

Scottish Men of Letters

CHAPTER VII

LITERARY JUDGES: LORD KAMES - LORD MONBODDO - LORD HAILES

THREE judges were distinguished contributors to the literature of Scotland; but it cannot be said that letters owe as much to the Law as to the Church, though the Bar was the “preserve” of men of rank and fortune, fashion and leisure, with whom culture and taste might be expected to abound. Those who had the brains, however, devoted them to the complexities of feudal law and the establishment of a good practice. The clergy had culture and leisure, though we need not credit the accusation of the censorious, that the “moderate” ministers devoted time to their books and good company which they should have spent on their duties and their prayers.

Young advocates in the early part of the century got their training as apprentices to writers or advocates, whose offices were rooms in their houses, up the turnpike stairs, which might be used as bedrooms at night. There, for a moderate fee, the lawyer extracted as much work in engrossing and copying briefs as he could, and imparted as much knowledge as he cared of the great Dutch jurists, whose Latin opinions were daily sonorously cited in the Court. After the young men had studied at the “lattern” (lectern or desk), they were examined for the Bar, presenting a thesis written for them maybe by Mr. Thomas Ruddiman, which compressed more Latin into twelve folio manuscript pages than their heads contained in their whole career. The richer young men, however, went off to Utrecht or Groningen or Leyden, where they casually attended the sleepy class-rooms and yawned over the ponderous Latin lectures; and then concluded their studies by visiting Montpellier and Paris. They came home with a fine air of continental fashion, a costume from the red heels of their shoes to the curls of their wigs of latest Parisian shape, and ever after looked down on the provincial ways and speech of their home-bred countrymen. [Ramsay’s *Scotland and Scotsmen*, i. 182.]

Henry Home was too poor to pursue study abroad, for he was the son of the Laird of Kames, whose acres were burdened with wadsets, whose farm-houses were in ruins, and whose fields were in nettles. Born in 1696, after a little training from the parish minister he went to Edinburgh to become apprentice to a writer; and not being sent to college, he had to educate himself by studying Latin and literature in



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From the Engraving after Martin.

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his frugal lodgings. The struggles of his early life became bitter memories in his later years of prosperity. Often would he say that had he been assured of £50 a year, no consideration would have made him submit to the drudgery of mind and body he had then, and after joining the Bar, to undergo. His career was intended to be that of a writer, but by chance his fortunes got a new bent. One evening he had been sent by his master to Lord President Dalrymple, who was living in his suburban villa near Bristo Street. There, as he entered, was the stately old judge in his bright room over his book, the daughter singing a Scotch song to her harpsichord. When business was over, talk followed; after tea came music, and the impecunious son of the Laird of Kames, delighted with his reception, went forth into the winter's darkness to his poor lodgings emulous of a life of learned ease and dignity, which he could hope to reach only by eminence at the Bar. From that night he resolved to be an advocate, and for that purpose he worked and pinched and saved indomitably.

In 1723 he became an advocate, and then his struggles began anew in a profession where high connections were the passports to practice. The best things at the Bar were for the sons of good families like the Dalrymples and Dundases, to whose hands judgeships and lord presidentships seemed to come as by natural right. At the Bar, for instance, was Robert Dundas of Arniston, whose father and grandfather had been judges, and who himself, and his son after him, were to sit as Presidents of the Court. Along with Duncan Forbes of Culloden, the most eloquent advocate at the Bar, once "the plentifullest drinker of the North," were scions of the families of Grant, Ferguson, and Erskine, before whom writers grovelled. It was hard for impecunious Henry Home to pit himself against men like these. Before the august fifteen judges, however, he pleaded with good success, in spite of his lack of influence and his propensity for subtleties by which he exercised his ingenuity and considerably exercised the patience of their common-sense lordships. He had, moreover, time and taste for something besides legal ambitions. There were meetings at the inns where good drink was to be got cheap, and good talk for nothing, not merely for the legal consultation with writers, which advocates in those days always held over claret or ale in taverns. With William Hamilton of Bangour and other boon companions he was merry at Balfour's Coffee-house [Hamilton's *Poems* (Life by Paterson); Tytler's *Kames*, i. 58.] - the "Wills" or "Buttons" of the North; he was gay at the Assembly in Bell's Wynd, to which entrance was half-a-crown, and for which he would prepare his lank person by getting his wig newly trimmed by the nimble hands of Allan Ramsay; and would carefully brush his well-used coat and waistcoat, trusting that their defects would not be detected by pretty eyes in the

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ball-room, ill-lighted with tallow candles. There the tall, dark-visaged advocate was a beau and a wit. Verses by Hamilton “To H. H. in the Assembly” recall the olden days:

When Erskine leads her happy man,
And Johnstone shakes the fluttering fan;
When beauteous Pringle shines confest
And gently heaves her swelling breast,
Her raptured partner still at gaze,
Pursuing through each winding maze:
Say, Harry, canst thou keep secure
Thy heart from conquering beauty’s power?

The busy, eager lawyer never lost sight of his legal prospects while dangling around fair damsels. He published reports of Decisions of the Court, which made judges look favourably on the man who could drink with wits, dance with belles, and plod with lawyers. When, in 1741, he issued in two vast folios his *Dictionary of Decisions of the Court of Session*, they were ready to bless him. For till then the decisions of judges were unclassified, unprinted; lawyers needed to ransack musty manuscripts for reports and precedents, and in despair of finding old decisions, lawyers had to quote Bartolus and Cujacius to move their lordships to an original decision. [Tytler’s *Kames*, i. 108.] The overflowing intelligence of Home sought still further outlets for its energy, and metaphysics gave scope for that subtlety at which their lordships so often winced. Philosophical discussions were the fashion for Edinburgh brains from 1720 to 1740. The speculations of Locke and of Shaftesbury, the new opinions of Berkeley, Butler, and Hutcheson of Glasgow, were keenly interesting to thinking young men. While some met at Thomas Rankin’s Inn, and called themselves the Rankinian Club, Home and others were members of the Philosophical Club, and over ale, claret, and oysters discussed philosophy. His restless brain was never weary of those problems, though his victims were often weary of his questions. Irrepressibly argumentative, he corresponded with Baxter, whose treatise on the *Immateriality of the Soul* had made some noise, till “Immateriality” Baxter was worn out, broke off communications, and testily burned the letters; he corresponded with Dr. Samuel Clarke on his *Being and Attributes of God*, with Berkeley on Idealism, till the patience and politeness of these divines were sorely tried; and Dr. Joseph Butler was entangled likewise in an epistolary discussion, the great moralist hoping that each reply might be final, only to find another lengthy epistle from Scotland (postage one shilling) would arrive to prove

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that the persistent inquirer was not yet at rest. [Tytler's *Kames*, i. 27; *Ramsay*, i. 155.]

This exuberantly critical propensity of the advocate found scope in combating the views of his friend David Hume - then the only man of letters in Edinburgh. Henry Home, once a Jacobite and Episcopalian, had by this time abandoned his politics and his persuasion, without adopting earnestly any other in their place, and when he became supporter of orthodoxy there was less religious ardour than speculative fussiness behind it. In Hume's denial of the law of causation, and his reduction of virtue to utility, he saw a sapping of the evidence for deity and of the basis of morality. In 1751, therefore, appeared his *Essays on the Principles of Moral and Natural Religion*, intended to vindicate religion and confute his friend. The author soon discovered, as others have done, that it is sometimes a very dangerous thing to defend the faith; that it is possible, by a too strenuous effort to uplift an overturned faith from one side, to make it fall over on the other. To his disgust Home found that he - the champion of the faith - was charged with infidelity. An irascible, coarse-penned chaplain, Mr. George Anderson, wrote a venomous pamphlet against his dangerous principles, the Presbytery of Edinburgh was stirred up thereby against the terrible freethinking not only of David Hume but also of Henry Home, who had piously tried to confute him. The matter ended in the General Assembly issuing a solemn exhortation against pernicious infidel books that were rife, and by warning their flocks against reading them. [Morren's *Annals of General Assembly*, ii. 54.]

David Hume, the heretic, was entitled to laugh at the defender of the faith being charged with the same crime as himself, in spite of the work closing with an elegant and solemn prayer which Mr. Hugh Blair had composed for his friend. Home was certainly not lucky in his argument. He granted with Hume that both moral and physical worlds are ruled by invariable laws, and that man acts from motives he cannot resist. This is alarmingly like heresy; how did he vindicate moral and human responsibility? By arguing that because man acts under the (mistaken) belief that he is a free agent, he is accountable for his actions as if he had really free will. This was the oddest way to conciliate Christians or to refute pagans. He found that it was safer to confine himself to pleadings on "multiplepointing" and "tailzies" before their lordships and leave divinity to the care of providence.

In 1754 Home took his place on the Bench as Lord Kames, for his reputation as a lawyer was high, and the expectations formed of him as a judge were great. He thought himself rich with a judge's salary of £500. Sitting beside him were men with whom he had measured wits at the Bar. Some of these were of far more

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polished manners than his own - Lord Minto, stately and dignified, and acquainted both with polite letters and polite manners; Lord Tinwald, most courteous of gentlemen, as he lisped out his elegant charges in dulcet tones which earned him the name of "Sweet Lips." There was Dalrymple, Lord Drummore, an elder of the kirk, who drank freely, lived loosely, and attended religious ordinances; and my Lord Grange, the unctuous Presbyterian saint, whose life and conduct were those of a Tartuffe. Beside him was my Lord Dundas, loud and rude in the bench, lively at the board, deep in potations in the tavern, sound for orthodoxy on the floor of the General Assembly; and Lord Milton, nephew of the incorruptible Fletcher of Saltoun, who, after managing all the patronage of Scotland as henchman of the politically all-powerful Lord Islay, was in the last days of his dotage to pass the time playing with children's toys. [Ramsay's *Scotland and Scotsmen*, i. 40-178.] Prominent amongst his brethren was Lord Auchinleck, the plainest-spoken judge, uncouth in speech, with good sense and good law in those prolix "opinions" during which the Lord President significantly displayed the sand-glass which was kept "to time" the speeches from the bench. Such men Kames, with his keen wit, measured shrewdly, making dull brethren the butts of his jests and pleaders the helpless recipients of his sarcasms.

At that period the Parliament House, in which the law courts were held, presented a very different appearance from what it did after the great fire of 1824. The front was picturesque in its austere way, with Scottish turrets and the balustraded roofs, on which their lordships could take the air, hidden from the vulgar gaze. The Inner Court, in which sat the august "fifteen" in their robes of scarlet, was a low-ceiled room thirty or forty feet wide; its walls dark with smoke, which proceeded from the fireplace, with its broken "jambs" and its ancient grate half full of dust and ashes behind the Lord President's chair. On each side of the bench the wall was adorned with wooden frames containing the Lord's Prayer and the Commandments worked in faded gilt letters on what had originally been a black velvet ground, but now was a dingy brown. This dismal abode of justice, when evening set in, was dimly lighted by malodorous candles, which, unsnuffed, guttered in miserable tin candlesticks. The spacious hall of the Parliament House was divided by low wooden partitions. At the east end were seats and benches, whereon, in proud days, members of Scots Parliament had sat, which now were occupied by lawyers and their clients, who faced the chair against the wall on which of yore the Lord Chancellor had presided, and whereon now sat the Lord Ordinary of the Outer House. At the western end book-sellers, glovers, and smiths had their

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stalls, and Peter Williamson set up his coffee-house, with the tiny apartments made by walls of brown paper. From behind a wooden partition on Mondays came a buzzing, often obstreperous, noise, for there a bailie tried petty offences in what was contemptuously known as the "Dirt Court" - a term most appropriate from its squalid condition and the uncleanly state of offenders and audience. In the middle of this hall, between the Outer House at one end and the "Dirt Court" and shops at the other, was the space in which advocates strolled or strutted, where briefless ones gossiped with their brethren in misfortune as they paced the *salle des pas perdus*; and men in demand walked in bland consultation with their agents till called before "my lord." [Chambers's *Reekiana*, p. 187; Arnot's *History of Edinburgh*, p. 293; Cockburn's *Memorials*, pp. 110-126.]

Lively as was the scene within, still livelier was it outside in the Parliament Close. Beneath the piazza were to be found the pettifogging agents who took pleas in the Dirt Court - writers as damaged in character as in clothing looking out for clients on what was properly known as the "Scoundrels' Walk." On the two sides of the close, and against the walls of St. Giles', which formed the fourth side of the square, jewellers, printers, glovers, booksellers had their shops, barbers had their little dens for legal wigs to trim and legal chins to shave, and taverns were open for thirsty citizens. Mr. Thomas Ruddiman might be seen going daily out of his printing-office to Mr. Andrew Symers, the bookseller, for his usual game of chess, and two hours after was seen to come out with flushed face and ruffled temper after the inevitable squabble. The square was full of the hubbub of life. Merchants, bankers, doctors, ministers took their morning saunter there before they had their "meridian," and exchanged greetings and snuff-boxes; lawyers and judges bustled past with their gowns flowing, their legal bob-wigs on their heads, and their cocked hats under their arms. The buzz of voices, the noise of bustling porters with their chairs, the cries of caddies on their errands, all made the place a scene of incessant liveliness, and none enjoyed it more than Lord Kames.

His life was vastly busy in his house in New Street, off the Canongate. He was up at five o'clock in the morning, and in winter two hours before daybreak, with his books to read, his papers to write on feudal law, history, on trade, on philosophy, on criticism, on drains, poetry, or sub-soil - frugally covering the backs of old letters with his extracts and notes. After early breakfast there were levées. [Tytler's *Kames*, i. 205; Ramsay's *Scotland and Scotsmen*, i. 202.] Friends came to ask his counsel, farmers and tradesmen were in the lobby to consult him about seeds or ploughing, or to crave his patronage with the Board of Trustees for some invention of

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marvellous efficiency, which would assuredly have secured the admission of the inventor into the asylum and of his family into the poorhouse.

The Court adjourned at mid-day for the early dinner, leaving before they resumed work little time for eating, and less for drinking, which latter operation was postponed till supper. In the evening his lordship was amongst the merriest at St. Cecilia concerts, making himself agreeable and facetious to some young lady, to whom he exclusively devoted himself. At supper he was liveliest and broadest over punch and whist.

When he achieved a practice, his first efforts were to relieve the paternal acres from their paternal burdens; and now he lived two lives - one as a judge and a man about town, the other as a farmer and a laird. If his wife had her hobby of collecting china, he had his hobby of improving land, clearing away morasses, ploughing, draining, planting, and enclosing. Still more scope was afforded for his rural tastes when by his wife he got the fine property of Blair Drummond near Kincardine, which brought wealth and ample opportunity for practising his husbandry. What feats he performed clearing the old wastes, removing the peat, which he floated down the Teith, introducing the best seeds and the newest implements! On arriving at night after the Court was up in Edinburgh, he would go out with the lantern to mark the growth of his saplings, and in the morning he was hurrying on his workman with strong oaths in plain Scotch, and impatiently helping them to lift stones for a dyke. His old-fashioned farmers, who had kept the land sterile and themselves poor by old modes of agriculture, shuddered at these wild schemes, which they were certain would end in ruin. One day his lordship was boasting to one of these incredulous tenants of a manure of marvellously fertilising power, invented by Baron von Hoek, a German quack. "Such, my good friend, is its power, that I should not be surprised if at some future time we might be able to carry the manure of an acre of land in our coat pockets." [Kerr's *Life of William Smellie*, i. 359.] The reply was disconcerting from the "bruit," as he would call him: "Maybe, my lord, but I suspect that you will be able to bring back the crop in your waistcoat pouch." His experiments did indeed often end in failure, hugely to the farmers' delight, but not the less he stands out as one of the most influential improvers of his time. Nothing interested him more to the end of his life than to hear of a new kind of spinning-wheel or barrow, or new modes of growing flax or turnips. [Ramsay, *Scotland and Scotsmen*, i. 208; Tytler's *Kames*, ii. 27.] In the Select Society, which was energetic after 1754 encouraging industry, art, and agriculture in Scotland, no member was more active than he. He kept up correspondence with Dr. Black on the attraction of

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clay and water; with Professor Walker on the generation of plants; with Dr. Reid on the laws of motion or the conversion of clay into vegetable mould; with Dean Tucker on poor-laws; and with “blue-stocking” Mrs. Montagu on literary gossip. [Tytler’s *Kames*, i. App.] One becomes breathless in the effort to follow this versatile, indefatigable lord in his studies and his works which came from the press on antiquities, on history, on law, on belles lettres. When he asked Lord Monboddo if he had read his last book, “No, my lord,” snarled his rival judge and author, “you write a great deal faster than I am able to read” [Ramsay, i. 353.]; and he further told his objectionable colleague that no man could write good English who did not know Greek, of which he was aware Kames knew not a word.

In 1762 appeared the fruit of long labour in his *Elements of Criticism*, in which his ceaseless interest in literature found scope, making his name as critic and man of letters spread far and wide. There he analyses beauty, taste, composition, art, gardening, showing on every subject an ingenious nature at work. All judgment on art and letters, according to him, rests on fixed principles; not feeling, but reason, is the infallible judge of taste and beauty. Unluckily for his reputation as a critic with posterity, Ossian is declared full of sublimity, Gothic art is pronounced fit only for the “rude, uncultivated” places where it was invented; the *Mourning Bride*, with its fustian sentiment, is lauded as “the most complete of English dramas.” This work appeared in an age when it was the fashion to search into the origin of emotions on taste and beauty. Hutcheson in 1725 had given his inquiry on the *Original of our Ideas of Beauty and Virtue*. Hume wrote on the standard of taste; Dr. Gerard of Aberdeen had, in 1758, also issued his *Essay on Taste*; and two years before Edmund Burke had made his name in letters by his *Sublime and the Beautiful*. Meanwhile Dr. Blair, in his class at college, to his admiring audience, was laying down the canons of literary art; and on these “fixed principles” was conclusively proving Ossian to be - what it never was. These perennial efforts to answer a question on the origin of æsthetic feeling, which the plain man never puts, all leave the matter exactly where it was, and the world likes and dislikes, admires or abhors from age to age, heedless of the infallible standards or the finest principles of any theorist that ever lived.

In far-off Ferney, Voltaire, whose eager mind missed nothing, read this treatise, in which his own *Henriade* was condemned, by “Lord Makames, a Justice of the Peace in Scotland,” as he called him, and he made merry over the profound critic, who begins by “proving that we have five senses, and that we are less struck by a gentle impression made on our eyes and ears by colours and sounds than by a

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knock on the head or a kick on the legs,” and who “with mathematical precision shows that time seems long to a lady going to be married, and short to a man going to be hanged.” He expressed vast astonishment that “from remote Scotland should come rules for taste on all matters from an epic to a garden.” [*Lettres d’un Journaliste.*] But this was Voltaire’s own little way. Dr. Johnson was pleased to speak of his work as “a pretty essay”; but when he was in a boisterous mood his expressions were obstreperous. Boswell one day was boasting of the advance in literature that Scotland had made. “Sir,” replied the doctor, “you have learned a little from us, and you think yourself very great. Hume would never have written his history had Voltaire not written his before him [which Voltaire had not done]. He is only an echo of Voltaire.” “But, sir,” said Boswell gently, “we have Lord Kames.” “You have Lord Kames!” cried out the great man, rolling his frame with Gargantuan mirth. “Keep him - ha! ha! ha! we don’t envy you him!” His lordship did not love Johnson: most likely babbling Boswell had confided to him this pleasant remark in strictest confidence. Whatever hostile critics might irreverently say, Scotland was proud of its literary senator; to him, as to Dr. Blair, aspirants came for guidance and society bowed in homage, and in truth a very clever critic he was.

Never was there a more industrious being, and whether he knew much of the subject or whether he knew little was equally with him a reason for writing about it. When Sir Gilbert Elliot appealed to him on an obscure point of political economy, he got the advice: “Go and write a book upon it if you want to understand it.” [Tytler’s *Kames*, i. 61.] So he went on writing his books and neglecting his legal duties with great assiduity, and at the ripe age of seventy-eight he sent forth from Creech’s book-shop his *Sketches of the History of Man*. It is a curious, an amusing book, a strange *olla podrida* of facts and theories, of quaint information and acute speculation on commerce, trade, crusades, poor-laws, womankind, and a hundred more subjects drawn from his reading on history, science, and travels. It is at once shrewd and shallow, touching rather than grasping many questions on sociology, on which the old man was wonder-fully alert; yet though written after Adam Smith’s *Wealth of Nations*, its economic opinions are often very pre-Adamite. This, his most popular work, he called the “child of his grey hairs,” and yet at the age of eighty came forth his *Gentleman Farmer*, in which, with a sharpness gained from experience and a whimsicality increased with age, he gives agricultural advice to the world. “Why should I sit with my finger in my cheek waiting till death takes me?” he sharply asked when congratulated on the activity of his old age. [Tytler and Watson’s *Songstresses of Scotland*, i. 159.]

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At the period of years when most men are dead or engaged in dying, he, with his wife, was in London, and visiting his old literary friend Mrs. Montagu at Tunbridge Wells. "At eighty-four he is as gay and as nimble as when he was twenty-five, his sight, hearing, memory perfect; he is a most entertaining companion," [Doran's *Lady of the Last Century*, p. 247.] wrote that lively old blue-stocking. To the end this nimble life continued. There were the early hours at work, the three o'clock dinner, when from fine patriotism French brandy and claret were discarded from the table for whisky-punch and port [In his abhorrence of claret, he abolished it even from his circuit tables. One day at the circuit court dinner he asked Henry Erskine where he supposed D'Estaing and the French fleet in the West Indies to be. "Confined to *port*, my lord, like ourselves," was the reply.]; his old friends Adam Smith and Blair and Joseph Black on Mondays sharing his vigorous company. The meal ended, the party would disperse to their homes or to stroll in the Meadows or the streets, and the old man in his dressing-gown and velvet cap settled down with his clerk to law business, which occupied him very perfunctorily. He loved his walks with deferential young men of promise, who were expected to wait on him at any hour, and to listen respectfully to his peripatetic discourses. If any flagging of attention called down on them some vigorous expletive, by an adroit compliment for his farming or his books, the sardonic humour was restored to patriarchal benignity. At evening gatherings, to which friends came when they pleased, with the supper of Scots fare, good wine and good talk, the veteran was the merriest, with full-flavoured stories in broadest of speech, and cards or music till midnight. [Ramsay's *Scotland and Scotsmen*, i. 203.]

It was not on the bench he achieved most credit, able and learned though he was. With caustic temper and flurrying manner, he bullied dull judges out of their dignity, worried witnesses out of their memories, and nagged pleaders out of their arguments. "He has the obstinacy of a mule and the levity of a harlequin," growled an over-baited counsel. [Boswelliana, p. 275.] Yet after all he was only one of the strangest series of administrators of justice the world ever saw - worthy, learned, shrewd mortals, with the longest of pedigrees and the grotesque of manners, and it needed the stateliness of Lord Hailes and Dundas of Arniston, and the suavity of Sir Islay Campbell, to leaven the Court with dignity. At the end of the century were judges whose physical strength was proved by their drinking so much and living so long. A hearty drinker was a man to respect. That in the "daft circuit" at Ayr the legal functionaries should be drunk all night and able to try prisoners all next day was a source of pride. Lord Hermand, whom all knew to be a true gentleman by birth and feeling, regarded drinking as a cardinal virtue, and his holy wrath during

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a murder case was stirred by the fact that a young man had stabbed another under the heart-warming and consecrating influence of partnership over a bottle of rum. "If the man did this when he was drunk, what would he not have done when he was sober!" he asked in virtuous indignation. Beside some who after him sat on the bench the peculiarities of Kames sink into commonplace. One of the most original of the number was Lord Hermand, clad in garments that never fitted and never joined. His long face would light up with emotion as he exclaimed in the course of an "opinion" - "My laards, I feel my law - I feel it here!" and he would smite his bosom to point out the exact locality. In the General Assembly, during the famous case on the orthodoxy of Professor Leslie, he was seen dancing on the floor with pious excitement - his thin powdered hair in a long pig-tail wagging in kindly sympathy - protesting that he "had sucked in the being and attributes of God with his mother's milk." The preposterous Eskgrove, with his purple scurvy face, his huge nose, and protruding under-lip supported by an enormous projecting chin, would shuffle in with stealthy tread and take his place beside this worthy, and mumble his wonderful judgments in sententious mispronounced absurdities. The jury - whom he obliged respectfully to stand when he addressed them - would almost faint under his long harangues as he prosed on; "And now, gentlemen, having shown you that the pannell's argument is utterly impossibill, I shall now proceed to show you that it is extremely improbabill." The prisoner doomed to die was cheered by his farewell words: "Whatever your persuasion may be, there are plenty of reverend gentlemen who will be happy for to show you the way to yeternal life." "Eskey" was the delight of the whole Bar, which had ridiculed Lord Monboddo for his whims and his hobbies, and despised Lord Strichen with his interjected "weel, weels" and his "oh dears." Stories were told, not to his moral credit, of Lord Gardenstone, who sat snuffing copiously on the bench. When Lord Kames flouted him with a scandal connected with the fair sex, he turned to his friend, whose parsimony was notorious: "Gang to the Deil, my lord; my fauts are growin' the langer the less, and your ain the langer the waur." At his country seat his love for pigs was so touching that one of them, when young, followed him like a dog, and at night slept with him in bed, till, becoming too obese, it slept on the floor, covered lovingly with his lordship's garments. [Cockburn's *Memorials*; Boswell's "Court of Session Garland," in *Chambers's Traditions*, ii. 158; Kay's *Edinburgh Portraits*.] Contrasted with these men of whims, Lord Braxfield was powerful, with his beetle-brows, his red face, his glowering eyes, his thick lips and growling voice, which made his victims in the dock to tremble. There would come from him the coarse jokes, which in private

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jovial talk were seldom decent, the fleering interjections, the insolent gibes in vulgarest Scots, spoken without heart or pity. "You're a vera clever chiel, maun; but ye wad be nane the waur o' a hanging," [Lockhart's *Life of Scott*, vi. 203; Kay's *Portraits*, i. 24.] was his reply to a prisoner who had pleaded ably for his life. Political offenders in the days of the "Friends of the People" roused his mighty wrath. "Come awa', Maister Horner," he said to Francis Horner's father, who was one of the jury, "and help us to hang some o' thae dawmned scoondrels."

The manner which was truculence in Braxfield was sardonic humour in Lord Kames, who dearly loved a "hanging circuit"; and victims were many in those days, when death was the penalty of a hundred offences. It was in 1780 that he tried a case for murder in Ayr. The prisoner was one Matthew Hay, a farmer by profession, a smuggler by practice, who had killed a man in a scramble. Kames had often played chess with this handsome, dashing, jovial fellow in taverns, and when the verdict of "guilty" was given, he turned to his old companion with a leer and said, "That's checkmate for you, Matthie!" [Caldwell *Papers*, ii. 129.] It is such little ebullitions of drollery that his amiable biographer, Lord Woodhouselee, refers to as "due to a certain humorous manner," [Tytler's *Kames*, ii. 241.] and as "the pleasing relaxations of a great mind." One prefers the simplicity of Lord Hermand, who, when he was trying a case of theft, plaintively asked the nefarious female at the bar: "My gude woman, what garred ye steal your neebor's tub?" If only James Boswell had carried out the surely playful wish of Kames that he should write his biography, [Boswelliana, p. 102.] what a rich picture we should have had of the versatile, ill-tongued judge and his age. But it is doubtful if Kames would have trusted his friend "Jamie." Boswell, calling on him one day, complained that he sometimes was dull. "Homer sometimes nods," graciously remarked the judge; but the instant he saw Bozzy elated at the compliment, he added with a grin: "Indeed, sir, it is the only chance you have of resembling him." [Boswelliana, p. 308.]

One of the most remarkable figures was this Nestor of literature - the long, gaunt, stooping figure, with toothless jaws bringing nose and chin into close terms; the keen piercing eye, the mouth with Voltairian expression, between a sneer and a smile, from which came the familiar phrase of greeting to acquaintances, "How are ye, ye bruits?" Sometimes the epithet was even more forcible. Each morning he was to be seen proceeding to Court from his house in the Canongate, attended by Sinkum, his favourite caddy, whose stumpy figure, with one leg shorter than the other, which caused him to duck at every step, contrasted with the tall, slouching lord, bending down to hear his companion's gossip of the day. [Chambers's *Traditions*, ii.

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171.] It was on a December day that he finally quitted the old Court, on whose bench he had been so notable a figure for nearly thirty years, giving his not too dignified farewell as he closed the door behind him. [One biographer records that “a few days before his death he came to the Court of Session and addressed all the judges separately, told them he was speedily to depart, and took a solemn and affectionate farewell,” (Smellie’s *Life of Kames*, p. 148). The tradition is that his only farewell consisted in the touching words: “Fare ye weel, ye b- -hes.”] Eight days afterwards he was dead - “of old age.” He died on 27th December 1782, having his earnest hope fulfilled that he should not survive his faculties, for sight, memory, humour, shrewdness were keen to the last.

Long had he been doyen of Scottish literature, and while the world smiled at his oddities, laughed at his jests, doubted his law, ignored his philosophy, and deplored his lack of senatorial dignity, it honoured the old man of the energetic, versatile brain, who had lived brilliantly through a century of varied history, and won a name eminent in his day. When Adam Smith was complimented in England on the array of men of letters who threw lustre on Scotland, “Yes,” he answered, “but we must every one of us acknowledge Lord Kames as our master.” [Tytler’s *Kames*, i. 215.] It must, however, be owned that in that case the grateful pupils very easily surpassed their master. Never was there a more industrious mortal, a more inquisitive person than the old judge, who two days before he died told his friend Dr. Cullen that he wished earnestly to be away, because he was exceedingly curious to learn the nature and manners of the other world. “Doctor,” said the indefatigable patriarch, “I never could be idle in this world, I shall willingly perform any task that may be imposed upon me.” [Smellie’s *Lives of Kames, etc.*, 1800, p. 147.] Thus the restless soul, eager on everything, on drainage or philosophy, poor-laws or poetry, looked forward to heaven - we presume it was heaven - with serene complacency, ready for any seraphic job or angelic occupation which might or might not suit his mind or his manners.

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Between Lord Kames and Lord Monboddo no love was lost: they ridiculed each other’s books, jeered at each other’s speculations, scorned each other’s law, and laughed at each other’s hobbies. One night, to stop their quarrelling at Gordon Castle, the Duchess made the two judges dance a harmonious reel together. [Ramsay’s *Scotland and Scotsmen*, i. 355.] Kames loved anything that was novel; Monboddo, though twenty years younger, affected the manners and opinions of the ancients. The only



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From the Drawing by John Brown in the Scottish National Portrait Gallery, Edinburgh.

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thing they had in common was longevity. But then that faculty of living long seems the peculiarity of the century among men of letters and of law. We find that on these gentlemen who lived in an age when society drank hard and often, death had difficulty in laying its grim, covetous clutches. The two judges were far in their eighties when they died, so were Home and Ferguson, Carlyle and Blair, Tytler, Reid, and Mackenzie, and to be over seventy was a commonplace term of existence in these leisurely old days. Law lords held on to their posts and to life with equal tenacity, and Lord Hermand, in spite of his stupendous drinking, was vigorous till he was eighty-four. As the century was drawing to its close, the venerable form of Lord Monboddo, meagre, emaciated, plain, and toothless, deaf and near-sighted, was one of the quaintest objects in Edinburgh streets and High Street suppers; with face still shrewd, manners delightfully courteous, and dress old-fashioned. Everybody knew his whims and his foibles, and society enjoyed his talk and his wit.

It was in 1714 that James Burnett was born in the plain, shabby, old house of Monboddo in Kincardineshire. He was educated at Aberdeen University, and Greek he imbibed from Professor Blackwell, famed in those days for his reviving classical learning in the North - an excellent Greek scholar, who fondly believed he had a fine English style. Under this learned and pompous master Burnett learned that ancient Greece was the source of all science and divine philosophy, that beyond it all was darkness, that speculation not based on Aristotle or Plato was utter foolishness. All this profound misinformation the son of the Laird of Monboddo most docilely absorbed, and the belief that the "ancients" were the people, and wisdom died with them, he loyally retained to his dying day.

Being intended for the Bar, after studying in a writer's chambers in Edinburgh, he passed on to Groningen to study Roman Law, and in that sleepy little seat of erudition he remained saturating himself with feudal lore, in class-rooms resonant with the great names of Voet and Noodt, Bynkershoek and Van Eck. Throughout his life he had a profound contempt for every one - including Lord Kames - who had not learned law from Dutch jurists and had never seen the world, having only studied in an advocate's or writer's chamber in a High Street flat. It was an eventful day in 1736 on which he returned to Edinburgh. The mob had broken into the Tolbooth, had dragged the obnoxious Captain Porteous from his refuge, and the stranger was kept awake in the lodgings in the West Row by the noise of the mob rushing down that narrow street. Going forth attired in little more than his nightgown and cap, he followed the tragic proceedings in the darkness - the surging crowd in the Grassmarket, the writhing figure of the victim in the relentless

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clutches of the wild mob, the gruesome hanging from the dyer's pole - all these he saw, quite forgetful of the scantiness of his habiliments. [Kay's *Edinburgh Portraits*, i. 19.]

In 1737 he became an advocate, but he was for a while more familiar with social entertainments than with writer's fees. He was at the assemblies dancing minuets with the laborious steps and Batavian grace which he acquired in Groningen, to the amusement of everybody but his partners. He was assiduous in attendance at the theatre, where Gentleman Digges and the fascinating Mrs. Ward were acting; with formal gallantry handing ladies to their seats with the air of an amateur master of ceremonies. [Ramsay, i, 353.] At the Bar briefs came slowly to this peculiar counsel; but he had ability and he knew law, so, in spite of whimsicality, he made his way. In 1762 (for many years went by before he had a chance of distinguishing himself) the great Douglas cause began. The question whether Alexander Douglas was really the son of Lady Jane Douglas, and therefore he, and not the Duke of Hamilton, heir to the Douglas estates, was a matter of wildest excitement. Nothing was talked of but that momentous question in every Edinburgh flat; it was the subject of endless debate; it was the source of lifelong friendships and the cause of deadly quarrels in society; and to preserve peace it was necessary to arrange that the subject should not be mentioned in general company. The town was divided into those who were for "Douglas" or for "Hamilton."

Burnett was one of the counsel for the penniless heir, and after making visits to Paris to collect evidence, he returned under the guileless idea that he was a man of fashion. The elderly beau appeared at the Assembly clad in a white velvet suit - "like a Chancellor of France," [Ramsey, i. 351.] he boasted - displaying his splendour, to the delight of spectators, in a minuet with the most grotesque steps which had ever been seen on that floor. The Queensberry influence, which was on the side of the claimant, raised him to the bench when Lord Milton retired, and his legal talents did justice to his patrons. It was while the great Case was pending that he gave a famous dinner to his brother judges. The Duchess of Queensberry had for the occasion sent wine, and also a fine haunch of venison; but the moment the dish was put on table, it assailed so vehemently the noses of the guests that the air became sanitary only when it was mercifully removed. "Monboddo, this is a pretty use to make of the Duchess' wine and venison," said a friend next day. "It is flat bribery and corruption." "Master Davidson," replied his lordship, "I confess much corruption, but no bribery." [Ramsey, i. 355; Omond's *Lives of Lord Advocates*, ii. 66.] Great was Monboddo's satisfaction, and wild the joy of Scotland, that day in 1769 when Islay Campbell arrived on horseback from London, and at the Cross waved his hat and

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shouted “Douglas for ever!” thus announcing that the House of Lords had reversed the narrow decision of the Court of Session and decided in favour of Archibald Douglas, giving the lad his great estates. Boswell headed the mob which smashed the windows of the adverse judges, and the question asked that night, “Douglas or Hamilton?” was put at the point of the sword to every one met on the street.

For years Burnett had been reading and thinking and writing a work more congenial to his mind than any legal business, and in 1778 there was published the first volume of *The Origin and Progress of Language*, a quarto which was the first of six volumes which were to appear in different years, till it was completed in 1792 - the world having forgotten the previous tomes before the next was issued. Here were found elaborate and most learned disquisitions on the origin of ideas according to Plato and Aristotle, on the invention of language, on the art of composition, [Monboddo’s quality as a literary critic may be judged from his opinion that “Dr. Armstrong’s diction (in *The Art of Preserving Health*) is more splendid than that of Milton’s *Paradise Lost*” (vol. v. p. 467).] on the original state of man. Society cared little for abstruse speculations, but there was something to amuse it in this formidable work. The primitive man was declared to have lived in a brute state without speech or reason, and possessed of tails like his beast contemporaries. Ingeniously the author traced how in the course of ages the human race gained intelligence and dropped their tails, and by development attained to that state of civilisation of which Greek art and philosophy form the highest point. Wits laughed aloud at him for going against common-sense; the pious mourned at his going against Holy Scripture; judges sneered at their brother on the bench for his ridiculous whims, and Lord Kames with a jeer would ask him to go before him into a room: “Just to see your tail, my lord.” They little dreamt that what were the fancies of the eccentric judge were, before a century elapsed, to be the creed of the anthropologist. There is no need, however, to give the good man too much credit for originality. His picture of the primitive man is, as he owns, [*Origin of Language*, i. 152. Kames said he wondered that Monboddo had not more pride than to swallow a Frenchman’s spittle (Ramsay, i. 357).] the same as that which Rousseau had painted in his *Discourse on the Origin of Inequality*. Monboddo is original only in presenting the primitive men with tails. To “anticipate” truth is not to be a discoverer, any more than a dreamer has foresight because his dream comes true. Erasmus Darwin suggested, in his *Lives of the Plants*, that species are modified by adaptation of individuals to suit their wants, but this “anticipation” was only a fancy with him, the merit lay with his grandson Charles, when he eventually proved it a fact. In Monboddo’s case, as he anticipates the modern anthropologist, he is only one of those foolish people who

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are wise before their time.

Among all the ingenious disquisitions of these massive tomes there is a portentous credulity and learned garrulity; Monboddo is convinced that ourang-outangs are of the human species; for he had himself seen at Versailles a specimen preserved in spirits, which, when alive, had shown all the intelligence of a man, and had quite like a rational being died of drink. [*Origin of Language*, i. 189.] He upholds his pet theory that men possessed tails on the ground that 130 years before a Swedish skipper was reported to have seen a tribe of human creatures with caudal appendages in the Bay of Bengal. It is difficult to credit that so incautious a pleader in his book should have been really so able and competent a judge on the bench, a shrewd sifter of evidence on multipoleinding and titles in the Inner House.

Yet one other great work engaged Monboddo's attention amid his legal labours - his *Ancient Metaphysics*, including a History of Mankind, which volume by volume appeared during the course of the years from 1779 to 1799 - the last being published a few weeks before his death. Here ancient philosophy is maintained against David Hume - who with him is "an atheist" and a "corrupter of moral teaching" - and against the physical theories of Sir Isaac Newton. To ancient Greece we are told to look for all truth and for all physical and intellectual perfection. The origin of language and art and religion is traced chiefly to Egypt, whence they arose from a race of Dæmon Kings - dæmons being the supernatural beings described by Plato, and "the Sons of God" mentioned by Moses, who intermarried with the "daughters of men." Monboddo is really no evolutionist, for he holds that man was originally endowed with language, reason, religion, but had lost all these by the Fall, when mankind was cursed and degraded. Whether the pre-Adamite men had tails or not, is left an unsettled point. Even if the ingenious judge could be said to have forestalled the modern theory of development in tracing man from almost brute state, he sadly mars any scientific reputation by whimsically insisting that since the brilliant age of Greece everything has degenerated, and mortals who originally possessed vast strength and longevity have become more and more a puny race. Monboddo prophesies that "in not many generations the race will die out, the miserable remains of the species will be destroyed by a convulsion of nature," and a new heaven and new earth will be formed for a saintly race. [*Ancient Metaphysics*, v.; viii.; vi. 138.] Even from subtle disquisitions on metaphysics of the ancients he cannot exclude his darling hobby. He tells most wonderful stories of tribes with tails that exist to-day; he shows from ancient witnesses that there once lived human beings who had the feet of goats and horns on their heads. "We have the authority

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of a Father of the Church for a greater singularity of the human form, and that is men without feet and with eyes in their breasts.” [*Ancient Metaphysics*, iv. 48.] That men with the paws of dogs, and monsters with the head of a man and the body of a lion, had existed, he sees no reason to doubt, because Aristotle has well said, “everything exists or did at one time exist which it is possible to exist.” [*Ancient Metaphysics*, iv. 45; *Origin of Language*, i. 262.] It is unlucky for poor Monboddo that all his ingenuity and Greek learning should be forgotten and only his absurdities remembered. His books are long ago dead, if indeed they can be said ever to have lived, but we may say of them that if they wearied those who read them, they pleased their author and amused society, that never read them at all.

But let us turn from Monboddo the scholar to Monboddo in daily life. There, as in his books, he was the oddest character. In the Inner House he was never seen sitting with his brother judges on the bench, but below among the clerks, and for this a probable reason was given. It happened one time that his horse was mismanaged and died in the hands of the farrier, and he brought an action against the man. Instead of employing counsel, he descended from the bench and pleaded his own cause. After the expenditure of a vast amount of Roman law over the carcass of the quadruped, their lordships decided against their legal brother, and never forgiving the judges, especially Lord President Dundas, he never sat beside them again. [Chambers’s *Traditions*, ii. 158.]

He was seen at his best at Monboddo; there he was “Farmer Burnett,” cultivating his acres on an estate of £300 a year; dressed in rustic garb and blue bonnet; the kindest and absurdest of landlords to those whom he loved to call “my people,” - never removing a tenant or raising a rent, when rents everywhere were rising. “Improvers” like Lord Kames he denounced as “desolators,” because they made big farms and depopulated the land of cottagers. [In his garrulous way, in his *Ancient Metaphysics*, he laments the practice of tenants having farm-servants in their houses instead of cottagers. “I could double the rent of the land by letting it to one tenant; but I would be sorry to increase my rent by depopulating any part of the country” (iii. 306).] At that home and in that garb he was found when Dr. Johnson and Boswell rode from Aberdeen, through the bare, treeless country, and sent a message that they were at the gate. Johnson and he had met before, and they did not love each other. The judge afterwards wrote of the Englishman as “malignant,” and sneered at him as a man who “compiled a dictionary of a barbarous language, a work which a man of genius would rather have died of hunger than have undertaken.” [*Origin of Language*, v. 274.] Johnson on his part laughed hugely at “Monny,” as he called him, who was “as proud of his tail as a squirrel.” [Ramsay’s *Scotland and Scotsmen*, i. 350.] Now they met and they fraternised; the “Dictionary-Maker” grew

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genial under his host's courteous manner and hospitality in the long, oak-panelled dining-room, both finding grounds of sympathy in their common hatred of David Hume and Bishop Warburton. They parted pleasantly to meet elsewhere.

Topham, the English visitor to Edinburgh in 1776, remarked at the time on the love that the Scotsmen had of travelling to London. That propensity was strong in Monboddo, and after 1780 he went to England every year to meet the literati, and to join circles of fashion, where he gave immense entertainment by his humours and his ready wit. At Mrs. Montagu's he met Mrs. Hannah More, making her angry by upholding slavery, because Plutarch had approved of it, and by maintaining that *Douglas* was the greatest of tragedies, far excelling Shakespeare, who could never depict a king or a hero. [*Memoirs of Hannah More*, i. 252.] Eagerly he questioned Sir Joseph Banks, if he had during his voyage met with tribes with the primeval tails, and was disconcerted by the naturalist's negative. Old as he became, he made all his journeys on his well-known white steed Alburac - for he considered it ignominious for a man to be dragged at the tail of a horse, instead of riding upon its back; and as for riding in a chaise - a "box" he contemptuously called it - it was grossly effeminate to enter such a vehicle, which was unknown to the ancients. In Edinburgh he would not enter the modern conveyance of a sedan-chair, though, when the rain was pouring as he came out of the Parliament House, he would get his wig put into a chair and walk by its side: it was fit for a wig but not for a man. [*Kay's Edinburgh Portraits*, ii. 368.] George III., who knew all the gossip about everybody, was delighted with the old man, when he had him at Windsor - a veteran who, reckless of snow, rain, and stormy blast, would ride the vile roads to London. "Very odd - very odd!" exclaimed his ejaculatory Majesty; "my judges gallop to town on horseback, and my cavalry officers travel snugly in the mail-coach." [*Ramsay's Scotland and Scotsmen*, i. 359.] During one of these visits to the metropolis, the eccentric judge fell in love with that ever lovable Mrs. Garrick, and twice he offered his hand to the great actor's widow, whom everybody liked - a valuable gift which she politely declined. [*Walpole's Letters*, viii. 297.] So the widower got on the back of Alburac and placidly cantered back to his home, where truly he needed no brighter inmate than his daughter to shed sunshine.

The suppers in his house in St. John Street, off the Canongate, were memorable. There, under the most genial and courteous of hosts, the best and brightest of Edinburgh society was to be found - men of letters, women of fashion. Dr. Gregory, Henry Erskine, Principal Robertson, and Ferguson were there; the merriest voice with broadest Scots that ever issued from lovely lips resounded in

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the room when the Duchess of Gordon came; blind Dr. Blacklock was present, his body swaying from side to side; and Lady Anne Lindsay sat singing “Auld Robin Gray” as she knew best how to sing it, and she alone knew who wrote it. The light of the company was the host’s unmarried daughter, Elizabeth Burnett, adored for her grace, her sweetness, and her beauty. It was there that Robert Burns, in 1787, saw a brilliant company, but none so bright as she. “Well, did you admire the young lady?” asked a friend on his return from the house. “I admired God Almighty more than ever - Miss Burnett is the most heavenly of all His works!” exclaimed the enthusiastic poet. At the age of twenty-five the fragile girl died, and all Edinburgh mourned, and pitied her old father. It is pitiful to think that the one permanent effect of the scholar’s devotion to antiquity was probably his daughter’s death, for his Spartan regimen, which would not allow her to enter a carriage or a sedan-chair on coming from a dance or concert, was enough to injure a stronger frame than hers. In the country, in the hardest of winters, she was made to ride whatever the day might be, and Monboddo was heard to boast that he and his daughter were on horseback one wretched day, when the only traveller they met was riding with his face to the tail to avoid the blast. It is said that, after she died, [Ramsay, i. 354, 359.] his son-in-law covered the portrait to spare the old man's feelings. [Kay's *Edinburgh Portraits*, ii. 137.] “Quite right - quite right,” said the man of learning, casually looking up from his book. “Let us now go on with Herodotus.” These wretched “ancients” were his model for everything. Each morning, after bathing, he must anoint himself with oil, for so the Romans had done of old. (Dr. Johnson, after he was told of that habit, [Boswell's *Johnson*, 1848, p. 550.] would speak of him with contempt as “that man of grease.”) When laid down with illness, he proudly told Henry Mackenzie that it was no common fever he had - “it was a burning fever, a true Roman fever” - deriving profound satisfaction from the fact. [Clayden's *Early Life of Sam Rogers*, p. 170.] Famous at his house were the fortnightly suppers, “after the manner of the ancients,” the claret flagons garlanded with roses, which also bestrewed the table *à la* Horace, and the diet of strange fare with Spartan broth and *mulsum*. There he was glorious, pooh-poohing everybody, boasting that he “had forgotten more than most other men had ever known,” discussing science with his friends, Joseph Black, the chemist, James Hutton, the geologist, and the rough, unkempt, learned printer, William Smellie, who could speak on anything and wrote on everything. [Kerr's *Life of Smellie*, p. 416; *Guy Mannering* (notes).] The decorations of the table were antique, but the talk of the guests around it was modern, and as the venerable host took his wine with most alarming frequency, it never impeded his speech, but rather gave it more copious garrulity.

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While he was becoming deplorably deaf, he never would own that he had lost his hearing; it was, according to him, only the degenerate generation that had lost its voice. Deaf he certainly was. His lordship, being in London, was one day attending the Court of King's Bench, when a false alarm arose that the roof was giving way, upon which judges, barristers, audience all rushed wildly to the door. With perfect composure Lord Monboddo placidly kept his seat, hearing no noise, ignorant of the cause of the tumult. When asked why he sat still, he explained that he thought it was only an annual ceremony connected with English Law Courts, and he was interested to witness this relic of antiquity. [Chambers's *Traditions of Edinburgh*, ii. 177.]

The venerable figure of Monboddo was every year seen on horseback posting off to London, to visit old friends and delight old circles. At last, however, such expeditions were too fatiguing for his shrivelled old body. He was on his way in 1799 to make his annual visit, but only got as far as Dunbar, where he was taken ill, and forced to undergo the ignominy of being conveyed home in the despised chaise. "Oh, George," he said plaintively to his nephew, "I find that I am eighty-four." A few days later, in May, the venerable humorist was dead. Then the world gossiped, according to its fashion, of stories true and false about the old man's humours - how he used to fancy that the tails of babies were snipped off by midwives at their birth, and how he would watch at the bedroom door when a child was born, in order to detect the relics of a primeval ancestry. [Kay's *Portraits*, i. 19.] Others more worthily recalled memorable nights in his society, his sayings of curious wit, his sallies which set the table in a roar, while perfect gravity reigned on his ugly old face; his pleasant ways, his courtly, old-fashioned manners. They missed the familiar form which had trotted up innumerable stairs to merry suppers - the worn-out old figure they had daily seen standing at the door of Creech's shop, or pacing the Parliament Close - the owner of a most kindly heart, the author of most unreadable books.

LORD HAILES

While Lord Kames and Lord Monboddo were sustaining the reputation of Scotland for literary ability, and the character of the Bench for grotesqueness of manners, Lord Hailes did his best to add some dignity as well as learning to the legal body, which sat on the judgment seat with ways not too suggestive of the majesty of the law. These worthies, in spite of their speech and homely habits, were

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all men of birth; the Bar being a profession considered proper only for a gentleman. It was by sheer dint of brain and will that; Robert Macqueen, the son of a country “writer,” forced himself to the front of the noblesse de la robe, and as Lord Braxfield, Lord Justice Clerk, dominated the Court of Justiciary with the strength of his coarse personality, bullying his brother senators on the bench and the prisoners in the dock, pleaders at the bar and witnesses in the box, with perfect impartiality.

Sir David Dalrymple in his stout little person brought to his profession the rare qualities of dignity, good manners, and a good accent. He belonged to one of those Scottish county families which seemed to supply judges to the Inner House as if by natural right. Dalrymples since the days of Lord Stair, and Dundases even after the days of Lord Melville, were prominent in good places; the best legal offices fell to their claims, the best pickings of patronage came to their hands:

First cam' the men o' many wimples,
In common parlance ca'd Da'rymples;
And after them cam' the Dundasses,
Wha raid our gude Scots land like asses.

David Dalrymple, son of Sir James, of New Hailes, was born in 1726, and was educated at Eton, unlike his contemporaries of highest birth, who were content to be taught at parish and burgh schools for 3s. 6d. a quarter. After the usual study at Utrecht, followed by a tour in France, he came home. In those days, when a young man of birth and fortune had mixed with society abroad or in London, he was apt, on his return to Scotland, to be shocked with its homely fashions, the narrowness of its interests, and the breadth of its vernacular. In such supercilious mood Gilbert Elliot of Minto arrived in Edinburgh in 1743 from his Dutch studies, his French travels, and his London visit - a spark and a fop. “Next morning,” he writes, [*Caldwell Papers*, ii. 115.] “I provided myself in a huge cocked-hat, Parliament House gown, and bob-wig of very formal cut, and made my first appearance at the bar. I yawn all morning at the fore bar. The gentry are a very sensible sort of people, and some of them in their youth seem to have known the world; but by being too long in a place their notions are contracted and their faces are become solemn. The Faculty of Advocates is a very learned and very worthy body. As for the ladies, they are unexceptionable in manner, innocent and beautiful, and of an easy conversation. The staple vices of the place are censoriousness and hypocrisy.



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From the Engraving after Seton.

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There is no allowance for levity, and none for dissipation. I do not find here that unconstrained noble way of thinking and talking which every one meets with among young fellows of plentiful fortune and good spirits who are moving in a more enlarged circle of society." A few years later the young advocate would have less reason to complain, for austerity was passing away and levity was not much restrained in the city.

David Dalrymple, who was grave and prudent, would not, like his friend Gilbert Elliot, feel the restraints of that prim life irksome. He brought with him a scholarship and a legal lore which were highly esteemed, as well as formal manners and English tones which were not esteemed at all by broad-speaking, hilarious brethren in the Parliament House. Of course he made his way at the Bar - could any of the tribe of Dalrymples fail to do so? - in spite of an awkward style and "a weak, ill-tuned voice." But he had the soul of an antiquary. From 1751 he was busy writing tractates and biographies, editing chronicles, ancient poetry, and forgotten authors, sifting chartularies, printing old documents with learned disquisitions. His reputation as a scholar and a critic was so good that modestly David Hume wished him to revise his *Inquiry into the Human Mind*; but Sir David was orthodox, and to assist a sceptic was no task for him. In 1766 he was raised to the bench, taking the title of Lord Hailes, and the ability and pains which served him well as an antiquary were displayed as a judge - with a painful proneness to insist on little points and to forget main issues, which made lawyers grumble and advocates sneer at his pedantry. "Him! he kens only the nooks o' a cause," [Ramsay's *Scotland and Scotsmen*, i. 397.] growled Lord Braxfield. It was never forgotten that he dismissed a cause because a document had the word "justice" spelt without the final "e."

[To judge of this matter I cannot pretend,

For justice, my lord, wants an "e" at the end.

(Boswell's "Court of Session Garland," in Chambers's *Traditions of Edin.* ii. 172.)] He sat on the bench, the most humane of judges, in days when "hanging circuits" were the delight of Kames and Braxfield; and he was the most polite and sober of law lords in hard-drinking days, when the faces of legal luminaries were as red as their robes.

Law work did not interfere with the antiquarian labours of Hailes, who studied even when riding in his coach, and went on writing and editing books which fill formidable columns of library catalogues - productions which, being of a class for which the public did not yearn, were issued at his lordship's own charges. That was an age when the literary bent of Scotsmen was towards history - such as Hume, Robertson, Ferguson, Henry, his kinsman Sir John Dalrymple, and his friend

LORD HAILES

William Tytler of Woodhouselee, whose *Inquiry into the Evidence against Queen Mary*, in 1759, perturbed the serene temper of David Hume so keenly that he would leave a room if he found his little antagonist there. [Burgon's *Life of P. F. Tytler*, p. 69.] Lord Hailes naturally followed the taste of his countrymen, and became busy over his *Annals of Scotland from the Accession of Malcolm Canmore*. Through the medium of James Boswell he transmitted, for revision of the style, the proof-sheets to Dr. Johnson, to whom Rozzy had so often praised his lordship as a "lawyer and a Christian," a scholar and a wit, that the lexicographer was moved to drink a bumper to the health of the legal paragon. We find his lordship referring to his solemn judgment the grave point whether the adjective "free" or "brave" should be used to describe the Scots - a nervous anxiety which is almost pathetic, as not one mortal could possibly care, in his excellent but not alluring diction, what epithets he used. [Boswell's *Johnson*, 1848, p. 413.] In 1776 the first volume appeared of a work in which early sources of Scottish history were examined and sifted with admirable acuteness and impartiality, and a connected narration was woven out of disputed documents. Many a venerable story and cherished tradition were demolished or banished to mythland. Hitherto the field had been the preserve of unconscionable pedants like Ruddiman, who warred with party animosity, and in temper as atrocious as their style, over charters and "claims" and pedigrees. Now this "restorer of Scottish History," as Sir Walter Scott has called him, lifted research into the domain of history. The *Annals* are dry, deplorably dry; but invaluable still for facts - a quarry in which later writers have dug for material out of which to build more artistic works.

In the fine library at New Hailes the judge was busy editing and compiling; composing careful pieces of elegance for the *World*; translating Church Fathers, with erudite disquisitions dedicated to Anglican bishops; writing a learned answer to Gibbon's famous Fourteenth Chapter of his *Decline and Fall*, with a learning and ability which are more than respectable. The fastidious accuracy of mind which spoiled Hailes as a lawyer and made him tedious as a judge suited him well as an antiquary.

An estimable man was this scholar; but a little less self-consciousness would have improved his lordship, who kept aloof from the genial society of Edinburgh lest it might impair his flawless dignity. Distant in manner, he was seldom met with even in the company of Ferguson and Blair and Adam Smith for such friendly comradeship would jar on his prim punctiliousness, and vex his due regard for what was "becoming." [Ramsay's *Scotland and Scotsmen*, i. 410.] That David Hume should so abuse

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his position as keeper of the Advocates' Library as to add to its spotless shelves the lewd works of La Fontaine and Crébillon called forth his condign censure; for he and Monboddo, being curators, were nervous about the morals of the Bar - for which prudery the philosopher called them "old wives." Much as Dr. Johnson respected "dear Lord Hailes," it is evident that the moralist would on this question have sided with his pet antipathy, David Hume; for when referring one day to Hailes having written of the "impure poems of Matthew Prior as worthy of eternal opprobrium," "No, sir," said Johnson to Boswell - "no, sir, Prior is a lady's book. No lady is ashamed to have it standing in her library." ["Boswell's *Johnson*, 1848, p. 559.] From which we may infer that the feminine taste of that age was wondrous tolerant.

Lord Hailes preferred to live at New Hailes rather than in the Canongate, driving the five miles to Court every morning in his handsome coach. In his later years he was a short, stout person, with thick, short neck, of apoplectic appearance, fat cheeks, and pursy mouth. Self-possessed and placid [Kay's *Edinburgh Portraits*.] he would preside at his dinner-parties, at which probably Dr. Carlyle of Inveresk was present to say grace; and he proved an admirable host to his guests, who admired his wide knowledge, listened to his excellent and decorous anecdotes, drank of his good wine, and at a seemly hour rode home unsatisfactorily sober. When Lord Hailes died of apoplexy in 1792, the country lost a great store of gentlemanly learning and the bench much good law; but the gaiety of the Scottish capital was not eclipsed.