, as his name does not appear on the list of those present at any of the subsequent meetings. It was resolved that all persons

<sup>6</sup> The English and Dutch Companies.

<sup>7</sup> Letter from William Paterson to the Lord Provost of Edinburgh, *Dar. Pap.* 4.

<sup>8</sup> Same to same, *Dar. Pap.* 4.

<sup>9</sup> *Acts Parl. Scot.* IX. 463.

who were desirous of joining the Company give their names, with the sums for which they were willing to subscribe, to Roderick Mackenzie, the newly-appointed secretary, who was cautioned not to allow said names or sums to be known to any persons whatsoever, without special direction of a majority of the members. This caution he observed even under the fire of Parliamentary investigation. In order to defray necessary expenses, each of the gentlemen present agreed to advance 25 pounds until the Company could be definitely established.<sup>10</sup>

Meanwhile the Act was discussed about the city. The politicians favoured the passage of a similar act for England rather than any interference with the Scots Company, and apparently the East India merchants were not yet alarmed. As the Act met with such a favourable reception, Paterson wrote, on the 3rd of September, urging that the persons to be sent from Edinburgh be dispatched with all expedition.<sup>11</sup> He importunes them to get the Act past the seals as soon as possible, hinting darkly at important reasons for this haste, which it was not fit for him to write. Parliament was to meet in the week following, and doubtless Paterson feared action would be taken to interfere with the establishment of the Company.<sup>12</sup> Besides news had just been received of the fall of Namur, and the King might be expected home at any time.<sup>13</sup> If the Act had not already passed the seals he might be influenced by the London companies to give orders forbidding it. Within four days of the writing of this letter a squadron was 'ordered to go to convoy the King home.'<sup>14</sup>

As the Company became more and more public, it became more necessary to have definite proposals to offer to those interested, before their ardour should cool or the opposition grow more powerful; the delay in the arrival of the members from Scotland grew more and more fatal. Although only three were required, and Paterson continued every few days to urge their immediate presence, his letters seemed to have been in vain. Whether the delay was on account of the difficulties of the journey, or jealousy of the London merchants, or for some other reason, is not clear. Fortunately, the meeting of Parliament

<sup>10</sup> *Jour. Ho. Com.* xi. 401.

<sup>11</sup> Letter from William Paterson to the Lord Provost of Edinburgh, *Dar. Pap.* 6.

<sup>12</sup> Narcissus Luttrell, *Brief Historical Relation*, iii. 503.

<sup>13</sup> *Ibid.* 518.

<sup>14</sup> *Ibid.* 522.

was postponed from time to time.<sup>15</sup> But preparations for the King's arrival continued daily.<sup>16</sup> His coming meant the opening of Parliament.

On the 19th of September Paterson wrote: 'We find ourselves daily more and more obliged by the constitution of affairs to press the coming of those persons who shall be deputed from you, the reasons still increasing for us to get our business here despatched before the approaching sessions of Parliament.'<sup>17</sup>

Enemies of the Company were industriously spreading abroad rumours that some of the persons concerned in the Company spoke contemptuously of the ability of the English government to restrain the new project. Whereupon the promoters, at a meeting on the 26th of September, ordered the members of the Company, upon all occasions, to speak with due respect of the English government.<sup>18</sup>

Little business could be done while they were waiting for the arrival of the members from Edinburgh. Yet apparently some of the Edinburgh patentees were still of the opinion that the business could be transacted by correspondence; or else that some of the London promoters should go to Scotland.<sup>19</sup> This was out of the question. Furthermore, the King had now arrived.<sup>20</sup> So they wrote through Paterson: 'We must now tell you that if you neglect coming up by a few days after this comes to hand it will endanger the loss of the whole matter.'<sup>21</sup> But the King went off to the races at Newmarket, where a horse of his won one of the big events.<sup>22</sup> He then proceeded to enjoy the hospitality of his nobles at a few house parties before Parliament should open late in November.<sup>23</sup>

Thus relieved for the present, the London promoters decided, on the 22nd of October, to begin to take subscriptions in a fortnight, and to fix the capital of the Company at £600,000 sterling.<sup>24</sup> While waiting for the arrival of the dilatory Scots, they

<sup>15</sup> Narcissus Luttrell, *Brief Historical Relation*, iii. 524, 526.

<sup>16</sup> *Ibid.* 524, 525, 526, 530, 532.

<sup>17</sup> Letter from William Paterson to the Lord Provost of Edinburgh, *Dar. Pap.* 7.

<sup>18</sup> *Jour. Ho. Com.* xi. 401.

<sup>19</sup> Letter from William Paterson to Scots patentees, *Dar. Pap.* 8.

<sup>20</sup> Narcissus Luttrell, *Brief Historical Relation*, iii. 536.

<sup>21</sup> Letter from Wm. Paterson to Scots patentees, 15 Oct., *Dar. Pap.* 8.

<sup>22</sup> Narcissus Luttrell, *Brief Historical Relation*, iii. 537, 540.

<sup>23</sup> *Ibid.* 536, 537, 541, 542.

<sup>24</sup> *Jour. Ho. Com.* xi. 401.

proceeded, on the 24th of October to decide, provisionally, that the government of the Company should rest in a court of directors, consisting of the twenty patentees, and thirty other proprietors. These last were each to hold at least 1000 pounds in their own name, and the proxies of 18,000 pounds more. By the 29th of October the 300,000 pounds assigned to England had been over-subscribed.<sup>25</sup>

This stimulated the English East India Company to enlarge their own capital.<sup>26</sup> Money was so plentiful they raised an additional £125,000 in less than three weeks.<sup>27</sup> The Scots Company, however, had other troubles.

The Edinburgh patentees seemed to have distrusted Paterson and his London friends from the very beginning. They were slow in answering letters from London, careless in forwarding necessary documents, and reluctant to acknowledge, by sending delegates to London, that the seat of the enterprise was not in Scotland. Perhaps, too, they realised that the Londoners had little expectation of Scotland's being able to carry on the enterprise alone. They were undoubtedly jealous of the great London merchants, although they themselves had had little or no experience in large mercantile undertakings.

Realising the necessity for action, the London promoters continued to make provisional arrangements for the establishment of the Company. On the 3rd of November they selected an office, and agreed that all subscribers be obliged to pay down one quarter part of their subscription. They drew up a preamble, which declared that, inasmuch as Paterson had been at great expense in making discoveries in both the Indies, and likewise in procuring privileges from foreign powers which were to benefit the Company, he was to receive two per cent. of the money to be subscribed for the said capital fund, as well as three per cent. of the profits for twenty-one years; that the management of the Company was to rest in the court of directors; and, finally, that the persons named in the Act were to be a complete court until others were added. This was dated London, the 6th of November, 1695.<sup>28</sup>

Apparently the three delegates arrived from Edinburgh on the 9th of November, for on that date the minutes read for the first time, 'at a meeting of the Company of Scotland Trading to Africa and the Indies.' They had previously read, 'at a

<sup>25</sup> *Ibid.* 402.

<sup>26</sup> Narcissus Luttrell, *Brief Historical Relation*, iii. 544.

<sup>27</sup> *Ibid.* 553.

<sup>28</sup> *Ho. of Lords MSS.* ii. 15.

meeting of the gentlemen concerned in the Company, etc.<sup>27</sup> Their first business was to correct the names of the two London merchants which had been incorrectly spelled in the Act; their next, to approve the selection of Roderick Mackenzie as secretary. The Scots directors were surprised at the greatness of the proposed capital, but were satisfied by the reasons given, which Paterson was requested to put in writing, and transmit to Scotland, together with the proceedings of the Company. Upon examining the minutes of previous meetings, all were declared and confirmed to be the sense of the Company, excepting the resolution concerning the court of directors, which was to be further considered. This was on Saturday.

On Monday evening the Company met again. The management and constitution of the Company were discussed, but no decision was reached.

The English East India Company first took official cognizance of the existence of the Scots Company by voting, the 11th of November, that no member of their Company could be concerned with the Scots without breaking his oath to the English Company.<sup>29</sup> They also petitioned the King to grant them his gracious assistance.<sup>30</sup> He had now returned from his progress and was entertained on Wednesday evening by fireworks in St. James Square, which, says Luttrell in his diary, 'were very fine.'<sup>31</sup>

The Scots met again on Thursday, the 14th, when it came out that some of the patentees in Scotland might decline being directors in such a large company. Accordingly it was resolved that the subscribers there have an opportunity to appoint substitutes in places of those named in the Act.<sup>32</sup> On November 15th the deputies from Scotland made further objections to the preamble of the subscription book, but appear to have been satisfied by Paterson's explanations; and on the 18th the preamble was confirmed. A second meeting was held in the evening when, pursuant to the preamble, two new directors were admitted after producing proxies representing £20,000 of stock each. On Wednesday four more directors were admitted, and a Committee of Treasury was appointed to examine the notes of the subscribers who had not paid cash. It is characteristic of the good business policy of the London directors that a majority,

<sup>29</sup> MS. East India Company's Court Book, No. 37, folio 38A.

<sup>30</sup> Narcissus Luttrell, *Brief Historical Relation*, iii. 550.

<sup>31</sup> *Ibid.* 550.

<sup>32</sup> *Jour. Ho. Com.* xi. 402.

and a quorum, of the first committee to be appointed, consisted not of the old directors but of the new ones, men who had been appointed directly by the stockholders exercising their right of proxy. For the present they acted as a kind of executive committee.<sup>33</sup>

On the 22nd of November, at a meeting of the directors, two others were admitted, and the subscription book was declared closed, as the complete sum of £300,000, being that half of the capital destined for England, had been taken up.<sup>34</sup> The books were closed in the nick of time, for Parliament assembled this very day.<sup>35</sup> While the necessary business connected with its opening occupied the new Parliament and engrossed its attention, the directors proceeded to establish the Company more firmly in London.

On the day of the opening there appeared a little four-page pamphlet entitled, 'Some Considerations upon the late Act of the Parliament of Scotland for Constituting an Indian Company.' It bears the earmarks of Paterson's work. It was a very clever attempt to fend off impending danger to the Company by calling the attention of the English nation to the fact that the best way to keep ahead of the Scots was to make their own trading laws less stringent and not, as many proposed, to attack the new Company.<sup>36</sup>

On the 25th, two new directors were admitted and a committee was appointed to secure permanent offices for the Company. Here again the directors who represented stockholders were in the majority on the committee. At the next meeting, Nov. 27th, it was agreed that all the directors, officers, and servants of the Company should take an oath *de fidei*, as enjoined by the Act. At this time also a motion was made to send some ship or ships to the East Indies to secure a settlement for the Company. It was further proposed that such parts of the capital as were not needed for immediate use be loaned at high rates of interest upon unquestionable security on notes payable two days after demand.

<sup>33</sup> From now on the minutes bear the superscription, 'At a Court of Directors of the Company of Scotland Trading to Africa and the Indies' (*Jour. Ho. Com.* xi. 403).

<sup>34</sup> *Jour. Ho. Com.* xi. 403.

<sup>35</sup> Narcissus Luttrell, *Brief Historical Relation*, iii. 554.

<sup>36</sup> *Some Considerations upon the late Act of the Parliament of Scotland, for Constituting an Indian Company. In a Letter to a Friend.* London, 1695. A copy is in the British Museum.

These proposals were further considered on Friday, the 29th of November. The form of the oath was taken into consideration and approved, and signed by all the directors then present. This oath declared that during his term of office the juror would not disclose anything that was given him to be kept secret, but would endeavour to the utmost of his power to promote the Company's interests. The matter of sending ships to the East Indies, and the proposal to start a small banking business were referred to a new Committee of Trade. This committee consisted of nine directors, of whom only one besides Paterson was a charter member. Either the promoters of the Company were losing control, or else thought it advisable to allow representatives of the stockholders to have a free hand in directing the Company's affairs.<sup>37</sup>

The most interesting feature of this meeting, however, was the formal renunciation and release by Paterson of the royalty which had been guaranteed him in the preamble to the subscriptions. In the release he stated that it was done 'for divers good causes and considerations.' He declared orally that, as he had the satisfaction of seeing himself vested with the legal right to these royalties, and as the majority of the Court consisted of men in whose justice and gratitude he had confidence, he was resolved 'to take hold of so glorious an opportunity of showing the generosity of his heart.' He also stated that he had insisted upon the two per cent. in hand, and the three per cent. of the profits in the preamble of subscriptions, not because of any doubt that he had had in the justice and generosity of the Company, but because of the ingratitude he had met with from others, and because he had spent nearly £10,000 of his own and other men's money, besides 'ten years' pains and travel, six whereof were wholly spent, in promoting the design of this company.' This sounds very noble and generous, but sixteen years later, when struggling to have Parliament recoup his losses, he stated that his release 'was only given in trust.' He pleads that: 'Soon after completing the Subscriptions in London the Parliament met, about which time the Clamours were so great against this Company and the Proceedings thereof, that Ruin was threatened to those who were concern'd; and among other insinuations, it was confidently pretended, That the two per Cent. Premium was already receiv'd, and divided amongst several great Men, who procur'd the Act of Parliament, for constituting the Company.

<sup>37</sup> *Jour. Ho. Com.* xi. 404.

Tho' those concern'd well knew that all this was utterly False and Groundless, yet considering the impending Danger, they intreated, and prevail'd with the Petitioner, on the 29th of November, 1695, being the very last Day of their meeting in London, to execute this Release, with Promise, it should be only in Trust, and never us'd against him, as in effect it never hath.'<sup>38</sup>

It was true that Parliament had already met, and that great clamours were arising against the Company, but it was not true that the 29th of November was the last day of their meeting in London. However, this is a small point, and one on which he was more likely to be mistaken after the lapse of sixteen years than the fact that in issuing his release he had yielded to great pressure and the unhappy circumstances of the time.<sup>39</sup> Probably there is a measure of truth in both accounts, and that, while it had been practically essential that he should make this release, he was really glad to do so by way of showing his confidence in the future of the Company and the honesty of the directors.

Although the House of Lords had a long debate over the Scots Act on the 3rd of December, the directors of the Company met on the 4th and resolved to fit out 'with all convenient speed' one or more ships to trade from Scotland to the East Indies.<sup>40</sup> There were twenty directors present, and there is nothing in the minutes to indicate any fear of immediate dissolution. The next meeting of the directors was on December 6th. After hearing the reports of committees, they went into such minute details as to take notice of the fact that many of the directors came late to the meetings, and caused the others to lose time. They decided what fines must be paid for tardiness. They even took the trouble to determine which clock should determine whether a member were late or not. This triviality was the last recorded act of the London directors.<sup>41</sup> They adjourned to meet on the following week, but by that time they were in the toils of the Parliamentary investigation. In fact, on the very next day the Lords ordered seven of those who had been named in the Act to appear before the bar of the House on December 9th.<sup>42</sup>

So ended the attempt to organise the Company in London.

<sup>38</sup> *State of Mr. Paterson's Claim upon the Equivalent*, 1712, p. 54.

<sup>39</sup> *Ibid.* 54.

<sup>40</sup> *Jour. Ho. Com.* xi. 405.

<sup>41</sup> *Jour. Ho. Com.* xi. 405.

<sup>42</sup> *Jour. Ho. Lords*, xv. 607.

The investigation carried on by the English Parliament effectually changed the history of the enterprise. The London merchants, whose efforts had started the Company and given it form, were destined to have little say in its affairs. The account of their proceedings is interesting chiefly because it shows what the Company was intended to be and what it might have become. Directed by men accustomed to the ways of the world and versed in the intricacies of large commercial undertakings, the Company would probably have followed the legitimate lines of trade and not have staked their all on that vague chimera—the Darien Scheme.

The question of the organisation in London has either been overlooked or misunderstood by most writers. Macaulay and others, following Dalrymple, have misplaced this episode entirely, making it follow the organisation in Edinburgh.<sup>43</sup> Although the minutes of the London meetings of the directors have long been printed in the Commons' Journals, no one seems to have made any use of them.<sup>44</sup>

HIRAM BINGHAM.

<sup>43</sup> Macaulay, *Hist. of Eng.* viii. 211.

<sup>44</sup> A paper on the 'Investigation by the English Parliament into the affairs of the Scots Darien Company' to appear in the July number of the *Scottish Historical Review* will conclude this series.

## The 'Scalacronica' of Sir Thomas Gray

*The Reign of Edward I. as chronicled in 1356 by Sir Thomas Gray in the 'Scalacronica,' and now translated by the Right Hon. Sir Herbert Maxwell, Bart., continued.*

AT this time the Count of Flanders was captured at Béthune and kept in prison by the King of France; wherefore the commons of Flanders made war upon the French, and on St. John's day at midsummer they fought with the power of France at Courtrai, where the Comte d'Artois and several other French counts and barons met their death through pride and arrogance, because they charged the Flemings in their trenches.<sup>1</sup> Enraged at this, the King of France laid siege to Lille with all his forces. The Flemings sent to King Edward of England to ask for help, which king was aged and in bad health and his treasure spent in his wars with Scotland, in which his people were so deeply involved<sup>2</sup> that he could interfere to no good purpose. Who [nevertheless] willingly undertook to aid them, [and] adopted a stratagem, causing a letter to be forged [as if] from the *eschevins* of Ghent to himself which was expressed thus :—

'To their redoubtable lord, the King of England, his humble servants of Ghent [present] all honours and services.

'Forasmuch we think it will be agreeable to your nobility to hear the joyous news of the well-being of our Lord the Count of Flanders, your ally if you please, please your highness to understand that we have purchased to our [cause] a pretty large conspiracy of private and powerful people in the King of France's army, who have covenanted with us under sufficient surety to take

<sup>1</sup> The date of this 'Battle of the Spurs' is wrongly given. It was not fought on St. John's Day (24th June), 1304, but on 11th July, 1302. *En tour fossez.* It is doubtful whether these *fossez* were military entrenchments or the existing ditches of the country. I incline to think that they were defensive works constructed for the occasion; like Bruce's pits at Bannockburn.

<sup>2</sup> *Enlacez.*

the king out of his tent within these fifteen days, and to send him to us at a certain fixed place<sup>1</sup> to be exchanged with our said lord.

'May it please your very excellent lordship to keep this matter secret, and to aid and defend, sustain and govern, your humble adherents<sup>2</sup> if they should require assistance when the aforesaid business is accomplished, which cannot well fail and will tend greatly to the increase of your estate. Which [things] we hope to perform, for if they are not done one day, they cannot fail on another; of so much we are certain.'

MS. fo. 202  
King Edward took this letter, and one day when he rose from bed with his wife the Queen, who was sister to the King of France, and was at that time in Kent, he pretended to search in his purse for letters, then left this [forged] letter lying on his wife's bed, and went off to chapel to hear mass. The Queen perceived the letter, which she took and read and re-placed. In the middle of the mass the King returned hastily to the Queen's chamber, asking impatiently<sup>3</sup> and abruptly whether anybody had found a letter; went to the bed, found the letter, snatched it up, folded it up with satisfaction, and departed quickly without saying more. The Queen, who had read the letter, noticed the King's countenance, and, being in great fear and sorrow lest her brother should be betrayed in this manner by villains, caused secret letters to be written to her brother the King of France [containing] all the substance of that letter, and warning him to be on his guard. These letters were despatched, and as soon as the King of France had seen the contents of his sister's letters, he departed from the siege that very night. And thus craft availed, which is often of great use when force is wanting. This happened after [the feast of] St. Michael.<sup>4</sup> And later in the same summer the King of France collected an army, re-entered Flanders, and, on the same St. John's Day, one year after the battle of Courtrai, the Flemings were defeated at Mons-en-Pévele<sup>5</sup> and their leader, William de Juliers, who was brother to the Count of Juliers, was slain. After which the Count Robert [of Flanders] was released from prison under an arrangement that the three cities of Flanders which were on the frontier of France should belong to the King of France, [namely] Douai, Lille and Béthune.

At this same time Robert de Brus, Earl of Carrick, who

<sup>1</sup> *A certain lieu limite.*

<sup>2</sup> *Voz simples enherdauntz.*

<sup>3</sup> *Irrousement.*

<sup>4</sup> 29th September.

<sup>5</sup> *Mouns en Paiwer, i.e.* Mons, capital of the province of Hainault, called Mons-en-Pévele, anciently written Mons-en-Pévre.

retained a strong following through kinsmanship and alliance, always hoping for the establishment of his claim of succession to the realm of Scotland, on the 4th of the kalends of February in the year of grace 1306<sup>1</sup> sent his two brothers, Thomas and Neil, from Lochmaben to Dalswinton to John Comyn, begging that he would meet him [Robert] at Dumfries at the [church of the] Minorite Friars, so that they might have a conversation. Now he had plotted with his two brothers aforesaid that they should kill the said John Comyn on the way. But they were received in such a friendly manner by the said John Comyn that they could not bring themselves to do him any harm, but agreed between themselves that their brother himself might do his best. The said John Comyn, suspecting no ill, set out with the two brothers of the said Robert de Brus in order to speak with him [Robert] at Dumfries, went to the Friars [Church] where he found the said Robert, who came to meet him and led him to the high altar. The two brothers of the said Robert told him secretly—'Sir,' they said, 'he gave us such a fair reception, and with such generous gifts, and won upon us so much by his frankness, that we could by no means do him an injury.'—'See!' quoth he, 'you are right lazy: let me settle with him.'

He took the said John Comyn, and they approached the altar.

'Sir,' then spoke the said Robert de Brus to the said John Comyn, 'this land of Scotland is entirely laid in bondage to the English, through the indolence of that chieftain who suffered his right and the franchise of the realm to be lost. Choose one of two ways, either take my estates and help me to be king, or give me yours and I will help you to be the same, because you are of his blood who lost it, for I have the hope of succession through my ancestors who claimed the right and were supplanted by yours; for now is the old age of this English King.'

'Certes,' then quoth the said John Comyn, 'I shall never be false to my English seigneur, forasmuch as I am bound to him by oath and homage, in a matter which might be charged against me as treason.'

'No?' exclaimed the said Robert de Brus; 'I had different hopes of you, by the promise of yourself and your friends.'

<sup>1</sup> According to the fourteenth century calendar the year should have been 1305.

You have betrayed me to the King in your letters, wherefore living thou canst not escape my will—thou shalt have thy guerdon !'

So saying, he struck him with his dagger, and the others cut him down in the middle of the church before the altar. A knight, his [Comyn's] uncle,<sup>1</sup> who was present, struck the said Robert de Brus with a sword in the breast,<sup>2</sup> but he [Bruce] being in armour, was not wounded, which uncle was slain straightway.

The said Robert caused himself to be crowned as King of Scotland at Scone on the feast of the Annunciation of Our Lady<sup>3</sup> by the Countess of Buchan, because of the absence of her son, who at that time was living at his manor of Whitwick near Leicester, to whom the duty of crowning the Kings of Scotland belonged by inheritance, in the absence of the Earl of Fife,<sup>4</sup> who at that time was in ward of the King in England. The said Countess this same year was captured by the English and taken to Berwick, and by command of King Edward of England was placed in a little wooden chamber<sup>5</sup> in a tower of the castle of Berwick with sparr'd sides, that all might look in from curiosity.

King Edward of England, perceiving the revolt that Robert de Brus and his adherents was making in Scotland, sent thither Aymer de Valence, Earl of Pembroke, with other barons of England and several Scottish ones, descended from the blood of John Comyn, who all set themselves against the said Robert de Brus. The said Earl of Pembroke went to the town of Perth<sup>6</sup> and remained there for a while. Robert de Brus had gathered all the force of Scotland which was on his side, and some fierce young fellows easily roused against the English, and came before the town of Perth in two great columns, offering battle to the said earl and to the English. He remained before the said town from morning until after high noon. The said Earl of Pembroke kept quite quiet until their departure, when, by advice

<sup>1</sup> Sir Robert Comyn, whom Barbour calls 'Schir Edmund.'

<sup>2</sup> *Hu pic*: apparently the same word as *pix*, which de Roquefort gives as *poitrine, estomac, pectus*.

<sup>3</sup> 25th March, whereas the coronation actually took place on 29th March, 1306.

<sup>4</sup> It was the hereditary office of the Earls of Fife. The Countess of Buchan was sister to the Earl of Fife, who at that time, like her husband, was in the English interest.

<sup>5</sup> *Mesounceaux de fust*.

<sup>6</sup> *La vile de Saint Johan*.

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of the Scottish lords who were with him in the town, friends of John Comyn and adherents of the English—the lords de Moubray, de Abernethy, de Brechin and de Gordon, with several others—he [Pembroke] marched out in two columns. Their Scottish enemy had decamped, sending their quarter-masters<sup>1</sup> to prepare a camp at Methven; they formed up as best they could and all on horseback attacked the said sortie; but the Scots were defeated. John de Haliburton caught the reins of the said Robert de Brus, and let him escape directly that he saw who it was, for he [Brus] had no coat armour, only a white shirt. Thomas Randolph, nephew of the said Robert de Brus, he who was afterwards Earl of Moray, was taken at this same battle of Methven,<sup>2</sup> and was released at the instance of Adam de Gordon, and remained English until at another time he was retaken by the Scots.<sup>3</sup>

Robert de Brus, most of his following being slain or captured at this battle of Methven, was pursued into Cantyre by the English, who invested the castle of the said country, thinking<sup>4</sup> that the said Robert was within it, but upon taking the said castle they found him not, but found there his wife, a daughter of the Earl of Ulster, and Niel his brother, and soon after the Earl of Athol was taken, who had fled from the said castle.<sup>5</sup> The said Niel, brother to the said Robert de Brus, with Alan Durward and several others, was hanged and drawn by sentence at Berwick, and the wife of the said Robert was sent to ward in England. The Earl of Athol, forasmuch as he was cousin of the King of England, [being] the son of Maud of Dover his [Edward's] aunt, was sent to London, and, because he was of the blood royal, was hanged on a gallows thirty feet higher than the others.

In the same year<sup>6</sup> the King made his son Edward, Prince of Wales, a knight at Westminster, with a great number of other noble young men of his realm, and sent him with a great force

<sup>1</sup> *Herbisours*.

<sup>2</sup> Sunday, 26th June, 1306.

<sup>3</sup> On the Water of Lyne, in 1309.

<sup>4</sup> *Quidantz*: omitted in *Maitland Club Edition*.

<sup>5</sup> *Qi de dit chastel fu fuis*, misrendered in *Maitland Club ed.*, [*au*] *le dit chastel*. Gray's statement is incorrect. Athol did not go to Dunaverty with the King. Bruce sent his Queen Elizabeth, his daughter Marjorie, his sister Marie, and the Countess of Buchan, under charge of his brother Niel or Nigel, and the Earl of Athol, to Kildrummie Castle in Aberdeenshire, where they were taken by the Prince of Wales in September.

<sup>6</sup> A.D. 1306.

to Scotland with all these new knights. Thomas Earl of Lancaster and Humfrey de Bohun Earl of Hereford, passing through the mountains of Scotland, invested the castle of Kildrummie and gained it, in which castle were found Christopher de Seton with his wife, the sister of Robert de Brus, who, as an English renegade, was sent to Dumfries and there hanged, drawn and decapitated, where he had before this caused to be slain a knight, appointed sheriff of a district for the King of England.<sup>1</sup> The Bishops of Glasgow and St. Andrews and the Abbot of Scone were taken in the same season and sent to ward in England.

Piers de Gaveston was accused before the King of divers crimes and vices, which rendered him unfit company for the King's son, wherefore he was exiled and outlawed.

In the year of Grace 1306 King Edward having come to Dunfermline, his son Edward Prince of Wales returned from beyond the mountains, and lay with a great army at the town of Perth. Meanwhile, Robert de Brus having landed from the Isles and collected round him a mob in the defiles of Athol, sent a messenger having a safe conduct to come and treat, to arrange for a treaty of peace with the said son of the king. He came to the bridge of the town of Perth, and began negotiation in order to ascertain whether he could not find grace, which parley was reported to the King at Dunfermline on the morrow.<sup>2</sup>

He was almost mad when he heard of the negotiation and demanded:

'Who has been so bold as to attempt treating with our traitors without our knowledge?' and would not hear speak of it.

The King and his son moved to the Marches of England. Aymer de Valence remained the King's lieutenant in Scotland. Robert de Brus resumed [his] great conspiracy; he sent his two brothers Thomas and Alexander into Nithsdale and the vale of Annan to draw [to him] the hearts of the people, where they

<sup>1</sup> There seems to be confusion here between Sir Christopher de Seton, who certainly was hanged at Dumfries, as his brother Sir Alexander was at Newcastle, and John de Seton, also hanged at Newcastle, for having captured Tibbers Castle in Dumfriesshire, and making captive Sir Richard de Siward, Sheriff of that county.

<sup>2</sup> This is an error. King Edward did not cross the Border in 1306, but remained ill in the North of England. Bruce landed at Turnberry in February or March, 1306-7, but there is no evidence to confirm Gray's statement that he attempted to open negotiations.

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were surprised by the English and captured,<sup>1</sup> and taken by command of the King to Carlisle, and there hanged, drawn and decapitated. Robert de Brus had assembled his adherents in Carrick. Hearing of this, Aymer de Valence marched against him, when the said Robert de Brus encountered the said Aymer de Valence at Loudoun, and defeated him, and pursued him to the castle of Ayr;<sup>2</sup> and on the third day [after] the said Robert de Brus defeated Rafe de Monthermer, who was called Earl of Gloucester because Joan the King's daughter and Countess of Gloucester had taken him for husband out of love [for him]. Him also he [Brus] pursued to the castle of Ayr, and there besieged him until the English army came to his rescue, which [army] reduced the said Robert de Brus to such distress<sup>3</sup> that he went afoot through the mountains, and from isle to isle, and at the same time in such plight as that occasionally he had nobody with him. For, as the chronicles of his actions testify, he came at this time to a passage between two islands all alone, and when he was in the boat with two seamen they asked him for news—whether he had heard nothing about what had become of Robert de Brus. 'Nothing whatever,' quoth he. 'Sure,' said they, 'would that we had hold of him at this moment, so that he might die by our hands!' 'And why?' enquired he. 'Because he murdered our lord John Comyn,' [said they]. They put him ashore where they had agreed to do, when he said to them: 'Good sirs, you were wishing that you had hold of Robert de Brus—behold me here if that pleases you; and were it not that you had done me the courtesy to set me across this narrow passage, you should have had your wish.' So he MS.  
fo. 204 went on his way, exposed to perils such as these.<sup>4</sup>

The aforesaid King Edward of England had remained at this same time exceedingly ill at Lanercost, whence he moved for change of air and to await his army which he had summoned to re-enter Scotland. Thus he arrived at Burgh-on-sands,<sup>5</sup> and died there in the month of July, in the year of grace 1307, whence he was carried and was solemnly interred at Westminster beside his ancestors after he had reigned 34 years 7 months and 11 days, and in the year of his age 68 years and 20 days.

<sup>1</sup> On the shore of Loch Ryan, 9th February, 1307.

<sup>2</sup> Battle of Loudoun Hill, May 1307.

<sup>3</sup> *Enboterent le dit Robert de Bruys a tiel meschef.*

<sup>4</sup> All this was antecedent to the Battle of Loudoun Hill.

<sup>5</sup> *Burch sure le Sabloun.*

This King Edward had by his first wife, the daughter of the King of Castile, but one son who lived. By his second wife, sister of the King of France, he had two sons, Thomas and Edmund. Upon Thomas he bestowed the earldom of Norfolk and Suffolk, with the Marshaldom of England, which earldom and office belonged by inheritance to Roger Bigod, who, having no offspring, made the King his heir, partly for fear lest the King should do him some injury, because there had once been at Lincoln a conspiracy against him [the King] between him [Bigod] and others. To Edmund his younger son he devised in his will 4000 marks of land, to be discharged with his benison by Edward his son and heir, which heir afterwards gave to the said Edmund the earldom of Kent with part of the land bequeathed to him, but the whole of it [the bequest] was not completed before the time of the third Edward. This Edward the First after the Conquest had several daughters; one was married to the Earl of Gloucester;<sup>1</sup> another to the Duke of Brabant;<sup>2</sup> the third to the Count of Bar;<sup>3</sup> the fourth to the Count of Holland, after whose death she was married again to the Earl of Hereford;<sup>4</sup> the fifth was a nun at Amesbury.<sup>5</sup>

Innocent V. was Pope after Gregory X. for five months.<sup>6</sup> He was named Peter of Taranto: he was of the Order of Preachers and Master in Divinity. After which Innocent, Adrian V. was Pope for two months.<sup>7</sup> He had been sent by Pope Clement to England, to settle the dispute between the King and his barons. After which Adrian, John V. was Pope for eight years.<sup>8</sup> He was originally named Peter, and was a good deal more saintly before than after he attained to his dignity. He willingly promoted great scholars; he hoped for a long life, but suddenly fell from a chamber which he had built at Viterbo and died.

<sup>1</sup> Joan, second daughter, afterwards married Sir Ralph de Monthermer.

<sup>2</sup> Margaret, third daughter.

<sup>3</sup> Eleanor, eldest daughter, married 1st King Alphonso of Aragon.

<sup>4</sup> Elizabeth, the fifth daughter.

<sup>5</sup> Mary, fourth daughter.

<sup>6</sup> A.D. 1276.

<sup>7</sup> For 36 days only.

<sup>8</sup> This ought to read; John XX. or XXI. was Pope for eight months, not years. There were four Popes elected successively in 1276, one of whom, Vice-dominus, not mentioned by Gray, died next day. The unsaintly character of John XX. or XXI., commented on by Gray, consisted in nothing more than a love of learning.

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After which John II. [*sic*], John III. was Pope for three years.<sup>1</sup> After which John, Nicholas was Pope,<sup>2</sup> who ordained Robert de Kilwardby as Cardinal, and Friar John de Peckham, of the Order of Minorites and Master of Divinity as Archbishop of Canterbury. After which Nicholas III., Honorius IV. was Pope for seven years.<sup>3</sup> He changed the costume of the Carmelite Friars, which hitherto had been *pale*.<sup>4</sup>

After which Honorius IV., Nicholas IV. was pope for six years.<sup>5</sup> He was of the Order of Minorite Friars; he declared<sup>6</sup> the rule of the Minorite Friars. In his time there befel in England, on the eve of Saint Margaret,<sup>7</sup> such a storm of winter thunder as destroyed the crops, whence came such a time of dearth as lasted almost throughout the life of Edward the First after the Conquest. At this time the taxation of the churches was changed to a higher rate. Celestine V. was pope for three years after Nicholas.<sup>8</sup> This Celestine was a poor hermit in the desert near Rome, simple in manner, neither learned, nor wise, nor distinguished. A certain cardinal, who desired to govern the Court, or to become pope, yet feared that the College would not elect him, made a pretence, and, after the death of the said Pope Nicholas, told his brother cardinals at the election to the Papacy, that a voice had come to him three times in a vision that they should elect as pope this simple hermit, whose promise he had that he would do nothing without him. The others, believing this to be the inspiration of God, elected him [the hermit] as pope; who knew not how to conduct his estate, whereby the Court fell into great confusion, and they themselves also.<sup>9</sup>

The aforesaid cardinal, who was afterwards named Boniface, allowed him to play the fool, and would not interfere [to maintain] good government, until affairs were in such a mess that

<sup>1</sup> An error: Nicholas III. succeeded John XX. or XXI.

<sup>2</sup> 1277-1288.

<sup>3</sup> 1285-88. Gray reckons him as Pope during the papacy of the French Martin IV., 1280-85.

<sup>4</sup> Meaning obscure. The Carmelites, or White Friars, always were distinguished by white robes. *Pale* is also an old term for 'cloth.'

<sup>5</sup> 1288-1292.

<sup>6</sup> *Declara.*

<sup>7</sup> 19th July, old style, equal to 30th July, new style.

<sup>8</sup> The see was vacant two years and three months after the death of Nicholas in 1292.

<sup>9</sup> *Et ty meismes ensaule*: misprinted *ensaule* in *Maitland Club Edit.* = *ensemble*.

they were past mending, and then he advised him [Celestine] and compelled him to resign the dignity in his favour, undertaking to provide for his honourable maintenance, to which he consented. The College [also] consented in their folly; elected the other and called him Boniface;<sup>1</sup> who, from the moment he entered into his dignity, took no care for Celestine, but allowed him to return to his former condition, to his wretched hermitage. Which Celestine, as soon as he perceived that he had been cheated, prophesied of Boniface his successor: 'Thou comest in like a fox: thou shalt reign like a lion, and die like a dog.'

Which thing came to pass, for the said Boniface reigned arrogantly; deposed cardinals of the most powerful house in Rome, the family of Colonna, and vehemently opposed the King of France. Wherefore, allying themselves, they seized the said pope and led him out of Rome, with his face turned MS.  
fo. 205 to his horse's tail, to a castle in the neighbourhood, where he perished of hunger.<sup>2</sup>

After which Boniface, Benedict III. of the Order of Preachers, was pope for one year,<sup>3</sup> of whom a certain ribald wit said in Latin:

'A re nomen habe—benedic, benefac, benedictē;  
Aut rem perverte—maledic, malefac, maledictē.'<sup>4</sup>

Antony de Beck, Bishop of Durham, was constituted Patriarch of Jerusalem, but never entered upon the Patriarchy, but insisted upon living as a noble in his own country.

Clement V. was pope after Benedict for twelve years.<sup>5</sup> He became enormously rich in treasure, purchased extensive lands, caused great castles to be built, and removed the Court from Rome [to Avignon]. In his time the Templars were dissolved. He caused certain of the decretals, of which he himself was the author, to be revoked, which John, his successor, renewed.

This John II. [*sic*] was pope after Clement, for more than twenty years,<sup>6</sup> and was a great scholar in Greek, Hebrew, and Latin. He caused great treasure to be amassed, and waged great wars

<sup>1</sup> 1294-1303.

<sup>2</sup> The town's people rescued him after three days' imprisonment, but he died soon after, 11th October, 1303.

<sup>3</sup> Benedict XI., 1303.

<sup>4</sup> Wrongly printed 'malefacte' in *Maitland Club Edit.*

<sup>5</sup> 1305-1314.

<sup>6</sup> John XXII., 1316-1334.

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in Lombardy. He willingly advanced great scholars; he condemned pluralities; he reserved for his Camera the first fruits after the death of the prelates; he instituted the matins of the Cross. He lived throughout the time of King Edward the Second after the Conquest, and, after him, during the time of his son, Edward III.

At the end of the reign of Edward the First after the Conquest, and at the beginning of the reign of Edward II., Henry, Count of Luxembourg, was King of Germany and Emperor,<sup>1</sup> who was valiant and chivalrous, and proved himself worthy of the dignity of his three crowns. He bestowed the realm of Bohemia upon his son John, with the King's daughter; which John conquered the said realm and took the city of Prague by assault from those who claimed the right by the other male line.

The said Emperor Henry chivalrously undertook to regain the rights of the empire in Tuscany and Lombardy; wherefore, while he lay before Brescia,<sup>2</sup> he was poisoned in receiving the body of God by his confessor, a Jacobin, who was hired by the Guelfs, who were in dire terror of his [Henry's] prowess. His physicians, who well perceived what had happened, would have saved him, but he would not cast up his Creator, saying that for fear of death he would never part with the body of God.

After his death there was great dispute about the election to the empire. The Duke of Austria had the votes of some of the electors; Louis, Duke of Bavaria, on the other hand, had the votes of the rest of the electors, by reason of which dispute <sup>MS.</sup> fo 205<sup>b</sup> the aforesaid seigneurs fought with [all] their force in Swabia. The Bavarian won the victory by the aid of John, King of Bohemia. The said Bavarian assumed the dignity of emperor, and received his three crowns; but the Pope and the Court of Rome were opposed to him; wherefore, at his coronation in Rome, the senators and those of the College who dwelt at the time about the church of SS. Peter and Paul, agreed to elect a new pope, a cordelier, who had the name of Nicholas, alleging as reasons for this that the Court, which by ancient canonical constitution ought to have been at Rome, was [then] at Avignon.

This Nicholas did not persevere long in his office, but, as soon as the aforesaid emperor had returned to Bavaria, put

<sup>1</sup> 1308-1313.

<sup>2</sup> At Buonconvento, 24th Aug., 1313.

himself at the mercy of Pope John, who at that time dwelt at Avignon. Wherefore the Court of Rome never accepted the said Bavarian as emperor, who lived all his days under interdict. He lived a good while, but did little in deeds of arms to be recounted. He was very skilful with his hands. He bestowed the Mark of Brandenburg upon his eldest son, as the right of the empire is that such lordships are at the disposal of the emperor in default of heir male. To this same [lord] of Brandenburg he gave the duchy of Carentane and the countship of Tyrol, with the daughter and heiress of the duke. He gave to his younger son, whom he had by the eldest daughter of William, Count of Hainaw, the earldoms of Zeeland, Holland and Hainaw. Another of his sons, le Romer, by the same wife, he caused to marry the daughter and heiress of the King of Cracow. He lived very long in the time of King Edward of England, the Third after the Conquest, as will be afterwards recorded.

*(To be continued.)*

## The Ruthven of Freeland Barony.

### IX THE RETURN OF 1740<sup>1</sup>

THOSE who have carefully studied the preceding section would, I think, admit that I was absolved from the necessity of replying any further to Mr. Stevenson. I may, however, point out briefly, that as to the return of 1740, his tactics are much the same. Enveloping in a cloud of dust the fact that he cannot disprove my assertions, he ends by announcing my 'defeat.'

Let us see, Mr. Stevenson asks, what can be urged against the authority of this Return, which, by the way, he has to admit '*was in fact, though not in form the Roll of 1707, with some additions, some omissions, and some qualifying observations,*' the Lords of Session having '*deleted only those titles of the extinction of which they had legal evidence*' (p. 22). Mr. Stevenson replies:

Mr. Round's argument, which comes first in logical order, is the formal objection that the Report has 'no judicial or official authority.'

Here we have Mr. Stevenson again trying to foist on to me a statement which was not mine, but, as we discover on his next page, Lord Crawford's. I cited with exact references the following passages from Lord Crawford's *Earldom of Mar*:

. . . 'The report possesses no judicial character (II. 27).

*I have shown that the report of the Court of Session in 1740 was the work merely of one man, and has no judicial or even official authority*' (II. 94).

This is strong and definite enough, and I cannot wonder that Mr. Stevenson does not like it. Half a dozen pages are devoted to arguing that Lord Crawford was guilty of 'inadvertency and misconception,' that he 'wrote hastily,' and so forth, in the midst of which we read as usual of 'Mr. Round's next statement that the report was the work of one

<sup>1</sup> See *Scottish Historical Review*, vol. iii. p. 194.

man,' a statement which I nowhere make, and which is merely found in the quotation from Lord Crawford's work.

And at the end of it all what do we find? That my above quotation from Lord Crawford is perfectly accurate—which is all that concerns me.

And now as to Riddell. I stated in my original article, that 'Riddell had been reluctantly compelled to admit that it contains "inadvertencies and misconceptions."' Why 'reluctantly,' Mr. Stevenson enquires twice over with affected surprise? Well, I need hardly observe that anyone who is familiar with Riddell's volumes knows how fiercely he maintained the authority of the Lords of Session as 'the natural *Forum* in such matters' (p. 646), so that he was not likely to disparage their Report if he could help it.

Mr. Stevenson says that he cannot find the words 'inadvertencies and misconceptions,' and unfortunately I did not give the page reference for them. They occur where we should expect them as preceding his important paragraphs headed :

Roll since the Union inaccurate, and not properly adjusted.

Prejudicial consequences from this, and want of form in Scottish Peers instructing their right of succession.

No proper remedy enforced, or proper Peerage Roll made.

For Mr. Stevenson these headings can hardly be pleasant reading.

I will now quote from Riddell's remarks :

The House of Peers . . . ordered a reprint of the Report of the Lords of Session in 1740 . . . which, with some good remarks, contains *inadvertencies and misconceptions*, etc., etc.

There was, it must be admitted, great necessity for these steps. . . . The Roll of the Scottish Peers adopted since the Union being *inaccurate and carelessly adjusted*. . . .

Owing therefore to all titles, with the sole exception of those forfeited, being retained in the existing, or what is styled the Union Roll, *whether assumed or extinct*, although it has been altered and augmented by the insertion of others under the authority of the Lords, successfully claimed since the Union,—the *unrevised and exceptionable state and condition of that Roll*, and want of a peremptory form and due establishment of Peerage rights, upon the demise of a Peer and accession of his heir,—while farther still, the preceding measures of the House of Lords have proved *irremedial*,—it has been practicable for anyone, though a mere stranger, to answer and vote, under some *vacant* dignity, at Peerage Elections (pp. 643-5).

I hope that if Mr. Stevenson should attempt to dispose of these assertions, so fatal to his whole argument, he will at

least refrain from describing them as 'Mr. Round's statements.'

And I may add that the view that there was no proper adjustment or revision of the Union Roll in 1740 would appear to be confirmed by the statement of Lyon (Mr. Burnett) to the Lords' Committee in 1882 that 'there was no readjustment of the Union Roll' on that occasion.

#### X THE CONDUCT OF THE FAMILY

Before dealing with the subject thus headed by Mr. Stevenson, I would repeat a passage in my original paper to which he does not allude :

I must not close this essay without emphatically observing that it is not intended to cast the least blame, or to make any unfavourable reflection whatever on the conduct of the descendants of those by whom the honours were assumed (p. 186).

Having said this much, on which I there further insisted, I will now address myself to the point on which Mr. Maitland Thomson decides emphatically against me :

The accusation of *mala fides*, founded on the recorded action of the early holders of the title, is here thoroughly investigated and triumphantly refuted. Rightly or wrongly, Baroness Jean and Baroness Isabel assumed the title without hesitancy and used it without vacillation. Against the former there is nothing but the phraseology of her Testament Dative, for which she clearly could not be responsible (p. 106).

Again I call a halt. I am absolutely certain that Mr. Maitland Thomson is anxious to be strictly fair ; but he has been here not unnaturally misled by accepting as fact Mr. Stevenson's triumphant assertion. The latter writer does indeed assert that 'of the lady's vacillations, so extremely difficult to prove, only one of Mr. Round's proofs, the *third*, remains,' namely, her Testament Dative. But if Mr. Maitland Thomson will look again at Mr. Stevenson's treatise, he will find that my critic is totally unable to deny the accuracy of my *first*, namely that, twenty years after her brother's death,—

'as if,' says Riddell, 'apprehensive of the scrutiny of the Bench, she, in her petition to the Court of Session, on the 4th of November, 1721, for recording the entail, is only modestly styled *Mrs. Jean Ruthven*' (p 168).

So writes Riddell. Is his statement correct or not? Mr. Stevenson has to admit that *it is*. He tries, indeed, to explain it away, but the fact that he cannot decide which explanation to adopt is eloquent enough of the weakness of his case. The

fact remains that this 'Baroness,' who, in the words of Mr. Maitland Thomson, had 'assumed the title without hesitancy and used it without vacillation,' nevertheless, in so formal a document as her petition to the Court of Session twenty years after her alleged succession to the title, 'is only modestly styled *Mrs. Jean Ruthven.*' The suggestion that on this occasion 'her law-agents were probably different' [!] can only be described as desperate.

Having insisted on this amazing, and to Riddell significant fact, I hasten to add that Mr. Stevenson is quite successful in other corrections of my case here, and is welcome to his exultation thereat. He has shown *firstly* that Baroness Jean could not be responsible for her description as 'Mrs. Jean Ruthven in her Testament Dative,' as I had erroneously supposed; *secondly*, that she is not described, in a deed of assignation of 1721, as 'said Jean Ruthven,' as alleged by me; *thirdly*, that so far from waiting 'some twenty years before she assumed the title, (as Riddell and I supposed), she is styled on the contrary 'Jean, Lady Ruthven,' 10th Dec., 1702.

The second of these corrections reveals an error of which, I venture to hope, few would expect me to be guilty, for Mr. Stevenson tells us that the words are 'said *defunct*,' who is styled elsewhere in the record 'Jean, Lady Ruthven.' The explanation—I can only give it as a warning to others—is that these extracts were made by Mr. Foster's professional searcher and supplied to me through Mr. Foster. It is, I suppose, the only case in which I have ever relied on the usually employed record-agent.

To the Testament Dative I shall have to recur. As to the third and remaining point, we can now at last, thanks to Mr. Stevenson, put together the *facts* as to Jean's use of the title. David, Lord Ruthven, died, Mr. Stevenson tells us (p. 57) in April, 1701. His sister and heir of entail, Jean—

(1) 'is styled *Jean, Lady Ruthven*' in a notarial instrument of sasine and a bond, 10th Dec., 1702 (p. 57);

(2) is made executor dative to her brother, 4th Jan., 1703 (*sic*) 'under the title of "*Mrs. Jean Ruthven*"' (p. 60);

(3) 'styles herself' *Jean, Lady Ruthven* in a discharge of an annual rent, 12th Nov., 1709 (p. 57); is also so styled in an instrument of sasine, 26th Jan., 1712 (*sic*); is also so styled when served heir to her brother in the Sheriff Court of Perth, 9th Sept., 1721 (p. 58);

(4) petitions the Court of Session, 4th Nov., 1721 (*i.e.* after being so served) as *Mrs. Jean Ruthven*.

This is how she 'used' the title 'without vacillation,' in Mr. Maitland Thomson's words.

The most important evidence in favour of Jean's right is, I gather, her service; for Mr. Stevenson is good enough to say of me that

The suggestion is ridiculous that a person in Scotland might assume what designation he chose in such a process whether he was entitled to it in law or courtesy or in neither. The proceedings, unless in a competition of heirs, were *ex parte*, but they were conducted publicly and formally, and the members of the jury were by statute personally liable for their error.

Surely Mr. Stevenson cannot be ignorant that twelve years later George Durie of Grange, whose assumption of the Rutherford title and voting in right of it (1733) he does not attempt to defend, was served 'heir of line, entail, and of provision' of Andrew, Earl of Teviot, as '*George, Lord Rutherford*,' 1st Nov., 1733,<sup>1</sup> in spite of the fierce contest for that title. Surely he knows that the Colville of Ochiltree claimant, denounced on all hands, obtained in 1784 a retour finding that he was first cousin and heir-male of Robert, the third Lord Colville of Ochiltree, although such finding was afterwards proved, in 1788, to have been wholly without foundation.<sup>2</sup> Need I adduce further instances?

So much for this vaunted evidence and for my 'ridiculous' attempt to minimise it.

Jean was succeeded in the family estates, under her brother's entail, by her nephew, Sir William Cunyngham, in April, 1722. As to him there is no question. It is admitted that—as was stated in my original article—he, 'though now both heir of line and of tailzie, *made no attempt to assume the title*' (p. 169). Mr. Stevenson writes that he

succeeded his aunt Jean Ruthven in April, 1722, under the entail of his uncle David, and assumed the surname of Ruthven. *Whether he succeeded to the peerage as well is not known.*<sup>3</sup> He certainly did not assume the title (p. 4).

To this we may now add that he gave up his aunt's testament dative as that, not of 'Jean, Lady Ruthven,' but of 'Mrs. Jean Ruthven.'

To account for the facts Mr. Maitland Thomson suggests

<sup>1</sup> Riddell, *op. cit.* p. 902.

<sup>2</sup> Robertson's *Peerage Proceedings*, pp. 459 *et seq.*

<sup>3</sup> The italics are mine.

a theory which I shall discuss, but for the present I will only note Mr. Stevenson's admission here that it was possible to succeed and assume the surname of Ruthven under the entail without succeeding to the peerage.

Beyond the fact that Sir William only survived his succession six months, I cannot find any explanation vouchsafed of his failure to assume the title, which was promptly assumed by his immediate predecessor and successor.<sup>1</sup> Mr. Stevenson writes :

Sir William Cunynghame succeeded in April, 1722, to the entailed estates. According to the unknown terms of the patent he did or did not succeed to the title and honour at the same time. But Mr. Round assumes (1) that if the title existed it was Sir William's . . .

How unwarranted the first of Mr. Round's assumptions is, I have already shown (p. 63).

He has not even attempted to show anything of the kind. The defenders of this assumption have all been agreed that, whatever the limitation was in the patent, Sir William must have inherited under it, for he was heir of line as well as heir of tailzie.

Mr. Stevenson asserts that I 'must at any rate have been aware of the case of Somerville' among 'more notable omissions to assume honours.' Surely he cannot be ignorant that the failure to assume that title was due to a doubt whether it should descend to the heir male or the heirs of line, and that when this doubt was removed by a single person becoming heir in both capacities, he successfully claimed the peerage. And thus this instance tells against, rather than for, Mr. Stevenson.

With regard to Sir William's successor in the entailed estates, Isobel, wife of Colonel James Johnston, she, as Lady Ruthven, gave up the will of her predecessor as that of 'Sir William Ruthven *alias* Cunyngham.' I desire to draw special attention to what Mr. Maitland Thomson asserts of the two 'Baronesses' :

Rightly or wrongly, Baroness Jean and Baroness Isobel assumed the title without hesitancy, and used it without vacillation. Against the former there is nothing but the phraseology of her Testament Dative, for which she clearly could not be responsible; against the former [? latter] only a series of unverified quotations, which proved to be misquotations, of the Commissariat Records (p. 106).

Mr. Maitland Thomson, who bases on this a verdict here

<sup>1</sup> His aunt, Mr. Stevenson insists, had assumed the title many years before she was served heir to her uncle in the Ruthven estates.

against me, is (as I have already said) anxious, I am sure, to be fair; but we have seen how he was misled by Mr. Stevenson's song of triumph into supposing that Baroness Jean's petition to the Court of Session as 'Mrs. Jean Ruthven' had been somehow got rid of, although Mr. Stevenson could not, as a fact, deny this evidence.

We now find that he has been similarly misled by Mr. Stevenson's boast that the case, so far as Isobel is concerned, 'has, in its turn, broken down at the touch.' For, among my 'misquotations' from the Commissariat Records, I alleged that 'more than three years' after assuming the title 'she gave up under the humble style of "*Mrs. Isabel Ruthven*" the "additional inventory of her aunt"' (p. 169). Is this the fact or not? Mr. Stevenson has to admit that *it is*, although the fact is smothered in his attempts at explaining it (pp. 67-8). 'It may have been,' is one of these, 'that the Ruthven family lawyers were old-fashioned.' Is that why they would not risk styling their employer a Peeress?

'Of James, Lord Ruthven,' Isabel's son and heir, I may repeat, from my original article, that he gave up his aunt's Testament Dative (see my quotation there from the Commissariat Records), 'not as James, Lord Ruthven, but as "James Ruthven of Ruthven, Esquire," and was served heir (in special) to his uncle<sup>1</sup> David three months later (9th Dec., 1732) under the same humble designation' (p. 170). As he cannot deny these facts, Mr. Stevenson boldly writes:

It will be observed that where, rightly or wrongly, he preserves his 'humble designation' of James Ruthven of Ruthven in his appointment as executor on his mother's estate, and in his service as heir-special to his grand uncle David, he is but following a general custom of former members of his family (p. 69).

'Former members of his family!' Why, his mother had given up her predecessor's Testament Dative under the peerage style of 'Lady Ruthven,' and her aunt Jean had been served heir in special to her brother David as 'Lady Ruthven' only twelve years before James was served heir to him as a plain Esquire! Nay, Mr. Stevenson rebuked my ignorance for not attaching sufficient importance to the formal recognition by that service of Jean's right to the title. And yet he dwells at great length (pp. 69-71) on the learning and the special know-

<sup>1</sup>This is a slip of mine for *great-uncle*, as my chart pedigree shows.

ledge of the jurors responsible for the service of James (Johnston) Ruthven as a plain commoner.

Need I pursue his contradictions further ?

#### XI WHAT WAS THE LIMITATION ?

In spite of his assumed confidence, in spite of his peans of triumph, we find that Mr. Stevenson, from the very outset, is conscious of the fatal flaw in the hopeless case he has espoused. Again and again have I challenged my opponents to agree upon any conceivable limitation consistent with the known facts, if the Ruthven assumption has been valid. This, surely, is the first step, the least we have a right to expect. If, as they insist, there is no evidence as to what the limitation was, the whole range of possible limitations known to the peerage law of Scotland is at their disposal to select from ; they have only to choose the one which suits them best.

And yet so keen is their consciousness that no conceivable limitation can be made to serve their purpose, that nothing can induce them to adopt one.

Mr. Stevenson must be well aware of the stress I lay upon this point, for on it in my original article (1884) I insisted in italic type and at exceptional length. Indeed, my difficulty is, as I explained at the outset, that though my argument remains unanswered, I cannot expect that this *Review* will reprint it *in extenso*.

The earliest attempt to justify the assumption was that of Douglas (1764), who, after observing that 'James . . . had voted as a peer at several elections,' cautiously guards himself by the saving clause :

'If (*sic*) the honours were to the heirs general of the patentee's body, this lord's title to the peerage is indisputable.'

Yes, but if the honours *were* so limited, then their assumption by Baroness Jean, who was *not* such heir general, was unwarranted, or, if my critics insist upon the term, 'fraudulent.'<sup>1</sup> Nevertheless, this guarded suggestion—of which Mr. Maitland Thomson writes :

'Douglas, our still superseded standard authority, . . . expresses himself with a reserve perhaps not less significant than the denunciations of the free lances—'<sup>2</sup>

'developed into a comfortable, though absolutely unfounded

<sup>1</sup> The word is not mine.

<sup>2</sup> *Scot. Hist. Rev.* iii. 104.

hypothesis.<sup>1</sup> There lies before me Burke's *Peerage* for 1823, which thus carefully states the ground on which the title was borne :

'The patent containing the precise specification of the honours of the house of Ruthven was unfortunately consumed with the mansion of Freeland on the 15th March, 1750; but it is understood, and so acted upon, that the reversion was to heirs male and female of the patentee's body' (p. 660).

This, surely, is definite enough. It would be really interesting to know what Mr. Stevenson makes of this statement, which must have received the sanction of the family. For he knows that this view of the patent had not been 'so acted upon'; he knows that, in the words of Mr. Maitland Thomson, 'Baroness Jean . . . assumed the title without hesitancy' *to the exclusion* of the heir general; and indeed he himself insists upon the fact. How will he escape from the horns of his dilemma? Will he suggest that the family themselves had never heard of 'Baroness Jean,' their own predecessor not only in the title, but also in the family estate?

It is quite possible that he may. For he is indignant at my suggestion that her most inconvenient existence was suppressed in order to present a consistent theory of the assumption. Suppressed, however, it certainly was, not only in the work of Douglas, who, in Riddell's words, 'very blameably represents things in such a manner as to lead anyone to believe that, upon the death of David in 1701, Isabel had succeeded as heir-general' (p. 140),<sup>2</sup> but again in Wood's *Douglas*,<sup>3</sup> and finally in Burke's *Peerage*. In this last publication Baroness Jean (and, of course, Sir William Cunyngham) continued to be comfortably ignored down to 1883 inclusive, in which year we were still informed that 'David, 2nd baron, . . . died without issue in 1701, when the barony devolved upon his niece, the Hon. Isabella Ruthven, as 1st Baroness.' Mr. Stevenson, who attaches so much importance to the sanction given by time, should note the persistence of this version for some hundred and twenty years, and the eventual acceptance as undoubted fact of what was at first but a tentative guess. The parallel is instructive.

But the pleasantly consistent tale was now rudely shattered, for by this time Mr. Joseph Foster had unearthed 'Baroness

<sup>1</sup> P. 170 of my article.

<sup>2</sup> The words are 'Isabel Baroness Ruthven, who succeeded her uncle David.'

<sup>3</sup> 'Supposed to be to heirs-general, as *an heir-general succeeded in 1701*' (II. 686).

Jean,' to say nothing of Sir William Cunyngham. A totally different story had now to be presented to the public, and in 1884 a rapidly evolved new version made its appearance in Burke. We thenceforth read of the 2nd lord that

Dying unmarried, 1701, he was succeeded by his youngest sister Jean, who as Baroness Ruthven made up her titles to the estates, and whose right to the peerage was unchallenged in her lifetime. She d. unm. 1722, and the next holder of the title was her niece, Isabel, Baroness Ruthven.

Overboard went the standing assertion that the family had 'acted upon' the understanding that the limitation was to heirs of line; and what is the understanding now? What does the family assert? What do their champions believe? No one can tell us; no one knows.

All that is certain is that the defence has now been forced to abandon its own avowed position and has not dared to adopt definitely any other in its place. To establish this we have only to compare the definite assertion as to the terms of the patent which was formerly made in Burke with that which has replaced it in that publication since the sudden change of front in 1883-4. We now read of the patent of creation that

'It is said to have perished 14th March, 1750, when Freeland House was burned. Collateral proofs<sup>1</sup> exist that heirs-female were not excluded[!] and there are grounds for surmising that a power of nomination in some shape was conferred in it.'

I can but quote from my original article (1884) the comment on this mist of words:

'Now, what does all this mean? Simply that the defenders of the assumption find that no one limitation will serve their turn, and that they are compelled to uphold the two alternately, just as suits their purpose,' (p. 176).

For, observe, the question must be faced; was Baroness Jean entitled to the dignity she assumed? or was she not? Yes or no? 'Burke,' it is true, now asserts definitely enough, it seems, that she 's. her brother in the title,' which implies that it was limited to heirs of tailzie not to heirs of line. But immediately afterwards we read of her niece Isabel:

'to whom (as being heir of line as well as of nomination or entail) any doubts suggested regarding her aunt's status have no application.'

But we catch the acrobat in the act of vaulting from steed to steed. If the assumption by Baroness Jean as heir 'of nomination' was valid; what need had Isabel to be heir of line

<sup>1</sup> These proofs, a footnote explains, are simply the retention of the title of the Union Roll, the votes in respect of it, etc.

as well? And if Isabel's right depended on her being 'heir of line,' Baroness Jean assumed the title to the exclusion of the heir of line without any ground whatever. For Mr. Maitland Thomson's suggestion will not avail here; whatever view she may have taken of the terms of the patent she must at least have known that she was not the heir of line.

The importance I attach to the version in 'Burke' is due to the fact that it is the most authoritative, as it must have been submitted to the family. It is also an *ex parte* statement making out for the defence the best case it can. And what does it admit? Why, that if Jean's right was doubtful, Isabel's at least was clear. Jean's right doubtful? Why, if the argument means anything, it means that she had no right at all. And yet Mr. Stevenson is wild with indignation at my daring to hold such a view.

And note further that the first of Burke's 'collateral proofs . . . that heirs-female were not excluded,' is the retention of the title on the Union Roll, although at the very time of its compilation the title was assumed by one who was not the heir-female (by which vague term is meant the heir of line), and who, indeed, excluded such heir!

And, further; how does the fact that 'Baroness Isabel' was heir of line as well as of entail make her right clear even if her aunt's was doubtful? There is no more evidence that the dignity was limited to heirs of line than there is for the 'surmise' that a power of nomination 'in some shape' had been conferred. The 'collateral proofs,' as they are quaintly styled in 'Burke,' resolve themselves, we find, into recognitions of the dignity's existence. But, as Mr. Stevenson insists, Jean's right to it was recognised; Jean was summoned to the crowning of the king. And yet she was not the heir of line. If such recognition does not avail, as 'Burke' implies that it does not, to prove her undoubted right, how can it constitute such proof in the case of Isabel? And what other proof is there?

The truth is, that there is one theory, and one alone, on which the assumption of this title can be consistently justified. But it involves, unluckily, not only the abandonment but the absolute repudiation of that understanding upon which we were assured the family had acted when assuming it. For this theory—which, indeed, does but raise other difficulties—is that the dignity was limited, not to the heirs of line

but to those who should inherit the Freeland estate. On that hypothesis 'Baroness Jean' and all her successors in its possession were entitled to the peerage dignity.

Why, then, is this hypothesis not boldly adopted? Why does 'Burke' lean to an heirs of line limitation? Why did the paper in the *Journal of Jurisprudence*,<sup>1</sup> on which, as I showed, his new ground was based, similarly hedge and trim?<sup>2</sup> Why did my opponents begin by proclaiming that 'the title was evidently *destined to pass along with the estates*, and did so,' only to contradict themselves by adding subsequently:

'Supposing that the right of Jean, Lady Ruthven, was questionable, no such doubt rests on the succession after her death, as all the subsequent holders were *heirs of line* of the original guarantee?'<sup>2</sup>

'Nay, which is more and most of all,'<sup>3</sup> why does Mr. Stevenson himself from the very outset of his case,<sup>4</sup> carefully abstain from adopting even a definite hypothesis as to what the limitation was? Let those who wish to learn what view he really holds turn to his guarded expressions on pp. 54-5. His one anxiety seems to be to avoid telling them what it is.

'Isobel and her successors *may have*<sup>5</sup> taken up the title as heirs of line of the patentee; but even though Douglas "admitted" it, that was not the only possible limitation by which the title reached them. The Scots law . . . is familiar with cases of honours limited to heirs of entail, and there is *no proof that entails were absent* in this case; but *something* to the contrary. There was a deed of nomination<sup>6</sup> of heirs of entail of the hereditary lands of the family.<sup>7</sup> The line of that entail coincides

<sup>1</sup> It is from collateral evidence only that we can gather what its terms were. . . . But was it simply limited to heirs of line, or did it contain, like a good many[!] other Scottish patents about its date, a power to the patentee, perhaps to his son also[!], to select an heir? Or was there an express limitation to the heir or class of heirs on whom Lord Ruthven [*i.e.* the *first* Lord] should entail his estates? *Be that as it may*, etc., etc.—*Journal of Jurisprudence and Scottish Law Magazine*, March, 1883.

<sup>2</sup> See p. 176 of my original article.

<sup>3</sup> From Lord Chief Justice Crewe's judgment in the Earldom of Oxford case.

<sup>4</sup> 'I propose to set forth in outline the history of the assumption of the peerage, first by the male line, and thereafter by the female line, or a line of heirs of entail, *which ever it may turn out to have been*' (p. 1).

<sup>5</sup> The italics in this and the preceding quotation are mine.

<sup>6</sup> But *not* by the patentee (*J. H. R.*).

<sup>7</sup> But only of the lands (*J. H. R.*).

to some extent certainly, and in its whole extent possibly with the line which the peerage has followed. . . . Either of these alternatives may have been in accordance with the facts. I state them merely to show that it is not possible to demand that the title, if not merely to heirs-male, shall be held to be to heirs-female merely, any more than to say that on failure of the last heir-male a title which is eventually to heirs, goes necessarily to the eldest daughter of the grantee. . . . It is thus impossible for us in the present state of our information to attribute to any of the heirs about to be named, the precise theory according to which he held himself to inherit the title.'

And thus, whether consciously or not, Mr. Stevenson knocks on the head the whole case which, we have seen, had been constructed for the defence!

The family, we were expressly told, had 'acted upon' the understanding that the title was limited to heirs of line. Then, on the opening of the cupboard doors, and the appearance of 'Baroness Jean,' we were told, as we are told still, that whether her assumption was rightful or not, the right of Isabel and her successors is clear, because they are the heirs of line. And now comes Mr. Stevenson insisting that, on the contrary, we have no right to say that the dignity was limited to heirs of line, or that Isabel and her successors assumed it upon that ground. What and whom are we to believe?

In the midst of all this contradiction, Mr. Maitland Thomson comes forward to offer a solution of his own. Others may shrink persistently from committing themselves to anything; he, at least, is not afraid.

The 'hypothesis' he adopts is this:

It has already been observed that the assumers of the title were each of them, at the time they took it, heirs of entail in possession. The conclusion to be drawn is tolerably certain,—the family belief was that the title was to go with the lands; in other words, that it was destined to the heirs of entail.<sup>1</sup>

Unfortunately, as I have shown, the family has throughout sanctioned, by its appearance in 'Burke,' the view that their rights depended on their being heirs of line.

But that is not the main difficulty involved in the above hypothesis. If I may say so, with all respect, it does not seem to have occurred to its distinguished author that my opponents would eagerly have advanced so simple a theory if they could have ventured to do so. It is because they knew

<sup>1</sup> *Scottish Historical Review*, iii. 106.

too much of the peerage law of Scotland that they have carefully refrained from doing so. Mr. Maitland Thomson oddly observes :

Mr. Round has a dictum of Riddell's to produce—a limitation to heirs of entail could only refer to entails executed before the death of the patentee.

'A dictum of Riddell's'! Why, it never occurred to him that anyone could be ignorant of the fact, or suppose the contrary. There happens to be in the group of creations to which the Ruthven patent belongs, one which contains such a power of nomination as it is surmised, we are told, may have been contained in that patent. It is the creation of the earldom of Balcarres,<sup>1</sup> with limitation to the patentee 'ejusque heredibus masculis talliae et provisionis in ejus infeofamentis expressis seu exprimentis.' No one, I presume, will suggest that by 'ejus' is meant the son or any other descendant of the patentee, or that it can mean anyone but the patentee himself.

The entail of the *estates* executed by David, the second lord, is exactly parallel in its provisions with others in the case of which it was known that no peerage dignity would pass with the estates, and it is because my critics are aware that the House of Lords would not dream of accepting it as conveying the Honours that they have so carefully abstained from resting their case upon it, however tempting an escape it might offer them if only they could do so.

At the end, as at the beginning, of his treatise, Mr. Stevenson is careful to avoid adopting any conceivable limitation; on the last as on the first page we find this admission: 'It has not been any part of my undertaking to show what the terms of the unknown patent were' (p. 76). Just so; for, as I write in my original paper:

here is the gist of the whole matter. Even if we conceded to the apologists of this assumption *carte blanche* to construct for themselves an imaginary limitation to suit their requirements, it is not in their power to construct any single hypothesis that shall be consistent with the known facts.

. . . So inconsistent with itself was this assumption, so hopeless the case for its defence, that its champions cannot, dare not suggest any one limitation that would justify it. In vain we challenge them to take their stand on any imaginary limitation they may prefer, that we may know what we have to deal with. They dare not (pp. 175-6).

It was so in 1883; it is so in 1906. Shall we with 'Burke' and the *Journal of Jurisprudence*, rather jettison Baroness Jean than abandon a limitation to heirs of line? Or shall we

<sup>1</sup>9th Jan., 1650-1.

rather, with Mr. Stevenson, jettison an heirs-of-line limitation than abandon the right of Baroness Jean? Let them settle it among themselves. Perhaps in another twenty years they may be able to do so. Then it will be time to consider their case; at present they have none.

I will here only add that, as to the coronation summons, I have now ascertained that not only was Robert Mackgill summoned to the coronation of George II. as Viscount Oxenford, but also 'Jean Lady Baroness of Newark,' who had wrongfully assumed that title. Brodie, as Lyon, returned the list of peers and peeresses to the Earl Marshal 'according to the best information he could gett,' but apparently he could not ascertain even Lady Ruthven's name, for she is only returned as '—— Rutheen Ldy Rutheen.'

J. H. ROUND.

*[Mr. J. H. Stevenson was anxious that we should insert in the present Number of the 'Scottish Historical Review,' a reply to Mr. Round; but arrangements previously made rendered it unavoidable that Mr. Stevenson's paper be held over until July.*

*Ed. S. H. R.]*