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J.W. Barry, LL.D.
James Barry, LL.B.
Alex. B. Barty, LL.B.

Dunblane 15th Sept. 1906.

Dear Sir

I have now the pleasure of sending you herewith to
Advocates
be placed in the ~~University~~ Library a copy of a book which has
been prepared by the Earl of Wharncliffe's instructions and
which deals with the ancient titles and other writings in his
possession having reference to his ancestors, Sir George
Mackenzie of Rosehaugh, Lord Advocate of Scotland, and the
Right Honble. James Stuart Mackenzie, Lord Privy Seal, with
short notices of these eminent men.

I may add that I took the liberty of suggesting that
a copy should be sent to the Library and that Lord Wharncliffe
permits me to say that he was happy to approve of the suggestion.

*Believe me
Yours faithfully
J.W. Barty*

*Only 100 copies printed, of which
this is No. 67...*

MACKENZIE-WHARNCLIFFE DEEDS







PORTRAIT OF
SIR GEORGE MACKENZIE OF ROSEHAUGH.
PAINTED IN 1665.
THE PROPERTY OF THE EARL OF WHARNCLIFFE.

ANCIENT DEEDS
AND OTHER WRITS IN THE
MACKENZIE-WHARNCLIFFE
CHARTER-CHEST

WITH SHORT NOTICES OF SIR GEORGE MACKENZIE OF
ROSEHAUGH; THE FIRST EARLS OF CROMARTY; THE
RIGHT HONOURABLE JAMES STEWART MACKENZIE,
LORD PRIVY SEAL OF SCOTLAND; AND OTHERS.

PREPARED ON THE INSTRUCTIONS OF THE
RIGHT HON. FRANCIS JOHN, EARL OF WHARNCLIFFE

BY J. W. BARTY, LL.D.



EDINBURGH
PRIVATELY PRINTED BY T. AND A. CONSTABLE

PRINTERS TO HIS MAJESTY

1906

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REPRODUCTIONS (*at end of book*):—

DEEDS

- I. Charter of Confirmation, or Bull, granted by the Pope, ratifying Charter in favour of George Blair of the lands of Bennathye, dated at St. Peter's, Rome, the 1st day of July in the fifth year of his pontificate.
- II. Charter by Robert Bruce, King of Scots, in favour of William Olifaunt, Knight, of the lands of Newtyle and Kylprony, dated 26th December in the twelfth year of his reign. (1317.)
- III. Charter by Robert Bruce, King of Scots, in favour of William Olyfant, Knight, of the lands of Ochtirtyre, dated 20th March in the twentieth year of his reign. (1326.)

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REPRODUCTIONS (*continued*)—

DEEDS (*continued*)

- IV. Charter by James, Earl of Douglas, in favour of Alan de Lawedyr, of subjects in North Berwyk (1384-1388).
- V. Charter by David, King of Scots, in favour of Walter Olyfaunt and spouse, of the lands of Newtyle and Kilprony, dated the last day of February in the thirty-fifth year of his reign. (1364.)
- VI. Charter by David, King of Scots, in favour of Walter Olyfaunt and spouse. (Duplicate of No. V.)
- VII. Charter by John Wallace of Craigie, in favour of the Regent Mortun, of the lands of Thuristoun, etc., dated 24th and 28th days of February 1575.
- VIII. Precept by George, Lord Halliburtoun, in favour of Walter Boyd and spouse, of the lands of Miltoun of Abernit, dated 1st July 1473.

LETTERS

- I. From Simon, or Simeon, Mackenzie of Lochslin to his 'loving and assured friend Alexander Farquhar, merchant burgess of Aberdeen.'
- II. Order by Sir George McKenzie to his clerk, Archibald Buntein.
- III. From Mr. George M'Kenzie, Sir George Mackenzie's son and heir, dated Bath, May 28th, 1701.

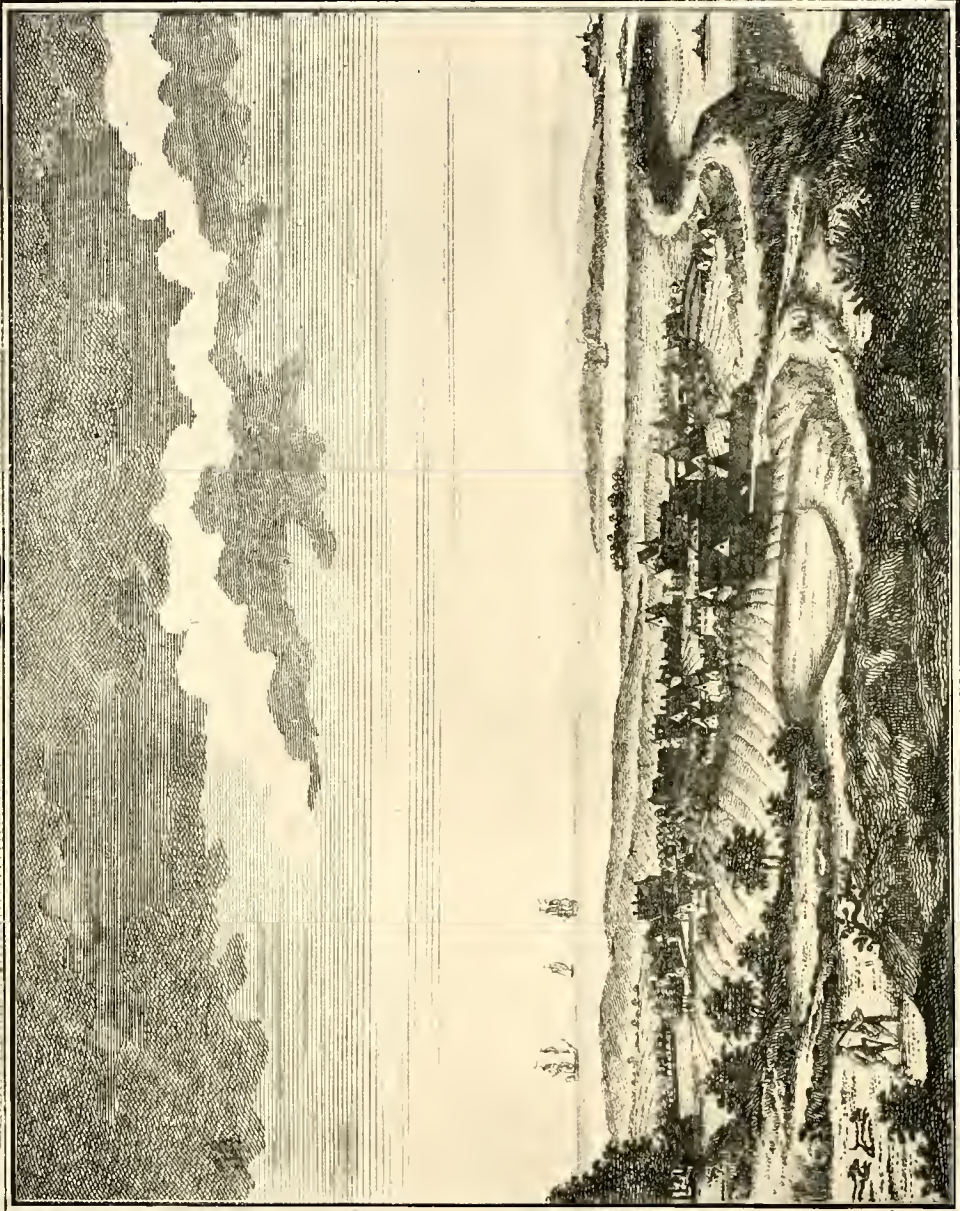
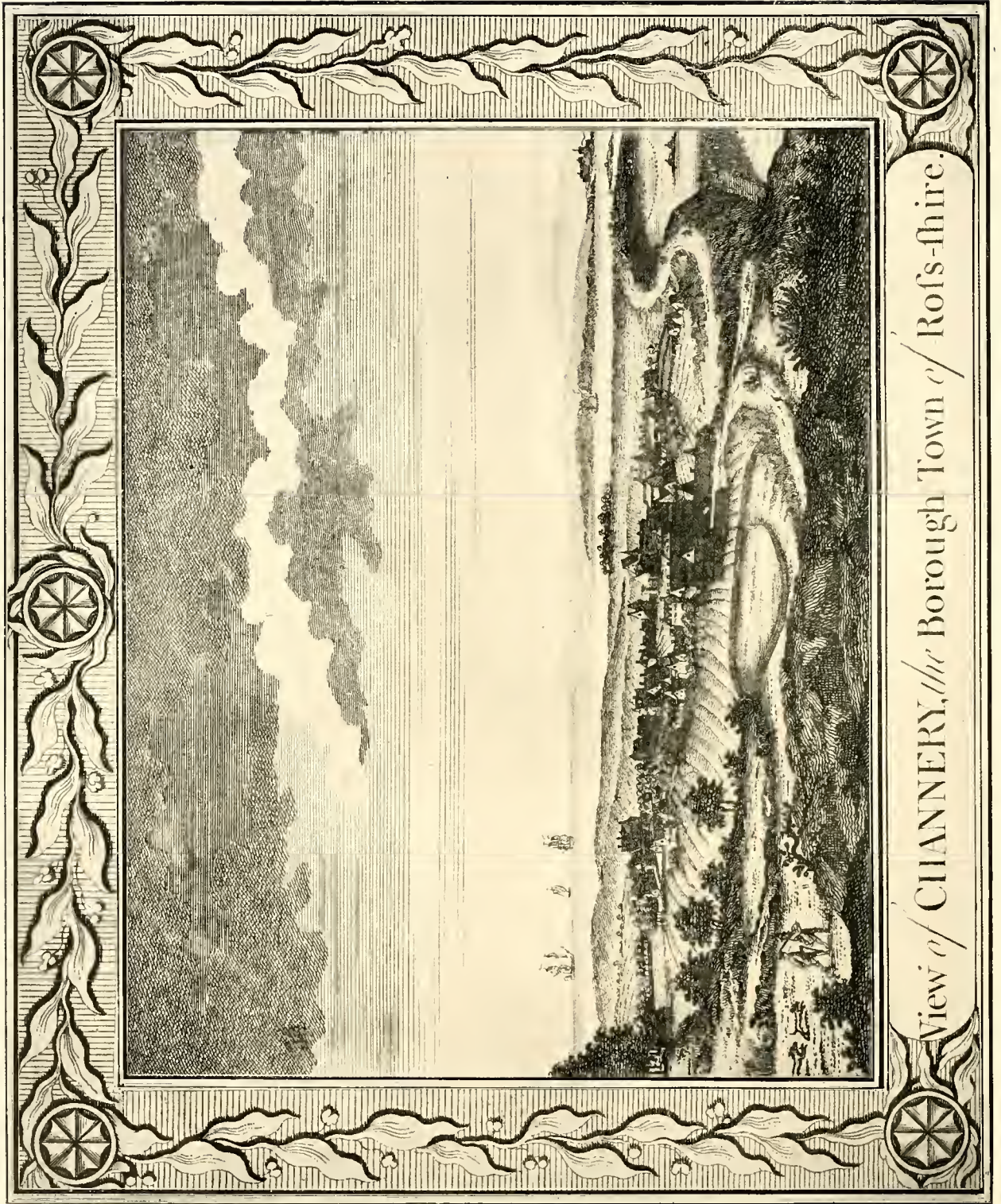
ERRATA

Page viii, Reproduction VI. For '(Duplicate of No. V.)' substitute 'of the lands of Ochtirtyre and Balcrag, of the same date as No. V.'

Page 133. Same alteration to be made.

Reproduction of Charter VI. For '(Duplicate of preceding)' substitute 'of lands of Ochtirtyre and Balcrag. 1364.'

Page 6, footnote. For '39' read '40.'



View of CHANNERY, the Borough Town of Ros-shire.

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PREFIXED to the original Inventory, dated 1780, of the papers and title-deeds belonging to his descendants, there is a short paper, styled a Memorial 'concerning the family of MacKenzie of Rosehaugh.' This paper, although containing interesting facts as to the pedigree of Sir George Mackenzie, and several of the principal events of his life, gives a very imperfect and inadequate account of one of the most able and powerful men who ruled Scotland in the troublous times of Charles II. and James II. In framing final notes with reference to the most interesting and valuable papers still remaining in the hands of the Earl of Wharncliffe, the representative of Sir George Mackenzie, it may not be improper to follow the example of those who prepared the original inventory, and to glean from the family papers and from other sources a fuller and more complete notice of Sir George Mackenzie. There was no one who, during his lifetime, and even after his death, was more maligned by his enemies:¹ while by those of the same political views, and by those who were members of the same branch of the Christian Church, he was greatly admired and beloved. Even to the present day, the hatred of those opposed to his policy most unfairly attaches itself to his name. Had he thrown over the Stuart kings, and forsaken the Episcopal Church for the Presbyterian, or, on the other hand, had the Stuart family regained the throne, and had the Episcopal Church been re-established as the National Church, how different would the popular feeling have been towards him. The admiration felt for him, and the personal regard for him so eloquently expressed by a few

¹ A contemporary, a Whig, blames Lord Stair and Sir George Mackenzie for 'each of them raking, tho' from Hell, all that may conduce to carry the causes that they heard *Flectere si nequeo superos,*' etc.

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friends when he died, would have been shared in by the Scottish nation. Success, like charity, covers a multitude of faults.

Sir George Mackenzie was the son of Simon or Simeon Mackenzie of Lochslin, in the county of Ross. The latter was a younger son of Kenneth, the first Lord Mackenzie of Kintail, by Elizabeth, or Isobel, Ogilvy, his second wife, and he was also brother-consanguinean of the first, and brother-german of the second Earl of Seaforth.

The first member of the great Highland family of Mackenzie of Kintail to be ennobled was Kenneth Mackenzie, who was in 1609 created a Peer with the title of Lord Mackenzie of Kintail. His brother Roderick Mor Mackenzie of Coigeach was knighted by King James. The following is the estimate formed by Sir George Mackenzie of Tarbat, first Earl of Cromarty, of Lord Mackenzie. 'He was truly of an heroic temper, but of a spirit too great for his estates, perhaps for his country, yet bounded by his station, so as he (his father) resolved to seek employment for him abroad; but no sooner had he gone to France, but Glengarry most outrageously, without any cause, and against all equity and law, convokes multitudes of people, and invades his estates, sacking, burning, and destroying all. Kenneth's friends sent John MacKenzie of Tollie to inform him of those wrongs, whereupon he made a speedy return to an affair so urgent and so suitable to his genius, for, as he never offered wrong, he never suffered any. His heat did not overwhelm his wit, for he took a legal procedure, obtained a commission of fire and sword against Glengarry and his compliers, which he prosecuted so bravely as in a short time, by himself and his brother, he soon forced them to retreat from his lands, and following them to their own hills, he soon dissipated and destroyed them, that young Glengarry and many others of their boldest and most outrageous were killed, and the rest forced to shelter themselves amongst the other Macdonalds in the islands and remote Highlands, leaving all their estates to Kenneth's disposal.' Lord Mackenzie married, first, Ann, daughter of George Ross of Balnagown, by whom he had three sons and two daughters. His eldest son Colin, who was afterwards first Earl of Seaforth, was his successor. Lord Mackenzie's second wife was Elizabeth or Isobel, daughter of Sir Gilbert Ogilvy of Powrie in Forfarshire.

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By her he had three other sons and one daughter. Alexander, the eldest, died without issue. George, the next son, succeeded his half-brother as second Earl of Seaforth. Thomas, the next son, was well known as Thomas Mackenzie of Pluscardine, whose issue is now extinct. The next son was Simon of Lochsln. Lord Mackenzie died in 1611 at Chanonry of Ross, and was buried in the church there 'with great triumph.' Colin, the first Earl of Seaforth, was only fourteen years of age when his father died, and the estates were for some time under the management of his uncle Sir Roderick Mor Mackenzie. The first Lord Seaforth is described by Lord Cromarty, as being 'a noble person of virtuous endowments, beloved of all good men, especially his Prince.' In the Ardintoul Manuscript it is said 'Colin lived most of his time at Chanonry in great state and very magnificently. He annually imported his wines from the Continent, and kept a store for his wines, beers and other liquors from which he replenished his fleet on his voyages round the west coast and the Lewis, when he made a circular voyage every year round his own estates. . . . It is scarcely credible what allowance was made for his table of Scotch and French wines during these trips amongst his people. From Inverness he sailed to the Lewis with what might be called a small navy, having as many boats if not more loaded with liquors, especially wines and English beer, as he had under men. . . . I have heard . . . say that the Earl never came to his house with less than three hundred and sometimes five hundred men.' He built the Castle of Brahan, and greatly enlarged the Castle of Chanonry. 'As he was diligent in secular affairs, so he and his lady were very pious and religious.' He built many churches, and spent largely on good works of all kinds. His only son died of small-pox in 1629. His lady survived her son only two years, and he himself died prematurely at Chanonry in 1633, in his thirty-sixth year, charging his half-brother and successor on his deathbed to protect the family, and show kindness to all his dependants. Anna, his second daughter, married, as her second husband, Archibald, ninth Earl of Argyll, who was beheaded in 1685.

The second Earl of Seaforth was the brother-consanguinean of the first Earl. His name was George, and during his brother's lifetime he

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was known as George Mackenzie of Kildun. Although personally attached to King Charles I. he took at first the side of the Covenant and 'joined the Assembly, the clergy, and the nobles in the Protest, and in favour of the renewal of the Confession of Faith previously accepted and confirmed by James VI. in 1580, 1581, and 1590.' The Earl of Sutherland, Lord Lovat, and many of the leaders of the north joined him. Soon afterwards, however, the influence of Montrose, who had dissociated himself from the Covenanters, induced Lord Seaforth to change his views, and in 1641, on Charles's arrival in Scotland, he was one of a number of distinguished noblemen who united themselves against the Covenanters. He did not long support this policy, but 'with unaccountable want of decision changed once more to the Covenanting side.' After Montrose's victory at Inverlochy, the Earl was sent by the Committee of Ross and Sutherland to meet Montrose, with the result that the latter arrested him. He was after a few days' detention released. After the battle of Auldearn, Lord Seaforth again changed sides, and once more publicly joined Montrose, in April 1646, at Inverness. After Montrose gave way in 1646, the Committee of Public Affairs attempted to heavily penalise the leading men of the Mackenzie clan by exacting forced loans from them. Sixteen Mackenzies were decerned to lend £28,666, 13s. 4d. Scots, but of this sum Sir Robert Farquhar of Aberdeen, the Treasurer, got not a single penny. Among those so decerned against were Lord Seaforth's brother, Thomas of Pluscardine, who on all occasions ably supported the Earl. Simon of Lochslin was not one of the sixteen, and it may be assumed, therefore, that he was in Dundee, or that he had had the prudence to avoid mingling himself up with his brothers in their changeable policy. In 1649 Lord Seaforth joined Charles II. in Holland, by whom he was appointed Secretary of State for Scotland. It is doubtful whether the Earl's regard for his own safety, or his loyalty to the exiled King, chiefly influenced him, but, in fact, he remained with Charles from 1649 to 1651. After the battle of Worcester 'he fell into a profound melancholy, and died in 1651, at Schiedam in Holland, . . . in the forty-third year of his age.'

Earl Kenneth, Sir George Mackenzie's cousin, the third Lord Seaforth, was born in 1635, and was therefore a year older than Sir George.

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In the year 1651 he was sent to King's College, Aberdeen. From the Ardintoul Manuscript we find that he was not able to continue his studies at Aberdeen 'after the army had been defeated at Dunbar the year before. Charles being then at Stirling recruiting and making up his army, with which he was resolved to march into England, the young Laird was called home in his father's absence . . . to raise his men for the King's service, and so went straight to Kintail with the particular persons of his name, viz. the Lairds of Pluscardine and Lochslin, his uncles.' Earl Kenneth was a devoted adherent of Charles II. His uncle, Thomas of Pluscardine, was, if possible, still more devoted to the royal Stuarts. He was present at Worcester, in command of a regiment from Inverness and Ross. After this battle Earl Kenneth was kept a close prisoner till the Restoration. His estates were forfeited by Cromwell, and his wife and family were left without any provision for their support. The Earl bore his long captivity 'with much firmness of mind and nobility of soul,' and on the restoration he became a great favourite at the court of Charles. 'During the remainder of his life little or nothing of any importance is known of him, except that he lived in the favour and merited smiles of his sovereign, in the undisputed possession and enjoyment of the extensive estates and honour of his noble ancestors, which through his faithful adherence to the House of Stuart had been nearly lost during the exile of the second Charles and his own captivity.' He died in 1678. He married in early youth Isobel, daughter of Sir John Mackenzie of Tarbat, and sister of Sir George Mackenzie of Tarbat, first Earl of Cromarty.

Earl Kenneth was succeeded by his son—also Earl Kenneth—known as Kenneth Og, or 'the little,' to distinguish him from his gigantic father, Kenneth Mhor. He also was a devoted adherent of the Stuart family; and he followed James II. to France, and thereafter to Ireland, where he was created Marquis of Seaforth. After the battle of the Boyne he returned to Scotland; gave himself up to General Mackay; was confined in the Castle of Edinburgh; was liberated in 1692; was again incarcerated; and was ultimately released by order of King William in 1696-7. During the remainder of his life Earl Kenneth Og lived abroad. His mother, the Countess-Dowager Isobel, had the principal charge of the

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estates and of his affairs, as will be seen hereafter in these Notes. He died in Paris in 1701.

It is unnecessary to follow the history of the Earldom of Seaforth farther or to say more regarding it than this, that had Sir George Mackenzie's heirs-male not become extinct, they would have been entitled to claim the Earldom of Seaforth, and would most probably have held it at the present time.

It has already been explained that Sir George Mackenzie's father was Simon Mackenzie of Lochslin.

Simon Mackenzie was twice married. His first wife was Elizabeth Bruce, daughter of the Rev. Peter Bruce, of Ferrar, Doctor of Divinity, who was both principal of St. Leonard's College in St. Andrews, and minister of the Church of St. Leonard's in that ancient university town. Dr. Bruce was 'a gentleman of great learning,' and descended from a very ancient family—Bruce of Fingask, in the county of Perth. He was a member of the famous Assembly of the Church which met in Perth in 1618, when he supported the passing of the 'Five Articles,' and acted as one of the Court of High Commission in 1610 and 1619. He resigned the charge of St. Leonard's in 1629 or 1630, aged sixty-three, 'Summa cum pietatis et eruditionis laude.' It is evident from the notice of Dr. Bruce, both in Scott's *Fasti Ecclesiae Scotticanae* and Calderwood's *History of the Church of Scotland*, that while Dr. Bruce had supported the ecclesiastical policy and schemes of James VI., he had done so with good judgment and moderation, as well as with ability. Calderwood, whose views were strongly opposed to those of the Court, does not disparage or find fault with Dr. Bruce. It may not be uninteresting to note that the 'Five Articles' propounded by his Majesty, which he earnestly urged the Church of Scotland to accept, were these: (1) Kneeling in receiving the sacramental elements of bread and wine; (2) The establishment of five holy days, viz. the days of Christ's Nativity, Passion, Resurrection, and Ascension, and of the Pentecost; (3) Episcopal confirmation; (4) Private baptism; and (5) Private communion.¹

¹ Simon Mackenzie's second wife was Agnes Fraser, daughter of Fraser of Culbockie (p. 39).

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The principal copy of the contract of marriage between Simon Mackenzie and Elizabeth Bruce is still among the family papers. Although the author of the paper describing the parish of Fearn in Sir John Sinclair's *Statistical Account of Scotland*, published in 1793, in which parish the Castle of Lochslin¹ was situated, states that 'it is said by some that the famous lawyer, Sir George Mackenzie, King's Advocate in King Charles II.'s time, was born in the Castle of Lochslin but there is no certainty of it,' there seems to be no reason to doubt that Sir George was born in Dundee in 1636. It has not been ascertained how Dundee came to be his birthplace, or why his father had resided for a time there. His possession of exceptional talents was proved at a very early age. It is said that 'in the tenth year of his age he was master of his grammar and of all the common classic authors that are taught in the schools.' He completed his University course at Aberdeen and St. Andrews Universities in his sixteenth year. Thereafter he studied civil law in the French University of Bourges for three years, and was admitted an Advocate in Scotland in his twentieth year—1656. His published works bear ample testimony to his linguistic, legal, and philosophical acquirements. His diligence as a student did not terminate with his admission to the bar. From 1660 to his death he wrote books on very varied subjects showing deep learning, a vigorous mind, and a 'pleasant wit.' His first publication was *Aretina*, a 'Serious Romance,' published in 1660, and thereafter his pen was never at rest. He discoursed on many subjects—from Criminal Law to the Law of Heraldry, and from the advantages of

¹ This author thus describes Lochslin Castle: 'It is said to be of five hundred years' standing. It stands upon an eminence about one mile north-east of the loch of Eye, and about six miles east of Tain; and is indeed one of the most conspicuous objects in this country. Its shape resembles two figures nearly square, joined together by the corners, in which junction there is a staircase to the top. The lesser one, which looks to the west, being about 20, and the greater, which looks towards the east, about 38 feet square. The Castle is 60 feet high. It is fortified with three large turrets, of which one stands upon the lesser square, and two upon the greater. These turrets are each of them capable of holding three or more men with ease, and in each of them are five small round holes of about 4 inches in diameter with three layer above them of a quadrangular form. The latter, it is imagined, were intended for the sentries or watchmen to see through, and the others for shooting arrows. The outer door of the kitchen was made of strong bars of iron, as thick as an ordinary man's leg, and the windows were closed with small grates or twisted stentions of iron, so that it may be readily supposed that it was almost impregnable.'

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Solitude to a Defence of the reign of Charles II., and a History of his own times. A large folio edition of his works in two volumes was published in 1716 to 1722, and, a century afterwards, all that the gross carelessness of the custodians had permitted to survive of the History of his own times was published. A full list of his many books will be found in the folio edition, and need not be referred to here. All his writings are free from the pedantry and ponderosity of the age, and while it may be said that they are somewhat overloaded with classical allusions, and do not disclose evidence of originality or genius, they are all exceedingly pleasant to read, fluent and euphonious in style, and characterised by genuine humour. Even had Sir George Mackenzie not filled so important a place in the legal and political history of Scotland, his writings would have secured a high position for him in the ranks of Scottish authors. From the day of his admission to the Bar, he distinguished himself as an Advocate. He was possessed of an agile mind, of great fluency of speech, and of exceptional courage. Qualifications such as these were at once recognised in an age when dexterity in pleading, acuteness in argument, and moral and physical courage were alike necessary to secure the success of any man ambitious to rise, either at the Bar or in the Scottish Parliament. He was re-admitted to the Bar in 1661 after the Restoration; and immediately thereafter was fixed upon as one of the Counsel to defend the Marquis of Argyll, charged with treason in respect of his compliance with the Cromwellian Government. His speech on behalf of the Earl was greatly admired, alike for its eloquence and courage. He argued that as a matter of necessity, every Scotsman had, to save himself and his wife and children from starvation, to comply with Cromwell, and that, therefore, the Marquis was guiltless of treason. He went on most courageously to show that the judges who were trying the case were all equally guilty of compliance, and calling to their recollection the parable in sacred Scripture of the servant who when forgiven by his master a great debt which he could not repay, at once went and put into prison a fellow-servant who owed him a paltry sum, warned them that their Royal Master might treat them in the same manner as the master of the cruel servant had treated him. ‘Phalaris (he said) was

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burned in his own bull, and it is remarkable that he who first brought in the Maiden did himself suffer by it.' This is an example of plain speaking scarcely to be followed at the present time, and most dangerous to the speaker in the year 1661. When remonstrated with for his boldness, he wittily answered 'it was impossible to plead for a Traytor without speaking Treason.'

Sir George Mackenzie was married in 1662 to a daughter of John Dickson of Hartree, one of the Senators of the College of Justice under the name of Lord Hartree. By this lady he had three sons and two daughters. The sons died in early youth, but both daughters survived their father, and they occupy very important places in the family history.

In 1663 he became a Judge Depute, a post of small emolument (£50 per annum), usually conferred upon younger members of the Bar.

In 1669 he was returned as one of the two Members for Ross-shire. At this particular time the Duke of Lauderdale had become somewhat unpopular with all parties, and Sir George Mackenzie became one of the boldest leaders of the opposition. In the session of 1669 an effort was made to persuade the Scots Parliament to consent to the appointment of commissioners to promote a union of the kingdoms, and to leave their nomination in the hands of the King. It was due to Sir George Mackenzie's eloquent and vigorous opposition that this proposal, although nominally carried, proved fruitless. Indeed his able opposition to the Duke of Lauderdale's plans resulted in his Grace expressing a serious intention to unseat him, as having no sufficient freeholder's qualification, in respect that the lands which he owned were held of the Bishop of Ross and not of the Crown, and that accordingly he was not a free Baron. On the advice, however, of a very sagacious and able man—Sir Archibald Primrose—this scheme was not farther proceeded with. Had it been so, it would only have made Sir George a more popular man and a more dangerous opponent. During the same session of Parliament he unsuccessfully opposed, but with unanswerable reasoning, a Bill permitting the trial in absence of persons accused of treason.

In January 1670 Sir George Mackenzie was married a second time, to Margaret Haliburton, daughter of Haliburton of Pitcur, the head

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of an ancient and wealthy Scots family. She was 'a lady of great piety and virtue, who, amongst the many other qualifications with which she was endowed, distinguished herself by the love which she showed to her husband's memory, which she expressed in her affection for all her husband's relations, a quality that is rare to be found in this degenerate age.' She had a son, George Mackenzie, who succeeded his father but died without issue, and it is said that she also had a daughter who died in early youth.

In the session of 1672 it was proposed that the summer sittings of the Court of Session should cease, Sir George Mackenzie arguing against the spending of the pleasant months of June and July 'in the most unwholesome and unpleasant town of Scotland.' It was very properly decided that the Court could not be allowed to spend a whole summer in idleness to the detriment of public business.

In 1674 certain royal burghs presented a letter to the King, protesting against certain Acts which had been passed into law, and craving the calling of a new Parliament. Certain provosts were put into prison, and on being examined, confessed that the objectionable letter had been framed by Sir George Mackenzie. By this time, however, the Duke of Lauderdale dared not venture to take any action against one whose position was so well established.

At this time a very extraordinary occurrence in the history of the Scottish Bar happened, and it was fraught with consequences of vital moment to Sir George Mackenzie. In a very important lawsuit, the person (a peer) against whom the Court of Session decided a question of procedure intimated an appeal to the Scottish Parliament. This was bitterly resented by the Court. The peer employed four counsel, one of whom was Sir George Mackenzie, to prepare a written paper in defence of the appeal. This paper was still more bitterly resented by the Court, who called the four advocates before it. 'A Hot Debate arose betwixt' the judges and the advocates. The King being appealed to, supported the Court, and ordered the advocates to submit. This they declined to do, and craved to plead before the Court, and in consequence they were by an order in Council banished twelve miles from Edinburgh. After some time Sir George Mackenzie, being satisfied that certain

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leaders of the Bar were unfairly leaving him to fight the battle by himself, and being persuaded of 'the great loss which the Lieges were sustaining,' used his influence to induce the members of the Bar to submit. He appeared before the Court and made an elaborate speech, which, although very clever and tactful, is scarcely of the kind which would be addressed to the Court at the present day. It is to be found in the biography prefixed to the second volume of his works—folio edition. The result is thus described—'The speech of our author being accompanied with that warmth and concern in which he delivered all his pleadings that had the least tendency to the good and welfare of the King and country, the Lords took it to their serious consideration, and Sir George's proposal being accepted of, the advocates returned to Edinburgh and were admitted to plead.'

In 1677 Sir John Nisbet of Dirleton, then Lord Advocate, was accused of having given advice and taken fees from both parties to a cause. This led to Sir George Mackenzie being offered the post of Lord Advocate.¹ At this time he declined to accept office, and offered to defend Sir John Nisbet; but the latter, conscious of the dangerous position in which he had placed himself, voluntarily resigned. Thereupon, although the claims to the office of another famous lawyer, Sir George Lockhart, the lifelong rival of Sir George Mackenzie, were supported by the powerful influence of the Duchess of Lauderdale, Sir George Mackenzie was, on the 23rd August 1677, appointed Lord Advocate; was knighted; and was sworn in a member of the Privy Council.

While it is very certain that no monarch and no government had ever a more faithful, able, and courageous servant than Sir George Mackenzie, he had the misfortune to attach himself to the unhappy Stuart family, to a losing and unpopular cause, and to a Church hated and vilified by its powerful and victorious enemies. The consequence was that from the date of his appointment as Lord Advocate to his death an ever-increasing volume of vindictive popular hatred gathered round him, of so intense a nature that even yet the descendants of the old Whigs of

¹ On the 28th June 1676 a letter from the King was read in the 'Treasury' commanding Sir John Nisbet, his Advocate, to call for Sir George Mackenzie's assistance in the concerns of his office and act by his advice, and granting £100 sterling of pension for the same.—Fountainhall's *Journals*, 226.

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1688 and of the Presbyterians of the Revolution join in libelling the memory of one, of whose talents, virtues, and failings they have no personal knowledge derived from an impartial examination of the history of that most unfortunate century for Scotland, but who repeat merely what they find in the excited volumes of political or clerical opponents of Sir George Mackenzie.

It is not difficult to explain why Sir George Mackenzie should have supported King Charles II. and his brother James II., why he should have been opposed to the Revolution settlement, and why he should have supported the Episcopal form of Church government.

There was probably no part of Scotland more perfectly loyal to the unfortunate Stuart family than Ross-shire was, and the Mackenzie family were a powerful family in that county. It would, therefore, have been indeed surprising if Sir George Mackenzie had failed, when he came to manhood, to devote his talents to the service of the Stuart kings, whom from childhood he had been taught to revere. As a sincere Episcopalian, also, he must have felt himself bound by religious convictions not only to fear God, but also to honour the King. It is admitted by all that the Episcopal Church in Scotland has ever been deeply attached to the monarchy, and, in times which have only recently passed away, to the ancient Stuart race of kings. His Church connections, therefore, formed another strong tie between Sir George Mackenzie and the Royal Stuarts. His love for the Episcopal Church was as hereditary as his loyalty to the King. His grandfather, Dr. Peter Bruce, the Principal of St. Leonard's College in St. Andrews, was, as we have seen, a staunch supporter of King James VI.'s Church policy, and it cannot be doubted that his daughter, Sir George's mother, instilled into the heart of her son in childhood the affection for the Episcopal Church which he retained till death. That Church was in 1636, the year of his birth, the endowed national Church. It had, after much opposition, been recognised by Parliament as the Established Church in 1612. It remained so till 1638, when the well-known 'National Covenant' was framed and enthusiastically signed. The overthrow of the Episcopal Church may be said to have been completed by a General Assembly of Presbyterians, held in Glasgow in November and December of that year. From that

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date till the restoration of Charles II. the Presbyterian Church, it may be said, ruled Scotland, and it must be confessed that the cruel treatment which that body meted out to its opponents explained and palliated, if it did not justify, the retaliatory measures of the King's Government from the Restoration to the Revolution.

One of the most recent historians of the Church of Scotland, an eminent minister of the Established Church, makes sad references to these Presbyterian excesses. He writes thus: 'At this time the executions of loyal and good Scotsmen by the Estates, goaded on by the Covenanters, were frequent and disgraceful. Sir John Gordon of Haddo (from whose confinement the dungeon beside St. Giles' was called "Haddo's Hole") was guillotined, 19th July 1644: the same fate and date applying to Captain John Logie, who had been captured with him. James Small, a messenger from Montrose to the King, was hanged at the Cross, 1st May 1645. After the battle of Philiphaugh, prisoners, to whom quarter was promised by Leslie, were slaughtered in the courtyard of Newark Castle on the brutal pressure of certain army chaplains, while others were smashed and drowned by being thrown over a high bridge on Ettrick or Yarrow. Ten prisoners of mark made at Philiphaugh were appointed to death. Three of these suffered at Glasgow, viz. Sir W. Pollock, Ogilvie of Inverarity, only eighteen years of age, and Sir W. Nisbet. At St. Andrews were guillotined Sir Robert Spottiswoode, Secretary for Scotland, and second son of the primate; Captain Andrew Guthrie, son of Bishop Guthrie of Moray; Colonel Nathaniel Gordon, on 20th January 1646; and at the same place, two days later, William Murray, brother of the Earl of Tullibardine. In Kintyre took place a massacre of poor disarmed natives by Leslie, instigated by a Covenanting preacher, called John Nevay. In February 1645 a committee of Assembly pressed for the execution of political prisoners in the Tolbooth, when Wishart, afterwards Bishop of Edinburgh, and Irvine of Drum, and two of his sons, were in the loathsome place called the Thieves' Hole fighting for their lives with swarms of rats. It is only fair to record these barbarities perpetrated on Episcopalians and Loyalists by the Scots Estates when in sympathy with the Covenanting leaders, for it was these and like excesses that prompted the terrible revenge that for twenty-eight years

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followed the Restoration of 1660. . . . In the same year of blood and revenge by temporary law took place three most cruel executions of honourable men—the Duke of Hamilton, 9th March (in London); Earl Huntly, 22nd March; and the Marquis of Montrose, 25th May. . . . These Scottish excesses, from 1643 to 1660, hamper fair-minded Churchmen in condemning to the full the cruel retaliations of Charles II.' When these admissions are made by a Presbyterian minister, it is not surprising that this long story of wanton cruelty inflicted on members of his own Episcopalian communion should have been indelibly impressed on the mind of Sir George Mackenzie, then a youth with a mind receptive of the horrors perpetrated during this sad and melancholy time. He himself, in his *Vindication of the Government of Charles II.*, refers to 'the dreadful slaughter of several hundreds, killed after free quarter given and surrendering of the Castle of Dunveleigh, which made Lieutenant-General Leslie, who then commanded the army, threaten to lay down his commission, notwithstanding of a violent sermon made before him on these words—1 Samuel, chap. xv. ver. 14: "What meaneth then this bleating," etc.' He also refers to the 'abominable' executions of Huntly, Montrose, Spottiswoode, 'and seven hundred Gentlemen more who died by their Justice Court . . . and against four hundred and fifty gentlemen and commons who died by the Justice Court of Argyle.' The purposeless and brutal slaughter of women and children at Linlithgow, by throwing them over the bridge into the river for no other reason than this, that they had followed Montrose's army, is also often quoted as an example of the savage cruelty shown by the Estates under Covenanting influence.

Is it surprising, then, that in 1660 Charles II. and his advisers, having a very vivid recollection of the principles preached by the Presbyterian ministers, of their betrayal of Charles I. to the English Parliament, of their treatment of Charles II. himself, of their teaching the people the supremacy of the Church over the State, and the duty of obeying the Church rather than the King, of the rebellion which they instigated and headed, and of the bloodshed and horrible cruelties which they inflicted upon many unfortunate men and women of all classes—should have resolved that it was impossible to trust the

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Presbyterian Church longer, or to make it the Established Church of a country, to which the whole people had recalled Charles II. with acclamation, and, repudiating the Commonwealth and puritanism, had gladly again accepted a race of kings who claimed to rule by divine right? It was manifest to them that to place the Presbyterian Church again in power was to court, if not another rebellion, at least a constant contest for supremacy between the King and the Church, and a certainty of continuous and restless dispeace through the whole land. Bearing in mind that the most far-seeing men of that time had not the slightest reason to suppose that the popular attachment to the Stuart family was not deep-seated and enduring, or that within a score of years, or a little more, a successful revolution was to be effected—no one can deny the prudence of the policy which induced the King's advisers to recommend the establishment of the Episcopalian Church, whose loyalty was undoubted, and whose principles and interest alike favoured the monarchy. 'We must remember too' (as Mr. Andrew Lang states in the third volume of his *History* just published) 'that the Government for political reasons in England could not abandon Episcopacy in Scotland. . . . Nothing short of what William III. conceded to the Kirk could have left the fanatics in a negligible condition, and what William gave, Charles, though by temperament averse to persecution, could not possibly give. Thus it was inevitable that the Scottish Government should continue, in Mackenzie's phrase, to whip the top, and earn perpetual odium.' Under other circumstances, the forms of worship adopted by the Episcopal Church would have given little offence. Sir George Mackenzie thus describes the form of worship. 'The way of worship in our church differed nothing from what the Presbyterians themselves practised (except only that we used this doxology, the Lord's Prayer, and in baptism the Creed, all of which they rejected). We had no ceremonies, surplice, altars, cross in baptisms, nor the meanest of those things which would be allowed in England by the dissenters in way of accommodation; that the most able and pious of their ministers did hear the Episcopal clergy preach, many of them communicated in the churches, and almost all the people communicated also; so that it cannot be said that they were persecuted and forced to join with an unsound, much

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less heretical, church as the French Protestants are.' The absolute correctness of Sir George Mackenzie's narrative is corroborated by others. Every one knows that the saintly Leighton, Bishop of Dunblane, and Archbishop of Glasgow, exercised his Episcopal jurisdiction in the way least offensive to Presbyterian sentiment, by restricting himself to the powers willingly assigned by Presbyterians to the Moderator of a Presbytery and the Moderator of a Synod, and that the forms used by him in worship were of the simplest kind. And yet, notwithstanding the saintliness of his character, the fervour and purity of his religion, and the humility of his daily life, Leighton, who accepted a Bishopric in the hope of being able by his influence to persuade good men of all ranks and conditions to unite in one Church, under the simplest and least objectionable Episcopacy, had to confess that what he longed for was unattainable, and resigned office rather than be a party to the policy of Archbishop Sharp and the King's representatives in Scotland. Sir George Mackenzie thus characterises Leighton in the history of his own times. 'It is easily found that the Bishop of Dunblane was the most proper and fit person to serve the State and the Church, according to the present platform of Government now resolved upon; for he was in much esteem for his piety and moderation amongst the people, and as to which the Presbyterians themselves can neither approach or equal him; albeit they hated in him most of all his fraternity, in respect he drew many into a kindness for Episcopacy by his exemplary life rather than debates. His great principle was that devotion was the great affair about which churchmen should employ themselves; and that the gaining of souls and not the external government was their proper task; nor did he deem it fit, and scarce lawful, to churchmen to sit in councils and judicatories, these being diversions from the main. And albeit his judgment did lead him to believe the Church of England the best model of all others both for doctrine and discipline, yet did he easily conform with the practice of the Christians amongst whom he lived, and therefore lived peaceably under Presbytery till it was abolished; and when he undertook to be a Bishop himself, he opposed all violent courses whereby men were forced to comply with the present worship beyond their persuasions, and he had granted a latitude and

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indulgence to those of his own diocese before the King had allowed any by his letter. This made the world believe that he was the author to his Majesty of that public indulgence, and the statesmen who were unwilling to be authors of an innovation which some there thought might prove dangerous, were well satisfied to have it so believed; but, however, these principles rendered him a fit instrument in their present undertakings.'

From the time of the Reformation in Scotland, the Presbyterian clergy adopted the principle of the spiritual independence of the Protestant Presbyterian Church, and believed that neither King nor Parliament dare interfere with the Church as the mouthpiece of the Lord Jesus Christ, its admitted Head; but then as now the temptation of churchmen was to elevate the Church above the State, and, forgetting its own proper duties and functions, to interfere in the political life of the country and its civil government. No doubt many of its ministers were men of the highest intellectual powers, and better qualified to lead the people than the nobility of that age. They were honest men, free from self-seeking, with no personal ends to serve; but they were fanatical in the extreme, and rude in speech and manner, and believing that they had the powers conferred on the Jewish prophets of old, they arrogated to themselves the privilege of scolding in public the highest dignitaries of the State, hesitating not to reprove in the most audacious fashion the reigning sovereigns. It is apparent that such presumption must have been most offensive to the Stuart kings, and most destructive to the growth of personal loyalty to the monarch, and the peace of the realm.

On the re-establishment of Episcopacy in 1660 it was soon found that the Scottish people were dissatisfied. They resented the extrusion from their parishes of the Presbyterian ministers. The injudicious conduct of the King's Scottish ministers and the violence of the leaders of his Majesty's troops exasperated the people, and led to open rebellion which culminated in the affair of Rullion Green. This was followed by severe punishments upon those who were present. This severity did not render Episcopacy more popular. The people still declined to attend Episcopal services. Presbyterian Church services were held in private houses. These meetings were called conventicles. In order to prevent

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this practice extending, a law was passed imposing penalties if more than five strangers attended a conventicle, 'having thereby,' as Sir George Mackenzie states, 'at once the free exercise of their conscience in their families, and yet securing the State against such a total defection as might involve us in a new civil war, which without doubt was all the State designed.' This law was evaded by field conventicles, as they were called, being held, at which it was alleged many attended bearing arms. Unfortunately more drastic legislation followed. By subsequent statutes every one was bound to reveal all that he knew about conventicles on oath, and every preacher at a field conventicle might be punished with death and confiscation. By another Act any extruded minister committed a crime who administered baptism. By still another Act absence from church for three successive Sundays was a crime. Thereafter two 'Indulgences,' as they were called, were granted by the King and Council, by which the old 'outed' ministers were allowed to occupy their manse and glebes and a sufficient 'Maintenance.' These indulgences were taken advantage of, greatly to the indignation of the more resolute and fanatical clergy. At this time the firm belief of the Scottish Presbyterians was that their clergy were being persecuted for conscience' sake—for their religion. This was wholly denied by the Government of the time. King Charles's ministers held these views: (1) That the laws against house conventicles were far less severe than the laws of England had been; or the laws of Sweden against Calvinists; or the laws made by Presbyterians and Independents in New England; (2) That dissent in Scotland was different from dissent elsewhere, in respect that in Scotland it naturally developed into rebellion; (3) That the conventicle laws were not directed against religious opinion but against meetings which took the form of rebellious and treasonable combinations; (4) That fines were at once remitted where the parties conformed, and that no man was executed in this reign who said 'God bless the King.'

Every one who has impartially considered the history of these times knows that no branch of the Christian Church practised religious tolerance. Knox himself did not understand the very alphabet of religious tolerance, and, when the Roman Catholic Church was in power

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it persecuted Protestants; when the Episcopal Church predominated, it persecuted the Presbyterians; and when the Presbyterians were in ascendance they impartially persecuted both Roman Catholics and Episcopalians.

In 1677, then, when Sir George Mackenzie became Lord Advocate, the King and his ministers were using every means—some of them unwise and cruel—to support the Episcopal Church in Scotland and to check the violence of the various sections of Presbyterians, who, embittered and exasperated, were, in the excess of their fanaticism, become dangerous to the peaceable government of the kingdom. In blaming Sir George Mackenzie for the manner in which he executed his official duties from 1677 to 1685, most critics fall into the error of supposing that in those times the Lord Advocate had the power of prosecuting or not prosecuting, as he thought right. That was far from being the case. Even in these enlightened times a public prosecutor cannot always act on his own judgment. In his time he had to prosecute when so instructed by the great officers of State and the Privy Council.¹ He was bound, as counsel for the Crown, to carry out the instructions he received. He refers in one of his works with approval to the contention of the Lord Advocate of 1673 that he was the King's servant, and therefore he would pursue no man without express warrant from the King or his Commissioner. Again, those who rail at Sir George Mackenzie are not aware that the public prosecutor has no right to question the righteousness or propriety of the statute law of the kingdom. He is bound to see these laws, until repealed, carried into effect, and those who so glibly condemn King Charles's Lord Advocate, if they only thought for a moment, would see that they ought to condemn the Scottish Parliament and the officers of State, and not the public prosecutor. Sir George Mackenzie, whatever his private sentiments were, was compelled to prosecute all offences created by statute. All that he could do was, in so far as he was able, to see that at the actual trial accused persons had an opportunity of fully defending themselves. That Sir George Mackenzie ameliorated, in the interests

¹ In Stephen's *Life of Archbishop Sharp* (p. 530), it is stated that Sir George Mackenzie 'was ordained to proceed against' the man Mitchell who attempted to assassinate Sharp.

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of accused persons, the harsh procedure of Scottish criminal courts is undoubted. A few of these reforms may be mentioned. He succeeded in having it enacted that an accused person should have a warrant to cite witnesses for his defence. On his initiative lists of jurymen were made up, and the jurors acting in the trial were selected without the Lord Advocate having any opportunity to pack the jury, and after the accused had objected to such as he wished not to sit. He also by his intercession had a rule made that, except in cases of treason, the counsel for the accused should address the jury last, and he put an end to the practice of the Clerk of Justiciary, an officer of the Crown, being confined with the jury, and arranged that the jury should name their own clerk. It is also clear that in many cases he used his influence to have the best counsel employed on behalf of the accused person. While these reforms must be placed to Sir George Mackenzie's credit, it must not be forgotten that even in this enlightened age, while a public prosecutor examines with the greatest care and impartiality the information placed in his hands supporting a charge of crime, whenever he resolves that a prosecution must take place, he does his best to obtain a conviction, and knowing that counsel for the prisoner addresses the jury after him, he feels it his duty to submit the case in its most convincing form to the jury, and does not profess to sum up the evidence in that judicial manner which is becoming to the presiding judge. It is easy to understand, therefore, that in the last quarter of the seventeenth century, when the prosecution of accused persons in certain cases was looked upon by the majority of the nation as religious persecution, when persons convicted of treasonable practices were viewed as martyrs, and their executions as judicial murders, and when the Lord Advocate could not discharge the official duties incumbent upon him without being reviled as a 'bluidy' malefactor, no public prosecutor would exercise the duties of his office without being assailed personally as the sole cause of every prosecution. It cannot be doubted that Sir George Mackenzie suffered greatly from the false notions entertained of his powers and position as regards prosecutions, and, what is very remarkable, these mistaken views are held even by the present generation, who repeat the ancient calumnies without giving them a

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thought. In a book recently published, an author who ought to have known better, if his political opinions did not altogether blind him, repeats with vindictive bitterness all the scandalous aspersions of the covenanting leaders during the close of the seventeenth century. It must, of course, be understood that even although it were possible, and it is probably impossible, to defend the Duke of Lauderdale, the Duke of Rothes, Lord Aberdeen, Lord Perth, and the other ministers of State, this is not the occasion for entering on such a subject. Suffice it to say, that whatever illegalities and cruelties these men perpetrated, and they were great, and whatever excesses and vices they indulged in, and they were infamous, no responsibility lies upon Sir George Mackenzie with respect to these men.¹

The principal cases in which Sir George Mackenzie has been subjected to sharp criticism from the time of that vain, egotistical, and self-sufficient but clever prelate, Gilbert Burnet, Bishop of Salisbury, whose personal ill-feeling to Sir George he cannot conceal, down to the last historian who writes with the Covenanter bias, are those (1) of James Mitchell, (2) of Baillie of Jerviswoode, (3) of the Earl of Argyle, and (4) of the two poor women drowned in the Solway.

Mitchell, it was supposed, was the man who in 1668 fired in the street in Edinburgh at Archbishop Sharp, who was driving in his carriage along with the Bishop of Orkney. The shot missed Sharp, but inflicted on his brother of Orkney a wound from which he never recovered. Mitchell absconded to Holland, but returning in 1674 he was arrested. He confessed the crime in the presence of the Privy Council, and, whether before or after the confession, it seems clear that it was promised that his life would be spared. At this time he was sent to prison, and remained there till 1678. It will be noticed that Sir George Mackenzie was not in the Privy Council when Mitchell confessed. In 1678 Sharp, who was in terror of his life, and hoped no doubt that by torture there might be extracted from Mitchell the

¹ In Wodrow's *History of the Church of Scotland* there is recorded, in vol. iii. p. 197 *et seq.*, a long examination, by a Committee of the Privy Council, of the Rev. Archibald Riddel. Any impartial reader will admit that the examination of the Lord Advocate and the other members of the Council is perfectly fair and temperate, evincing indeed a friendly spirit towards Riddel.

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names of his accomplices, so that they also might be prevented making any other attempt against the life of the Archbishop, insisted on renewed proceedings being taken against Mitchell. Torture being unavailing, he was, at Sharp's instigation, put upon his trial. Sir George Mackenzie prosecuted, and his able rival, Lockhart, defended the accused. The principal proof was Mitchell's own confession. Its competency was objected to, it being given under promise of pardon. The question of the alleged promise was submitted to probation; and it is certainly lamentable to find that the promise was denied by the Duke of Lauderdale, his brother, Lord Halton, Lord Rothes, Archbishop Sharp, and others, who had been present at the Privy Council meeting. It may be that the confession was made before the promise was given, although there seems to be no support for this theory, but in any case the promise *was given*, and the statements, therefore, made by the Privy Council were most unjustifiable, being attributable either to gross carelessness, to an unexplained failure of memory, or to wilful perjury, and their enemies hesitated not to accuse them of that dishonourable crime. Indeed, at a subsequent date Lord Halton was confronted with his own letter written at the time when the Privy Council gave the promise, and admitting the promise, and the King was asked to proceed against him for gross perjury. This his Majesty would not do, but Halton had to part with the property of Dudhope, near Dundee, in order to pay a penalty of £20,000. But Sir George Mackenzie was in no way responsible for the failure of memory, or perjury of the Privy Council. He was bound, as prosecutor, to believe his own witnesses, and how could he venture to question the truthfulness of his Majesty's principal ministers? Mitchell was convicted and executed. It is true that it is impossible to defend the Duke of Lauderdale, who yielded to the solicitations of Sharp, who, for his own protection, insisted on Mitchell's death, and in a weak moment, and in defiance of his own promise, dishonourably sanctioned the execution. This execution was not, however, the judicial murder of an innocent man. No one doubted Mitchell's guilt. He admitted it prior to his execution and gloried in what he had done, and Sir George Mackenzie states that there was evidence of his intention to renew his attempt on Sharp's life. Mitchell, therefore, received the due reward of his deeds, and in

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obtaining the conviction Sir George Mackenzie committed no moral wrong. The Duke of Lauderdale and the members of the Privy Council were in a different position. Even after conviction they had the power to fulfil, as honourable men, their promise to save Mitchell's life, but their sin must not be laid upon Sir George Mackenzie.

Probably no case tried during this unhappy time gave rise to greater or hotter public feeling than that of Baillie of Jerviswoode, and it is not surprising that it created an outburst of public sympathy. He was a man of the highest personal character, a sincere Christian, and a member of a family which had acquired, and to this day retains, the respect of the majority of Scotsmen. At the time of his trial he was in the most feeble health, and scarcely able to appear in court or to plead. He was brought into court in his night-dress, and cordials had to be administered during the whole trial. He was supposed at the time to be dying. Why it was thought necessary to try him at all is not apparent. He was charged with being accessory to the Rye House plot, and to have concealed treasonable practices, and Sir George Mackenzie affirms that the evidence against him was clear, and that Lockhart and Sir John Lauder both agreed with him in this, and they also acted as counsel for the prosecution. Mr. Andrew Lang in his *History of Scotland* makes it clear that Jerviswoode and Argyle desired to bring in the Prince of Orange, and eject Charles II. and his brother. Mr. Lang adds: 'Whatever Argyle and Jerviswoode intended, their conduct was certainly treasonous.' Possibly his Majesty's ministers may have thought that the conviction and execution of a Presbyterian so respected would strike terror into the ministers and others, who at this time were openly preaching treason. In this the gravest miscalculation was made; to hurry a dying man, beloved and respected by the people, to trial and to death, is a very sure means to arouse the sympathy of the nation, and it did so. It cannot be questioned that Baillie had, to some extent, transgressed the laws with respect to treason, and made himself amenable to prosecution; but it would have been wise policy on the part of the ministers of State to have permitted him to die in peace. While in these times of ours there will be no doubt of the wisdom of such a policy, it must not be forgotten that those responsible for the peace of Scotland were honestly of opinion

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that treason and revolution were rampant, and could only be put down by vigorous measures and stern repression. Who could have supposed at this crisis that Charles II. would die within a year, and at an age which, in these modern times, is thought youthful, or that within a few years James II. would be deposed and expatriated. His Majesty's ministers would have been culpably reprehensible if they had allowed the disregard of the statute law of the country to become general. They were bound to maintain the laws and to secure their being obeyed. But granting all this, they grossly blundered in trying a man already moribund, as Baillie was. The blame, however, must not fall on Sir George Mackenzie. When the Privy Council insisted on the trial, and when he found that Sir George Lockhart and Sir John Lauder both agreed that the evidence against Baillie was clear, he could not possibly decline to carry out the orders of the Privy Council. Baillie himself reproached the Lord Advocate with inconsistency, he having spoken to him in prison with sympathy, which he (Baillie) thought inconsistent with his conduct in court, but Sir George Mackenzie himself pointed out to Baillie there and then that there was no inconsistency.¹ An advocate may, as a private person, hold views which are not those of the client whom he represents. In pleading a case an advocate does not proclaim his own personal sentiments; he presents to the court his client's case in the most persuasive and convincing manner of which he is capable, and as his client would have done had he had the requisite ability. In the prosecution of Baillie, then, Sir George Mackenzie was bound, as he did, to plead as forcibly as he could in support of the policy of the Privy Council, and subordinate his own personal views of the case whatever they may have been. This very elementary truth as to the duties and practice of advocates, Sir George Mackenzie's critics, one and all, wilfully overlooked.

Even less blame can be attached to Sir George Mackenzie as to the prosecution of the Earl of Argyle. In 1681 what is known as the 'Test

¹ Erskine of Carnock in his *Journal* (p. 100) gives a different version of what was said by Baillie to the Lord Advocate, and of the latter's reply: 'Jerviswood said to the Advocate' how he had said to him that he was now convinced of his 'innocence.' The Lord Advocate answered, 'I said I thought you was indeed innocent of any design against the King.'

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Act' was passed. By this Act it was necessary to take an oath not to attempt to alter the Government either in Church or State. The Earl most foolishly insisted on taking the oath with the explanation that he understood that it would not prevent his supporting improvements in Church and State, and in so far only as it was consistent with the Protestant religion. As the oath was intended to affirm the absolute loyalty to the King of every one who took it, it was evident that its object was frustrated by the Earl's explanations. Great pressure was brought to bear upon him to withdraw from the position he had taken up, but he would not be persuaded. An oath of allegiance being useless unless unequivocally binding, and Lord Argyle's explanations leaving, as the Crown lawyers determined, a loop-hole for rebellion, it was resolved that his conduct inferred treason, and he was accordingly prosecuted. The result was that the earl, although defended by an unusual number of able lawyers, was convicted, and sentenced to be executed. At this time he escaped to the Continent. Mr. Andrew Lang thinks that the intention of the trial was really to frighten Argyle away from Scotland, and deprive him of his local power and influence. Be this as it may, his trial and escape unfortunately did not act as a warning to him. Shortly afterwards he returned to Scotland in open rebellion, and being apprehended, was executed on the original warrant. This was arranged by Sir George Mackenzie so that his heir and family might not suffer from the permanent attainder which would have followed a new conviction for treason or actual rebellion.

The last case to which we need refer is that of the execution by drowning in the Solway of two women, since known as the Solway Martyrs. That women should be executed for political offences, or even severely punished, is sufficiently lamentable, and the sympathy of the present generation who live in quiet times, when neither rebellion nor other political crime is known, is easily aroused to condemn unheard the Government of the time. But, as invariably is the case with respect to political trials, there are two very different sides which can be presented to us, who look at the case after the lapse of two hundred years. While the descendants of the Covenanters point out how bravely these women met death for conscience' sake,

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praying to Almighty God for strength to bear their sore trial and courage to withstand to the end, it must be remembered that it was proved, as is alleged, that these women had harboured the murderers of Archbishop Sharp, and declared that Charles II. was an enemy to God and the devil's vicegerent, and it is said that although offered a pardon if they withdrew these statements and undertook to be loyal subjects, they absolutely declined. It is surely evident that to permit of a reigning sovereign being so aspersed without punishment following could not be done without encouraging a general rebellion at a time when resistance to lawful authority and treason were being openly advocated by fanatical preachers. It must not be forgotten, also, that after conviction the Privy Council took the usual steps for obtaining the King's pardon for these women, and that it cannot now be explained why the public authorities in Galloway carried out the sentence. It is true that in this twentieth century public opinion would not tolerate the execution by drowning of two women for assailing the reigning monarch with abuse, however blasphemous or vulgar. But public opinion was very different two hundred and twenty years ago; and it ill becomes the descendants of the Presbyterians of that time to vilify the ministers of Charles II. and his Lord Advocate, with respect to the case of the Wigtown Martyrs, when it is well known—as it has already been told—that the Presbyterians when in power prior to the Restoration drowned in one day eighty women and children, by throwing them over Linlithgow Bridge, and that without any formal trial, and merely because they followed the army of the gallant and unfortunate Montrose. How small a justification the Presbyterians of that time have to calumniate Sir George Mackenzie for heartlessness in his capacity as public prosecutor is shown by the murder of Archbishop Sharp on Magus Muir near St. Andrews, on the 3rd May 1679, by a few fanatical Covenanters. We have to retrace our steps in the order of historical events to refer to that cruel crime, but it is so characteristic of the time, and was followed by such baleful results, that it must be noticed. Nothing more horrible or brutal can be imagined than the details of that tragedy as narrated by Hill Burton, the historian of Scotland. The murderers had met together with the avowed intention of threatening, if not slaying, an inferior local

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judge, whose discharge of his official duties had given offence. Although they had prayed to God for success in this scheme of theirs, the threatened sheriff-substitute, having received a hint of what was awaiting him, foiled the attempt by avoiding Magus Muir. Thereupon these fanatics wrestled with the Almighty in prayer for a lengthened time in order to be enlightened as to what work was required of them, and some one having told them that the Archbishop's carriage was approaching, it became manifest to them that the great and godly work of ridding Scotland of the Archbishop had been assigned to them, and that it behoved them to slay him there and then. The Archbishop was travelling with his daughter. His carriage was stopped and he was fired at. Escaping by the shelter of the carriage, the murderers concluded that he was so protected by the Devil that he could not be shot. He was therefore dragged from his carriage, and, notwithstanding his daughter's tears and his own pitiful appeals, they hacked at him with swords, but so unskilfully, that nearly an hour elapsed before they succeeded in killing him.¹ It was impossible that a crime so atrocious as this should not be followed by two consequences—(1) the exasperation of the King and his ministers; and (2) the encouragement of the fanatical Covenanters to further deeds of violence. Both these unfortunate results did follow. On the 26th May 1679 (being the anniversary of the Restoration), a declaration, which even the most recent historian of the Presbyterian Church admits to be one of open rebellion, was made by a section of Presbyterians at Rutherglen, near Glasgow. They were engaged by the famous Graham of Claverhouse, afterwards Viscount Dundee, at Drumclog, and by a rare good fortune routed his dragoons. A few weeks later (22nd June) the Duke of Monmouth, who had brought additional forces with him from England, attacked the rebels at Bothwell Bridge, and defeated them with great slaughter. One thousand prisoners were taken, and were a long time confined within the Greyfriars Churchyard in Edinburgh, and no doubt suffered many hardships; but no one who openly rebels against a reigning sovereign can expect to experience anything else than the condign punishment which every well-regulated State must inflict upon

¹ It may be mentioned that Sharp's grandmother, Magdalen Halliburton, was a daughter of Halliburton of Pitcur, and therefore a near relative of Lady Mackenzie, Sir George Mackenzie's second wife.

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those who openly rebel against and despise the lawful and subsisting Government of the country. Considering the outrageous conduct of the Covenanters, it argues a wonderfully forgiving spirit in the Duke of Monmouth and King Charles that on the advice of the former the latter within a month of the battle of Bothwell Bridge caused an Act of Indemnity to be passed. This Act, being the third Act of Indulgence during Charles's reign, did not cast out the evil spirit which had taken possession of the most violent of the Covenanters. On the 22nd June 1680 they set up at Sanquhar, in Dumfriesshire, a declaration renouncing allegiance to the King, affirming that he had forfeited the throne 'by his perjury and breach of covenant both to God and his Kirk,' and 'declaring war with such a tyrant and usurper.' Punishment speedily followed this outburst. On the 23rd July sixty-three of the party were attacked on Airds Moss, in Ayrshire, when their clerical leader was killed, and Hackston of Rathillet, the principal man among the gang who murdered the Archbishop, was captured. Hackston received the due reward of his deeds by being executed at Edinburgh on the 30th July 1680. This warning produced little effect, for, at Torwood, in Stirlingshire, in October of the same year, a preacher of the name of Cargill had the impertinence to excommunicate the King, his brother, and leading statesmen including Sir George Mackenzie. Cargill was apprehended, tried, and executed on the 27th July 1681.

During the same month of July 1681 the Duke of York, accompanied by the Duchess and the Princess Anne (afterwards Queen Anne) and a brilliant retinue, came to Scotland and held court in the ancient Palace of Holyrood. His Royal Highness seems to have acted with great tact and conciliation, and the royal hospitality which he dispensed was long remembered in Scotland. Tea, for the first time in Scotland, was given to the royal guests. It is admitted by a very severe critic of Sir George Mackenzie that he charmed the royal circle with his wit, epigrams, and irony.

The deserved punishment of Cargill did not deter his followers. In 1684 a few desperate fanatics framed and published, at church doors and elsewhere, a most treasonable and rebellious document known as the Apologetic Declaration, in which a full approval and

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confirmation was given to all the most violent statements of the Covenanters. As a matter of necessity and self-defence this was followed by an Act of the Privy Council, providing that every one who owned the Apologetic Declaration, or did not disown it, in the presence of two witnesses, might be put to death. Unfortunately the military forces were permitted to put this drastic measure into execution, and it is to be feared that they carried out the powers intrusted to them unmercifully and cruelly; but to attempt to lay any blame on Sir George Mackenzie for this is most unreasonable. It may be said that he should have been no party to legislation which inflicted death for adherence to this treasonable declaration, but death is the penalty of treason in civilised lands to this day, and it must not be forgotten that up till a very recent date death in Scotland followed conviction for minor crimes, such as housebreaking and forgery. Exception has also been taken to Sir George Mackenzie having been a party to the torturing of accused persons, and the deportation of those convicted of treason to the West Indies and America. The application of torture was not a device of Sir George Mackenzie. It was allowed by the law of Scotland and of continental nations, although not made use of in England; and although the public feeling would now revolt at the adoption of such a practice in criminal procedure, such a feeling did not exist two hundred years ago. It is further to be noted that Sir George explains that torture was never used except in the case of those who were otherwise proved to have been accessory to the crime of treason and knew who the other parties were, who were also accessories but declined to reveal the names. In these days physical torture is impossible as a means of obtaining evidence, but it must not be supposed that Sir George Mackenzie was in any way responsible for its existence in 1677-1685, or had any personal favour for its use. As regards transportation of convicted persons, he himself points out that the persons convicted had forfeited their lives, and that, therefore, the punishment of transportation was an act of clemency and not of cruelty. Considerable exception was taken by many to Sir George Mackenzie's interference with the local Barons' Court, which had jurisdiction and a power even of life and death. It is remarkable to

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find that he had acuteness of foresight to conclude that these heritable jurisdictions were opposed to good government and the liberty of the subject, and that fifty years afterwards it was found necessary, in the reign of George II., to abolish them. The patent evils which existed he attempted to remedy by conferring on the Crown the power of appointing local Magistrates, called Sheriffs, with large civil and criminal jurisdiction. He tersely sums up the evils of a jurisdiction based on the mere ownership of property thus: 'Heritable jurisdictions are of themselves very little to be favoured, the heir must be a judge both in matters of life and fortune, though he want probity or knowledge in the law, and the interested superiors or over-lords had thereby the unfortunate poor vassals absolutely at their devotion, and, therefore, by an old law, in King James II.'s time there was an Act made discharging all heritable jurisdictions without the consent of Parliament.'

On the 6th February 1685 Charles II. died and was succeeded by his brother, the Duke of York, under the name of James VII. The new king had never concealed his preference for the Roman Catholic religion, and on his succession he endeavoured to persuade his Scots ministers to relax the laws against nonconformity in favour of the Scottish Catholics. Although Lord Perth, the Chancellor, used every influence to persuade his colleagues and Parliament to agree to his Majesty's express wishes, they absolutely declined to do so, with the result that on the 17th March 1686 he dismissed six of his ministers, including Sir George Mackenzie. Sir George incidentally refers to this incident in his life thus: 'We must also be allowed to admire how those who so eminently complied with the dispensing power in taking an indulgence from the papists, and who magnified King James upon that account as the best of kings that ever reigned, should so snarle at us, who in a Parliament (at which not one of them assisted) refused to take away the penal laws against popery, while many of us resigned our places willingly in defence of those laws.'

On the 21st January 1687 Sir John Dalrymple was appointed Lord Advocate. Sir George Mackenzie, therefore, resumed his practice at the bar, and showed the same zeal, ability, and success in defending

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Presbyterians as he had done in prosecuting them.¹ This of itself shows that he had no personal animosity whatever towards any of his fellow-countrymen, and that he looked upon his office as Lord Advocate as one which left him no initiative or responsibility for prosecutions ordered by the Privy Council or the King's Commissioner. While Lord Advocate he considered himself as counsel for the Crown, and bound to give his Majesty's ministers his best service. While free from official restraints he felt equally bound to use his talents and professional skill on behalf of all his clients, be they Tories or Whigs, Covenanters or Episcopalians. How seldom has he received credit for acting on these principles.

During Sir John Dalrymple's tenure of office the last execution of a Presbyterian minister took place. This was one Renwick, with whom no sympathy need be shown, as he was a leader of those who openly renounced allegiance to the King.

Sir George Mackenzie was reappointed Lord Advocate on the 31st January 1688. The Revolution, however, brought his tenure of office finally to an end. In evidence of his sincere affection for Episcopacy, it may be mentioned that he and his namesake, Sir George Mackenzie of Tarbat, first Earl of Cromarty, prepared a joint memorial to King William advocating the continued establishment of Episcopacy. His devotion to the Stuart family was equally deep-seated. With the greatest courage, and at the imminent risk of his own life, he attended in his place in Parliament on the 4th April 1689 and opposed Sir John Dalrymple's resolution that King James had forfeited the throne of Scotland. To support a fallen cause, when backed by a minority of five, showed no small intrepidity. It was impossible for him in the heated state of public feeling to reside in Scotland. One letter from him to Lord Melville, dated 1689, is written from 'Knesbrough Wells in Yorkshire.' In September of that year he reached Oxford, where he met with a most gracious and courteous reception. His learning,

¹ Fountainhall in his *Historical Notices*, vol. ii. p. 763, refers to this period of Sir George's life thus: 'Sir George Mackenzie of Rosehaugh, late King's Advocate, puts on aue gown as aue ordinary Advocate, and appears in causes at the Bar with his hat of (off) (which is most of the difference): This the English frequently doe when deprived by a quietus.'

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wit, church connection, and politics, all made him a *personâ grata* in that university town. He was admitted to all the privileges which could be conferred upon him. His society was much sought after and greatly appreciated. His residence at Oxford afforded him more rest and happiness than he had ever experienced during the many stormy and anxious years which he had spent in faithful service to the Crown in Edinburgh. But his days of repose and pleasant literary work were few. He went to London in the spring of 1691, and taking ill, died there on the 8th May of that year in his lodgings in St. James's Street. His body was conveyed by road to Scotland, 'and after it had lain some time in the Abbey Church of Holyrood House at Edinburgh it was on the 26th June following buried with great state and solemnity in the Franciscan or Greyfriars Churchyard in a vault which he had caused make for himself, with a cupola of freestone over it. His funeral was attended by all the Council, Nobility, College of Justice, College of Physicians, University, Clergy, and Gentry, and such a concourse of people was never seen upon the like occasion.' His premature death had softened even his enemies, and Scotsmen of every political party and ecclesiastical sect united at his grave to do honour to one who was certainly one of the ablest and most distinguished Scotsmen of that generation.¹

For one great work outside of politics Sir George Mackenzie's memory is revered to this day. To him, and to him alone, is due the institution of the finest library in Scotland—the Advocates' Library in the Parliament House in Edinburgh. His last act as Dean of the Faculty of Advocates was to open the library on the 1st March 1689. He gave an inaugural address in Latin, which will be found in the first folio volume of his works.

He also prepared and passed through Parliament in 1685 the original Act with reference to Scots Entails. This Act effected the object with which it was passed, viz. to preserve to the old Scots landed proprietors, and their successors, their estates, but it is an open question whether, on the whole, this legislation has been for the

¹ Even Wodrow, the historian of the Presbyterian Church (vol. iv. p. 456), admits that at the close of his life 'Sir George was much more soft than in former years.'

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general good of the nation. For many years Parliament has been engaged in pruning away the restrictions of Scots Entails, and now at last the merest shadow of the system remains. It is worthy of note, that in the case of Sir George Mackenzie, as in the case of so many eminent lawyers, his own efforts to entail his own estates were so far unsuccessful as to give rise to prolonged litigations, showing how unwise it is even for the ablest lawyers to be their own advisers.

In recent times historians have, on the whole, taken an impartial and reasonable view of Sir George Mackenzie as a politician and Lord Advocate.¹ Many who still speak and write bitterly with reference to the cruelty and madness—as they term it—of the policy of Sharp, Rothes, Lauderdale, Aberdeen, Perth, Melfort, and their underlings, Dundee, Turner, Dalziel, and others, and of their folly in attempting to thrust Episcopacy on a people so violently opposed to that form of church government as to prefer death to adopting it, have the fairness to admit that a Lord Advocate is bound to carry out the statute laws of the country so long as they are unrepealed, and that he has no responsibility for the laws themselves. Indeed, his own private judgment may be wholly opposed to these laws, but as official prosecutor for the Crown he is bound to carry into effect the resolutions of the ministers and Privy Council. It is very wrong, therefore, to lay upon Sir George Mackenzie personal responsibility for the slaughter which took place in these unhappy times. He had not the slightest control over the military forces, nor could he check or moderate, as Lord Advocate, their cruelty or violence. It is a simple matter for the present generation to say how mistaken the policy of Lauderdale and his successors was. Had they foreseen the Revolution of 1688 and the forfeiture of the crown by James II., their policy would have been very different, but the policy which they unfortunately pursued was one which might very well have in the end been successful. In the world's history we find that many treasonable plots and threatened

¹ In the introduction to Lord Fountainhall's *Journals* this justice is done to Sir George, although Fountainhall was opposed to him in politics. It is there said: 'In his estimate of Mackenzie, it is easy to see, that while he doubted the wisdom and humanity of his relentless prosecutions, and while his arrogance comes in for a criticism in a lighter vein, respect for his capacity, learning, and industry was the predominating element' (p. xxxvii).

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revolutions have been frustrated by firm government and the iron hand of power. Had Charles II. and his brother succeeded in their policy instead of signally failing therein, how different would have been the verdict of history upon them and their ministers.

Complimentary references to Sir George Mackenzie's wit, learning, and ability will be found in Lord Macaulay's *History*—although that historian could see no estimable feature in a Tory,—in Hill Burton's *History of Scotland*, in Andrew Lang's *History* of that country, and elsewhere.

When his remains were laid in the tomb in Greyfriars Churchyard there was a laudatory inscription in Latin on the coffin-plate. That plate has long since disappeared, no care having till recently been taken to preserve his resting-place from intrusion; but the precise language used is preserved not only in the biographical notice prefixed to the second volume of the folio edition of his works, but also in Monteith's *Theatre of Mortality*. Shortly before the deaths of the late Earl of Wharncliffe and his kinsman the Marquis of Bute, they put the tomb, which had suffered little from time and ill-usage, into a condition of complete repair, and erected therein a tablet containing the original inscription, which is as follows:—

Reliquiae Sacrae
D. Georgii Mackenzie a Valle Rosarum,
Equitis Aurati;
Simonis Fil. Caleni Comit: de Seafort Nepot;
Natus AErae Christ: Anno MDCXXXVI
Per annos XXXI, in Foro Supremo
Causarum Patronus,
Ab Anno MDCLXXVII. Regius Advocatus;
Regibus CAROLO Secundo & JACOBO Septimo
A Secretioribus Consiliis:
Patriae decus, Religionis Vindex, Justitiae Propugnator,
Juris Regii, Assertor Strenuus & Indefessus;
Collegii Juridici, sive Jurisprudentiam summam,
Sive Eloquentiam Eximiam, sive in instruenda
Jurisconsultorum Bibliotheca Curam &
Locupletanda Munificentiam, Spectes,
Ornamentum imprimis Illustre:
Comitatis Exemplar,
Eruditorum Maecenas Eruditissimus,

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Omnibus Charus,
Si perduellium Colluviem excipias :
A quorum Violentia Patriam Patriaeque Patrem,
Cum Ore, cum calamo, acerrime vindicavit ;
Virulentiam Jure & Justitia temperavit,
Ferociam Rationis viribus retudit
Ac tantum non domuit :
Monarchiae Genius Tutclaris,
Fama, Eloquio, Morum Integritate, Factis
Et Scriptis, Clarus ;
Ecclesiae, Regi, Reipublicae, Liberis
Et Amicis vixit.
Maii die octavo, anno 1691.
In Domino Obiit
Desideratissimus.

Epitaphium hoc a contemporaneis et
Conscriptum et ne inscriberetur impeditum
Hic deinde scribendum curaverunt posterum
Joannes Marchio Bothae et Eadwardus
Comes de Wharncliffe, aerae Christ: anno 1893.

The following is an English translation:—

The sacred remains of Sir George Mackenzie of Rosehaugh, Knight, son of Simon, nephew of Colin, Earl of Seaforth, born in the year 1636 of the Christian era; for thirty-one years defender of causes in the Supreme Court; from the year 1677 King's Advocate; member of Privy Council to their Majesties Charles II. and James VII.; the glory of his country, the vindicator of religion; the disseminator of justice, the strenuous and unwearied assertor of the rights of royalty; a most illustrious ornament of the College of Justice, whether you consider his remarkable sagacity, his distinguished eloquence, or his care in founding and munificence in enriching the Advocates' Library: a pattern of affability; a most learned patron of the learned: beloved by all except the rabble of traitors, from whose violence he most boldly defended, alike by tongue and pen, his country and the father of his country; restrained their virulence by law and justice, repelled their ferocity by strength of argument, and all but subdued.

The guardian genius of the monarchy, he lived distinguished by his fame, eloquence, uprightness of character, actions, and writings: he died in the Lord on the 8th May 1691, greatly regretted by Church and State, his family and friends.

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There will also be found at the close of the biography referred to not only the laudatory testimony of his personal friends to his character, genius, and labours, but also numerous highly commendatory addresses and letters from important public bodies and individuals of distinction, showing the great reputation which he had gained for himself in England and the continent of Europe.

It has already been mentioned that Sir George Mackenzie was twice married. His first wife was a daughter of Dickson of Hartree, a Lord of Session. The contract of marriage between Sir George Mackenzie, then Mr. George Mackenzie, with consent of his father, is dated 8th December 1662. He was twenty-six years of age, and his wife had not reached her majority. By this contract he was provided by his father with a fortune of 34,000 merks. This contract is still in existence, and will no doubt be retained among the family papers. Of the issue of this marriage only two daughters survived. The elder, Agnes Mackenzie, married Mr. James Steuart, Advocate, Sheriff, and afterwards Earl of Bute, and the younger, Elizabeth Mackenzie, married, in the first place, Mr. Archibald Cockburn, younger of Langton, and after his death Sir James Mackenzie, Baronet, of Royston—Lord Royston, a Lord of Session—who was the third son of Sir George Mackenzie of Tarbat, the first Earl of Cromarty. He acquired the estate of Royston from his father. In 1698 he was admitted to the Scottish Bar, and speedily achieved distinction. His baronetcy was conferred upon him in 1704, and on the resignation of his uncle, Lord Prestonhall, he became, in 1710, a Lord of Session. He was in the following year appointed a Lord of Justiciary. It is stated in Haig and Brunton's book that he was involved 'in a law-suit for his father-in-law's property with the Earl of Bute, who had married another daughter of Sir George Mackenzie, in which, however, he was not successful.'

The circumstances which led to this litigation are not without interest. On the death of Sir George Mackenzie's only son in 1707 without issue, his sister, Lady Bute, who had predeceased him, left an only son, James, Lord Mountstuart, who on the death of his father became Earl of Bute. Mrs. Cockburn, or Lady Langton as she was

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called, who had then become Lady Mackenzie, had by her first husband an only son, and on her brother's death she was pregnant by her second husband. At this stage Lord Mountstuart purchased a brieve from Chancery for having himself served heir of tailie and provision to his grandfather, Sir George Mackenzie. This service was opposed by Lady Langton and her husband, Sir James Mackenzie, upon the ground that her son was preferable to Lady Bute's eldest or only son, and that, therefore, Lord Mountstuart could not be served until it were seen whether Lady Langton was to give birth to a second son or not. In January 1708 the Court of Session unanimously found that Lord Mountstuart was entitled to proceed with his service to his grandfather. Lady Langton having soon thereafter given birth to a second son—another George Mackenzie—an action was raised at the child's instance with the concurrence of his father, Lord Royston, for the purpose of reducing Lord Mountstuart's service, and compelling him to denude in favour of his youthful cousin. Whereupon Lord Mountstuart instituted a new process of Declarator to support his own service and rights. On the 13th December 1709 the Court reduced Lord Mountstuart's service, and ordained him to denude in favour of the child. This judgment was appealed, and while the appeal was under consideration Lady Langton's elder son died in London, and she being left with an only son, a new petition was presented by Lord Mountstuart founding on the altered circumstances, the whole proceedings terminating with Lord Mountstuart's service and title being upheld by the Court. It is seldom, indeed, that a birth and a death occurring during the progress of a lawsuit so completely changes the position of two families, and transfers from one to another and then from the latter to the former a great landed estate. Lord Royston died in Edinburgh on the 9th November 1744, aged seventy-three. He was buried in Sir George Mackenzie's tomb. He is said to have been 'a person of vast learning, honour, and probity, impartial in judgment, justly ranked among the first judges in criminal causes of the age, and in private life a most polite, friendly, agreeable, facetious, and affable gentleman.' There is in the Advocates' Library in Edinburgh a copy of Sir George

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Mackenzie's work on Criminal Law, containing copious notes by Lord Royston.

The contract of marriage between Mr. James Steuart, then Sheriff of Bute, and Agnes Mackenzie, Sir George Mackenzie's elder daughter, is still in existence, and bears date the 24th July 1680. This deed will also without doubt be looked upon as one of much value, and be retained among the family papers. By the contract Sir George Mackenzie provided for his daughter a 'tocher' (marriage portion) of 30,000 merks. The jointure provided was 3000 merks.

Sir George Mackenzie, as has been already noticed, married a second time in 1670. His second wife was Margaret Hallyburton of Pitcur, an important estate in Forfarshire, adjoining the Belmont estate. By this lady Sir George had an only son—George Mackenzie, and if the biography prefixed to the posthumous edition of the works be correct, also an only daughter—who died in early youth unmarried. She married a second time, Mr. Roderick Mackenzie of Prestonhall, a member of the Scottish bar and a Lord of Session, with the title of Lord Prestonhall, whom she also survived. After this marriage she was known as Lady Prestonhall. Lord Prestonhall, who was the third son of Sir John Mackenzie of Tarbat, and brother of the first Earl of Cromarty, was admitted an advocate in 1666. He represented the county of Cromarty in Parliament in 1698, 1700-1, and the Burgh of Fortrose in 1703. He took his seat on the bench of the Supreme Court as Lord Justice-Clerk in January 1703. A few days thereafter he was appointed an ordinary Lord of Session, with the title of Lord Prestonhall. He resigned his seat in 1710 in favour of his nephew Sir James Mackenzie of Royston. He died Sheriff of Ross-shire in 1712.

It appears from an inventory of the property belonging to Mr. George Mackenzie, Sir George Mackenzie's son, that the family plate had been in the possession of Lady Prestonhall, and that when the mansion-house of Prestonhall was burned the greater part of the plate was melted by the fire and consumed.

Mr. George Mackenzie, who died in 1707, bequeathed his whole personal estate to his mother.

In an edition of Sir George Mackenzie's *Essays on Moral Subjects*,

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published in London in 1713, the author states, in a short life of Sir George Mackenzie prefixed to the book, that he had seen 'a son of his who was a gentleman commoner of University College, Oxford, about eight or nine years ago, and had the character of a very sober, well-accomplished man.'

Lady Prestonhall survived till 1713, and nominated Lord Royston as her executor, who accepted that office. Lady Prestonhall was, by deed of nomination executed by Sir George Mackenzie at Kensington, shortly before his death, appointed tutrix to her son. Sir George narrates as a reason for nominating his 'dearest wife' as tutrix and curatrix, that he has found his 'friends unwilling to be tutor even to my own son,' and that he had 'prevailed' with his dearest wife to be both tutrix and curatrix. He appointed that as regards 'his land or money lying benorth the water of Spey she should consult with George, Viscount of Tarbat, Sir Alexander Mackenzie of Coull, and failing him, his eldest son; Colline Mackenzie of Reedcastle, whom failing, his eldest son; Mackenzie of Findon; and Mr. Robert Mackenzie of Moch'; that as regards his 'estate, lands, and money lying within the Shyre of Forfar or Perth,' she should be advised by Sir Patrick Lyon of Carss; Sir David Kinloch of that ilk, Graham, younger of Fintry, John Wedderburn of Blackness, and Alexander Campbell of Balgirsho. The deed then proceeds thus: 'And because the Sheriff of Bute and Langtoun, younger, my sons-in-law, and Peter Wedderburn of Gossford reside besouth Forth, and may be frequently at Edinburgh, and Mr. Colinne Mackenzie, my brother german, Mr. Robert Stewart, advocate, uncle to the Sheriff of Bute, John Wedderburne of Blackness, and George Mackenzie, one of the Clerks of Excheq^r, have y^r constant residence at Ed^r. Therefore I appoint my wife to take y^r advice generally in all my sons affairs.' Thereafter follow minute instructions with reference to the number of these friends whose concurrence Lady Mackenzie ought to have in transacting different kinds of business.

This deed is specially interesting. It shows who, in Sir George Mackenzie's opinion, were his dearest and most faithful friends. It demonstrates the solitary position, politically and personally, in which Sir George stood during the last three years of his life, when no friend

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would undertake the duty of acting as tutor and curator for his son. The very exceptional and elaborate arrangements which he makes for Lady Mackenzie's protection in the discharge of her duties as tutrix and curatrix proves his deep affection and anxious regard for his only son.

On the death of Mr. George Mackenzie, James, second Earl of Bute, established, as has already been explained, his right to the entailed estates of Sir George Mackenzie. He married Lady Ann Campbell, daughter of the first Duke of Argyll, and she, on the death of Lord Bute, married, in September 1731, Alexander Fraser of Strichen, one of the Senators of the College of Justice, under the name of Lord Strichen. Lady Bute died in 1736.

From the family papers, preserved with the title-deeds, it would seem that Sir George Mackenzie's father, Simon Mackenzie, was twice married. After the death of Elizabeth or Isobel Bruce, his first wife, he married, in January 1650, Agnes Fraser, daughter of William Fraser of Culbockie, and widow of Alexander Mackenzie of Ballone, brother of Sir John Mackenzie of Tarbat. Simon Mackenzie had families by both his wives. Sir George Mackenzie, presumably as his father's eldest son and heir, made provision for certain brothers and sisters. In addition to sisters, to whom reference will still be made, it would seem that Sir George had four brothers-german, and one brother-consanguinean, Simon Mackenzie, Alexander Mackenzie, designed portioner of Logie, Thomas Mackenzie, and Colin Mackenzie, all sons of Elizabeth or Isobel Bruce, and Kenneth Mhor, son of Agnes Fraser. Kenneth founded the family of Mackenzie of Dundonel. In 1681 he was Chamberlain of Assynt. Simon Mackenzie, Sir George's next eldest brother, died at Lochbroom in 1664. He married in 1663 a daughter of Alexander Mackenzie of Ballone. By this lady he had a posthumous son, Simon of Allangrange, who became an advocate at the Scottish bar, and was for some time tutor to Mr. George Mackenzie, his cousin. He was drowned in the river Orrin in 1730. Alexander Mackenzie's son, George Mackenzie of Inchcoulter, is frequently referred to in the family papers, and so also is Colin Mackenzie, Sir George's brother, who, like himself, was an advocate at the Scottish bar, and through Sir George's influence seems to have been made clerk to the Privy Council, and thereafter one of

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the Commissaries of Edinburgh.¹ His brother, Thomas Mackenzie, was at Sir George's death in his debt to the amount of £350. To this brother Sir George bequeathed a legacy of 2000 merks. Inchcoulter's brother, Hector Mackenzie, acted as Chamberlain of Newtyle for several years, but ultimately failed to account for his intromissions. Upon Sir George's death in London in 1691, it would seem that his repositories and papers in Edinburgh were examined, if not taken possession of, by his nephew George Mackenzie of Inchcoulter, who afterwards had reason to regret his interference. For many years subsequent to Sir George's death questions and litigations arose with reference to his estate. For example, George Mackenzie of Inchcoulter, his nephew, in 1707 raised an action against the second Earl of Bute, previously known as Lord Mountstuart, as heir of tailzie to George Mackenzie of Rosehaugh, Sir George Mackenzie's only son. This action was founded on a bond granted by Sir George Mackenzie to his brother Alexander Mackenzie, Inchcoulter's father, bearing date 1668, by which Sir George had bound himself to pay to his brother and his heirs the sum of 4000 merks Scots, and had also bound himself to infest his brother and the latter's wife and their heir-male in fee in the equal half of the lands of Logie in Lochbroom. By this bond it was provided that the sums therein contained should be 'in full contentation and satisfaction to the said Alexander Mackenzie of all bairnes part of gear, portion naturall, or any sums of money he could claime from the said Sir George Mackenzie be virtue of his bonds of provision, contract of marriage, or any other manner of way whatsoever.' From the proceedings in the process it would seem that Alexander Mackenzie of Logie had assigned all his rights to George Mackenzie, his son. The summons against Lord Bute and others was also founded upon a contract of marriage betwixt George Cockburn, bailie in Haddington, and Margaret Grant, lawful daughter to the deceased James Grant of Moyness, with the special consent of Sir George Mackenzie, who was an uncle of Miss Grant. This contract of marriage was dated in February

¹ Fountainhall in his *Historical Notices*, vol. ii. p. 757, under date 4th Nov. 1686, makes the following reference to Colin Mackenzie: 'At Privy Council a debate fell in between the two Clerks Sir William Paterson and Mr. Colin Mackenzie, and each of them was seizing upon the Keys of the Chamber with the Records and Warrants. The quarrell was, tho' they divided the profits, yet Sir William was putting in his man Gourlay, conjunct with George Rae, without Mr. Colin's consent.'

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1685, and by it Sir George Mackenzie bound himself to pay Mr. Cockburn, the bridegroom, the sum of 5500 merks 'in name of dote and tocher with the said Margaret Grant.' By assignation, dated in 1699, George Cockburn assigned to the pursuer, George Mackenzie of Inchcoulter, his rights under the contract of marriage as far as not implemented. The summons in the action craved that Lord Mountstuart should be ordained either to grant a sufficient and valid right to the half lands of Logie, or otherwise to make payment of 5000 merks, as also to make payment to the pursuer, George Mackenzie, of the sum of 2500 merks contained in George Cockburn's contract of marriage. There was produced in this lawsuit a declaration by Kenneth Mackenzie of Scatwell, Kenneth Mackenzie, brother-german of Colin Mackenzie of Muirton, Hugh Innes of Master Thomas Fraser, minister at Suddie, and Master Simon Mackenzie of Allangrange, dated 25th February 1708, certifying that Dame Jean Mackenzie, Lady Moyness, sister-german to the late Sir George Mackenzie of Rosehaugh, had died and was honourably interred in the churchyard of Killearnan, 14th May 1707. Similar declarations were produced, signed by Simon Mackenzie of Allangrange, Mackenzie of Belmaduthy, William Mackenzie of Belmaduthy, younger, and Master Thomas Fraser, minister of Suddie, and others. During the course of this law plea, appearance was made for Dame Elizabeth Mackenzie, Sir George Mackenzie's younger daughter, who, as has already been noticed, married first Archibald Cockburn, younger of Langton, who died in August 1702, and secondly, Sir James Mackenzie of Royston. Sir James Mackenzie is designed 'son to the Earl of Cromarty, and one of the Senators of the College of Justice,' and he—Sir James Mackenzie—also appears in the action. The result of the action was that the Lords of Council and Session, being satisfied of Lady Grant's death, decerned and ordained the Earl of Bute, previously Lord Mountstuart, as heir of tailzie to George Mackenzie of Rosehaugh, either to grant a sufficient and valid right to the half lands of Logie to George Mackenzie of Inchcoulter, or to make payment of the sum of 5000 merks above-mentioned, as also to make payment of the sum of 2500 merks, the balance of the provision in George Cockburn's marriage-contract.

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It may be noted here that no trace has been found of the ultimate history of the lands of Logie in Lochbroom. Power was given to the Lord Privy Seal to sell these lands, but it would seem from an opinion of Lord Justice-Clerk Braxfield, that he advised that nothing should be done with reference thereto from want of title or otherwise, and so far as is known no claim was made to them by the Lord Privy Seal. It would seem from the judgment which has just been quoted that these lands had really belonged to Sir George Mackenzie, but it does not appear whether they had been made over to his nephew, George Mackenzie of Inchcoulter, or not.

On the 9th March 1691—that is, a few weeks before his death—Sir George Mackenzie executed a bond and assignation in favour of the children of his son-in-law, Mr. Archibald Cockburn and his wife, who was his second daughter, whereby he set aside a sum of 10,000 merks, due to him by Sir Archibald Cockburn of Langton, for his daughter's children, the eldest child getting a double portion. He also bound himself to pay an additional sum of 10,000 merks to his grandchildren, the eldest receiving a double portion. This obligation of Sir George Mackenzie subsequently gave rise to considerable discussion and dispute. But even prior to thus providing for his grandchildren, Sir George seems to have had trouble with his daughter's affairs. There are among the papers two copies of a writing which is called 'Information for the young Lady Lantoun as to that point which concerns her aliment in the competition with the rest of the creditors of Lantoun.' This document is endorsed 'Information for the young Lady Langtoun concerning her aliment drawn by Sir Geo. at London 1690.' From this document it appears that on the marriage of his daughter Sir George Mackenzie gave his son-in-law 'tocher with her of six and thirty thousand merk Scots,' and that this sum was paid to young Langton within a year, in order to satisfy creditors. In addition to this sum Sir George in this 'Information' explains that he had given his daughter £300 sterling 'wch hee laid out in necessary cloaths for her wch was allso in rem versam to ye famile because it kept her from buying for severall years.' Sir George goes on to say, 'At that time hee, as all provident fathers, did expressly treat with old Langtoun and

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his friends that shee should be secured in ane aliment during his sones life and in a Jointure after his sones death without either wch shee might starve or be a burden upon her father.' The whole paper is of considerable interest, and contains a clever and lucid argument in support of his daughter's claim to be preferred to the general creditors.

Another interesting 'Information' with reference to Lady Langton's claim is found among the family papers. It also bears the date of 1691, but whether it was prepared by Sir George himself or not does not appear. The claims of Mr. Archibald Cockburn's children subsequently became the subject of a reference to an arbiter, Mr. Francis Farquharson, Accountant in Edinburgh, and among the papers found in connection with this arbitration it appears that there were three children born to Mr. Cockburn, Younger, and his spouse, Elizabeth Mackenzie. Margaret, the eldest, was married to a Captain Urquhart, and Agnes, the youngest, was married to Sir George Stuart. The third child was a son, Archibald, who died in early youth. Mr. Farquharson, the arbiter, issued his final award on the 30th March 1752. He found the Honble. James Stewart Mackenzie, the successor of Sir George Mackenzie, liable in a sum of £10,661, 7s. 3d. Scots money, and ordained him to pay that sum in the proportions therein mentioned to Sir George Stuart of Grantully, in right of his wife, and to parties of the names of Urquhart and others. The arbiter's decree contained other provisions, now of no interest. There was another prolonged litigation in the Court of Session, ending in 1725, between George Mackenzie of Inchcoulter and James, Earl of Bute, and Sir James Mackenzie of Royston as executor to Lady Prestonhall, who, again, was the sole executrix of her son, George Mackenzie of Rosehaugh. This action was ultimately insisted in by John, Earl of Bute, the Right Honble. James Stewart Mackenzie of Rosehaugh, his brother, who was the heir of line and tailzie to James, Earl of Bute, their father, and Sir James Mackenzie of Royston. In one phase of the litigation George Mackenzie, son to Sir James Mackenzie of Royston, whose birth had such a startling effect upon a prior lawsuit, was also a party. From the proceedings in this case it would seem that the action followed upon a contract of marriage between Mr. Colin

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Mackenzie, Advocate, brother of Sir George Mackenzie, with consent of Sir George Mackenzie, on the one part, and Helen Clerk, daughter to John Clerk of Pennycook, with consent of John, Earl of Stair, Sir John Clerk of Pennycook, James Clerk, merchant in Edinburgh, George Drummond, bailie of Edinburgh, and William Aikman, Advocate. By this deed Sir George Mackenzie had bound himself to make payment to his brother and his bride, and the longest liver of them and their heirs, of the sum of 10,000 merks Scots money. On the death of Mr. Colin Mackenzie George Mackenzie of Inchcoulter was appointed his executor, and it would seem that just before the expiry of the forty years following the date of the contract, George Mackenzie, as executor of Colin Mackenzie, commenced this lawsuit against the Earl of Bute and others, founding on the fact of Sir George Mackenzie's obligation to pay the 10,000 merks referred to and his alleged failure to do so. It was alleged that this action had been brought in a secret way and without Lord Bute and the others interested knowing what its nature was, and consequently one part of the litigation had for its object the reduction of the decree which Mackenzie of Inchcoulter had obtained. The case stated on behalf of the Earl of Bute against Inchcoulter's decree was based on these points:—

- (1) That the Contract itself was null in respect of vitiations in it ;
- (2) That no action had been taken upon the Contract for forty years, and it was, therefore, discharged by the 'negative prescription' so called ;
- (3) That in the states of his affairs, made out on behalf of Sir George Mackenzie at Whitsunday 1689 and 1690, being the last of such statements made before his death, there was no mention of this debt due to his brother and Mrs. Mackenzie, and that Sir George, having been a man of much landed and personal estate, and being known to be most punctual in the payment of his debts, there was a presumption that he must have long before paid the 10,000 merks ;
- (4) That George Mackenzie of Inchcoulter having, upon Sir George Mackenzie's death in London, been the first to

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open his repositories in Scotland, and having taken no proper steps to have the contents of these repositories duly inventoried by impartial agents, the presumption was that he himself had abstracted the discharges, which Sir George must have received for the 10,000 merks, and made way with or destroyed them.

Mackenzie of Inchcoulter's reply to these arguments of Lord Bute and the other pursuers was generally as follows:—

- (1) That although the process which he raised in Court to establish his claim as Mr. Colin Mackenzie's executor to the 10,000 merks Scots was instituted shortly before the expiry of the period of forty years, still it was timeously executed, and barred prescription.
- (2) Although Mr. Colin Mackenzie and his lady were at the time of their marriage in need of funds, he afterwards acquired considerable means, and did not—and was not in a position rendering it necessary for him to—press his brother for payment, and so the claim lay over.
- (3) However correct Sir George Mackenzie was in framing the statement of his affairs, his own statement could never be evidence that he had paid a debt of which he himself took no notice in these statements.
- (4) That although it might be said that he, Mackenzie of Inchcoulter, had opened the late Sir George Mackenzie's repositories, he was acting as his son's curator, that he was not the first to act in that capacity, and that in any case there could be no presumption against a man of honour that he made way with discharges or receipts prejudicial to himself.

The result of the litigation, however, was that the Court decided wholly in favour of Lord Bute, even to the extent of holding *that there was a presumption* that Mackenzie of Inchcoulter had found the discharges and made way with them.

Sir George Mackenzie had three sisters. An extract of the contract of marriage between James Grant, younger of Moynes, and Jean

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Mackenzie, eldest daughter of Simon Mackenzie, who had been previously married to Robert Douglass of Muldargie, and had survived him, is among the family papers. This contract is dated 19th February 1663.

His second sister was 'Issaboll' Mackenzie, daughter of Agnes Fraser. She married Murdoch Mackenzie, younger of Farburne. The contract of marriage is still in the charter-chest, and is dated 18th September 1673. Mackenzie, senior of Farburne is named in this contract 'Rorie Mackenzie of Farburne,' and his son is designed 'Murdo Mackenzie, his eldest laull son.' This deed is in excellent preservation, and the beautiful signature of Issaboll, the bride, bears a striking resemblance to that of her father's first wife, Elizabeth Bruce. The bride's 'tocher' was 5000 merks Scots. His third sister, also consanguinean, was Elizabeth Mackenzie, who married the Rev. Roderick Mackenzie of Avoch, son of John, Archdeacon of Ross.

It is to be extremely regretted that the commission as Lord-Advocate conferred upon Sir George Mackenzie by Charles II. in 1677 is marked in the oldest inventories as being amissing. It cannot now be found. Fortunately the second commission as Lord-Advocate—that granted under the great seal by King James II., and dated at Whitehall the 31st January 1688, is still extant, and is of great interest. It is also to be regretted that the extract from the Lyon Office blazoning of the coat armorial 'of the Right Worshipful Sir George Mackenzie of Rosehaugh, eldest son of Simeon Mackenzie of Lochsline, who was brother to the Earl of Seaforth,' disappeared many years ago and cannot now be found. A still more important and interesting document had been long ago removed from the charter-chest or lost. That is the original extract of the minute of the Privy Council, whereby His Grace the Commissioner and the Lords of His Majesty's Privy Council approve of Sir George Mackenzie's management of his trust as Lord Advocate, and particularly his successful endeavour to maintain His Majesty's just and royal prerogatives when he attended his Majesty by the Council's command, dated 20th June 1678.¹ A new extract has been obtained, and the following is a copy of it:—

¹ Since these notes were prepared the original extract has been found, and is restored to its proper place among the ancient writs.

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PRIVY COUNCIL ACTA, 1673-1678.

Apud Edinburgh vigesimo die Junii 1678.

Sederunt—

The Lord Commissioner His Grace.	
Chancellour.	Belhaven.
St. Andrews.	President session.
Linlithgow.	Thesaurar deput.
Aboyne.	Register.
Dundonald.	Advocat.
Caithness.	Justice Clerk.
Elphinstoune.	Abbotshall.

The Lord Commissioner his grace and Lords of his majesties privy councill, Considering the great services done by Sir George Mackenzie of Rosehaugh, his majesties advocate since his being admitted in that station and particularly his successfull endeavours for manteaning his majesties just and royall prerogatives when he attended his sacred Majesty by the councills command And the Lord Commissioner his Grace having informed the councill how sensible his majesty is of his services They for his further encouragement and Exoneration Have approven And hereby approve of his management of that trust and returne him their thanks for having served his Majesty & them therein.

It has already been mentioned, and it is an interesting illustration of the careful and precise manner in which Sir George Mackenzie managed his own affairs, that he was in the habit of periodically framing statements of the property which belonged to him, and of the sums which he was due to others. Several of these statements are still in existence. There is one dated in 1670, and another bearing date 1673. Portions at least of these statements appear to be written by Sir George Mackenzie's own hand. It is interesting to notice that in 1673 he had been due Sir George Lockhart, his great rival, 1500 merks. At this time he was also due to Colin Mackenzie, his brother, 5500 merks. He was also due his nephew, son of his brother Simon, 8000 merks. From writs already narrated it was thought that Sir George Mackenzie had been the proprietor of the lands of Lochbroom, but from this statement of 1673 it would appear that the lands of Logie in Lochbroom had probably been conveyed by his uncle Thomas, the proprietor of Pluscardine, near Elgin, to Sir George's father, till a sum due by Pluscardine was paid,

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and in 1673 Sir George noted that until Pluscardine paid all that was due to him the lands of Logie were not to be reconveyed. There are many other important notes regarding Sir George's affairs in these statements. There are also among the titles two very interesting inventories of the estate belonging to Mr. George Mackenzie, Sir George's son, made up in conformity with the Act 2 and 3 Charles II. The first of these inventories is dated in 1696, and was framed by two of the nearest of kin upon Mr. George Mackenzie's father's side, and by two upon his mother's side. The inventory was subscribed by all these parties with the addition of Mr. Simeon Mackenzie of Allangrange, who was tutor-in-law to Mr. George Mackenzie. This inventory includes not only the properties in Ross-shire and Forfarshire, but also Sir George's house, formerly belonging to the Abbot of Melrose, in a close off the High Street of Edinburgh, and the lands of Shank and other lands in the county of Edinburgh. There are also included the lands of Coupar-Maculty and Bendochy, which are said to be in the county of Forfar, but which are really in the county of Perth. From these inventories it appears that among those indebted to Sir George Mackenzie at the time of his death were Macdonald of Sleat, the Master of Balmerino, Mr. Alexander Mackenzie Sir George's brother, Lord Doune, Erskine of Dun, the second Marquis of Montrose, Mackenzie of Gairloch, Sir John Drummond of Logiealmond, the Earl of Strathmore, the Earl of Errol, the Viscount of Kilsyth, Hallyburton of Pitcur, the Bishop of Ross, the Earl of Seaforth, the Viscount of Tarbat, and many other well-known Scotsmen. The second inventory is dated February 1700, and is given up by Mr. George Mackenzie, the cousin and sole curator of Mr. George Mackenzie. This inventory is in many respects a duplicate of the former one. It is interesting to note that in 1700 Sir George's dwelling-house, or lodgings as it is called, which had been lately possessed by Lord Carmichael at a rent of £47 sterling, was then 'wast (that is, waste, unlet), the last year because of the highness of the rent.' In referring to the lands of Coupar-Maculty and Bendochy, it is noted in the inventory that the tenants of these lands had renounced their tacks or leases 'because they declare they could not pay the bar (that is, bear or barley) rent contained in their tacks . . . and desyred that the bar rent should be reduced to ffyve

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pounds per boll otherwayes they would quyte their possessions and leave the land wast.' This inventory in dealing with the debt due by the Master of Balmerino, refers to the fact that he had been the proprietor of the lands of North Berwick, which, however, had just been dispoed to Sir Hugh Dalrymple, President of the Court of Session. From the various statements of Sir George Mackenzie's affairs as well as from the inventories now being referred to, it appears that it was the practice to give the leading lawyers, such as Sir George Mackenzie, 'pensions,' which, it may be assumed, were really retaining fees. For example, the Convention of Royal Burghs, on 4th July 1684, conferred on him a pension of 500 merks yearly as their assessor and advocate. The Burgh of Burntisland and the Burgh of Inverkeithing also gave similar bonds, and among the debts due to Sir George Mackenzie, which in the inventory was said to be 'thought desperrt,' are pensions granted by the tutor of Lovat, Simeon Fraser of Inveralathy, the tutor of Grant, Sir George Urquhart of Cromarty, the Marquis of Montrose, and others. Among other somewhat remarkable bonds is one of Sir Robert Murray, alias Creichtoun of Glenmuire to Sir George, 'payable at the first term of Mertimas or Whitsunday next, after the sd Sir Robert attained to the possession of the Earle off Annandale's estate in Scotland or Ireland.' At the conclusion of this bond there is an obligation by John, Marquis of Atholl and his heirs, to pay the contents of the bond, 'how soon James Murray, his son, shall obtain to the possession of the estate in Ireland.' Another remarkable bond is that of Cunninghame of Auchinharvy to Sir George, the sum therein being to be paid 'out of the first and readiest of the soumes resting by the Duke and Dutches of Hamiltoun to Auchinharvy when the same shall be recovered.'

It would seem that Lady Mackenzie had attempted to recover from the Marquis of Montrose the arrears of pension due to Sir George, but the court decided against her. It appears from this Inventory also that Mr. Colin Mackenzie of Muiretoun, who had managed the Ross-shire estates after Sir George's death, had not accounted to his son and Lady Mackenzie for the rents, and a decret was obtained against him in the Court of Session.

The last entry in this Inventory has reference to Sir George

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Mackenzie's silver plate, which, while in his widow's (Lady Preston-hall's) possession, was either destroyed or lost when the house of Preston-hall was burned.

The estate known as Rosehaugh, which was situated in the county of Ross, and from which Sir George Mackenzie took his designation, 'Sir George Mackenzie of Rosehaugh,' consisted of various portions of land, the principal names of which seem to have been Balmungie with the Mills of Rosemarkie; the lands of Wester Raddery; certain lands lying between the burghs of Chanery and Rosemarkie known as the Chanon lands; the lands of Arcandith, Inch, and quarter lands of Avoch, and also certain church property in the Chanery. The lands of Balmungie, Wester Raddery, and others were acquired by a disposition in Sir George Mackenzie's favour granted by Sir George Mackenzie of Tarbat and Sir John Urquhart of Cromarty with consent of Kenneth, Earl of Seaforth, which disposition bears date the 18th May 1668. The mills of Rosemarkie and others were conveyed by Kenneth, Earl of Seaforth, to Sir George Mackenzie by disposition dated the 20th May 1668. The mill lands of Avoch came into Sir George Mackenzie's possession by a deed executed by George Mackenzie of Kincurdie, in his favour, dated 15th September 1669. The lands of Arcandith were conveyed by Kenneth Mackenzie of Coull to him in September 1671. The lands of Inch were acquired by Sir George Mackenzie on the 26th May 1668 by a conveyance from William Innes and Robert Innes. There were also conveyances of other small portions of land which need not be specified. It would seem, however, that by disposition dated the 15th and 18th September 1669 a general conveyance was granted by Sir George Mackenzie of Tarbat, Sir John Urquhart of Cromarty, and others, in favour of Sir George Mackenzie, of the whole lands in Ross-shire hereinbefore specified, and that Sir George's title to these lands was duly completed in the same year, according to the forms of Scottish conveyancing. By disposition and deed of entail dated the 4th June 1689, and recorded in the Register of Taillies the 19th July 1692, Sir George Mackenzie, who himself prepared and passed into law the Scottish Entail Act of 1685, executed a strict entail of his whole estates, including Rosehaugh,

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in favour of his son and others. In 1739 the Right Honourable James Stewart Mackenzie, the great-grandson of Sir George, who held the very important and dignified office of Lord Privy Seal of Scotland from the year 1763 to his death in 1800, succeeded to the estate of Rosehaugh, and his title thereto was completed conform to a charter of resignation in his favour under the Great Seal dated the 26th July 1739.

Under the powers of a private Act of Parliament obtained by him in 1752, the Lord Privy Seal sold the whole estate of Rosehaugh to Mr. George Ross of Pitkeerie, reserving merely to himself such a 'superiority' of the lands as entitled him to the qualification of a freeholder in the county. In order to retain his position as freeholder the Lord Privy Seal granted two conveyances to Mr. Ross, viz., first, a feu disposition, by which he conveyed to him the lands of Arcandith, Inch, and others for payment of the sum of £20 Scots yearly. The sum of £20 Scots is equivalent to £1, 13s. 4d. sterling. He also granted in favour of Mr. Ross an absolute conveyance of the lands of Balmungie, Wester Raddery, and others.

The lands of Arcandith and others now belong to Mr. Fletcher of Rosehaugh and to Mrs. Crosbie of Flowerburn, who still continue to pay the annual feu-duty of £1, 13s. 4d., Mr. Fletcher paying £1, 3s. 4d. and Mrs. Crosbie 10s. annually.

The whole of the ancient writs connected with Rosehaugh were assigned and transferred by the Lord Privy Seal to Mr. Ross of Pitkeerie, who, however, was bound to make them forthcoming to the Lord Privy Seal and his successors when required. It is believed that these old writs cannot now be found, but it may be assumed from the particulars which the Inventory thereof, signed with reference to the conveyance by the Lord Privy Seal to Mr. Ross, contains, that there is nothing of special interest or value in any of them.

The author of the description of the Parish of Fortrose in Sir John Sinclair's *Statistical Account of Scotland* (1793) observes that 'that eminent statesman and lawyer, Sir George Mackenzie, derived much pleasure from his occasional residences at Rosehaugh,' and the



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author of the paper on the parish of Avoch refers thus to Rosehaugh : 'The property is said to have been so named from a small haugh contiguous to the bank where a great many sweetbriars and wild roses used to grow. The ground having been mostly brought into tillage they are not now so numerous. On this haugh, along the bottom of the wood, lies the road from Fortrose to Avoch ; and there can scarcely be imagined a more delightful summer evening's walk than this—when on one hand the western sun glitters through the trees, the birches send forth their fragrance, and the singing-birds serenade you ; and on the other hand you behold the beautiful basin before mentioned with vessels and boats plying upon it with cheerful industry. It is said that Sir George Mackenzie was so fond of this walk and of that on Chanonry point, which stretches out a mile and a half into the sea, covered with short close grass, as smooth and soft as a carpet, that he used to call it rudeness and want of taste in any of his friends or acquaintances to ride on horseback along them.'

The first estate in Forfarshire purchased by Sir George Mackenzie was the barony of Newtyle and Kinpurnie together with the barony of Auchtertyre and Balcraig ; the mill of Newtyle ; the lands of Denend, Redford, Newbigging, and Boghead ; the lands of Burnmouth ; the lands of Clynche ; the lands of Hillend or Templebank ; the kirklands of Newtyle ; the fourth part of the lands of Balmaw and others. These lands were purchased from David Hallyburton of Pitcur, and were conveyed by him, with consent of his wife, Mrs. Agnes Wedderburn or Hallyburton, to Sir George Mackenzie by disposition bearing date 16th June 1682. Sir George Mackenzie received a Crown charter of these lands, dated at Windsor Castle the 15th August 1682. And this charter was duly ratified by the King and Estates of Parliament on the 16th June 1685.

The ancient writs connected with the estate of Newtyle, Kinpurnie, and others are of great interest and value, more especially those which bear dates within the fourteenth century.

The following are especially interesting, viz. :—

- (1) Charter by Robert Bruce, King of Scots, to William Olifaunt, Knight, of the lands of Newtyle and Kylprony, in

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the shire of Forfar, dated at Neubotyll, 26th December 1317.

- (2) Notarial copy of the foregoing charter made at the instance of Sir Johne Olyfaunt, Knight, Lord of Aberdalgy, on 2nd October 1438 in the House of the Carmelite Brethren of Tulylum, near Perth.
- (3) Charter by David II., King of Scots, narrating that Walter Olyfaunt having 'resined' the lands of Newtyle and Kilprony, the King confirmed them to the said Walter and Elizabeth, his spouse, the King's sister, rendering for the said lands a pair of silver spurs, on the feast of All Saints, at Halton of Newtyle yearly in name of blench farm, with three suits at the King's Court at Forfar, dated at Edinburgh, 29th February 1364.
- (4) A duplicate of said charter.
- (5) A similar charter of the same date by David II., confirming to the said Walter Olyfaunt and his spouse the lands of Ochtertyre and Balcrag on the resignation of the said Walter Olyfaunt, the reddendo being three broad arrows on the Feast of St. Martin yearly at Ochtertyre, in name of blench farm, with three suits at the King's Court at Forfar.
- (6) A duplicate of said charter.
- (7) Charter by Robert, King of Scots, on the resignation by Niel of Carrick in the king's hands of the lands of Uchtertyre which had belonged to John Cunyn, granting them to Sir William Oliphant, Knight, for the service of three archers in the king's army and Scottish service, use and wont, dated at Scone 20th March 1326.

These seven writs are of exceptional interest and bear evidence to the fact that the lands of Newtyle, Kinpurney, and Auchtertyre, and Baleraig had been the personal property of the great national hero, Robert the Bruce, who died in 1329. This is corroborated by these facts:—In a field on the farm of Auchtertyre, immediately to the west

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of the railway line leading to Dundee, there are two mounds known as the 'bow butts' where evidently the king's troops had practised archery. There is also on another part of the lands of Auchtertyre the site of a royal camp, only a small part of which is not now under cultivation. To the north-west of the camp there is a knoll known as 'Graham's knowe,' which it may be assumed took its name from one of the Bruce's supporters. Near the Graham's knowe is the site of a well, known from time immemorial as the 'King's Well.'

There is no writ or title-deed of any kind having reference to Newtyle, Kinpurney, Auchtertyre, or Balcraig, from 1364 to 1457. Probably during that period the Oliphants' title to these lands had been included in their titles to their other lands in Scotland. Be that as it may, the next deed with reference to the Oliphants' portions of Auchtertyre and Balcraig is one in favour of John, Lord Oliphant, dated the 28th of May 1500, which has reference to the 'twa part lands of Auchtertyre and Balcraig.' The next deed in its order bears date the 5th November 1517, and is in favour of Laurence, Lord Oliphant, and has reference to the lands of Newtyle and Kinpurnie. These deeds are followed by the 'Retour,' that is, the Special Service, as it is called, of Laurence, Lord Oliphant, as the heir of Laurence, Lord Oliphant, his father, in the same lands, which bears date the 2nd May 1566. By deed known as 'Contract of Wadset,' dated the 11th October 1588, Laurence, Lord Oliphant, conveyed to his son, John Oliphant, the lands last-mentioned, reserving his own liferent and power of redemption. This power of redemption he afterwards exercised, as is shown by the deeds still in existence. On the 2nd July 1605 Laurence, Lord Oliphant, was served heir of the last-mentioned Laurence, Lord Oliphant, 'his Goodsire.' On the 3rd December 1614, James, Marquis of Hamilton, Lord Arran, etc., conveyed to the last-mentioned Laurence, Lord Oliphant, the teinds, parsonage and vicarage, of the Kirk and Parish of Newtyle.

It thus appears that from 1500 downwards the Oliphant family possessed only two parts of the lands of Auchtertyre and Balcraig. Early in the 15th century the remaining third part of these lands had belonged to a family whose name is now spelled 'Halkett,' but

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whose name in those early days was written 'Hakate' and 'Halkhede.' There is among these old writs a deed in favour of William Hakate, infesting him in the third part of the lands of Auchtertyre and Balcraig, bearing date the 7th December 1457. From the subsequent Crown charter dated 28th April 1512, it would seem that John Halkhede, possessing this part of the lands of Auchtertyre, etc., was the son and heir of Henry Halkhede, now Halkett, of Pitfirran, a well-known Fifeshire family. In 1524 the third part of Auchtertyre and Balcraig was conveyed to a Robert Mercer in security of debt. Ultimately by charter of date September 1529 this third part of Auchtertyre, Balcraig, and others, was disposed by John Halkhede to George Hallyburton of Gask, and Janet Ogston, his spouse, bearing to be granted in consideration of a certain sum paid to John Halkhede 'while in great and urgent necessity.'

The whole lands of Newtyle, Kinpurney, Auchtertyre, and Balcraig were acquired by the Hallyburton family in 1616-17, and remained in their possession till they were conveyed to Sir George Mackenzie.

It cannot be said that any of the ancient writs of more recent date than 1500 have any special interest from an historical point of view. On the other hand, the various deeds in which successive Lords Oliphant are parties, and cadets of that family are witnesses, are of very considerable interest and value in framing a genealogical history of the Oliphant family, and the Earl of Wharncliffe recently permitted Mr. Maitland Thomson, LL.D., Curator of Historical Manuscripts in the Register House, Edinburgh, who has prepared a notice of the Oliphant peerage for the new edition of Douglas's *Baronage and Peerage*, to make use of these deeds. It may be said also that those deeds granted to, or in favour of, the members of the family of Halkett or Halkhede of Pitfirran, might either now or hereafter prove links in the pedigree of the Halkett family.

The lands of Kirktown, and the Kirklands of Newtyle and part of Balmaw, were for a considerable period the property of a family of the name of Bannatyne, who acquired them from Andrew Lesslie, Earl of Rothes, by charter dated 5th October 1562. This charter was confirmed by John, Commendator of Aberbrothock, on the 28th

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of November in the same year, and both charters were confirmed by Mary Queen of Scots on the last day of November 1562. On the 24th January 1617 King James VI. of Scotland granted a charter of novodamus (new grant) in favour of 'James Bannatyne of Kirkcoun of Newtyle,' one of the Commissaries of Edinburgh, of the Kirklands of Newtyle (excepting the minister's manse and glebe). This charter proceeded upon the resignation in favour of the Crown of James, Marquis of Hamilton, Lord Arran and Aberbrothick, The whole lands of Kirklands, etc., were united into a 'tenandry' to be called the tenandry of Wester Newtyle.

It appears from the next writ in the inventory, viz., An Instrument of Sasine, as it is called, in favour of Mr. James Bannatyne, one of the Commissaries of Edinburgh, that he was the son and heir of 'Mr. Thomas Bannatyne of Newtyle,' one of the Senators of the College of Justice. In Burton and Haig's *Historical Account of the Senators of the College of Justice*, p. 275, there is the following notice of Lord Bannatyne, under date 1626, February 14th: 'James Bannatyne of Newhall' (presumably a mistake for Newtyle), 'son of

Bannatyne of Newtyle, was bred to the law, and appointed one of the Commissaries of Edinburgh. He was admitted as an ordinary Lord on the 14th February 1626, and died before the 1st November 1636, when Patrick Nisbet, Lord Eastbank, was received in his place.' It will be observed that this statement is inconsistent with the facts mentioned in the sasine just quoted. As the sasine is dated 1619, and it states that James Bannatyne was then dead, it is clear that the father, Thomas Bannatyne, could not be a Lord of Session in 1626-36. It is somewhat interesting to find that the manse and glebe of Newtyle had been conveyed by Andrew Lindsay, vicar of Newtyle, to David Lindsay of Lethnoth, in 1566, at the time of the Reformation, and that this charter was confirmed by the King in 1581. The manse and glebe were afterwards possessed by the Lindsays of Barnagairs, and ultimately, under reservation of what was set aside to the minister, became the property of one Laurence Anderson at the Mill of Newtyle.

On the 15th of May 1619 Mr. James Bannatyne, 'one of the

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commissaries of Edinburgh,' conveyed the Kirklands of Newtyle and his quarter of the lands of Balmaw to James Hallyburton of Pitcur, and these lands, together with that portion of the glebe which was set aside for the minister, remained in possession of the Hallyburton family till they were acquired by Sir George Mackenzie.

There are some interesting papers in the charter-chest with reference to the fishings on the river Ericht and Blairgowrie, known as the 'Keith' fishings. These fishings had originally belonged to Crichton of Rattray, who had conveyed them to James Scrimgeour of Fairdill. Ultimately they became the property of Sir John Scrymgeour of Dudhope in 1620, and through Scrimgeour, Viscount of Dudhope, they became the property of the Hallyburton family, and ultimately of Sir George Mackenzie. There was a very interesting litigation in the Court of Session with reference to the obstruction of the river at the Keith of Rattray, in 1750, in which the Lord Privy Seal was successful. These fishings were sold about thirty years ago to a Dr. Rattray of Coralbank, near Blairgowrie.

Viscount Dudhope, before referred to, conveyed, in 1659, to James Hallyburton of Pitcur, the lands of Henderston and Silliseat with other property, and these lands also passed from the Hallyburton family to Sir George Mackenzie. There is nothing of special interest in these last-mentioned writs.

In 1514 John, Lord Oliphant, granted a charter in favour of David Anderson of the lands of Clynche of Kinpurnie in the barony of Newtyle, as also the half of the lands of Burnmouth, as also two parts of the lands of Burnmouth. In 1518 John Halkhede of Pitfirran, already referred to, granted in favour of this David Anderson a charter of the third of Burnmouth. There are various other precepts or charters by successive Lords Oliphant to the owners of these portions of the estate. There is also a charter by John, Abbot of Lindores, in favour of John Rolland, of the lands of Haltoun of Newtyle or Hillend, bearing date August 1550. In 1574 Patrick Lesslie, Commendator of Lindores, issued a precept in favour of John Rolland, Junior. In 1599 King James VI., being then 'of perfect age,' and after he had revoked previous grants, and 'after the annexation of Church lands to the Crown,

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disponed to John Anderson at the Mill of Newtyle all the lands last referred to, which are said to belong to his Majesty in virtue of the Acts annexing church lands to the Crown. These lands were, by disposition dated 24th April 1675, conveyed by Patrick 'Weynton,' formerly 'Anderson,' of Strickmartine, only son and heir of Patrick Anderson of Burnmouth, to David Hallyburton of Pitcur, and from the family of Hallyburton the lands passed to Sir George Mackenzie. It may be here mentioned that the lands of Henderston were sold by the late Earl of Wharncliffe to Mr. Whitton of Couston, and that it is impossible now to tell what particular portion of Kinpurney was known as Clynche. It has already been mentioned that David Hallyburton of Pitcur conveyed, on the 16th June 1682, to Sir George Mackenzie, therein designed of Rosehaugh, his Majesty's Advocate, *inter alia*: (1) the barony of Newtyle and Kinpurney; (2) the barony of Auchtertyre and Balcraig; (3) the Mill of Newtyle, with Denend, Redford, Newbigging, and Bogside; (4) Burnmouth; (5) Clynche; (6) Hillend or Templebank, with smaller subjects; (7) the kirklands of Newtyle, including the fourth part of Balmaw; (8) Henderston, Silliseat, and others; (9) the fishings of Keith of Rattray.

On the 15th August 1682 Sir George Mackenzie received a Crown charter of all these lands, which were thereby erected into a new barony to be called the barony of Newtyle, and whereby the town of Kirkton of Newtyle was also erected into a burgh or barony.

There is a series of old writs and titles having reference to the Keillor property:—

1. WESTER KEILLOR

The oldest existing deed is a charter of these lands granted by Patrick Hadden of Wester Keillor to Sylvester Hadden, his son, which is dated 4th April 1492. These lands of Wester Keillor appear to have remained in the Hadden family till 1598, when they passed to the Hallyburton family.

2. HALF OF EASTER KEILLOR

This half of Easter Keillor belonged at one time to James, Lord

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Ogilvy, in whose lands of Ogilvy this half portion of Easter Keillor was included. The oldest writ in existence is a procuratory of resignation by Lord Ogilvy in favour of his son, the Master of Ogilvy, bearing date 1591. In 1604 and subsequent years this half of Easter Keillor was acquired by the Hallyburton family, and there are various charters thereafter granted by Lord Ogilvy and the Earl of Airlie in favour of the Hallyburtons.

By disposition dated 17th December 1685 and 21st April 1686 David Hallyburton, with consents, conveyed to Sir George Mackenzie the lands of West Keillor and the west half of Easter Keillor. A Crown charter in favour of Mr. George Mackenzie was granted by King William and Queen Mary on the 9th March 1694.

3. OTHER HALF OF EASTER KEILLOR

In 1648 this half of the lands of Easter Keillor belonged to a Susannah Haldane, wife of George Hallyburton of Easter Keillor, and was purchased in 1762 and 1764 by the Lord Privy Seal from a James Hay and a Henry Geikie respectively. By disposition dated the 7th July and 23rd August 1764, the Lord Privy Seal disposed these lands to himself and the other heirs of entail under Sir George Mackenzie's deeds.

The estates which have been specified and described, including the Ross-shire estates, together with the lands of Shank in the shire of Edinburgh, and a lodging in the City of Edinburgh, detailed reference to both of which is hereinafter made, are the estates entailed by Sir George Mackenzie on his son and others by the principal deed of entail already referred to, dated the 4th June 1689.

In 1694 Mr. George Mackenzie, Sir George Mackenzie's only son, purchased with monies paid by Dame Margaret Hallyburton, his mother, out of Sir George Mackenzie's funds, the lands of Bendochy or Bennathie, lying in the west of Stormont, within the regality of Dunfermline and shire of Perth, and also the lands of Coupar-Maccultie and others adjoining, from James Ramsay, younger, of Banff, with the consent of

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Sir Gilbert Ramsay of Banff, his father. These lands of Bendochy and Coupar-Maccultie formed a most desirable estate in the parish of Bendochy and county of Perth, distant about one mile from the town of Coupar-Angus. They are bounded on the south by the river Isla, which unites with the Tay at Cargill. At one time tradition says that the Lord Privy Seal intended to build his principal residence on this estate instead of at Belmont, but ultimately the finer timber on the Belmont estate induced him to prefer the site on which Belmont Castle was eventually erected. The estate of Bendochy and Coupar-Maccultie was sold in various divisions and at various times. The last portion was sold about twenty-five years ago. Only the modern title-deeds were delivered to the purchasers, and there are still in existence a series of very interesting deeds connected with these properties.

The lands of Coupar-Maculty were granted to the church of Dunfermline, along with the church of the Holy Trinity of Dunkeld, by Adam, Bishop of Caithness, and Malcolm iv. in perpetual alms for the weal of the soul of David, King of Scotland. A document in the Register of the Abbey of Dunfermline shows that a claim having been made on the part of the Crown for a certain sum from the abbot on account of his neglect to give suit for the lands of Cupermacultin, Fordoui, and others, in the court of the Sheriff of Perth, an inquest was held before Alexander Cumyn, Earl of Buchan, Justiciary of Scotland, through various baronies, whether suit was owing from the said lands or not, and after careful inquiry Sir Gilbert Hay, who had been present at the inquest, thereafter, in 'pleno colloquio domini regis,' at Holyrood, on the 14th January 1255, pronounced the verdict of the baronies to be that they had seen the men of the lands come to the said court but never as suitors, and the king freed the abbot from the claim.

The lands of Couper-macultie were in 1282 confirmed by the Abbot of Dunfermline to Malcolm de Ferenderach, and from this family they passed into the possession of Sir James Fraser of Ferenderach.

The oldest deed in existence connected with this property is a charter by John, Abbot of Dunfermline, to Sir Richard Cummin, Knight, of the lands of Coupar-maccultie, bearing date 2nd November 1394, with an annualrent of five merks of sterlings out of the lands

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of Fordoui, which lands and annualrent belonged to Sir James Fraser, above-mentioned, and were resigned by him. The witnesses to this charter were Walter, Bishop of St. Andrews, Master Duncan Petyt, Archdeacon of Glasgow, Chancellor of Scotland, Master John of Caron, Rector of the church of Rathon, and noblemen, Sir Walter Olyfaunt and Sir John Ramsay of Kernoc, Knights. This charter contains the following clause: 'Sciatis autem dictus Ricardus et heredes sui habebit et habebunt forisfactam vaccam vacce et ovis de hominibus suis legiis infra dictis terris de Cupermaculty et de Forduy manentibus et nos autem habemus forisfacta vaccam et ovem excedencia.' On the 20th February 1403 John, Abbot of Dunfermline, granted another charter in favour of Sir Richard Cumyn, and after his decease to David Cumyn, his natural son, whom failing to John Cumyn, his other natural son. The witnesses to this charter were Laurence, Abbot of Inchcolm; Sir Archibald Stewart, Knight; Mr. Andrew of Trebrown, Eleemosinar General of our Lord the King; Sir Walter Bell, rector of the church of Kyngorn; Malice Dawson, Andrew Endswane, William Dolar, Esquires; Thomas Twyn, Notary Public, and others. In 1466 Richard, Abbot of Dunfermline, granted a precept for infesting David Cuming, son of the David Cuming already mentioned, in these lands. In 1498 George, Abbot of Dunfermline, granted a similar precept in favour of Elizabeth Brown, the wife of David Cuming, in half of the lands of Coupar-Maccultie. In 1501 James, Archbishop of St. Andrews, Comendator of the monastery of Dunfermline, granted a charter to this David Cuming and Elizabeth Brown, his spouse, of these lands. In 1523 the Archbishop granted a precept for infesting John Cuming as heir of Alexander Cuming, his father, therein, and there are subsequent charters and precepts in favour of the Cuming family. There is a seal of John Cumyng of Coultie attached to a procuratory of resignation of 9th March 1601 in very perfect order. Following upon this procuratory there is a charter, granted at Dalkeith, and bearing date the 10th May 1601, by Queen Anne of Denmark, with consent of James VI., her husband, in favour of John Cuming, of the lands of Coupar-Maccultie and others, which contains a provision that the proprietors shall not be entitled to sell these lands without the special

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consent of their Majesties, and making the first offer thereof to them. This charter is subscribed both by the King and Queen, and bears the Queen's seal. In 1606 these lands of Coupar-Maccultie, then and thereafter known as 'Couttie,' passed from the Cuming family to the Hallyburtons of Pitcur, and in 1628 it would seem that Coupar-Maccultie became the property of a Patrick Ogilvy. In 1606 a charter was granted by Queen Anna, with consent of the King, in favour of Hallyburton. The King and Queen superscribed, and the seal is perfect.

Bendochy or Bennathie.—The oldest title-deed in existence with reference to this property is a charter by George, Dean of St. Andrews, and Commendator of Dunfermline, in favour of George Blair and his heirs, whom failing to Ogilvy of Coalstoun and his heirs, bearing date 10th March 1538.

One of the most interesting of all the deeds connected with this portion of Mr. George Mackenzie's estates is perhaps the charter of confirmation, or bull, granted by the Pope, ratifying a charter in favour of George Blair, whom failing Ogilvy, dated Rome at St. Peter's, the first day of July and fifth year of the Pontificate. This charter is a most beautiful specimen of caligraphy, and is in excellent order and of much interest.

There are also a number of charters granted by the Commendator of Dunfermline in favour of successive proprietors subsequent to the Reformation, from which, and from other deeds still existing, it would appear that the property of Bendochy remained in the hands of the Ogilvy family—Ogilvy of Balfour—for a very considerable period. Among the titles to Bendochy there are writs having seals attached in very good order. There is a Crown charter of date 160—superscribed by Queen Anna and the King which has some interesting ornamental writing on it. On the 20th February 1630 a Crown charter was granted in favour of Patrick Ogilvy of Drummie, therein designed Patrick Ogilvy of Bennathie, and Jean Ramsay, his spouse, of both properties of Bendochy and Coupar-Maccultie.

On the 15th of November 1649 the lands of Bennathie and Coupar-Maccultie were disposed by Patrick Ogilvy of Bennathie, with consent of

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Sir Patrick Ogilvy of Inchmartine, Patrick, Lord Deskford, and William Ogilvy, son of the said Sir Patrick Ogilvy, to Gilbert Ramsay of Banff.

Both properties were disposed to George Mackenzie in 1694 by James Ramsay, younger, of Banff, the disposition containing the same series of heirs as are specified in Sir George Mackenzie's own disposition of taillie.

In several ways these old titles of Bendochy and Coupar-Maccultie are of interest and value. The family of Cuming of Coupar-Maccultie had been one of some importance. In the ancient parish church of Bendochy there is erected a monument to one of the Cumings. The figure is that of a knight in full armour. Except from these old title-deeds nothing is known of this branch of the great Cumyn or Cuming family. Even the name of Cuming is unknown in the district, and it is still more remarkable that the name of Coupar-Maccultie is never heard of, the property from time immemorial being known merely as 'Couttie.' The titles, both of Coupar-Maccultie and Bendochy, contain much information, both as to people and places, of value to any one preparing an historical sketch of the district, and it will be well, therefore, if they were so disposed of as to make certain that they would be carefully preserved. The Papal Bull, to which reference has already been made, is specially interesting.

In 1693 Mr. George Mackenzie, Sir George Mackenzie's only son, acquired from George Brown of Leidgerlaw two quarter parts of the lands of Balmaw. The deed of conveyance was in favour of the same series of heirs as that contained in Sir George Mackenzie's principal deed of taillie.

The first deed having reference to this part of the lands of Balmaw is a feu charter, dated in April 1552, granted by John, Abbot of Lindores, to Janet Blair, relict to Archibald Anderson 'of Burnmow' and George Blair of Gairdrum, her brother. In 1557 George Blair sold these lands to Andrew Moncur, designed as 'of that ilk' (that is, Andrew Moncur of Moncur). In 1623 Andrew Moncur, with his wife's consent, disposed his half of Balmaw to George Brown at the Mill of Collace. The Moncurs of that ilk seem to have been a family of importance so far back as the fourteenth century. In Lord Kinnaird's collection of

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ancient writs there is a charter by Raigenaldus de Kynnaird in favour of his cousin Andrew de Muncur of that ilk of the lands of Muncur, in the shire of Perth. The family seems to have been, as landowners, long extinct. The Browns retained this property of Balmaw until they sold it to Mr. George Mackenzie in 1693.

There is nothing in any of the deeds connected with this part of Balmaw of any special interest.

It has been already noticed that at the date of his death Sir George Mackenzie, in addition to the other lands and estates mentioned in these notes, possessed a residence in Edinburgh, and a small property known as the barony of Shank, and the lands of Haughhead, all lying in the county of Edinburgh. His house in Edinburgh was known as the 'Abbot of Melrose's lodging,' it having originally been the town house of that abbot. Both the Edinburgh house and the lands in the county of Edinburgh passed, along with Sir George Mackenzie's other estates, to the Right Honourable James Stewart Mackenzie, Sir George's great-grandson, whose title was completed thereto in 1739. Mr. James Stewart Mackenzie was the second son of James, second Earl of Bute, who was married to Lady Ann Campbell, daughter of Archibald, first Duke of Argyll. Lady Bute survived her husband, and was married a second time to Alexander Fraser of Strichen, one of the Senators of the College of Justice, under the name of Lord Strichen. Frequent reference is made in these notes to Lady Bute and Lord Strichen. She by her first marriage had two sons, John, third Earl of Bute, and Mr. James Stewart Mackenzie. The latter married his cousin, Lady Elizabeth Campbell, to whom frequent reference is made as 'Lady Betty Campbell,' the fourth daughter of John, second Duke of Argyll and Greenwich. No children survived her. Mr. Stewart Mackenzie is frequently referred to in the most kindly and appreciative way by the famous Lady Mary Wortley Montagu in her correspondence, and she named him as a legatee in her last will. The first reference to him in Lady Mary's correspondence is in a letter to the Countess of Pomfret of 29th June 1740, in which she refers to Mr. Mackenzie as being 'a very pretty youth, much enchanted by the charms of Lady Sophia,' that is, Lady Sophia Fermor.

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In another letter to the same Countess, dated 11th November 1740, she writes thus: 'I perceive all letters are stopped. Two that you enclosed are from dear Mr. Mackenzie pressing with the most friendly solicitude my return to Venice, and begging me to let him meet me at Bologna. I am amazed at the good nature of that youth. I could not wish a child of my own a more affectionate behaviour than he has shown to me, and that inducement has added to many others to incline me to Venice.' Lord Wharncliffe, her great-grandson, has a footnote to this letter in which he says that Mr. Mackenzie expressed throughout his life, and to the end of it, the highest opinion of Lady Mary.

In a letter to Lady Bute, her daughter, dated Padua, 17th July 1758, she refers to the nomination of Mr. Mackenzie to the ambassadorship at Turin. She writes: 'It is the peculiar glory of Mr. Mackenzie that the whole Sardinian Court rejoices in the expectation of his arrival, notwithstanding that they have been very well pleased with Lord Bristol. To say truth, they are the only young men I have seen abroad that have found the secret of introducing themselves into the best company.'

In her next letter to the Countess of Bute, dated Padua, 29th July 1758, she makes reference to Lady Betty Mackenzie. She writes thus: 'I am glad to hear that Lady Betty Mackenzie is so amiable. I have dined with her at the Duke of Argyle's, and seen her several times, but she was then of an age when young ladies think silence becoming in the presence of their parents. Lady Mary, hardly past her childhood, was more free, and I confess was my favourite in the family.'

In a postscript she expresses the hope that Mr. Mackenzie is to pass through Venice.

In a subsequent letter to Lady Bute, dated 24th June 1759, she mentioned that she has had a letter from Mr. Mackenzie informing her that he has sent her her books, and adds: 'I could greatly wish to see Lady Betty and your brother-in-law. I fancy I have a thousand questions to ask in relation to their nephews and nieces. Whatever touches you is important to me. I fear I must not expect that satisfaction. They are obliged to reside at Turin, and I cannot resolve to appear in a Court where old people always make an ill figure.'

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In letters to Lady Bute of 26th September 1759, 9th November 1759, 23rd November 1759, and January 1760, she refers to Mr. Mackenzie. In one she writes thus : ' I have had a letter from Mr. Mackenzie, who is excessively liked at Turin. I cannot be persuaded to go thither, but I heartily wish I could contrive some other place to see him and Lady Betty.' Again, ' I am informed that Mr. Mackenzie makes a very good figure at Turin.'

In 1741 Mr. Stewart Mackenzie was chosen representative in Parliament for the county of Argyll; in 1747 he was elected member for the county of Bute; in 1754 for the Ayr District of Burghs; and in 1761 for the county of Ross, for which he continued to sit till 1784.

In 1758 Mr. Stewart Mackenzie was appointed by George II. his Majesty's Envoy Extraordinary to the court of Turin, and upon the accession of George III. in 1760 he was re-appointed Envoy Extraordinary and Minister Plenipotentiary of that court. In 1761 he became Ambassador Extraordinary and Minister Plenipotentiary to the Republic of Venice. The management of the affairs of Scotland had during the latter years of the reign of George II. and the earlier years of George III. been intrusted to John, third Duke of Argyll, an administrator and politician of the highest ability and influence. On his death in 1761 it was not unnatural that his authority should be transferred to his nephews, Lord Bute and Mr. Stewart Mackenzie. Mr. Mackenzie was accordingly recalled by King George III. to Britain, and practically the supreme direction of affairs in Scotland was committed to him for a time, he being at the same time appointed one of his Majesty's Privy Council. Unfortunately, as is too well-known, the personal regard which George III. felt for Lord Bute raised a storm of indignation against him, his family, and the Scottish nation generally. The most unfounded and villainous charges were openly made against Lord Bute. Schemes of the wildest and most treasonable ambition were attributed to him, though not even a shadow of evidence was forthcoming to show that a nobleman of middle life, who had never put forward his own claims to high position, and whose personal character was beyond reproach, had suddenly developed into a sordid, scheming, self-seeking politician. Posterity has done justice to Lord Bute, but at the beginning of the

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reign of George III. the fact that a man was born in Scotland and spoke with a Scotch accent was enough to damn him in the eyes of every Englishman. Scotsmen hated the Union, and desired to repeal it. Englishmen forgot that the Rebellion of 1745 was a rebellion merely of the Highland clans, from which the Lowland Scots had stood entirely aloof. They wilfully confused between the Celtic population of Scotland, whose imagination had been fired and fascinated by the Bonnie Prince Charlie, and the great bulk of the nation, who stood staunchly by the Revolution of 1688, and, as Presbyterians and Protestants, had no desire to see the Stuart dynasty returned to power. Few Englishmen had crossed the Scottish border, and resenting as they did the alarm produced by the Highland inroad of 1745, and anticipating as they did the immigration of hosts of poverty-stricken Scotsmen into the English cities, and especially into London, in search of employment and wealth, and failing, as they did, to understand the rude accent, so different from that of England, there was in the London of that day, notwithstanding that many eminent Scotsmen had already distinguished themselves greatly both in the professions and in politics, no one so thoroughly detested as a Scotsman was. The unpopularity of Lord Bute was extreme, and it is not surprising, therefore, that when he resigned office in 1763, the succeeding Government insisted in 1765 on removing his brother from the post of Lord Privy Seal. The King with great spirit declined to agree to this, stating that his personal promise had been given to Mr. Stewart Mackenzie that he should be continued in office. Grenville still insisted on his dismissal, and at last the King felt bound to yield, 'but he desired Grenville distinctly to understand that his royal word had been pledged to Mackenzie, and that if that word was to be broken, the responsibility should rest upon his ministers and not upon himself.' In 1766, on the initiative of Lord Chatham, Mr. Stewart Mackenzie was re-appointed Lord Privy Seal, and at the same time a dukedom was conferred upon Lord Bute's kinsman, the Duke of Northumberland. From 1761 to 1765 Lord Bute and Mr. Stewart Mackenzie virtually ruled Scotland, but the re-appointment of the latter to the Lord Privy Sealship did not unfortunately carry with it the supreme power and influence in Scottish affairs. This was part of

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Lord Chatham's policy, as he himself declared. Thereafter Pitt ruled Scotland and administered its affairs for many years through the famous Henry Dundas, long Lord Advocate of Scotland, and afterwards the first Viscount Melville. Mr. Stewart Mackenzie held the post of Lord Privy Seal till his death in 1800, and although the office had been, since 1765, shorn of its powers, it was still an office of much dignity and high emolument. Lady Betty Mackenzie died in 1799, and it is understood that the Lord Privy Seal's death nine months afterwards was due to grief at the irreparable loss which he had sustained.¹

Among the family papers and patents the following are to be found :—

- (1) Commission under the Great Seal by His Majesty George III. nominating and appointing the Right Honourable James Stewart Mackenzie to be Lord Keeper of the Privy Seal in place of John, Duke of Athol, dated at St. James, 15th April 1763.
- (2) His Majesty's warrant under the said Privy Seal of Scotland for payment to the Lord Privy Seal of a yearly salary of £3000 sterling as Keeper, dated 3rd June 1763.
- (3) Another commission under the Great Seal by His Majesty

¹ Prefixed to the *Letters and Journals of Lady Mary Coke* there is a most interesting Memoir by Lady Louisa Stuart, daughter of the Earl of Bute, the Prime Minister of George the Third, prepared in order to give Caroline Lucy Lady Scott an account of John, Duke of Argyll, and his family, in which Lady Louisa gives a graphic account of the Lord Privy Seal and his Lady. The following are short extracts : 'I defy a more devoted attachment to exist than she [Lady Betty] had to my uncle [the Lord Privy Seal], and being love of the genuine sterling kind (marked by a sincere preference of another to self) which always ennoble the character, it raised her above the folly of hers, wherever he was concerned. Her constant attention to his wishes, and visible delight in his presence, were not debased by any silly fondness unbecoming their age. If through youthful flippancy one sometimes simpered at the looks of affection exchanged between the ugly old woman and the good man in a bob-wig, one's heart presently smote one since in sober earnest one could not but allow that their steady cordial perfect union was a sight beautiful to behold.' This is her description of the Lord Privy Seal. 'A temper once impetuous had subsided into calmness and left him the best humoured mortal alive, always in good spirits, always happy, fond of society, and from his lively conversation formed to delight it, yet with pursuits in mathematics, astronomy, and all the exact sciences (to say nothing of a close attention to business) which occupied his mind pleasantly when alone.' It is impossible to imagine a more pleasing picture than the talented Lady Louisa Stuart gives us of her relatives, the Lord Privy Seal and his wife. Portraits of both, taken as they acted in Otway's *Orphan*, are to be found on the walls of Dalkeith Palace. Their two children died in infancy.

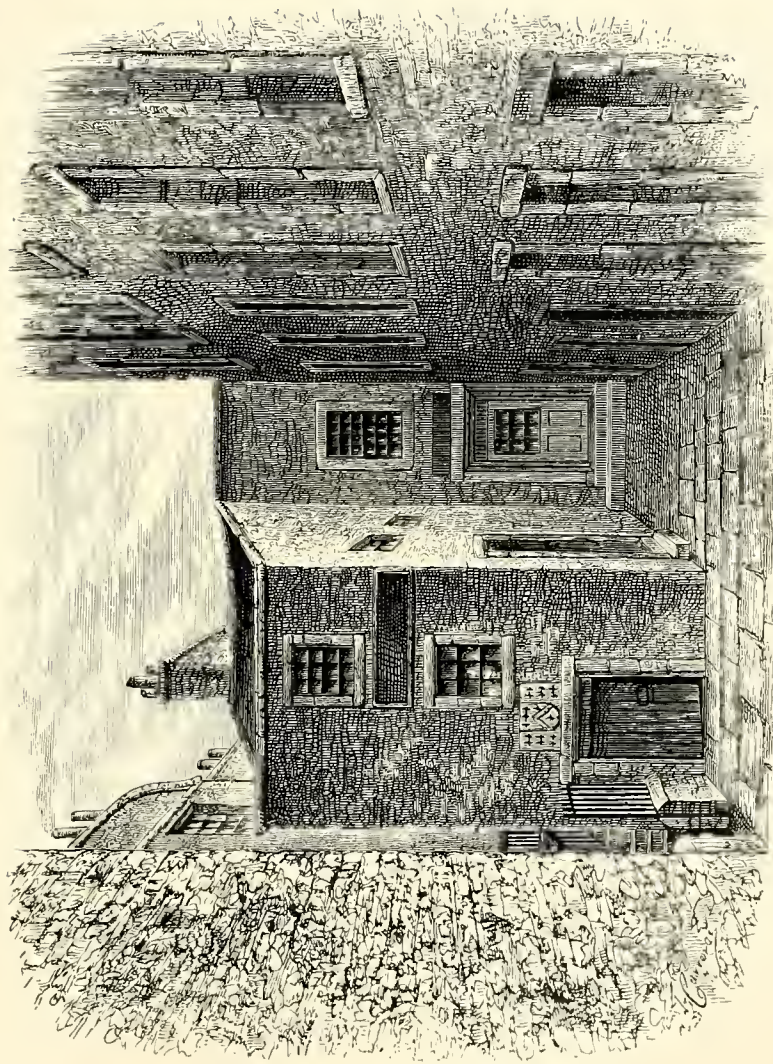
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George III., appointing Mr. James Stewart Mackenzie to be again Lord Keeper of the Privy Seal in place of the Earl of Breadalbane, dated the 28th August 1766.

- (4) A similar warrant for payment of Lord Privy Seal's salary of £3000 sterling, dated 16th October 1766.
- (5) Another commission under the Great Seal by His Majesty George III. to Mr. Stewart Mackenzie, continuing him as Keeper of the Privy Seal of Scotland during his life, with the same salary as that formerly enjoyed, dated 7th May 1776.
- (6) A similar warrant under the Privy Seal for payment of the Lord Privy Seal's salary of £3000 sterling, dated 1st June 1776.

In 1751, the Lord Privy Seal obtained a private Act of Parliament, authorising the sale of the entailed estates in Ross-shire; of the property of Shank and others in the county of Edinburgh; and of his town house in the city of Edinburgh. It was provided that the moneys arising from these sales should be reinvested in lands lying contiguous to the remainder of the entailed estates in the counties of Forfar and Perth to be secured to the heirs under Sir George Mackenzie's entail. This Act also authorised Lady Elizabeth Campbell's fortune, which by the marriage settlements was to be secured in England, to be uplifted and invested in the purchase of lands or in heritable security in Scotland with the consent of the Trustees mentioned in the Act. Among the family papers there is an old volume containing a copy of this private Act of Parliament with the whole proceedings of the Trustees in virtue thereof. The Trustees were Lord Charles Douglas, second son of the Duke of Queensberry, Lord Strichen, Robert Craigie of Glen-doick, afterwards Lord President of the Court of Session, and James Ferguson of Pitfour, John Mackie of Palgowan, and James Oswald of Dunikeir.

The town-house of the Abbots of Melrose was situated on the south side of the High Street, in the alley now called Strichen's Close and formerly Rosehaugh's Close, and had a garden which extended down to the Cowgate, and up the opposite slope on the west side of the



SIR GEORGE MACKENZIE'S EDINBURGH HOUSE
ROSEHAUGH'S OR STRICHEN'S CLOSE

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Pleasance, within the city wall, and on the one side, was the residence of the Earl of Morton. There was a close or lane on the west side known as 'Cant's Close,' from which very probably there was a door leading to the house itself.

A description of it in 1847 states that 'the whole building has evidently undergone great alterations; a carved stone bears a large and very boldly cut shield, with two coats of arms impaled, and the date 1600. There seems no reason to doubt, however, that the main portion of the Abbot's residence still remains. The lower story is strongly vaulted, and is evidently the work of an early date. The small quadrangle is also quite in character with the period assumed for the building; and at its north-west angle in Cant's Close, where a curiously carved fleur-de-lis surmounts the gable, a grotesque gargoyle of antique form serves as a gutter to the roof.'

Abbot Andrew Duvil, who was nominated to the Abbacy of Melrose in 1526 by James v., resided here.

The close in earlier time took its name from the Abbots of Melrose; but at a later period was called Rosehaugh's Close, after Sir George Mackenzie.

During a great part of the eighteenth century, the ancient mansion in Rosehaugh's Close was occupied by Lord Strichen, who had married the Lord Privy Seal's mother, and who gave to the close the name it now bears. He resided in the house for forty-five years, it being bought by him in 1752. Two skilled experts had valued the house at £440 or £450 sterling, and Lord Strichen agreed to pay the higher sum. The change in the value of money as well as in the habits of the higher classes in the city of Edinburgh is well exemplified by the circumstances connected with the sale of Sir George Mackenzie's house. As is well known the houses in the High Street of Edinburgh consisted of erections of many stories, and no doubt numerous citizens lived in the flats above Sir George Mackenzie's house. To this day there will be found in some of those ancient houses, and even in the higher stories thereof, wood carvings and decorated ceilings, showing considerable artistic taste. At the present time such a house as that of the Abbot of Melrose is occupied by the lowest class of the population, and the professional

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and wealthy classes have now their residences where, in those days, there were green fields separated from the High Street by the Nor' Loch, which are now the low ground and gardens lying between the Castle and Princes Street of Edinburgh. The rent paid by Lord Strichen, who at the time of the purchase was in the occupation of Sir George Mackenzie's house, was only £40 sterling, and the price of the house was, as has already been noted, £450. Any common tradesman in Edinburgh at the present time occupies a house as valuable as that which the famous Lord Advocate of Charles II. occupied, and the fitting residence for such a dignitary of State in the new town of Edinburgh would now cost from £6000 to £10,000. The estate of Shank and Haughhead produced a rental of less than £100, and in 1752 it was valued at £3000 sterling, being twenty-six years' purchase of the net rent with a sum of £500 added for the value of the timber. This price is in excess of what would be obtained at the present day for such a rental. The property was eventually sold to Lord President Dundas of Arniston for the sum of £3000. There is an Inventory of the title-deeds of Shank in the Sederunt Book of the Trust. The first deed mentioned is a charter of confirmation under the Great Seal confirming two charters, the one granted by James, Lord St. John, Preceptor of Torphichen, in favour of Mr. Nicoll Elphinston, dated 1st August 1566, and the other granted by Lord St. John, also in favour of Nicoll Elphinston, dated 12th December 1566. None of the other title-deeds appear to be of any particular interest. The barony of Shank and the lands of Haughhead, which had in 1597 belonged to James, Lord Borthwick, were disposed to Sir George Mackenzie on the 28th November 1677 by Walter Scott of Lethem. The title-deeds of the 'Abbot of Melrose's Lodgings' begin with a feu-charter by Michael, Commendator of Mellross, in favour of a Gilbert Balfour, burgher of Edinburgh, and the property was purchased by Sir George Mackenzie in 1677 from a Robert Cunningham, an apothecary in Edinburgh.

In 1752-53 the Lord Privy Seal acquired several portions of the lands known as Monkmyre in the parish of Bendochy. These lands were sold a considerable time ago to a Mr. Geekie of Rosemount, and

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none of the deeds having reference thereto still remaining in the charter-chests are of any special interest.

In 1753 the Lord Privy Seal acquired other portions of the lands of Balmaw. These portions seem to have been contained in a charter of resignation from Oliver Cromwell the Lord Protector, dated 12th December 1656, in favour of John Gray, writer in Forfar. In 1687 James Maule in Boath, factor to the Earl of Panmure, was proprietor of these portions of Balmaw. In 1745 Dr. James Maule conveyed the lands in favour of the Ministers, Elders, and Deacons of the Kirk-Session of the burgh of Dundee, for the use and behoof of poor widows of Dundee.

There is nothing of special interest in any of the deeds connected with these portions of Balmaw.

The lands of Edderty were acquired by Anne, Countess of Bute, by disposition in her favour from Dame Elizabeth Nevay, or Kinloch, with consent of Sir James Kinloch, bearing date the 21st February 1730. The oldest writ connected with Edderty is an instrument of sasine in favour of James Scrimgeour, son of James Scrimgeour of Dudhope, Constable of Dundee, and others, bearing date the 21st April 1557. James Scrimgeour of Dudhope granted a charter, of date 30th June 1566, in favour of Patrick Kinneard, son and apparent heir of John Kinneard of Insture (Inchture) and Margaret Moncur his spouse of the lands of Edderty. In June 1652 the lands of Edderty were conveyed by Patrick Kinneard of Insture to Patrick Anderson of Burnmouth. David Nevay of Nevay became proprietor in 1662-64. The Countess of Bute disposed Edderty to the Lord Privy Seal on the 31st May 1731, and a deed of entail was executed by the latter in 1754.

The twelfth part of the lands of Balmaw already mentioned (or more correctly, the one-third of one-fourth part) was in 1643 the property of an Isobel Gray. This portion of Balmaw ultimately became the property of a William Luke, who conveyed it to the Lord Privy Seal by disposition dated the 25th November 1757, who conveyed it again, in terms of the private Act of Parliament, to himself and the other heirs of entail nominated by Sir George Mackenzie. This disposition by the Lord Privy Seal was dated the 12th and 14th days of August 1758.

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Belmont Castle was erected on lands which, previous to their acquisition by the Lord Privy Seal, were known as the Kirkhill, and these lands in 1663 belonged to a Henry Smith of who conveyed them to William Nairn of Newton-of-Biras. These lands remained in the Nairn family till they were conveyed to the Lord Privy Seal by disposition granted by Sir William Nairn and Thomas Nairn, younger of Dunsinnan, his son, with consent of Dame Amelia Graham, Lady Nairn, dated the 4th December 1752.

By disposition dated the 11th November 1752, the Lord Privy Seal conveyed Belmont and Balmacron to Archibald, Duke of Argyle, and William, Earl of Strafford, trustees named in the marriage settlement between himself and Lady Elizabeth Campbell, his wife, in security of the sum of £4018 sterling advanced by the marriage-settlement trustees. There was a clause of redemption in this deed, and, as a matter of fact, the lands were duly redeemed.

By disposition dated the 14th, 21st, and 24th January 1772, the Lord Privy Seal, upon the narrative of Sir George Mackenzie's entail, of his (the Lord Privy Seal) having sold the Ross-shire estate to George Ross of Pitkeerie at the sum of £10,000 sterling, and of the lands and estate of Belmont and Balmacron belonging to him, 'for the accommodation of the heirs of entail and for rendering the situation more commodious,' of his being willing to dispoise the lands of Belmont and others to the heirs of entail in terms of the private Act of Parliament (previously referred to), and, in respect of the trustees under the Act paying to him a balance of £354, 6s. 7½d., and the sum of £10,500, the price of the Ross-shire estates, dispoised Belmont, Balmacron and others to himself, and the other heirs of entail under Sir George Mackenzie's deeds.

It is understood that the Lord Privy Seal expended a sum of upwards of £10,000 in erecting Belmont Castle.

The beautiful property of Keithick, which was for some time a portion of the Mackenzie-Wharncliffe estate, belonged originally to the Abbey of Coupar-Angus, which, prior to the Reformation, possessed very valuable lands in the central district of Scotland.

The Abbey of Coupar was founded by King Malcolm IV., known as the 'Maiden,' on the 12th July 1164, and it was placed under monks of



OLD BELMONT CASTLE

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the Cistercian order—Bernardines following the rules and wearing the garb prescribed by St. Benedict. King Malcolm made large grants of lands to the abbey, and his brother, King William the Lyon, on his succession in 1165, followed his example. In Roger's interesting History of the abbey will be found an abstract of a charter in the register of the abbey, by which William conveyed the lands of Keithick (therein written 'Kethet') to the abbey 'ita libere sicut aliquid abacia Cisterciensis in toto regno Scotiae.' The charter granted at Perth is undated, and the witnesses are Matthew, Bishop of Aberdeen; Andrew, Bishop of Caithness, William de Ridel, Chancellor; Earl Duncan, Justiciary; William de Berklei, Chamberlain; Thomas Muschampe, Nessus the son of William, and Samuel Maloch Mack-Gillespe.

The first despoiler of the abbey was Edward I., who in 1276 confiscated and sold the furniture and silver of the abbey.

In 1317 Robert the Bruce granted at the abbey charters to Sir John de Graham of the lands of Eskdale. This is probably the Graham whose name is still known in the district of Newtyle by the Knoll, near the king's well at Newbigging, which is still spoken of as 'Graham's Knowe.' While at the Abbey of Coupar, no doubt Bruce had troops at the camp at Auchtertyre, a few miles to the north-east of Coupar-Angus.

It is understood that the abbey was irreparably injured in 1559 by the violent mob who destroyed the Carthusian Monastery in Perth. Still, in 1562, it accommodated Queen Mary, who spent a few days at Coupar-Angus in the month of August in that year. Leonard Lesley, the first lay Commendator, who died in 1605, lived in the abbey.

In July 1606 the extensive estates still belonging to the abbey were formed into a temporal lordship, and on 20th December 1607, King James VI. granted a charter of the lordship and lands to James Elphinstone, second son of the first Lord Balmerino, who took the title of Lord Coupar. The abbey became Lord Coupar's residence. His lordship being a supporter of the Covenanters, one of the lieutenants of the Marquis of Montrose, in 1645, assailed the abbey and wholly wrecked it, completing the destruction which had been commenced a century earlier by the reformers. In 1682 it is described as being 'nothing but rubbish';

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a single gateway or porter's lodge is the sole remnant, and to this day the sculptured and dressed stones of what had been one of the richest and fairest religious houses in Scotland are to be found built into the old houses and garden-walls of the present village of Coupar-Angus. Lord Coupar's estates passed to his nephew, Lord Balmerino, and in 1745 the last Lord was attainted, and his estates sold by the Commissioners of Forfeited Estates to the then Earl of Moray, whose representatives still possess any lands and superiorities which remain.

An abbot mentioned in the deeds contained in the charter-chest is Donald Campbell, whose tenure of office endured from 1526 to 1562. He was the youngest son of Archibald, Earl of Argyle, and till the overthrow of the power of the Roman Catholic Church in Scotland, he occupied a leading position in the Privy Council and the Scottish Parliament. He was for some time Keeper of the Privy Seal, as well as one of the Senators of the College of Justice. It was intended that he should have been appointed to the See of Dunkeld, or to that of Brechin, but in both cases the Holy See declined to confirm the appointments. Abbot Campbell died in 1562, leaving, as is alleged, five illegitimate sons, and at least one daughter, to each of whom he carved out an estate from the abbey's wide domain—one obtained Keithock, one Balgersho, one Arthurstone, one Denhead, and one Crunan—all properties situated near to Coupar-Angus. Two of these sons have stones placed to their memory in the parish church of Bendochy.

To Donald Campbell succeeded Leonard Leslie, a son of Leslie of Kininvie in Banffshire, as abbot-commendator, now a secular office. He was appointed in 1563. Leslie was in orders, but became a Protestant, married, and had a family. Leslie died in 1605 at the age of 81, and was buried in the church of Bendochy, where his tombstone, in excellent preservation, is still to be seen.

There are various deeds granted by Leonard Leslie among the Keithock papers in the charter-chest.

By a feu-charter, dated 10th February 1558, Donald, Abbot of Coupar and the convent thereof, conveyed the lands of Keithick, under exceptions, to David Campbell. By another feu-charter, dated 5th December 1558, the same abbot and convent conveyed to the same

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David Campbell 'the said lands and mills, astricted multures, free and dry, and "ring-bear" of the hail lands and lordship of Coupar within the parochin of Bennethie on the south side of the water of Iliff, and aikers of Saint Ninians and pertinents, excepting the eight part feued to Archibald Campbell.' Among the earlier titles of Keithick there are several interesting documents referring to the abbacy. For example there are several acts of court regarding the mills of Keithick and Coupar, from 1478 to 1562, together with several other acts of the abbot's council of 1551, 1552, and 1554.

The abbots, whose names are given in these writs, are David Bane or Bays, 1464-1480; John Schanwell, 1480-1509, and William Trunbull or Turnbull, some time Abbot of Melrose, together with those already mentioned. Abbots Bane, Schanwell, and Trunbull were all distinguished ecclesiastics. Much interesting information as to them will be found in the *Register of Coupar Abbey*, vol. i., pages 86 *et seq.*

On the 5th December 1558, Donald, Abbot of Coupar and convent thereof, granted to Margret Campbell, a sister of David's, two charters of the lands of Kemphill, Bruntihill and Cowbyre of Keithick, and other charters were granted by the abbot and convent on 5th April 1559 and 30th August 1571. On 10th June 1574 King James VI. granted a charter of confirmation under the Great Seal of these last-mentioned charters.

On the 13th March 1571, Leonard, Commendator of Coupar and the convent thereof, granted in favour of Arthur Mule a charter of a croft of land near Kemphill, which charter was confirmed by King James VI. in 1602.

On the 6th October 1541, Donald, Abbot of Coupar, granted a charter to John Campbell 'his servitor' of his boat upon the water of Ilay near the lands of Beachill or Baitsehill, or Baitshill with the whole profits and commodities of the lordship of Coupar, and whole other parts adjacent of eleven acres and a half-acre of the said lands of Beachill and another pendicle on the north side of the said water.

It is interesting to note that, until towards the end of the eighteenth century, there was no bridge over the River Isla, which is a river of considerable size and importance, on the main road between Coupar-Angus,

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Blairgowrie and Braemar; the whole traffic between Coupar-Angus northwards being carried over the river by a boat—the boat referred to in the foregoing charter.

Donald, the same Abbot of Coupar, granted another charter in favour of John Campbell and his wife of the same date as the first. It would appear from the extant papers that the heritors and inhabitants within the lordship of Coupar had to give to the tenant of the boat an allowance of grain called 'boat-oats,' and that there were frequent disputes with reference to this payment. There are decrees of the Bailie Court of Coupar at the instance of the tenant of the boats against the inhabitants of Coupar-Grange, a property higher up the Isla than Coupar-Angus, for failure to pay these boat-oats. It is to be noted that the lands on the south side of the Isla, which now form the parish of Coupar-Angus, were in ancient times portions of the parish of Bendochy. This explains why abbots and others were interred in the church of Bendochy.

It may be noted that there are a number of deeds to which the seal of the abbey is attached. In some cases the seal is practically perfect. Other seals of interest are attached to these writs.

There are also among the titles grants by the Abbot of Coupar and others in favour of various parties of small portions of land at Keithick.

Portions of these lands of Keithick at one time belonged to the family of Drummond of Blair, which is now represented by Colonel Home Drummond of Blair Drummond, one of the principal proprietors in the western district of Perthshire.

The whole of these writs of the estate of Keithick, and especially those connected with the Abbey of Coupar, are of exceptional interest.

There are among the Keithick titles a number of writs granted by Lords Coupar and Balmerino which might be serviceable in elucidating the pedigree of that family. The whole of the properties constituting the estate of Keithick remained in the family of Campbell until 1736, when they were conveyed by David Campbell, elder, and David Campbell, younger of Keithick, with certain consents, in favour of the Lord Privy Seal. The property of Keithick was sold on the death of the Lord Privy Seal in 1800 (in order to provide funds for the payment

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of legacies bequeathed by him) to a Dr. Wood, and is now the property of Mr. Collins Wood.

There were also various superiorities and lands in the town of Coupar-Angus which were acquired by the Lord Privy Seal in 1753. These had been the property of the Balmerino family. These superiorities and lands were sold by the late Earl of Wharncliffe to Mr. John Panton, a banker in Blairgowrie, and are now the property of his representatives.

The estate of Ardler (spelled also Ardlair) formed for a considerable time a part of the Belmont estate. In 1493 it belonged to Thomas Blair of Balthayock, a well-known family in the Carse of Gowrie.

In 1654 Sir Alexander Blair conveyed Ardler to Alexander Hallyburton of Fodderance, who, on the 6th January 1668, conveyed the lands to John Hallyburton of Ardlair, his brother.

By disposition dated 1st February 1707 and 10th January 1709 James Hallyburton conveyed Ardler to James Cook, sometime of Balnaght, then in Balledgarno. Mr. Cook, on the 1st of June 1714, sold Ardler to a Captain William Cramond.

On the 16th October 1745, William Cramond conveyed Ardler to George Dempster. By disposition dated the 30th and 31st days of March 1753, Dempster, who seems to have held the property merely as a creditor or for some other purpose, with consent of Cramond, conveyed Ardler to the Lord Privy Seal, who ultimately disposed the lands to himself and the other heirs of entail mentioned in Sir George Mackenzie's deeds.

The important estate of Nevay, and of Balgrugo, Balkeerie, and Kirkton of Nevay, were acquired by the Lord Privy Seal in 1778. There is no deed in the charter-chest having reference to Nevay of very old date.

In 1647 John Nevay of that ilk (that is, of Nevay) bound himself to infest and seise David Nevay his eldest son and apparent heir, whom failing, David Nevay his brother-german, in the lands of Balgrugo, Balkeerie, and Kirkton of Nevay. It would seem that John Nevay's heirs failed, and that David Nevay his brother, afterwards Sir David Nevay, succeeded.

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In 1682 the estate belonged to Sir David Nevay of Nevay, one of the Senators of the College of Justice, who sat on the bench of the Supreme Court first with the title of Lord 'Reidy' and afterwards under the title of Lord Nevay. From Brunton and Haig's *Historical Sketch of the Senators of the College of Justice* it appears that Sir David Nevay (whose name is spelled by the authors of the work 'Nevoy') was a professor in St. Leonard's College, St. Andrews. He passed advocate on the 27th November 1649, and acted for some time during the Usurpation as Sheriff-Depute of Forfarshire. He was knighted and admitted an ordinary Lord of Session on the 25th June 1661 in place of Viscount Oxfurd, who was named a Lord of Session, but did not accept office. It would seem that Lord Nevay having been admitted without the usual trial, the other Lords of Session took occasion to declare that 'in all tyme coming whensoever the King's Ma^{tie} shall nominate any persone to the place of ane ordinar Lord of Session, that before his admission the persone so named shall be tryd and examined by the remanent Lordes and give proof of his literature and knowledge of the laws and practicks of this kingdame conforme to the ancient customes and actes of Parliament made thereanent.' It may be inferred from this declaration of the Lords that Sir David Nevay was not specially distinguished for his knowledge of law and practice. Be that as it may, on the very next nomination of a new lord, who chanced to be Sir James Dundas of Arniston, he was examined by Lords Redhey and Kinglassie as to his knowledge of literature and law.

In 1714 Dame Elizabeth Nevay, who was wife of Sir James Kinloch, Baronet, was served heir of her brother David Nevay of Nevay. It would appear that another person, an Alexander Nevay, farmer, in Creichie, Dunnichen, in the county of Forfar, also served himself heir to David Nevay, but Alexander Nevay's title was reduced by the Supreme Court in an action at the instance of Sir James and Lady Kinloch. Sir James Kinloch's eldest son (afterwards Sir James Kinloch Nevay) was married to Janet Duff, daughter of William Duff, Dupple, and sister of Lord Braco, a Lord of Session. Sir James Kinloch Nevay took part in the rebellion of 1745, and his estates were in consequence forfeited. The estates were purchased at a public sale by Mr. Ogilvie of

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Inchmartine, a proprietor in the Carse of Gowrie. The disposition in Mr. Ogilvie's favour is dated 11th February and is recorded in the Books of Council and Session 14th April 1755. It is granted by the Barons of His Majesty's Exchequer in Scotland. It narrates that Sir James Kinloch Nevay being convicted of high treason, his estates became forfeited and were conveyed in terms of the Act known as the 'Vesting Act,' the public sale thereof, and the purchase thereof by Mr. Ogilvie. In a deed of ratification Sir James Kinloch Nevay narrates as follows: 'And whereas my said Estate being forfeited to the Crown by and through my conviction and attainder in the year 1746, the same was, by the Act of the 20th of His Present Majesty King George the Second, vested in the Crown with power to the Barons of Exchequer in Scotland to sell my said Estates and apply the proceeds, in the first place, of payment of my debts as same should be ascertained by the Court of Session . . . and Whereas Mr. James Ogilvy of Inchmartine, advocate, at the special desire and request of me and my relatives, and for the benefit of my distrest family, purchased my foresaid Estate.' Among the lands so purchased were the Nevays.

The patronage of the parish of Eassie and Nevay had at one time belonged to the family of Crichton of Ruthven along with certain portions of the lands of Eassie, and those were in 1704 conveyed by Crichton to David Nevay of Nevay. The lands of Nevay, Balgrugo and others were acquired by the Lord Privy Seal in 1765. From the discharged securities having reference to the estate of Nevay, it would seem that during the rebellion of 1745 Sir James Kinloch Nevay executed a bond for two thousand merks in favour of his younger brothers and sisters, and that the validity of this bond was afterwards sustained by the Court of Session. In supplement of the Lord Privy Seal's title, Ogilvie of Inchmartine conveyed to the latter the whole discharged debts and grounds thereof.

In 1783 the Lord Privy Seal purchased the lands and estate of Camno and others from Robert Ramsay. None of the title-deeds of this property are of great age or of great interest. The earliest is a charter under the Great Seal by Charles II. in favour of Hendry Smith of Glasswell as heir served and retoured to John Smith of

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Glasswell, his father, of the lands of Camno and the commonities of Whitehill, Greenmire, and Pilmuir. One of the Smith family married a daughter of the then Threipland of Fingask, a very old Scottish family. The lands of Camno remained in the possession of the Smith family till 1772, when they were sold to Robert Ramsay, who, as has already been said, conveyed them to the Lord Privy Seal.

On the death of the Lord Privy Seal, in 1800, without issue, litigation ensued between the Honourable James Archibald Stuart Wortley of Wortley Hall, the second son of John, third Earl of Bute; the Marquess of Bute and Lord Herbert Windsor Stuart, the second son of the latter, regarding the succession to the Lord Privy Seal's entailed estates in Scotland. Mr. Stuart Wortley claimed as nearest and lawful heir of taillie and provision to his uncle, the Lord Privy Seal, and founded upon the various deeds of entail of Sir George Mackenzie to support his claim. He also argued that prior to his uncle's death he had been *de facto* in certain deeds and procedure already recognised as the heir. Formal claims were also made on behalf of the Marquess of Bute and Lord Herbert Windsor Stuart, who each pleaded that under the several deeds of entail he was heir of taillie and provision to the Lord Privy Seal. The arguments were lengthy and weighty, but as they are exceedingly technical it is unnecessary to embody them, however shortly, in these notes. Suffice it to say that both in the Court of Session and in the House of Lords Mr. Stuart Wortley's claim was upheld. The judgment of the House of Lords was given on the 4th March 1803. The proceedings in the Court of Session and the judgment of the Lords will be found in the charter-chest.

It may be mentioned that the surplus price arising from the sale of Keithick was utilised in the purchase of the lands of Milnhole in 1801. None of the title-deeds of Milnhole are either old or of any particular interest.

In 1851 the then Lord Wharncliffe purchased the estate of Drumkilbo, which was recently sold to Mr. Edward Cox. When Drumkilbo was purchased, the lands of Bendochy and Coupar-Maccultie were by a deed of excambion converted into fee-simple estate, and were sold in

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three main divisions to a family of Playfair, who had been long tenants of that portion of the estate.

It is unnecessary to make any observation with reference to the more modern title-deeds.

In addition to the title-deeds, properly so-called, there are numerous writs in the charter-chests which are of no small historical and family interest. In so far as these consist of contracts of marriage, incidental reference has already been made to several of them. The following may be specially referred to:—

- (1) The principal contract of marriage between Simeon Mackenzie (father of Sir George Mackenzie, brother-german 'to ane nobill and potent Erle, George, Erle of Seaforth, Lord Mackenzie of Kintail'), Sir George Mackenzie of 'Tarbat, Baronet, Thomas Mackenzie of Pluskardeane, Mr. Alexander Mackenzie of Kilcowie, Alexander Mackenzie of Coull, and Elizabeth Bruce, Sir George Mackenzie's mother, designed 'eldest law^{ll} dochter umqu^{ll} Dr. Peter Bruce sumtyme prin^{ll} of St. Lennard College within the cite of St. Andrs.' The contract is dated in May and June 1634. The writ is considerably worn and injured, but the signatures of Mr. Simeon Mackenzie and his wife are still preserved and are distinct.
- (2) Extract of the contract of marriage between Robert Douglass, younger of Muldargie, with consent of Hector Douglass, his father, and Jean Mackenzie, daughter of Simeon Mackenzie, and Sir George Mackenzie's sister. The tocher provided was 8000 merks. The contract is dated the 9th July 1656, and is registered in the Books of Council and Session on the 27th June 1662. There is another copy of this contract among the title-deeds.
- (3) The principal contract of marriage between Sir George Mackenzie and Elizabeth Dickson, designed 'Lau^{ll} dochter of the deceist George Dickson of Hartre, ane of the Senators of the Colledge of Justice,' with consent of her Curator, Sir George Mackenzie's father, who is designed as 'The Right Hon. Symon McKenzie, brother germain of the deceist

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George, Erle of Seaforth, Lord Mackenzie of Kintail,' and Sir George Mackenzie himself is designed as 'Maister Georg McKenzie, Advocat, his eldest lau^{ll} sone and appeirand air'—that is, of Simeon Mackenzie. At the time of the marriage Sir George Mackenzie's first wife had been under age, as she was still under curatory. The marriage-contract is dated 8th December 1662, when Sir George Mackenzie himself was twenty-six years of age. His father by the contract provided for him a sum of 34,000 merks.

- (4) Contract of marriage between James Grant, younger of Moynes, and Jean Mackenzie, eldest daughter of Simeon Mackenzie (and eldest sister of Sir George Mackenzie), who was previously married to Robert Douglass of Muldargie and had survived him. This contract is dated 19th February 1663.
- (5) Extract contract of marriage between Sir George Mackenzie of Rosehaugh and Mistress Margaret Hallyburton of Pitcur, the tocher (marriage portion) being 18,000 merks. The contract is dated 4th January 1670, and registered in the Books of Council and Session the 14th January 1675. From the contract it appears that the second Lady Mackenzie's father, James Hallyburton of Pitcur, had died previous to her marriage, and the contract was entered into with concurrence of 'Agnes Campbell, Ladie Pitcur, hir mother, and of ane noble Erle David, Erle Northesk, Lord Rosehill.' As has been already noticed, Lady Mackenzie, on the death of Sir George Mackenzie, married Sir Roderick Mackenzie, well known in those days as 'Rorie Mackenzie,' Lord Prestonhall, whom she also survived.
- (6) Principal contract of marriage between Mackenzie, younger of Farburne, and Sir George Mackenzie of Rosehaugh for himself, and as taking full burden upon him for Issaboll Mackenzie, his second lawful sister, and Issaboll Mackenzie for her own interest. Mr. Mackenzie, senior, of Farburne, is designed as 'Rorie Mackenzie of Farburne,' and his son is designed as 'Murdo Mackenzie, his eldest lau^{ll} son.' This

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contract of marriage is in excellent preservation, and the beautiful handwriting of Issaboll Mackenzie, the bride, resembling much that of her father's first wife, Elizabeth Bruce, is noteworthy. This contract is dated 18th September 1673, and the tocher is 5000 merks Scots.

- (7) Contract of marriage between James Stewart, Sheriff of Bute, who is designed therein as 'James Stewart of Kirktoune, Sheriff of Bute,' and Agnes Mackenzie, Sir George Mackenzie's eldest daughter. In entering into the contract Mr. Stewart had the express advice and consent of his honourable friends 'William, Earle of Dundonald, Sir James Foulles of Collingtone, ane of the Senators of the Colledge of Justice, Sir Ard. Stewart of Blackhall, Archibald, Bishop of the Isles.' The bride is designed as 'Mistresse Agnes Mackenzie, eldest lau^{ll} daughter of Sir George Mackenzie of Rosehaugh, his Ma^{ties} Advocate,' and the deed is entered into with consent of Sir George Mackenzie, and it is declared that execution thereon shall pass at the instance of Mr. Colin Mackenzie, Advocate, his brother. The tocher provided was 30,000 merks, and the lady's jointure was 3000 merks. The contract is dated the 24th July 1680. Mr. Stewart spells his name 'Steuart,' and the bride spells her name 'Agnes Mackenzie.' The deed bears the signatures of Sir George Mackenzie, of the Bishop of the Isles, who signs 'Arch. Sodoren,' Mr. Robert Stewart, uncle of the bridegroom, David Hallyburton of Pitcur, and John Wedderburn of Gossford.

Among the miscellaneous ancient writs which have found their way to the Rosehaugh charter-chests is an interesting charter dated between 1384 and 1388, by James Earl Douglas, who was killed at the battle of Otterburn in the latter year, in favour of Alan of Lawedyr, of a house in North Berwick. It is difficult to explain how this charter was in Sir George Mackenzie's possession, unless on the theory that his friend the Duke of Lauderdale had handed it to him in order that he might be advised with reference to it. Among the Lauderdale papers there are numerous deeds referring to Alan de Lawedyre, sometimes designed

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Sir Alan. He was proprietor of the estate of Halton, or Hatton, which, as we have already found, give a title to Lord Halton, the Duke of Lauderdale's brother. The deeds in favour of Alan de Lawedyre extend over a long period of years—the earliest being dated in 1361, and the latest in 1402. He was Constable of Tantallon Castle, and proprietor of the estates of Hallton, Dallincathe in Ayrshire, Wormistoun Norton, Platt Westhall, and Northraw. It is interesting to observe that a number of these charters and other deeds in favour of Alan de Lawedyre are granted by Egidia Lindsay, widow of Hugh of Eglington, and her second husband James Douglas of Dalkeith, between 1377 and 1379, and that one of the charters was signed at North Berwick. This James Douglas was not, however, Earl of Douglas. He was Sir James of Dalkeith, and father of the first Lord Dalkeith.¹

It may also be mentioned that there are among the Lauderdale papers, ancient and extremely interesting writs having reference to the Scrimgeour family, hereditary Constables of Dundee, afterwards ennobled by the title of Viscount Dudhope. It has already been pointed out that various Scrimgeour charters are to be found among the Newtyle papers.

Until the passing of the Act 20 George II. cap. 43, the owners of baronies in Scotland had extensive judicial powers, which were exercised by the official known as the 'Baron-Bailie'; these powers included even (where so expressed) the right to inflict capital punishment. The civil jurisdiction, subject to appeals to the highest courts, was very considerable. The main purposes of these Baron courts were to enforce the conditions of the tenants' leases, to inflict penalties for breaches of estate regulations, and to determine questions between the tenants. The

¹ James, Earl Douglas, was proprietor of the barony of North Berwick, and Tantallon Castle was one of his seats. It was not unnatural, therefore, that Alan of Lawedyre, as Constable of Tantallon, should have a grant of subjects in North Berwick from the Earl. See *Red Book of Menteith*, vol. i. p. 152.

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decrees might be enforced by poinding and corporal punishment. The author of these notes, although he has been for many years agent for owners of old baronies, had never seen a court book of a barony until he found among the estate papers connected with Newtyle a most interesting volume, containing a record of the proceedings of the barony court of the baronies of Sir George Mackenzie. It is styled 'Court Book of the Barroneys of Newtyld, Keillors, Couty, and Bendochie, begun in Anno 1725.'

The first court was held 'at ye Milne of Newtyld, 15th day of September' 1725, 'by Patrick Grant, of Bonhard, bailly yrto.' Mr. Charles Rattray, of Gelliebanks, produced 'ane letter of Baillieary and Chamberlainary granted by the Right honourable Anne, Countess of Bute, in his favours,' which was duly minuted, and the tenants were decerned to pay rents due by them to Mr. Rattray.

A similar court was held at Couty on the same day, when the same letter in favour of Mr. Rattray was produced.

At a court held at the Haltown of Newtyld on the 8th November 1725, by Mr. James Howy at Pitcur, who had become 'Bailly,' Patrick Couper, Writer at Newtyld, was appointed Clerk to the Court; Thomas Murray in Kirktown, Procurator Fiscal; and Andrew M'Kewan in Kirktown, Ground Officer. The bailly made the following Acts 'for the good and advantage of the said Barrony, and the better regulating of the public affairs of the same,' and ordered them to be engrossed 'and read publicly once or twice a year at the most frequent meetings of the tenants.'

I.—ACT ANENT COMMONTYS.

Tenants were forbidden to take possession of 'commontys'—that is, common lands—under a penalty of £10 Scots.

II.—ACT ANENT PLANTING AND CUTTING OF TREES AND 'BRAKEING INCLOSURES.'

By this Act tenants were forbidden to cut trees or their branches, or to use any trees given to them 'but to the use of their bigings' (buildings), under the penalty of £10 Scots.

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III.—ACT ANENT THE MILNES AND FARM MEALL.

By this Act tenants are enjoined under penalties to carry their corns to the mills to which they are astricted, and stringent provisions are made against mixing of grain or bad corns used, against taking home farm meall before it goes to the girnall, and ordering tenants to give the usual services in keeping up mills, dam-dykes, etc.

IV.—ACT ANENT THE MOSS.

This Act prohibits tenants from selling peats, or taking a too great use of the moss, under penalties.

V.—ACT ANENT BREAKING OF INCLOSURES.

Tenants are forbidden to break inclosures, and certain inclosures are specified.

VI.—ACT ANENT VAGRANT PERSONS.

Tenants are enjoined not to 'resett or entertain' vagrants, or permit them to reside in their 'grass houses,' and no strangers can be received unless they bring a sufficient testimony of their good behaviour—all under a penalty.

VII.—ACT ANENT GOOD NEIGHBOURHOOD.

Tenants are warned against separating themselves from other tenants in having common herds for their sheep or cattle, etc.

VIII.—ACT ANENT THE MEADOW.

Tenants are not to labour more than half their share of the meadow.

IX.—ACT ANENT SWARD GROUND.

This Act prohibits the breaking up of sward ground—(old grass).

X.—ACT ANENT SMYDDIES.

This Act ordains tenants to frequent the smithy of Newtyle, and the blacksmith to give due attendance to them.

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XI.—ACT ANENT STIPENDS.

The tenants who pay minister's stipend or school-master's salary are to produce receipts.

XII.—ACT ANENT BIGGINGS.

Tenants are ordained to leave their houses in order at their removal, 'and that all their freed houses be sighted by the birleymen, and if the incomer will pay to the outgoer the price ye birleyman settis on them, then they are not to be taken down.'

Note.—Birleymen or Byrlawmen. These are men in a country district who decide local questions. Derived from 'Baur,' a husbandman, and *law*.

XIII.—ACT ANENT THE TENANTS.

Tenants must attend courts under a penalty, and when they meet the factor, bring with them books containing their receipts.

XIV.—ACT ANENT SOWING OF PEASE.

This Act enjoins the sowing of pease, 'and that no tenant adventure on sowing of pease after oats.'

XV.—ACT ANENT COMPLAINTS AND ARRESTMENTS.

The tenants are ordered to bring their disputes before the baron court; to pay the clerk's dues; and 'that none cite one anoyr before any oyr judicatory under the pain of twenty pounds *toties quoties*.'

XVI.—ACT ANENT THE DISPOSAL OF CORNS.

Tenants are forbidden to sell their corns 'if any bygone duty resting' unless caution be found.

XVII.—ACT ANENT MILLERS.

Millers are ordered to grind the corns of cottars as well as of tenants.

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XVIII.—ACT ANENT PAYING THE DUTY OF CROP 1727.

Is a temporary Act.

Immediately after these Acts the barony court books contain the acts and regulations made by the Countess of Bute, agreed to and acquiesced in by the factor and tenants and possessors of Rosehaugh estate, in the shires of Perth and Forfar.

These regulations are fourteen in number, and are signed in the book by the Countess of Bute and the bailie thus: ‘Ann Bute,’ ‘Cha: Rattray.’ The titles of the Acts are as follows:—

1. Concerning good neighbourhood.
2. For preserving planting.
3. Concerning the milns.
4. For preserving and right ordering of the moss.
5. For preserving enclosures.
6. Against grass houses and idle persons.
7. For preserving the meadow of Newtyld and making earth middins (heaps).
8. Against public houses and offices not authorised.
9. Regulations between the outgoing and incoming tenants as to their houses.
10. To oblige the tenants to attend courts and keep receipt-books.
11. For sowing pease.
12. Against selling of corn and straw.
13. For encouraging the enclosing of grounds.
14. For encouraging and regulating the spinning of yearn.

These Acts are chiefly more elaborate and detailed editions of those previously enacted.

The 8th Act prohibits any one setting up an alehouse, etc., or a smithy or a maltbarn ‘but by the special allowance and approbation of the Master,’ but when alehouses, smithies, or maltbarns are permitted, the tenants have to frequent them.

By the 10th Act penalties are provided, if the bailie and other officers fail in their duty, or if the factor give a receipt on loose paper instead of in a receipt-book.

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The 13th Act provides substantial encouragement to tenants who enclose their lands. The following provision is rather a remarkable one: 'If at the expyrie of the three years the possessing tennent offer any advanced rent beyond the present Rental the master shall be oblidge to accept of such additional rent or pay to the Tennent ten years' purchass of the additional rent so offered in lieu of the Tennent's trouble and charges in enclosing the grounds of his ffarm or any part of 'em.'

The 14th Act provides regarding yarn which certain tenants are bound to deliver between 'Zuill and Candlemas,' and that the spinner of the best yarn shall receive as a reward a certain quantity of lint, and that the worst spinner shall next year deliver double the usual quantity of yarn.

On the 31st May 1726, at a court held at Keillor, a number of residents were sworn in as 'birleymen.' At the same court a 'moss-grieve' was appointed, and it is interesting to know that the office seems to have been of sufficient importance to warrant the administration of the oath *de fidei administratione*. On the 10th of August of the same year a ground officer was sworn in with the same formalities.

For some time the chamberlain appears to have applied yearly to the bailie for a warrant to compel the tenants to pay the yearly rent.

In 1728 or 1729 a complaint, which is not entered in the court-book, had evidently been made against farm-servants and others for cutting and peeling young trees, and the evidence on oath of many witnesses is inserted, and all of them 'deponed negative to the Libel,' so the proceedings ended without result.

There appears to have been from time to time suits of more or less importance brought before the barony court, and dealt with by the bailie with some formality. There are also frequent complaints at the instance of the miller, arising from the tenants failing to send their grain to be ground at the barony mills.

At a barony court held at Couty and at Newtyle on the 12th day of June 1733 factories were produced by Mr. James Allison from the Countess of Bute and her second husband, Lord Strichen. At the same time the bailie, depute-clerk, and other officials were all reappointed.

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Lord Strichen (Alexander Fraser) was the son of Thomas Fraser of Strichen, and was born in 1699. He was admitted to the bar in 1722, and became a Lord of Session in 1730, at the early age of thirty-one. He was also General of the Mint, to which post he was appointed in 1764, and died at Strichen in 1775.

At a court held at the Milntown of Newtyle in 1736 certain tenants in Ochertyre were forbidden to till the 'march balks betwixt their respective falls of land,' that is, the strips of grass ground separating one holding from another, and from throwing the stones off their own ground on to that of their neighbours.

At the baron court held at Miln of Newtyle on the 30th January 1740 Sir James Kinloch, of that ilk, and George Small, procurator-fiscal, complained against a number of persons for taking away Sir James Kinloch's peats out of the Moss of Nevay. One delinquent, an Andrew Pirney, appeared and confessed to having taken away a 'pockfull of peats,' and of being prevented on another occasion from removing another 'pockfull.' Sir James Kinloch craved that he should be either 'secured,' which seems to mean confined in some safe place, or admitted to bail. On Andrew's protesting, however, that he could not find bail, his own obligation to appear was accepted. Thereafter three other men acknowledged having removed 'pockfulls' of Sir James Kinloch's peats. This inquiry seemed to the bailie to be of sufficient importance to warrant his making 'avizandum' with the case till the next court day. Accordingly, on the 16th of February Sir James Kinloch again appeared, and with him 'four honest men' who had inspected the Moss of Nevay, and these 'honest men' deponed that they thought twenty-three 'cartfulls' of peats had been removed, and the value of each 'cartfull' was 9s. Scots, that is to say, 9d. sterling. The bailie found each of the men liable to Sir James Kinloch in 9s. Scots for each 'cartfull,' and also decerned that they should conjunctly and severally pay to Sir James £20 Scots of damages.

At a court held at Newtyle in November 1747 one of the tenants was charged with having tilled up sward ground, that is, old grass, and 'snedding,' that is, pruning, growing trees, contrary to the regulations of the barony. The respondent practically admitted the fact stated in the complaint against him, but pleading that he had previously been

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allowed to do such acts unchallenged, he craved to be allowed to prove these facts; no further action seems to have been taken against this man.

At a court held on the 29th November 1754 James Wright of Lawtown appeared and produced a commission of bailliary of the barony of Newtyle and others, granted by the Honourable James Stewart Mackenzie of Rosehaugh, which was duly recorded in the court book.

Patrick Ogilvie, Writer, Potento, was continued as clerk of court, George Small as fiscal, and David Gilbert as officer. On the same occasion the new bailie re-enacted the estate regulations, twelve in number. It is scarcely necessary to refer to these regulations, as they bear generally close resemblance to those already narrated.

At a court held at the miln of Newtyle in December 1756 the tenants were complained against 'for not furnishing their several proportions of thatch to the Schoolhouse.' The bailie ordained them to supply their respective portions of thatch under the pain of summary poinding.

The baron court seems to have exercised jurisdiction in matters of considerable moment and difficulty. For example, at a court in June 1770, decree was given against a tenant for £80, 18s. 10d. sterling money, and his bestial and whole effects on his farm were sequestrated.

In a barony court held at Coupar-Angus 18th December 1770 it was enacted that, in respect that the tenants had persistently taken too much marle from the marle pits at Monkmyre in defiance of regulations, no marle should be taken in future without the Lord Privy Seal's personal licence. It had apparently been the practice to take four successive crops of grain after marling. The Act made provision also for the sowing of pease, and afterwards of grass seeds. On the same day it was enacted that if the tenants did not 'poind' trespassing cattle and exact the penalty, the Lord Privy Seal would do so. It was also enacted that every tenant should make 'headridges' adjoining roads, as it had been their practice to plough up to the edge of the road, and thereby the roads were much damaged. At a subsequent court held at Newtyle similar regulations were made as to marling, trespassing cattle, and headridges.

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In October 1770 Mr. George Watson, who was then apparently newly appointed superintendent of the estates, received very specific instructions with reference to his management of the estates, and these are engrossed in the barony court book. They relate to cultivation of the land, to marling, to the preservation of fences, the care of houses, the upkeep of plantations, the prevention of turf removal, and of trespass by cattle, to the formation and care of roads, to the dismissal of careless ground officers, etc. The Lord Privy Seal concludes by stating that these regulations 'exact nothing of the tenants but what a sensible and thriving tenant would for his own sake without any other obligation be desirous to perform and fulfill.'

In a court held at Newtyle 2nd January 1771 certain tenants were charged with various offences, such as removing turf, etc. Three confessed, and two were fined 5s. and one 2s. 6d. Two denied, and the case was continued till next court for proof. On the margin the Lord Privy Seal has put this note: '17 June—near 6 months, and no further mention of this offence. J. S. M.'

This spurred up the bailie, who in September had the two incriminated tenants before him. They pleaded the trifling nature of the offence and their good conduct since, whereupon the bailie 'assoilized them,' with a strong statement as to what would follow renewed offences.

In another court held in Coupar-Angus in 1771 eight tenants in Keithick were complained against for allowing cattle to trespass. They were fined sums amounting to 1s. upwards. The Lord Privy Seal notes on the margin that eight tenants have been fined 22s. in all, while by the Act of 1685 the penalty of allowing cattle to go over a fence is £10 Scots=16s. 8d. sterling.

In another court held in the following year certain tenants in Couttie were charged with allowing their cattle to stray. One appeared, and was sentenced to pay a fine of 2s. 6d. The others, not appearing, were held confessed, and fined.

In 1773 the Lord Privy Seal appointed George Young, 'Merchant' in Coupar-Angus, to be bailie.

At a court held in Coupar-Angus in December of the same year Bailie Young decerned against certain of the Keithick tenants for their

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respective proportions of the wages of the 'Keithick Hedger.' The bailie's decerniture is in very formal terms.

At various subsequent courts tenants are fined at the instance of George Watson, superintendent of the Lord Privy Seal's estates.

In a court held at Kirkinch in September 1775 several little children and their parents were complained against, in respect that the children had set fire to the Moss of Nevay, adjoining the Moss of Drumkilbo. The children explained that they did this for 'their diversion,' and because other children did so on Drumkilbo. The bailie, in respect of the extreme poverty of the parents, fined them 2s. 6d.

In 1777 tenants were fined for contumacy in respect of their failing to attend the barony court.

Between 1777 and 1789 the book merely contains entries regarding the public reading of Lord Privy Seal's instructions. In 1789 James Ramsay at Newtyle was appointed baron bailie. David Miller in Newbigging was appointed procurator-fiscal and officer.

In 1791 the Lord Privy Seal issued final instructions to Mr. Watson as to the management of the estate, and the court book contains a copy of these signed by his lordship. These contain new provisions regarding the extirpation of ragweed, allowing tenants lime for buildings, prohibiting unauthorised killing of game, etc.

Till 1815 the book contains only a few entries as to the reading of the instructions. In December of that year Mr. James Stuart Wortley, younger of Belmont, sent instructions to Mr. Watson as to the manner in which he was to deal with certain tenants, and the baron bailie explained Mr. Stuart Wortley's instructions to the tenants on the 6th January 1816. A reduction of twenty per cent. from the rents was then given.

The last entries in the book are dated 10th August 1816.

One part of the barony court book contains the records of what were called 'perambulations' of the Lord Privy Seal's estates by certain experts appointed by him from time to time 'to perambulate his Estate and consider how far the regulations incumbent on the tenants have been observed.' The first perambulators were Robert Hunter of Southballo, William Henderson in Bellmont, and William Dalgairns at Mills

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of Keithick. The first perambulation took place in 1755. It is interesting to observe that one of the tenants on the estate of Couty at that time was a Charles Playfair, whose descendants are now proprietors of that estate, as well as of the adjacent estate of Bendochy. For some time the perambulators were complimentary to the tenants, and more or less satisfied with the conditions of the farms. It is surprising to find that the Bendochy farms, which now consist of some of the best land in Perthshire, were let and occupied by 'runridge,' as it was called; that is to say, a system by which each alternate ridge belonged to a different tenant. At their second perambulation the experts suggested to the Lord Privy Seal that there should be an end of the system of runridge holdings. The tenants of the Bendochy farms were in those days a George Constable and a George Playfair. The Constable family continued in their holding for another hundred years or more, and, as has been said, the Playfairs are now proprietors of the estate. Attached to the Bendochy estate was a separate property called the Monkmyre, on which there was a large supply of excellent marle. Soon after his succession the Lord Privy Seal made very special rules as to the use of the marle. It is interesting to note that the minister of the parish was allowed to have his share thereof. The system of cultivation at this time appears to the present-day agriculturist to be somewhat antiquated. Evidently, after marling land, the tenants were in the practice of taking three or four consecutive crops of oats from the land, and the growing of green crop was by no means general. One special stipulation made by the Lord Privy Seal was that a certain area of land should be sown out in 'pease.' All these new regulations the tenants had more or less difficulty in reconciling themselves to. His lordship was accordingly under the necessity of renewing his instructions. These are frequently subscribed in the perambulation book with his own hand. In 1758 additional perambulators were appointed, with the result that thereafter many faults are found even with those tenants who had been previously complimented on their good management. In the same year one of the new regulations made for the tenants, which dealt with the subject of the cultivation of pease, provided that it was to be left to the tenant's option whether he should sow pease or not, but what was not

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sown in pease 'must be sown with some other broad-leafed crop such as potatoes, turnips, or clover, the former two in the horse hoeing way, which will serve for fallow, or a part of it in simple fallow as they choose.'

In 1759 the perambulators recommend that recalcitrant tenants should be fined before the baron court. Accordingly, in a court held in Keithick in July of that year, fines from 2s. to 10s. sterling money were imposed on defaulting tenants. In October of the same year, the perambulators desired that certain of the tenants should again be fined 'so as they may be ammerciate in at least double of what they were last.'

At the perambulation in 1763 there was produced to the perambulators 'a letter from Mr. Menzies of Culterallers in which he desires that at this perambulation the perambulators will order to give the person whose farm they find in best order £4 sterling as the remains of the fines after paying the expenses and prosecuting the delinquents, and as in the course of the perambulation they found George Playfair's farm in best order, so appoint the £4 to be given to him.'

In August 1763 the Lord Privy Seal had personally examined—evidently with much care—his estates, with the result that very minute regulations are inserted in the book of what his directions for future management were to be. Annexed to this record of the Lord Privy Seal's personal inspection is the following holograph note written and signed by him:—'Newhall, 29th September 1763. As the tenants have none of them as yet obeyed the above order relating to the marling of their lands, I do desire that the strictest attention may be had thereto, and that they be compelled to do it in order that the whole of their transactions about marling may appear fully in this Book.—JAS. STEWART MACKENZIE. I desire that an exact copy of what is to be inserted here relating to marling may be transmitted to me as soon as it is entered in this Book. J. S. M.'

In October 1763 the Lord Privy Seal appointed Mr. Oliphant of Rossie and two of the former perambulators to fix upon two or more portions of ground on his estate, of about ten acres each, for a certain number of his tenants to cultivate in accordance with specific directions, 'in order to their more speedy improvement in Agriculture from their

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own experience of the proper methods of carrying it on.' Mr. Oliphant and the other perambulators set aside a field on Bendochy of about six acres, and one in Keithick, also about six acres in extent, for experiments. The tenants on both of these properties agreed to try the effect of the following rotation:—(1) Fallow to be dunged sufficiently; (2) wheat; (3) turnips, horse hoed, with a little dung, if necessary; (4) barley with clover; (5) clover to be cut once or twice; (6) flax; (7) pease; (8) oats; and the rent which the tenants were to be charged was fixed at 15s. an acre. At the suggestion of Mr. Oliphant it was agreed to make a trial of pounded limestone, burnt limestone, and marl upon a ridge of grass ground.

When Mr. Oliphant and his friends met the Newtyle and other tenants in Forfarshire, they found considerable difficulty in arranging with them, each tenant desiring to make the experiments proposed on his own farm.

The perambulation book contains, under date 4th July 1766, a new order by the Lord Privy Seal, signed by himself, with reference to marling. In this order the tenants are prohibited from taking more than four crops after marling, and one of these four crops had to be either pease or turnips. Land was not to be remarled until after it had lain six years in grass. In those days there must have been a peat moss at Monkmyre besides the marl pit, as his lordship makes regulations as to the removal of peats. In the following pages of this perambulation book there are frequent additional references to marling, a process which has long ceased to be in use in that part of Scotland. The Lord Privy Seal appears to have taken the deepest interest in his estates, as this book is filled with regulations and orders made by himself, some of these being signed by him or altered by him in his own handwriting. In those days a proprietor, through his barony court and otherwise, had a control over his tenants which in modern times no proprietor can aspire to. Any breach of an estate regulation or of the conditions of a tack was visited with summary and exemplary punishment. Even for allowing a cow to stray through a hole in a hedge an unfortunate tenant is fined 2s. 6d. sterling. Two women for crossing over fences and palings are fined a like sum of 2s. 6d. A tenant for 'casting divots,' that is, removing a

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few turfs from land which he was improving, was fined 5s. 6d., and similar transgressions are followed by similar punishments. Enough has been said to show that this barony court book is of great value and interest, which will increase greatly when the aged people of the present generation, who still retain a traditional knowledge of what a barony and a barony court meant, have passed away.

Sir George Mackenzie had a very eminent friend relative and contemporary of the same name, with whom, as was natural, he was frequently confused, and there is reason to suppose that the acts and policy of Sir George Mackenzie of Tarbat, afterwards Lord Tarbat and Earl of Cromarty, who was 'a passionate cavalier,' were not infrequently attributed to Sir George Mackenzie of Rosehaugh. It is surprising to find that Mackenzie of Inverness, the historian of the clan, himself confuses Tarbat with the Lord Advocate (see page 17 of his work). The Mackenzies of Cromarty were descended from the famous Sir Roderick Mackenzie of Coigeach, known as the Tutor of Kintail. There is still current in Ross-shire the following saying concerning him: 'There are but two things worse than the Tutor of Kintail—frost in spring and mist in the dog days.' He purchased Milton and Tarbat Ness in Ross-shire. His eldest son was Sir John Mackenzie, first Baronet of Tarbat—creation 1628. He married Margaret Erskine, daughter of Sir George Erskine of Inverteill, a Lord of Session, by whom he had eleven children. His eldest son was Sir George Mackenzie of Tarbat, who was born in 1630, and succeeded his father in 1654. He was 'a man of great learning, well versed in Scottish laws and antiquities, and an able statesman.' When only twenty-four years of age he had the honour of being united with Lord Middleton in a Commission authorising them to raise forces for the service of Charles II. He maintained the royal cause for twelve months, but was then forced by General Morgan to capitulate. On the Restoration the affairs of Scotland were committed to the charge of Lord Middleton, and the respect for Tarbat's abilities was then so great that he became Middleton's principal adviser, and it was thought that he was

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fated ultimately to supplant the Duke of Lauderdale himself. In 1661, at the age of thirty-one, he became a Lord of Session and Member of the Privy Council. His influence in the Scottish Parliament was so great that in 1661 he persuaded Parliament to pass the high-handed and extraordinary Act known as the Act Rescissory, by which all the statutes passed since 1640 were repealed, 'because,' as Sir George Mackenzie of Rosehaugh says, 'they were a series of rebellion.' In 1662 it was proposed that a general Act of Indemnity should be passed, and Tarbat was sent to London to arrange this with the King. In order to secure his friend Middleton, and to crush Lauderdale, Tarbat proposed that the Act should exclude twelve persons to be fixed on from all offices of public trust. This high-handed provision was given effect to by what was known as the 'Act of Billeting.' The process of 'billeting' would now be called balloting. Every member of the House had to write on papers the names of twelve persons whom he wished excluded from situations of public trust, and by comparing these papers it was found which names most frequently appeared, the twelve having a plurality of votes being excluded. Among those billeted were Lord Crawford, Lord Lauderdale, and Sir Robert Murray, all ministers of his Majesty. Tarbat was one of those sent to London with the Act of Indemnity and the names of the billeted twelve. Although courteously received, the King absolutely refused to follow or act upon the advice given, and the final result was the fall of Middleton, and the removal of Tarbat from his seat on the bench of the Supreme Court as a punishment for the part which he had taken. On the 27th September 1678 the King sent to him a special letter of pardon, which was presented to the Court of Session on the 12th November following, and ordered to be recorded. He was appointed Lord Justice General on 16th October 1678. On the 11th November of the same year he was reappointed a Privy Councillor. He received a patent as Lord Clerk Register of date 16th October 1681. On the fall of Lauderdale in 1682 Tarbat became chief minister of Scotland, and retained office till the Revolution. On the accession of James II. he was created a peer, and took the title of Viscount Tarbat Lord Macleod and Castlehaven. At the Revolution it was on his motion that Parliament passed a resolution disbanding the militia, 'by which artful device that

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important matter was accomplished without bloodshed.' In 1692 William III. restored to him his appointment as Lord Clerk Register. In 1695 he resigned with a pension of £400 per annum. By Queen Anne he was appointed Secretary for Scotland, and was raised a step in the peerage, having conferred upon him the title of Earl of Cromarty on the 1st January 1703. He again became Justice General in 1605, but ceded the office to Archibald, Lord Islay, in 1710. He married, secondly, Margaret, Countess of Wemyss, by whom he had no children. He died in 1714 in his eighty-fourth year. About 1692 Lord Cromarty, then Lord Tarbat, published a learned vindication of the legitimacy of Robert III. He also published a volume of essays on the Union, a volume on the Gowrie Conspiracy, a 'plain explication of the prophecies of Daniel and St. John,' and a history of his clan.

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The Earl of Cromarty's second brother (to whom reference has already been made), Roderick Mackenzie, became Lord Prestonhall, and married Margaret Hallyburton, the widow of Sir George Mackenzie of Rosehaugh. Lord Cromarty's second son, Kenneth, was in 1704 created a baronet, under the title of Sir Kenneth Mackenzie of Grandvale and Cromarty. Sir Kenneth married Anne, daughter of Sir Colin Campbell, first Baronet of Aberuchill. Sir Kenneth was M.P. for Cromarty, and sat in the British Parliament as a member till his death in 1729. Lord Cromarty's third son, Sir James Mackenzie of Royston, Lord Royston (so frequently mentioned in these notes), was created a baronet also in 1704, and was married to Sir George Mackenzie's second daughter Elizabeth, who was then a widow. By her he had one son and two daughters. In addition to a peerage and earldom for himself, Lord Cromarty succeeded in having two of his sons made baronets, and although to each he made over considerable estates, he retained sufficient in his own hands to endow the earldom. Lord Cromarty's second sister Isobel married Kenneth, Earl of Seaforth. His youngest sister married Sir Colin Campbell, of Aberuchill, who was a Lord of Session with the title of Lord Aberuchill. His eldest sister, the widow of MacLeod of MacLeod, married Sir James Campbell of Lawyers, a near relative of Sir Colin Campbell.

That the first Earl of Cromarty was possessed of abilities of the



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very highest order is undoubted. It is equally clear, however, that the extraordinary success which attended him all through life was due as much to his sagacity and astuteness as to any constancy of political creed. He had changed sides so frequently that one contemporary critic said: 'Some do compare him to an eel, and certainly the character suited him exactly. . . . He had sworn all the most contradictory oaths, and complied with all the opposite governments since the year 1648, and was humble servant to them all till he got what he aimed at, though often he did not know what that was.' His enemies—jealous in all probability of his wonderful success in life—charged him as a judge with considering rather the litigant than the cause, and as Clerk Register with manipulating the records of Parliament. Similar charges have been made against other men with probably as little cause. Nevertheless, from his earliest years his great intellectual powers enabled him to surpass almost all his contemporaries. Even while at St. Andrews University and King's College, Aberdeen, he was recognised as being an excellent classical scholar and expert both in literature and science. During his whole lifetime he occupied a principal place in the history of his country, and in addition to the far-seeing and far-reaching legislation which he initiated, it may be mentioned that in 1689 he proposed a joint recognition of Episcopacy and Presbyterianism, which, if it had been approved of by William, would have greatly altered the Church history of Scotland. He retained to a full old age his physical and mental vigour. Swift mentions that after he was eighty years of age he went to his country house, professing his intention to reside there for six years and accumulate sufficient money to enable him once more to enjoy life in London. Before the expiry of the six years he was gathered to his fathers, and was interred in Dingwall.

It may also be noted that among the miscellaneous writs of interest and value in the charter-chest are two ancient charters. The first is a charter by John Wallace of Craigie to James, fourth Earl of Morton, of the lands of Thurston, Woodhall, and Waddilie, lying in the barony and county of Renfrew, 1575. This Earl of Morton, after a distinguished

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career, was executed on the 2nd of June 1581 for alleged accession to the murder of Darnley. He was Chancellor under Queen Mary, and on Mary's abdication was Chancellor, High Admiral, and Regent of Scotland from 1572 to 1578. The earl's forfeiture was rescinded in 1585-86, and the earldom conferred upon Archibald Douglas, eighth Earl of Angus and seventh Earl of Morton. It is impossible to explain how this writ, which has no connection whatever with Sir George Mackenzie and his estates, found its way among Sir George Mackenzie's titles. It is of much interest in respect that it was granted to the Regent Morton during the few years of his short tenure of office as Regent, and he is designed therein as Regent.

The second is a Precept by Halliburton of that Ilk (that is, of Halliburton), in favour of Walter Boyd, of the lands of Milton of Abernyte, dated in 1473. Halliburton subscribes himself, 'George Lord Halyburton.' This writ must have been handed over to Sir George Mackenzie along with other Halliburton title-deeds. It has no reference to any part of Sir George's estates.

It is greatly to be regretted that the correspondence of Sir George Mackenzie with political and private friends does not seem to have been preserved. Possibly during the sad and troubled years which preceded the date of Sir George's death it was dangerous for any man, who had held high office during the previous reigns, to retain any letters which he received, or copies of any which he had written. It has been found that the repositories of eminent contemporaries of his are equally wanting in correspondence, which would now be of the deepest interest and of inestimable value. Whatever be the explanation, it is the case that Sir George's descendants have not in their possession any letters or political memoranda of value. Boxes of miscellaneous papers have been carefully gone over, but the result has been very disappointing. There have been preserved a few letters written by Sir George's father—Simon or Simeon Mackenzie of Lochsln (a specimen of which is reproduced in the Appendix), to his 'loving and assured friend, Alexander Farquhar, merchant, burgess of Aberdeen.' From these letters it would

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seem that Mr. Simeon Mackenzie was in pecuniary difficulties, and had to beseech his very dear friend, Mr. Farquhar, to advance money for his son, who, from the correspondence, would seem to have been in 1649 and 1650 a student at the University of Aberdeen. Mr. Farquhar had rendered accurate accounts of his intromissions. Nor had he been unmindful of Mr. George Mackenzie's comforts. His account bears that he had paid £1 Scots for a 'reid nicht cape' for Mr. George. The great change which has taken place in the cost of living is well exemplified by the receipt of Mr. and Mrs. John Lundie for £40 Scots, being the charge for a quarter's board of the future Lord Advocate. A sum of £40 Scots is equal to £3, 8s. 8d. sterling, and is a modest charge for the board of a nephew of the Earl of Seaforth for three months. Among these miscellaneous papers there is a registered copy of a lease between Kenneth, Earl of Seaforth, and 'The Right Honourable Simeon Mackenzie,' his uncle, dated 1658, by which the earl let to Mr. Simeon and his heirs lands evidently of great extent and substantial value. In addition to the payment of a nominal rent, Mr. Simeon bound himself with regard to certain heritable debts over the earl's estates, and in this obligation his eldest son, George Mackenzie, was security for his father. The terms of this deed are peculiar and unusual, and it is not evident whether it is of the nature of a trust-deed for creditors, or whether its intention was to preserve the free rental for the benefit of the earl, or whether it was conceived in the interests of Simeon Mackenzie. Be that as it may, the Earl of Seaforth in 1669 discharged Sir George Mackenzie as eldest son of his then deceased father of all these obligations under this deed. From a discharge, dated 1st November 1662, it appears that George, Earl of Seaforth, by bond dated 1641, had borrowed from John Fairholm, merchant, burghess of Edinburgh, the sum of 20,000 merks, for which sum Sir Donald Macdonald of Sleat, John MacLeod of Dunvegan, Thomas Mackenzie of Pluscardine, and Simeon Mackenzie of Lochsclin had been co-obligants, and that Simeon Mackenzie (who in the latter part of the discharge is referred to as 'sometime of Lochsclin') had paid to John Fairholm of Craigiehall the sum of 4000 merks. There is a discharge by Fairholm to Simeon McKenzie, of date 1664, of a sum paid by him to account amounting

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to £2656 Scots, and there are other discharges by Fairholm in favour of Thomas Mackenzie, Sir George's uncle, for two sums of 4000 merks each, dated in 1666, which have also been found among Sir George's papers. There is other evidence that Simeon Mackenzie had been in many ways interested in the affairs of his relatives the Earls of Seaforth. By a lease of his principal house in Fortrose, granted in favour of John, Bishop of Ross, in 1664, it would seem that Simeon Mackenzie of Lochslin was still alive. By deed of assignation in favour of Sir George Mackenzie, dated in 1666, it appears that not only was Sir George's father then dead, but also that his father had some time before married a second time. In consideration of a certain sum paid to her by her stepson she, 'Agnes Fraser, relict of the deceased Symon McKenzie of Lochslin,' discharged him of certain provisions made in her favour by her ante-nuptial contract of marriage. This deed gives no information as to the family to which Agnes Fraser belonged, but it is otherwise known that she was a daughter of William Fraser, elder of Culbockie. It is interesting to find that the receipts for the sums paid by Sir George on receiving the honour of knighthood, to the Lord Lyon, to Mr. Robert Cunningham, Gentleman Usher, and to Robert Childer, on behalf of his Majesty's trumpeters, had been carefully preserved. The sum paid to the Lord Lyon was a hundred merks; that paid to the Gentleman Usher was £40 Scots; and the sum received by the trumpeters was six rix dollars. These receipts bear date March 1666. Another receipt which has been preserved illustrates in a very marked manner the value of sterling money in the seventeenth century, and the very humble dwellings which satisfied a leading member of the Scottish bar and the representative in Parliament of the county of Ross. The receipt is one for a year's rent of Sir George's dwelling house 'in George McOwans land' for the year ending Whitsunday 1667—the rent amounting to £14, 8s., a sum which the poorest tradesman in Edinburgh has now to pay for his house. In a list of discharges, apparently holograph of Sir George and bearing date 1670, which had been granted in his favour, there are numerous receipts for house-rent amounting to sums of an almost equally modest amount. There is one unusual and interesting receipt noted in this list. It is a receipt by M'Lean, yr. of Burravoe, to

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Sir George 'for ane ring belonging to Ladie Marie Douglas spous to Donald M'Donald, younger of Slait, having in it nyne diamonds, one in ye middle longer than the rest.' This receipt is dated 1665. Sir George has even preserved a receipt for the rent of his church seat 'in New Kirk' amounting to twenty merks. What church in Edinburgh was then known as the New Church is not known to the writer, but in 1683 the Town Council of Edinburgh gave a grant 'to him and his familie to possess that seat or loft in the Tron Church which is possest be Mr. James Smith, Mason, and also granted warrant to his lordship to possess the back seat of the said loft, and recommended to the Lord Advocate to accommodat the said Mr. James Smith with a seat in the back loft.' It may be feared that Mr. James Smith did not appreciate the honour which the Town Council did him, by depriving him of his pew in church, because the great Lord Advocate desired to have it, and that he would not be unduly grateful for the privilege of having a single seat in his lordship's 'back loft.' The Tron Church was the only church in Edinburgh whereof the services were fully according to Episcopal forms.

Sir George Mackenzie received many marks of the royal favour and approbation. Several of the royal warrants are still preserved. On the 4th June 1678 Charles II. made a grant to him of all the past feuduties due to the Crown for his Ross-shire estates, as well as those payable during the following seven years. As the Crown duties payable for these lands were unusually heavy, this grant was of substantial money value. Its terms are interesting, and are as follows:—

‘CHARLES R.

‘Right trusty & right intirly beloved Cousine & Counsellor, Right trusty & wele beloved Cousins & Counsellors, and right trusty & wele beloved Counsellor: Wee greet you wele. Wee being very sensible of the Faithfull services done to us by our right trusty & wele beloved Counsellor Sir George McKenzie of Rosshaugh our Advocate at this tyme. And of the great paines taken by him ever since wee appointed him to serve in that station. And being resolved to putt a mark of our favour upon him, for his farder encouradgement in our service, our will & pleasure is that you discharge him of all Feu dueties resting by him to us, for all his propper Lands, within the Shyre of Ross, for this prestant year of God 1678, And of all yeares & termes preceeding; And that accordingly you give power & Warrant for expeding hereupon in due forme. And seeing wee are resolved to continue this our Royall favour unto him, Wee doo appoint you in lykemaner, to acquitt & discharge him, of

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all Feu dueties payable to us by him, out of the saids Lands, for the space of seven years next to come after the date hereof; And that in sure manner as may be most Loyally drawn for his security thereanent. And that you take special care, that this mark of our favour & bounty, be made effectually unto him according to this our Intention, to the end he may be effectually & really discharged of his said Feu dueties dureing the years abovementioned. For all which this shall be yor Warrant. And so wee bid you heartily Farewele. Given at our Court at Whitehall the 4th day of June 1678: And of our Reigne the 30th year. Sic subscribitur by his Ma^{ties} Comand.

‘LAUDERDALE.’

In 1683 Sir George Mackenzie received another very substantial mark of royal approbation. This was a grant of penalties inflicted on Sir William Scott of Harden and his Lady ‘upon the account of whatsoever irregularities, disorder or crimes’ which they may have been convicted of. The royal order and the documents which followed thereon are in the following terms:—

‘CHARLES R.

‘Right trusty & right welebeloved Cousine and Counsellor, and right trusty & welebeloved Counsellor, Wee Greet you wele, Whereas in Consideration of the great services, performed to us upon many occasions, by our right trusty and welebeloved Counsellor Sir George McKenzie of Rosehaugh our Advocate, Especially in his having so vigourously prosecuted such persones as have been guilty of, or any wayes accessory to Rebellion, and in having contributed very much, towards the Establishing a great part of our prerogative. Wee are now graciously resolved, to confer & bestow upon him, a new mark of our Royall favour & bounty; These are to authorise & require you, to pay or cause to be payed, unto the said Sir George McKenzie, the sum of Fifteen hundred pound sterline Money, out of the Fyne imposed or to be imposed on s^r W^m Scott of Harden & his Lady, upon the account of whatsoever Irregularities, disorder or Crymes. For dooing which this shall be yo^r Warrant and so wee bid you heartily Farewele. Given at our Court at Whytehall the 22^d day of october 1683: And of our Reigne the 35th year. By his Ma^{ties} Comand, sic sub^{tur}

MIDDLETON.

‘Directed thus—

‘To our Right trusty & right welebeloved Cousine & Counsellor, and our right trusty and welebeloved Counsellor William Marques of Queensberry our Trear prin^{ll} and John Drumond of Lundine our Trear depute, of our ancient Kingdome of Scotland.

‘Followes the precept drawn upon the within mend Warrant—

‘Hugh Wallace Cashkeeper, pay unto the within named Sir George McKenzie of Rosehaugh, His Ma^{ties} Advocate, the within mentioned sum of Fifteen hundred pound sterl. out of the Fyne within mend. For quhilk these presents & his Receipt shall be yo^r Warrant, dated at Ed^r this 27th Augst 1684: sic sub^{tur}

QUEENSBERRY *Thesr.*
DRUMMOND.

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‘ Followes the Receipt—

‘ I s^r George McKenzie his Ma^{ties} Advocate Grants me to have received from Hugh Wallace full satisfaction of the fifteen hundred pound sterl., contained in the within mend Warrant, and therefore I discharge the s^d Hugh Wallace his Ma^{ties} Cashkeeper thereof, conform to the forsd Warrands. In witnes whereof I have subscribed thir presents at Ed^r the 30th day of August 1684; sic sub^{tur} GEO. MACKENZIE.’

Although this very kingly gift from Charles II. must have been highly gratifying to Sir George Mackenzie at the time, it was the source of great annoyance and much litigation to his successors, as these notes will amply show under the proper date.

There are two receipted accounts bearing date in 1684 which tell a mournful tale of an early death and of the kindness of Sir George Mackenzie to his unfortunate nephew, John Grant, student in Old Aberdeen College 1682-84. The account first in date is that of Matthew M‘Karle, apothecary and chirurgeon in Aberdeen, and it contains a sad record of tumours opened, and liniments, dressings and ointments supplied. The unfortunate youth’s sufferings in these last years of his life must have been great. The *summa totalis* of this account is £80, 15s. Scots, but the Lord Advocate’s Chamberlain endeavoured to settle it by payment of a sum of £78, 9s. Scots. With true Aberdeen carefulness Mr. M‘Karle was not satisfied; he reserved ‘the last particulars Chirurgicall to his Lordships discretion.’ Probably his lordship in his discretion was of opinion that Mr. M‘Karle was very well paid and could afford 3 per cent. of a deduction. The other account is still more sad. It is the ‘account of debursements upon John Grant, his funerall,’ and gives the gruesome details as to coffin, grave-clothes and other sad accompaniments of death. Those who watched the body had to be refreshed, and they did not despise the solace afforded by ‘wine, ale, tobacco and pipes.’ The account is discharged by ‘Catrene Ross,’ relict of John Ross, ‘Sacrist of ye Kings College,’ who also acknowledges the payment of a sum to be given to her servants for their attendance on the dying student. It is interesting to notice that one of the witnesses to these receipts is Alexander Farquhar, probably a son of one of the Farquhars who were correspondents of Sir George’s father. Among the letters of 1685 is one from Mr. David Haliburton of Haliburton, the Lord Advocate’s brother-in-law, which had accompanied certain sum-

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monsers served upon him by 'y^t woman' and sent to his agent that he might see her in order 'y^t she insist not ane farther,' and it is hoped that the agent was able to persuade 'y^t woman' to forbear farther action. Among the papers of 1686, which have been preserved, there is a holograph order by Sir George McKenzie to his clerk, Archibald Buntein, to pay George Cockburn of Haddington 1000 merks to account of the tocher due to Sir George's niece, Margaret Grant. As this order is an undeniable specimen of his lordship's handwriting it is reproduced in the Appendix. In a receipt of 1687 by the Chamberlain of Ross, it appears that the annual duties payable by Sir George to the Crown amounted to £561 Scots; and also that his brother Kenneth had recently before become proprietor of a portion of Sir George's estate. Another receipt of that year shows that the Earl of Northesk and Sir George were jointly liable in a sum of 4000 merks to his predecessor in office, Sir John Nisbet of Dirleton. Among the many obligations entered into by Sir George Mackenzie was one of date 1684, conceived in favour of Lady Mackenzie's nieces and cousins, which would have come into operation had Lady Mackenzie had no family. In a letter from his Chamberlain in Ross dated 17th November 1690 a miserable account is given of the condition of his Ross-shire tenantry. He writes 'Ther are severales of those tennents dead who have no representatives, and these that are on life are rendered somewhat poor by reason of bade cropts thir two yeares and the heavie burden of the shouderie in this nothern pairt, being the seat of war. This may seem to be a bade account, yet a werie trew one.' Agriculture in Ross has still its difficulties to contend with, but it is, in modern times, happily situated when compared with its position in the unsettled years of the Revolution. In 1688 Sir George Mackenzie sold large portions of his Ross-shire estates, the price paid by four purchasers amounting to what was then the very considerable sum of upwards of 50,000 merks. At this time the coinage of the Kingdom of Scotland must have been in an unsatisfactory condition, as a statement of the prices received from the purchasers shows that in every individual case bad money had been received, chiefly in the form of rix dollars. In 1691 Cunningham of Auchenbowie was incarcerated in the Tolbooth of Edinburgh for his failure to pay a debt due to

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Sir George, and on the 28th April of that year Sir George granted at Kensington a letter of consent for his interim liberation provided that due arrangements were made with his brother, Colin Mackenzie, Advocate, for his voluntarily again entering into ward in the following July. Sir George's signature to this document testifies to his infirm condition at the time. He died within a few weeks thereafter. There are, after the date of Sir George's death, numerous letters to Mr. Robert Stewart on the affairs of his successor. Colin Mackenzie writes to him from Chanonry on the 25th January 1693: 'Much honoured Wishing that Hymen in a golden . . . may secure the happie knott of Marriadge betwixt you and the incomparably virtuous ladie (object of your affection) I shall now only trouble you . . . intreating to have your advice and comands anent your victuale,' etc. One of the few letters of Lady Mackenzie which have been preserved is one dated Cornval, 31st May '93. It is in the following terms:—

' CORNVAL, *May* 31, . . . 93.

'SR,—Since you are so uncertain as to the time when our business will be called in Parliament I think it needless for me to stay here or anywhere else till I be att Scarsborrow, especially since I can gett notice almost as soon there as here how busines goes, and you conclud I could do little tho present, therefor I resolve to go from this to-morrow. As soon as I come to York I shall send a direction how you are to direct your letters to me, but in the meantime you may write and direct to Master Thomleson, Apothecary, in York in Peter Gate over against the . . . I am to leave Dodie (her son George) here because it is both a good aire and near home. I have sent two minutes subscribed. You may adjust matters betwixt Ledger-law and us as you think fit. I have sent Mr. Campbell's obligation; you must be careful to have a bill of 50 guinies ready for me att London, but I will acquaint you afterwards of the time I ame to be there. I wished the 40 guinies and 11 pund sterling you sent by Moore. Be careful to send this enclosed to Halyairds, who you'l see I have ordered to pay to you all my money. I have gott an accmpt from Laurence Ore of the expense I have been att upon my coach and horses when in Toune about my son's busines. I think it just he pay that, it being the only thing I ame to charge him for my jurneys to Toune, so I have drawn a precept upon you which I desire you may pay when it comes to your hand. Since I wrote Halyairds' letter I am informed that those sacks that brought my meal from Angus were not returned with the ship, but left in the weighthouse of Leith. Pray ask William Stuart what the reason was they were not sent, and cause him to send them with the first occasion. I resolve that thousand merks be payed to the distressed Clergy att Lambas. I shall leave the precept for it with Mr. Lamy and has given him some orders anent the distribution of

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it, and when he returns I have ordered him to advise with others who are most proper objects to give the rest to. Write my apology to Butt (Bute) that I have never gott time to answer their letter. Tell them that I hope to be so happy as to see them in winter, since it is not proper that the Sherif (Bute) stay there in winter. When you pay Laurence Ore's accompt gett an absolute discharge for all bygons, because you'l see I have taken don considerably of his accompt, mind both him and Bailie to trey if they can sell my coach. If what money I have left with Mr. Lamy do not serve them till they return (which you are to informe them of), you must send to him what he calls for.—I am, Sir, your most humble servant,

‘ We are all very well.’

Margaret Habiburtoxe

This letter bears no address, but it was probably written to Archibald Buntein, Sir George's clerk, or to her solicitor. It is evident that Lady Mackenzie was a woman of business aptitude, with considerable force of character. As showing the difficulty which the old Episcopalian ministers had after the Revolution in conforming to the Government's demands, it may be mentioned that in a letter from Chanonry, dated 2nd May 1693, Colin Mackenzie incidentally refers to ‘our Minister going South this day to answeare befor the Councele for his non compliance with the Government.’

In 1693 Sir William Scott of Harden petitioned the Scots Parliament for repayment of the 27,000 merks which he and his lady had been fined, and which by the royal grant had been paid to Sir George Mackenzie. The copy of the petition served on Sir George's son has been preserved. Sir William Scott's statement is that he ‘was most exorbitantly fined for most frivolous church irregularities by a decret first pronounced against him by the Laird of Meldrum then ratified by sentence of the Lords of Privy Council in the somme of no less than 46,000 pounds Scots which was restricted as to the execution to the somme of 27,000 merks,’ and that he accordingly made payment of the latter sum to Hugh Wallace of Inglistoun, cash-keeper for the time, who probably made payment thereof to Sir George Mackenzie, who indeed during his life-time had stated that he had received the money in virtue of a grant from the King. He accordingly craved repayment primarily from Wallace, and also from Sir George's heir. The grounds stated by Sir William in support of his petition were these: (1) that the ‘fyne was

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manifestlie exorbitant,' and (2) that by the Claim of Right and the Act of Parliament of 1690 rescinding 'forfeitours and fynes' he was entitled to have repayment made.¹ Archibald Buntein, formerly clerk to Sir George Mackenzie, in a letter, dated 11th December 1694, and addressed to Lady Mackenzie, makes the following reference to the Scott petition, and to a troublesome question which had been raised by Hamilton of Monkland. 'I can give little farder information in it than what is knowne to most of your sones friends and what is contained in the enclosed papers which I send to your Ladyship, till I come myself, and as to that other affair of Hamiltoune of Munklands band being given to my master upon his receipt, I never knew any interest my master had in that band of his, so as to give his receipt for it, nor does my memorie serve me so well in that affair for Inches looked upon any concerne my master could have with Munkland so as to have any dealling with his after that maner, only I have some confused mynd of ane old band of the Marquess of Argyll in favours of the last Munklands father which the last Munklands lookt upon as desperat and in the tyme of the last Argyll forfeiture, he brought it to Sir George to know his opinion whether he could be classed among the rest of Argyll's creditors who were then giving their clames, and I believe Sir George advysed him to give it in on all hazards, but for Sir George giving a receipt for it himself I remember nothing of it. But, however, Munklands himself was about that tyme forfeited for his accession to the rebellion of Bothwell Bridge, and his forfeiture was gifted to the Earle of Mellfort, and consequently that band fell under the forfeiture of the Earle of Mellfort; after he got the forfeiture recovered up that band by diligence as properly belonging to him as a part of Munklands estate, so that the band wold be inquired after either from Blair Drummond as one of the Earle of Mellfort's friends or from the Lairds of Orbiestoune and Wishaw who transacted with Mellfort as to Munklands forfeiture. But I believe Mellfort made use of this band as the

¹ The strong religious views of Harden and his Lady brought trouble upon them on another occasion. In Fountainhall's *Historical Notices*, vol. ii. p. 773, under date 5th January 1687, he mentions that 'Reid the Mountebank perslues Scott of Harden and his Lady for stealing away from him a little girl called the Tumbling lassie that danced upon the stage.' The result of the litigation in this instance was favourable to Harden.

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ground of a debt against Argyll's estate by which he got that title of Mellfort, it being a title in Argyllshire, and I am sure your Ladyship will get information in this either from my Lord Tarbatt or Prestonhall. This is all I shall or can say in these affairs.'¹

The decree of Parliament following upon Sir William Scott's petition is among the family papers. It proceeds in the first place to quote *ad longum* the whole of the original petition and the citation of the parties thereon. It would seem that during the course of the process a decree of suspension before the Lords of Privy Council at the instance of Hugh Wallace already referred to, then his late Majesty's cash-keeper, against Sir William Scott, dated the 15th day of November 1683, whereby, to use the words of the decree, 'the Lords of Privie Council have found the letters and charges raised, used, and execute at the instance of the said Hugh Wallace, his Majesty's cash keeper, against the said Sir William Scott upon ane decreit obtained against him, and pronounced by Adam Urquhart of Meldrum as having commissione from the Privie Council orderly proceeded against the said Sir William Scott for the soume of forty sex thousand one hundred and twenty ffye pounds Scots money bot in regaird of the power and latitude allowed to the Council by the king's letter of nynteen day of April sixteen hundred eight three years to modifie delinquents finis charged for but so as to keep them over their heads as ane awe band for their future good behaviour ordained the letters at the instance of the cash keeper to be putt to furdere executione against the said Sir William Scot suspended ay and whyle he made payment to the said cash keeper for the king's use off the sum of fifteen hundreth pounds starline of the whole soume charged for.' There were also produced copies of his Majesty's order to Sir George Mackenzie of the precept granted by the Duke of Queens-

¹ Fountainhall in his *Historical Notices*, vol. ii. p. 772, under date 16th December 1686, notes the following reference to Buntein: 'George Porteous Heralld pershues Archibald Buntein, Sir George Mackenzie's servant, for invading him in the Hy Street and beating him. Alledged you were the first aggressor, for you assaulted and beat me the day before, and so compensatione tollunter. Replyd that was a chaud melle and accidental recontre, but yours was a deliberat forthought assassination—having gathered Auchlossan and sundry with you, you treachously sent for me out of my house to speak with a friend, and then fell upon me, and self-defence must be incontinenti, and he offered to prove all this by his oath. It was committed to Tarbat and the President.'

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berry, and order to Hugh Wallace, cash-keeper, and of Sir George's receipt for the money, as also the extract of the discharge granted by Hugh Wallace for the sum. The petition, with productions, was remitted to the committee 'for security of the kingdom,' on hearing both parties' counsel thereupon, and to report thereupon to Parliament. This committee having heard the petition of Sir William Scott found the copies of the documents produced to be correct, and attested by Sir Thomas Moncrieff. They, in the absence of any appearance on behalf of Mr. George Mackenzie, Sir George's son, reported to Parliament that Sir William Scott had been most unjustly and illegally fined, and that Sir George Mackenzie had received the fine. The committee's report having been read in Parliament, and Mr. George Mackenzie and his tutors and curators having been thrice called, both at the bar and at the great door of the Parliament House, and not appearing, decreed and ordained Mr. George Mackenzie, as his father's heir, duly served and returned to make payment and delivery to Sir William Scott of the principal sum of £1500, and annual rent and interest from the 30th day of August 1684, Parliament assailing Mr. George Mackenzie from all other damages in time coming. It is interesting to note that the extract from the proceedings of Parliament was made under the hand of George, Viscount of Tarbat, Lord M'Cleod of Castlehaven, the personal friend and relative of Sir George Mackenzie, and is signed 'Tarbat, C. L. Repr.' Diligence having been done against Mr. G. Mackenzie's estate, and being threatened against his person, a suspension of the diligence and threatened caption was brought before the Supreme Court in 1695. It was pointed out that Mr. G. Mackenzie was only about ten years of age, and could not be imprisoned, and that as his estates were entirely heritable, it was impossible to realise, in the time given, such a sum as would suffice to meet the decret which Sir William Scott had obtained from Parliament. At this time, apparently no one had been served as tutor to Mr. G. Mackenzie. Why this should have been so is not clear. If it were delayed because of the difficult questions which had to be settled, and in order to throw every obstacle in the way of such a claim as that of Sir William Scott, one can understand the reasons which induced Lady Mackenzie and her friends to postpone having tutors appointed. If no

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relative would undertake the duty, it would seem to argue a remarkable lack of affection and respect on the part of Sir George Mackenzie's near relatives for him, and also the consciousness that every means would be taken by the Whig Government to retaliate upon and punish the great Tory Lord Advocate in the person of his unfortunate child and representatives. A letter on this subject from Lord Prestonhall to 'Mr. Simone McKenzie of Allan, orr in his absence to George McKenzie, Nevoy to Rosshauch,' dated 15 Janry 1695, has been preserved. It is in the following terms:—

'Edr. 15 Jany 95.

'DEAR COUSIN,—I writt to you twice befor to come here in order to have Rosshach provided w^h a toutor, which I wish you had done befor now, but seeing y^t my weefe (wife) and I are now going w^h her sonne ye south of York, I hope to have this . . . for his securitie agst Sir William Scotts caption (which he is about to raise agst him ye days of ye charge of Horning being now expired), I would wish y^t ware ye midle of July before you cast yourself here. And I would have you bring Scatwall w^h you if it be possible & if he can not com y^t you bring a bond of cationre from him for y^r toutorie.

'I think he can . . . ye years of the toutorie be only four years, and he may see himself y^t ye business be right managed. I shall add noe moe, but it is very fitt for you to be here then when you shall be attended by Y^r affectionat Cousine and houble Serv^t

Ro. MCKENZIE.

'I had almost neglected y^t which was of greatest purport, Sir William Scott has Jhon Douw to be his Agent, and is resolved to use all diligence which wee must use all menes to prevent. Wee have prettie well secured ye rents of ye unliftrented lands here by causing ye Sheriff of Boutt, Lanton, and oysr of Sir George creditors arest, and shall send ye Letters of arestment north y^t the rents ther may be arested and for securing ye mony resting by Scatwall and others. I would have them gate (get) an asynne (assign) from ye unchels Thomas and Alexander, or any other to whom Sir George did rest money who will extinguish ye debt by compensation, imediately as ye assignne is delyvered, and I doe not dout but Scatwall & you have sufficient credit to procur these Assignne which will be a singular Kyndness to Rosshauch, a mene of geting them payment, and good medium to draw Sir William Scot to compound, who will not hear of compounding as long as he has any prospect of payment.'

This letter of Lord Prestonhall contains better law and sounder advice than the execrable spelling would at first lead one to hope for. It is surprising to find that men of rank and culture, and good classical scholars, in the end of the seventeenth century wrote their own language in a style which would now throw discredit on the youngest schoolboy.

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It will be observed that when he wrote the letter he had already been married to Lady Mackenzie. The marriage must have taken place shortly before, as on the 19th April, Mr. Patrick Lamy, who seems to have been a tutor or companion to George Mackenzie the younger, in writing from Shank, the Midlothian property, where Lady Mackenzie then resided, to Mr. William Stewart in Edinburgh, who acted for some time as agent for Sir George's representatives, expresses himself with some humour, thus:—'My lady, whither Rosshaugh or Prestonhall, I cannot say, desires you may offer the house of Shank, gardines, ducôt, and as much grass as they please to take, to any persone you think will be for it, particularly to Carnwath or Kellie. She desires you may be at pains about it, and get it off as it deserves. Receive enclosed some charges which you are to show to Mr. Robert, that a proper course may be taken about them. Your humble servant, Pa. Lamy.' 'My lady desires you may go to the Bishop of the Isles and give her service to his L'ship, and begg some more of his eyewater for my lady, because she found good of the Last, and send it by this bearer. If there be any menes send them.' Evidently Lady Prestonhall would brook no delay either in letting the house of Shank, or in the sending of her eyewater from town.

In 1695-96 Sir William Scott proceeded to serve upon Sir George's son, and his tutors and curators, a summons of adjudication, by which a debtor's lands are adjudged to his creditor when the debt due has not been paid. That process went on in court for a considerable time, and it is observed that Mr. Mackenzie's counsel succeeded in obtaining a judgment that the adjudication should be limited to lands in Ross-shire, of which a rental was produced in court.

In 1696 there was also an action of furthcoming served by Sir William Scott against Lady Mackenzie and her husband and other parties, to make effectual numerous arrestments which had been made by Sir William Scott, with the view of recovering payment of the £1500 contained in the decret of Parliament. This lawsuit was defended, and the last date indorsed on the original summons is July 1698. There is a very interesting letter from Lord Prestonhall to Mr. Simeon Mackenzie of Allangrange, written from Prestonhall, and bearing date the 27th

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September 1697, with reference to this Scott litigation. It is as follows:—

‘SIR,—Now y^t that the peace w^h King William is concluded my weefe is of opinion y^t it will be fitt to agree w^h Sir William Scote and to prevent his adjudications which will not be gotten delayed any longer as ye beginning of the next session. Ye Shirefe (Bute) and Lanton are lykways of y^t opinione, and recomended to me to desayr (desire) y^t you would be at Ed^r ye first day of November for y^t effect which I doe by this. . . . Of all ye other things, wee shall tak (talk) at meeting, only I would have you bring y^r ladie w^h you and resolve to be ane Ed^r mane (man), now when wee are all one mans bearns (bairns). I find ye affear of Colen McKenzie anent his intromissions will not end without a play, therfor I have order sumds (summons) agst him to be sent north to be executed agst November. I wish he had agreed without . . . for I fear he will lose by a legal decision mor as I can gaine. Roshauch has recoverd his health very well, thoe’ his swellings arenot quite gone and I fear will tak somne tyme: and I am Sir Y^r most houble servant
RO. MCKENZIE.’

From this letter it would seem that one reason why Lady M’Kenzie and her friends had resisted Sir William Scott’s claim had been the hope, which the Tory party had still entertained, that King William might be overthrown, and the Stuarts restored, which would undoubtedly have resulted in the decret from Parliament which Sir William Scott had received being revoked and cancelled. By 1697 Lord Prestonhall had come to the conclusion that King William’s throne was fully secured. The public feeling in Edinburgh in 1696 with reference to the Continental war is touched upon in a letter from A. M’Leod to Allangrange bearing the date of 19th July 1696. In this letter Mr. M’Leod writes as follows:—‘All the news here is the peace betwixt the French and Savoy which is said to be concluded. And there is a great talk of a generall peace . . . the King has emitted a proclamatione in his Camp in Flanders forbidding any soger to talk of peace under the payne of death, and any officer under the payne of cashierment, so it seems he has no good will to it. There is no Country news. Our camp still remains at Foggomuire notwithstanding of what news we had of Dubart, his being blown up, who is yet alive and has taken ane eastland fleet since, and is said to be just now on the coast of Denmark. Rosshaugh is very weill, and never looked better.’

There is no paper extant showing whether the sum decerned for was paid to Sir William Scott, or when or on what terms it was paid, but

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from incidental references it may be gathered that the claim was ultimately settled by Mr. Simon M'Kenzie, Mr. George M'Kenzie's cousin and tutor. There is among the family papers a draft of a petition to the Scottish Parliament in name of Mr. Mackenzie, craving a reduction of the decret in Sir William Scott's favour, and some of the objections stated seem forcible and to the point. Apart from weighty technical objections, it is pointed out that the gift of the 27,000 merks to Sir George Mackenzie was from his Majesty's funds, as much as if no reference had been made to the penalties of Sir William and Lady Scott, that the grant was one made by his Majesty in recognition of the Lord Advocate's frequent journeys to London on his Majesty's business and the expenses attendant thereupon; that, therefore, the grant was one for most onerous causes and valuable service, and that, accordingly, Sir George's heirs could not be called upon to repay the sum.

Among those who were in debt to Sir George Mackenzie at the time of his death was Lord Doune, the eldest son of the Earl of Moray. There is a letter extant from Lord Moray to Allangrange, dated Duni-
bristle, 22nd February '99, in the following terms:—

'I am wholly a stranger to the affair you wryt of consarning my leat sone Doun . . . and has not yet my healthe so weall as to goe about any affairs but I houp in some time I shall, and then I shall informe myself as to that bussines, and you may expect to hear from me thereanent. I am, &c. MORRAY.'

In 1700 extracts had been obtained from the Books of Council and Session by Sir George Mackenzie's representatives of two deeds having reference to the affairs of his brother Alexander Mackenzie. The first was a lease granted in 1671 by Sir G. Mackenzie to his brother of the lands of Pitonuchtie, and the second is a discharge by Alexander and his lady, in favour of Sir George, granted in 1669, whereby, for the sum of 4000 merks secured by wadset over the lands of Logie in Lochbroom, Alexander's legitim (portion out of his father's estate) was discharged.

There has been only one letter of Mr. George Mackenzie, Sir George's son, preserved. It is written from Bath on the 28th May 1701, when he was residing there with Mr. Lamy. The handwriting is youthful, but extremely neat. The letter is reproduced in the Appendix. It

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is addressed to Mr. A. M'Leod, who had some charge of the business of the Mackenzie family, and is in these terms:—

'SIR,—I had a letter from my cousin near a month ago in which he told me that he had desired you to send those six guineas with all possible hast; and really I wonder you omitted it, since you knew I was to be at London against the coronation, for I saw so many of our countrymen there that were lately come up that I am sure you could not want an occasione to send them, but for now that I am at the Bath where I believe I may have as much occasion for them as in London, I hope that you'll let me have them immediately, and I think the best way for that is to send the next post after receiving my letter your answer with a bill enclosed in it to the value of six guineas, which I hope you will not fail to do. Pray give my service to your spouse and to Mrs. Anderson.—I am &c.

GEO. MCKENZIE.'

There is a postscript to this letter by Mr. Lamy, regarding farther remittances, as to Mr. G. Mackenzie's intention to visit the fleet, and as to the addressing of letters to Oxford, to the University of which he was about to return.

There is a long and interesting letter from Allangrange to Mr. George Mackenzie of Cruinan, of date 6th January 1701, which, as it gives some interesting information as to life in Ross-shire two hundred years ago, may be given at length:—

'ALLANGRANGE, 6th Jan. 1701.

'DEAR COUSIN,—In my last w^t ye ordinar post directed in your absence to Alex^r Mackleod I sent Belloan and Kenneth of Achladowll's Decreet agst Locheils Elder and Younger for to stop Locheils getting a suspension (wch I hear hee strives to obtaine) but I was then in such heast and confusion yt I forgott an maine reason of suspension y^t may be alleadged by Locheils prors—to witt; that Belloan and Kenneths men are payed allready by Kenneths uplifting Alister Roy in Leadgowen his goods by ye Justiciary's order to which may be answered, 1^o that Alister Roys goods were taken up upon a distinct crime . . . and informing of theives and receipting theft for wch hee was accordingly punished but q^{ht} sayes y^t as to the theives and away takers of ye goods for whom Lochiels are bound by a standing decreit: Wee have often heard yt ye receiver is as guilty as the theif, but never before now yt he should pay for all, & the theif let away. But 2^{do} es to yt Achladowll took up ye goods of Alister Roy was found all that these goods amount to by a partar [particular] appretiation will not exceed a hundred pounds Scots wch is but a small part of the Decreit which is above 800 libs. For verifying and instructing this, I have sent a double of the protestation given in to Strathnaver and the Justiciars by Dod: Mackfarqr Notar after Kenneth and Mackfarqr and other men had returned from poynding Alister Roys goods all yt ye poynding amounted to by ye fossd appretiation is but 17² lib 6/ and 8^d. Now take out the Notars 40 libs . . . as . . . Discharge sent and Achladowlls own and his mens

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expenses yr back and fore to Inverness will I think in comon ability and . . . take off ye rest of ye odds if not more so y^t if Locheil propounds on y^t head hee is soon ansred by production of ye enclosed process and discharge. Kenneth is come down and is feasting w^t My Lord Seaforth, but hee has sent his boy here to bid mee tell you y^t by any means you look to y^r affair and to stop the suspension if possible for they'l bestow on it all you think necessary since it has goen this length; the horning will be sent next post after they are denounced in order to lay a girn for apprehending young Locheil who is . . . with you. A vigorous execution of dilligence is ye only way to doe business of this nature: but keep this up close from comeing to his ears and Mr. Alexander Mackleod advocat must not know of it nor any oyr till you see ye oportunity present itself fair for you. Add this last to ye former reasons for stoping ye suspension, and if it pass let yr be consigned . . . at least of ye money containied in ye Decreit. It is really sad to see our country so abused and harrassed by such masterfull thieves; have we not a fresh instance in Coul and Tullochs Cows: no less yⁿ 45 in ye hail were stolen ye oyr week of which 13 of Tullochs were houghed and hewen down in the way and three of Couls bomans [bower]. If y^t be not barbarity and like ye old Highland feuds I know not q^t it is—they were tracked to Monar and they say . . . and divided y^r: but of this I shall not be positive but I shall not wish it be found true. Its talked that Coul our Comissioner is not cordiall for getting our greivances agst highland depredators redrest, Its lyke this last act of theirs upon himself and his man may spurr him a little and when his neighbours are all harryed and ruined. Theives cannot want . . . nor give over so advantageous a trade and it must fall ypon his goods at last. Dad Baine Spanich is made Under Secretary to Torridon—I have no newes nor . . . for these we expect from you. Only minde q^t I wrott in my last anent Kenneth Baine Tullochs sone. I wonder y^t I never hear from Alex^r Mackleod or him about my money and I entreat let mee know q^t wee may expect for our victuall this year as soon as you can with the Inverness . . . Write to the care of Geo Anderson, Mercht. yr or to the care of the postmaster alwayes.—Dr Cous, Yours to serve you,

SIM. MACKENZIE.

‘Remember me to Rosehaugh and to all friends y^r.

‘Burn this after reading and considering it. Let Alex^r MacLeod be active in this and he'l be gratified for his paines by Belloan and Kenneth.’

This letter is addressed to ‘Mr. George Mackenzie off Cruinan. In his absence to Alex^r Mackleod Writer in Edin at his house in Millers Court at the way-house Edinburgh.

‘With care and heast, heast [haste].’

In 1702 Mr. George Mackenzie was at University College, Oxford. During that year there are a number of letters from Mr. Lamy, the main subject of correspondence being the necessity for further remittances of money. On the 17th March he wrote to Mr. M^cLeod (already referred to) as to Mr. Mackenzie's wish to purchase a horse. He writes thus:

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‘Mr. Mackenzie tells me his mother has write to him to buy a horse. In my last to the Curatour I acquainted him that Mr. McKenzie had such a design, and that considering how rash a rider he is, and how dangerous a fall he had gott this winter from a hackney horse, I could not dissuade him from it, tho’ I assure you I never did persuade him to it. . . . expensive it is to keep a horse here. I expected to have known before this time ye Curatours . . . as to this especially, seeing it’s probable, he living at Edr., he knows that my Lady has write so to her son, and you may be sure I will not gett much quiet, after such a letter till I be obliged. Pray, Sir, speak to him to write his mind to me upon this, as also how he approves of my giving Mr. McKenzie ten shillings a week for his pocket and extraordinaries in his Chamber. I told him in my last . . . on that I had orders—at least advice from my Lady to do so, and I did not think it unreasonable . . . to pay for his extraordinaries. It would be more besides an occasion of frequent debate betwixt us, but in his last he wrot that he had not heard from me for six months befor. I am very sure I wrote thrice to him after we come last from the Bath, which is about six months ago. Let me know whether the Curatour knows that Mr. Mackenzie spent the price of his mare . . . which probably he does not if my last . . . has miscarried. Tell the Curatour that in my nixt I will give him an account what we have spent in the college in a quarter and a half, by which he will be able to judge the difference betwixt living in a college and in the toune. If there be a horse bought I must draw for more money, for I cannot buy one out of the £50 I am to draw for in a day or two.’ We may trust that through the influence of his mother Mr. Mackenzie succeeded in getting both his horse and his half-sovereign weekly for extraordinary expenses. In Mr. Lamy’s next letter, dated 30th March 1702, there are some interesting references to current affairs. ‘I believe the money I have would have lasted us to May, but last newes gave an account that the coronation is fixed for the 23rd April. If this hold I will be forced to draw a Bill of fifty pounds upon you sounerer, for Mr. Mackenzie will go to London then, and must have clothes, a night gown and more linen, and what is over will, I believe, scarce serve him the first season att the Bath. I believe his friends will not be against his going upon such a solem occasion.

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You may acquaint them as soon as this comes to your hand, as I resolve to do as soon as I have this confirmed, but if it be the 23^d of April I can hardly have a return before he go, for he must go in such time as to gett his clothes and there will be no keeping of him. He is in the pet that the guineas so long promised have not come. To be sure his ordinary allowance will not serve him either at the Bath or London. He is in good health and looks very well. This journey will increase our charges considerably. For newes, the Church party here are very upish, and think they will now sail before the wind, tho' I am told the other party are not cast down but as confident as ever, particularly the . . . Lords. No doubt your Kirk party are affraid, and will oppose the Union now so much talkt of and believed to be seriously desired by the English. It's said that they will allow our peers and commons that are to sit in the Britannick parliament to be chosen by our parliament, that all our laws shall continue in force, and non of our people be obliged to come for justice to any Court in England: that in all taxes, the Scots shall pay but one shilling for four the English shall pay. They talk of 24 peers and 30 Commoners. The first is not thought unreasonable, but all this is but talk, for it's only talkt in parliament as yet. K. W. [King William] seemed to have many admirers while alive, but now he is dead I never heard one regret his death: he has left 650 thousand pound of debt to his servants and trades people, by which many families will be brock: there is a report that now that his papers are seas'd there is found out a design he had to have armed 1600 French refugees; to have attainted and imprisoned the prince of Denmark, a list of his pensioners in Parliament, with a great deal of stories of this nature, whether true or false, time will discover.'

Mr. Mackenzie and Mr. Lamy were in London in April 1702 at the coronation. The latter laments grievously the necessity for spending so much money, and asks that Lady Mackenzie should write to her son limiting their stay in London to a fortnight. He concludes as follows: 'I have had no time as yet to gett newes of our own countrymens great designs: the preparations for the coronation stops all other business till that be over; in my nixt I shall tell you what I hear.'

In a letter from Oxford, dated 13th July 1702, Mr. Lamy enlarges

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on his pecuniary difficulties, dreads the 'curatours rage'; and explains how impossible it is to live as they do without incurring heavy expenditure.

In a letter from Mr. Lamy from Bath, of date 7th September 1702, he deals with a proposal that Mr. Mackenzie should spend the winter in London and return to Scotland in spring, and points out the folly of any one entering a college in Oxford for only a short period.

Among the letters of 1702 there are four from George Mackenzie, of Inchcoulter, Sir George's nephew. All are addressed to Mr. Alexr. M'Leod, although it would seem that one at least may have been sent to Simon Mackenzie and forwarded by him to M'Leod. The first, dated 30th March, is of little interest. He, however, asks that seven guineas should be sent from him to Rosehaugh without Mr. Lamy's knowledge. The second, dated 7th June, is as follows:—'Ye know I am creditor to the late Seafort by the band ye have of mine, & I know if it be possible the Countes of Seafort desires to defraud me, which oblidges me to take all the reasonable courses for my payment I can, therefore, I intreat ye waite on Langtoun and Mr. Alex^r M'Leod and shew the Marchioness of Seafort and the Laird of Assin [Assynt] have intromited without confirmation wth considerable parts of the late Seafort's exērie who, in my opinion, I may pursue for vitious intromissione tho' the Ladie intromitted for the maintanane of ye familie and Assin for defraying the funeral expenses. Send me advise in this, & before whom I shall commence the process.' To this there is a postscript: 'I wish she have sent Rose: [Rosehaugh] his gold.' In the next letter, 3rd August 1702, Mr. Mackenzie writes as follows:—'I received my club & balls, for which I thank you, which ye may say is bad harvest employment for a farmer sed oportet vivere.' It is interesting to observe that golf competed with the claims of harvest at Fortrose two hundred and three years ago. In this letter also Mr. Mackenzie refers to rumours of Rosehaugh's extravagance. The last letter is dated 2nd November 1702. It explains his inability to make any remittances on behalf of his cousin till Christmas, and counsels proceedings against the Earl of Argyll and Sir William Sharp.

In 1707 Lady Prestonhall mortified a sum of 1000 merks owing to her by Sir George her first husband for the poor of the parish of Newtyle, and ordained her son, whom failing, the other heirs of taillie, to pay the interest

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to the poor 'upon that day wherein it shall please God to remove me from this valley of Miseries to his eternall rest.' When the Earl of Bute succeeded he declined to pay the interest, and an action was brought against him and Lord Royston, as executors of Lady Mackenzie. The points raised were these:—1st, Was the Bond by Sir George to his Lady valid, being granted by a husband to a wife, and without any obligation to repay the principal? 2nd, Was the bond not prescribed, no action having been taken upon it for upwards of forty years? 3rd, Had the Kirk Session authorised the prosecution? This annual Interest, if ever paid to the poor, has long ago ceased to be so.

There is a letter from Sir James Kinloch of Kinloch (afterwards attainted) with reference to the sale to the Countess of Bute of the lands of Edderty. There has been preserved a letter from Cramond of Ardler, dated from the Bridge of Earn the last day of July 1718, where he was detained owing to the serious illness of his travelling companion Halliburton, younger of Fodderance, who had been suddenly attacked by pluerisy. Cramond writes with refreshing bitterness regarding several persons who had wronged him. He writes: 'just now I see your letter to Fodderance. I find I am not much mistaken of these worthie gentlemen, and I think you have been too easie to them all, who are all another thing than honest men. I wish you may end this affair, & I hope in God never to be concerned with such a sett of men as Arrot Rigg & Monro who I doubt not the Devil will have the three at last.'

From an inventory of writs bearing the date of 1731 it appears that the Earl of Seaforth was due to Sir George Mackenzie's father the sum of £20,000 Scots, and that this debt was the ground of diligence against the Seaforths. On the 26th January 1698 a decret of adjudication was obtained by Sir George's son for the accumulated sum of £29,280, 16s. Scots, and it is probable that payment was ultimately obtained, by the Countess of Bute, as tutor and curator for her son. A copy of the *Caledonian Mercury* of January 24th 1734 has been preserved, evidently because it contains two advertisements of interest to the family, the one being the advertisement of the Midlothian estate of Sir George Mackenzie—the Shank, to sell, and the other being the judicial sale of

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the estate of Keithick, which was at this time purchased and added to the Newtyle estate of Sir George's representatives.

The non-existence and probable destruction of Sir George Mackenzie's political correspondence and private memoranda on public affairs is deeply to be deplored. It is possible that the charter-chests of several of the older Scottish nobility may on examination still yield valuable letters and papers of his. Specimens of his letters are to be found among the Lauderdale papers published by the Camden Society in 1884. There are in the third volume six letters from him to the Duke and Duchess of Lauderdale. The first in date is supposed to have been written in February 1680, and in it Sir George expresses his opinion that the visit of the Duke of York (afterwards James II.) has done much to establish peace in Scotland. 'The country is quiet' (he writes) 'nor doe I think any will ryse while the Duke is heer and wee ow really much to his being heer for our enemies dare not now own their complaints against the Council nor doe any differences appear amongst ourselves.' He complains of lukewarmness on the part of certain persons in getting proof against rebels, and adds, 'I am weary of having all the burden.' He dissuades Lauderdale from bringing criminal prosecutions before the Council as being illegal; and adds, 'I am glad I never lost a caus to the King.'

On the 17th February a loyal address to the King was sent by the Privy Council. It is exceedingly laudatory as regards the Duke of York, 'in whom wee have seen that moderation of Spirit and equality of Justice that is so remarkable in Y^r sacred Race. So that this too short time has been the most peaceable and seren part of our life, and the happiest days we ever saw except your Majestys miraculous restitution.' This address is signed both by Rosehaugh and Tarbat.

Sir George's second letter to the Duke, supposed to have been written in the same month, contains nothing of special interest. His third letter to his Grace, dated in March 1680, refers merely to the prosecution of Barganie.

In the autumn of 1680 Sir George wrote to the Duchess in defence of his own action regarding several matters in which her Grace was interested, and specially as to a sum of money which seems to have

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reached her hands in some irregular way. The next letter to the Duchess seems also to have been written in 1680. In it Sir George thanks her for many kindnesses, and defends himself and his own policy and acts from hostile criticism. Incidentally he says, 'It is very unjust to blame me for Tarbat.'

In the next letter to her Grace (still in 1680) he protests that he has accepted no money 'from them nor any one else sav what I get from the King by the Duk of Lauderdale, nor value I money if I get kyndnesse and belovd for a faithfull and frank friend.' He also informs her Grace that he had advised that she herself should have 'som small mark of their acknowledgement.' He asked that her Grace should burn his letters. Her Grace did what every one does who is asked to burn a letter—she carefully retained it.

The last letter is one from Sir George to the Duke. He refers to the work in which he was then engaged, *The History of His Own Times*, and asks the Duke to give copies of the papers connected with the Earl of Middleton's matter. He reminds his Grace of his offer to get from the King a letter commending his efforts as Lord Advocate to be 'a securitie' to him against his enemies who are constantly becoming more and more embittered against him. He sent a draft of a Royal letter for the Duke's approval and thereafter for his Majesty's signature. This letter was never completed. Possibly Charles II. and Lauderdale thought that the frequent grants to Sir George by his Majesty which were accompanied by strongly worded acknowledgments of the King's satisfaction with the Lord Advocate afforded the latter all the protection which any writing under his Majesty's sign-manual could possibly give.

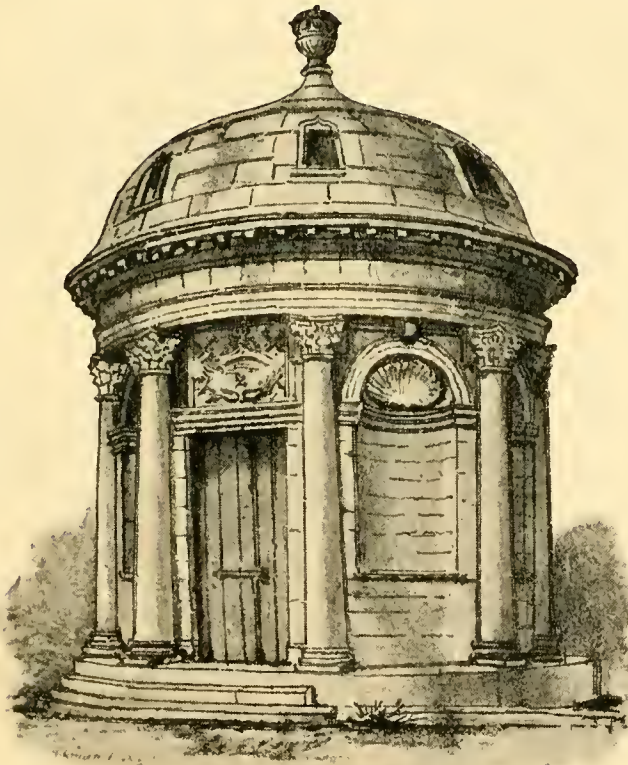
There is a reference in Lord Fountainhall's Notes to the case of Scott of Harden. Much doubt had been expressed whether a husband should be fined and punished because his wife insisted on attending Conventicles, contrary to the Statute law of the time. When the judgment of the Court was submitted to the King himself, his Majesty, although showing a tendency towards relieving the husband from the consequences of the wife's delicts, ultimately sustained the sentence.

It may be gathered from the same authority that Sir George Mackenzie and Harden had arranged with one another as to the

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payment by the latter of the £1500 of restricted penalty. All this makes the proceedings by Scott after Sir George's death against his representatives all the more grievous and unfair. In any case they should have been relieved by the Crown from the claim.

These notes may be fittingly concluded by the expression of the hope that at no distant date justice will at last be done to Sir George Mackenzie's memory by the preparation of a biography written from his, or at least the modern standpoint, having embodied therein such extracts from his published works as will suffice to give readers of to-day an adequate idea both of the style and substance of his writings.



TOMB OF SIR GEORGE MACKENZIE OF ROSEHAUGH

APPENDIX

I.

CHARTER OF CONFIRMATION, or BULL, granted by the POPE, ratifying Charter in favour of GEORGE BLAIR, of the lands of Bennathye, dated at St. Peter's, Rome, the 1st day of July in the fifth year of his pontificate.

ANTONIUS by the Divine pity, by the title of the four Crowned Saints presbyter Cardinal, to prudent men, the Archdeacon of Brechin, the Treasurer of Glasgow and Henry Forsicht, canon of Aberdeen churches, greeting in the Lord. To these things which are known to have been providently done for the convenience and use of churches and regular places that they may stand for ever unharmed the Apostolic See when asked freely commands the strength of its authority to be added: A petition lately shown to us on behalf of George Blair laic of St. Andrews or other diocese contains that at another time George,¹ perpetual Commendator of the monastery of Dunfermline of the Order of St. Benedict, diocese of St. Andrews, and the convent of that monastery gathered for that purpose in chapter, the utility of said monastery being every where foreseen and considered, also diligent treaties and ripe deliberation being had, for the increase of Divine service, of the number of religious and of the rental of said monastery and the honour of the state and increase of the policy of the kingdom of Scotland the favours also, and the benefits done by the said exponent to the said George and convent requiring it, has [or have] given, granted, set, rented, leased, demised and confirmed, as in a charter or public instrument made thereupon is said to be more fully contained, all and sundry the said monastery's lands of Bennathy with their pertinents lying in West Stermontht, the regality of that monastery of Dunfermline and Sheriffdom of Pertht which formerly in the rental of the said monastery extended themselves to six pounds thirteen shillings and four pence of the usual money of the kingdom of Scotland with eighteen poultry, to the said exponent and his heirs male to be procreated of his body and in lawful bed, and failing them, to John Ogilbe son and apparent heir of James Ogilbe of Cwistikoun, and his heirs then to be procreated of lawful bed, and failing them all, to the lawful and nearer heirs whomsoever of Marjorie Durie mother of the said exponent² and of John [Ogilbe]; to be holden and had by them from the said Commendator and convent and their successors in said monastery in feu farm and perpetual lease heritably for ever, by all their right ancient marches and boundaries, as they lie in length and

¹ Durie.

² George Blair.

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breadth, in houses, buildings, woods, plains, moors, marshes, roads, paths, waters, stanks, streams, meadows, grazings, pastures, mills, multures and their sequels, hawkings, huntings, fishings, peataries, turbaries, coals, coal-heughs, rabbits, warrens, doves, dove-cotes, smythys, malthouses, heath, broom, woods [or shaws], groves, brushwood, timber, quarries with stone and lime, with courts and their issues, ameracements, blood-wits, merchets of women, with common pasture, free entry and exit and with all other and sundry freedoms, conveniences, profits, and easements and their just pertinents whatsoever, as well not named as named, under earth as above earth, far and near, to the said lands with their pertinents belonging or that may in any wise justly belong in future, and as freely, quietly, fully, wholly, honorably, well and in peace in all and through all as any other lands are given by any one within the kingdom of Scotland or are demised to feufarm or perpetual lease, or as far as can be of right, without any hindrance, revocation, contradiction and obstacle whatever, under a yearly cane or rent of ten pounds, and for the eighteen poultry, nine shillings, of the usual money of the kingdom of Scotland, not exceeding in all Three pounds of Sterlings or thereabout, at two terms of the year for the one moiety at the feast of Whitsunday and for the other moiety at the feast of St. Martin in winter to be paid by equal portions, and that with three suits at three head pleas or chief courts at their burgh of Dunfermline only, for all other burden, exaction, demand or secular service which from the said lands with their pertinents can in any manner be justly exacted or required by any one; with condition that each of the heirs at their entry to said lands shall be held to double the said rent in name of feu farm, and if it shall happen that the exponents or others foresaid cease in payment of the said farm or cease for three terms successively, continuously running, the said feufarm shall be quashed and annulled and shall be reputed as void, null and undone, and it shall then be lawfull to the same Commendator and convent and their successors in said monastery to dispose of these lands with pertinents at their pleasure, without further process of law, canon or civil. George, moreover, the Commendator and convent foresaid and their successors in said monastery for the time, shall be bound to warrant, acquit and for ever defend all and sundry the forenamed lands of Bennathye, with their pertinents, to the exponent and heirs and others foresaid, successors in said lands as freely, quietly, well and in peace through all, alike in form and effect as is before said against all mortals, and perchance under other compacts, conditions, renunciations, limitations and declarations, in feu farm and heritable lease for ever: By the force of which gift, grant, tack, lease and dimission the said exponent perhaps attained real and actual possession of such lands, but whereas, as the same petition subjoins such gift, grant, tack, renting, lease, dimission and confirmation have tended and do tend to the evident utility of said monastery and therefore the said exponent desires them, for their firmer subsistence, to be strengthened by the force of Apostolic confirmation, the said exponent has caused humble supplication to be made that a convenient remedy may be mercifully provided to him thereupon by the Apostolic See. We therefore, having no certain knowledge of the premisses, and holding the situations of all and sundry the lands, their boundaries, values, qualities, quantities, and other circumstances, and the exact words, the tenors also of the said charter or instrument, to be fully and sufficiently expressed in the

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present writ, and understanding that we ought to be favourable and kind in those matters which tend to the evident utility of monasteries and regular places, by the authority of the Lord Pope of whose Penitentiary we bear the cure, and of his special mandate made before this to us by word of mouth, commit to your discretion that, having cited those who ought to be cited, you or two of you proceeding conjointly shall diligently inform yourselves of the premisses done, as is stated, and if by the information ye shall find (upon which we burden your conscience) that the same gift, grant, tack, renting, lease, dimission and confirmation have tended and tend to the evident utility of said monastery, ye shall by apostolic authority, approve and confirm the same gift, grant, tack, renting, lease, dimission and confirmation, and, as they concern these, all and sundry things (lawful and honourable only) contained in such charter or instrument, and that ye add to them the force of perpetual firmness, and discern that all these shall be valid and effectual and have their due effects and efficaciously be observed, and ought to be so judged and defined by judges exercising any authority, even apostolic, taking from them all faculty and authority of judging and interpreting otherwise, and that whatsoever shall happen to be attempted to the contrary shall be null and void; and all and sundry defects as well of law as of fact, if any perchance intervene in the same, ye shall supply, notwithstanding the constitutions and ordinations, those of Paul Pope II. of happy memory and others, apostolic and provincial and synodical, also the statutes and customs of the said monastery and Order, even though fortified by Apostolic confirmation or any other support, privileges, also indults and letters apostolic granted to them, of whatever tenor they may be, and others to the contrary whatsoever. Given at Rome, at St. Peter, under the seal of the office of Penitentiary v. Kal Julii of the Pontificate of Lord Paul Pope III. year five.

(Signed) A. DE VILLANOVA. C. MAZENS.

II.

CHARTER by ROBERT BRUCE, King of Scots, in favour of WILLIAM OLIFAUNT, Knight, of the lands of Newtyle and Kylprony, dated 26th December in the twelfth year of his reign. (1317.)

ROBERT, by the Grace of God, King of Scots, to all good men of his whole land, GREETING: know that we have given, granted, and by this our present Charter confirmed to William Olifaunt our beloved and faithful Knight for his homage and service the whole land of Newtyle and of Kylprony with their pertinents, within the Sheriffdom of Forfar, to be held and had to the said William and his heirs of us and our heirs in fee and heritage and free barony by all its right marches and accustomed boundaries, freely, quietly, fully and honorably with all serfs, and native men of the said land and with all their other liberties, commodities, easements and just pertinents, the foresaid William and his heirs doing therefor to us and our heirs the fourth part of the service of one knight in our Army, IN WITNESS WHEREOF to this our present Charter we have commanded to be appended our Seal before these Witnesses, Bernard,

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Abbot of Alberbrocht (Arbroath) our Chancellor, William de Lyndesay our Chamberlain, Walter Steward of Scotland, Gilbert de Haya our Constable, and Robert de Keth our Mareschall, Knights, at Neubotyll the Twenty-sixth day of December in the twelfth year of our reign. (1317.)

III.

CHARTER by ROBERT BRUCE, King of Scots, in favour of WILLIAM OLYFANT, Knight, of the lands of Ochdirtyre, dated 20th March in the twentieth year of his reign. (1326.)

ROBERT, by the Grace of God, King of Scots, to all good men of his whole land, GREETING: Whereas Nigel of Carrik surrendered and upgave by staff and baton into our hands the land of Ochdirtyre with pertinents which sometime belonged to John Cumyn of Brethertoun in the Sheriffdom of Forfar and all right and claim in the said lands which he had or might have in any manner in future, altogether quit claimed to us for himself and his heirs forever, know that we have given, granted, and by this our present Charter, confirmed to our beloved and faithful William Olyfant, Knight, for his homage and service, the whole foresaid land of Ochdirtyre with pertinents to be held and had to the said William and his heirs of us and our heirs in fee and heritage by all its right marches and divisions freely and quietly, fully and honorably with all manner of liberties, commodities, easements and just pertinents belonging to the foresaid lands or which of right may belong in future in any manner of way, the said William and his heirs doing therefor to us and our heirs the service of three archers in our Army and Scottish service from the foresaid lands with pertinents used and wont: IN WITNESS WHEREOF we have commanded our Seal to be appended to this our present Charter before these witnesses, the Venerable father in God, William, by the Grace of God, Bishop of St. Andrews, Bernard, Abbot of Abirbroth our Chancellor, Duncan, Earl of Fife, Malise, Earl of Stratheryn, Walter Steward of Scotland and Gilbert de Haia, our Constable, Knights, at Scone the Twentieth day of March in the Twentieth year of our reign. (1326.)

IV.

CHARTER by JAMES, Earl of Douglas, in favour of ALAN DE LAWEDYR, of subjects in North Berwyk. (1384-1388.)

To all who shall see or hear this Charter, James, Earl of Douglas and Lord of the Barony of North Berwyk, GREETING in the Lord Eternal; know ye all that we have given, granted, and by this our present Charter confirmed to our beloved Alan de Lawedyr for his good service done to us, all the underwritten lands with their liberties and pertinents lying in our Burgh of North Berwyk belonging to us through the failure of heirs of its former tenants by all their right marches and divisions videlicet, beginning at the Highway which stretches toward the Church of St. Andrew on the

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east and so by the Highway of the Burgh on the south part to the tenement of William Brown on the west and so on both sides as far as the sea on the north to be held and had to the said Alan and his heirs and assignees of us and our heirs and (successors) Lords of North Berwyk all the foresaid lands with all their liberties, commodities and easements as freely and quietly, fully and honorably, well and in peace as any other land in our Burgh of our Lord the King or of any other Earl and Baron can be given and granted: Paying therefor annually the said Alan and his heirs and assignees to us and our heirs and successors, Lords of the Barony of North Berwyk, nine pennies for Burgh rent, and to the Chaplain of the Blessed Virgin Mary celebrating divine service in the Parish Church of North Berwyk six shillings and eight pennies Sterling, which he was accustomed to receive in former times from the said lands and that for all other service, exaction or demand which from the said lands could be asked or required. We the said James and our heirs warrant and forever defend the foresaid lands with pertinents to the said Alan and his heirs and assignees against all mortals in all things and by all things as is foresaid: IN WITNESS WHEREOF we have caused our Seal to be appended to this our present Charter at our Castle of Temptaloun in presence of these Witnesses, Sirs Robert, Thomas and William de Colvele, Gilbert de Grame, Richard de _____, Knights John, Rector of Douglas, Warine, _____ Bailie of our Burgh of North Berwyk and many others.

V.

CHARTER by DAVID, King of Scots, in favour of WALTER OLYFAUNT and spouse, of the lands of Newtyle and Kilprony, dated the last day of February in the thirty-fifth year of his reign. (1364.)

DAVID, by the Grace of God, King of Scots, to all good men of his whole land, Cleric and Laic, GREETING: know that whereas our beloved and faithful Walter Olyfaunt in our full council held at Perth the eleventh day of the month of January in the year of Christ One thousand, three hundred and sixty-four in the presence of many Prelates and Nobles and others our faithful lieges congregated there personally compeared, neither induced by force or fear nor fallen into error but by his unbiased and free will among certain lands which he held of us in chief there resigned and given up to us simply resigned and purely gave up the lands of Newtyle and of Kilprony with pertinents within our Sherifdom of Forfar by staff and baton, we have given, granted, and by this our present Charter, confirmed to our foresaid beloved and faithful Walter for his good service done to us, and Elizabeth his spouse, our beloved sister, the whole foresaid lands of Newtyle and of Kilprony with pertinents to be held and had to the said Walter and Elizabeth his spouse, and the longer liver of them two and the others procreated or to be procreated between them and their assignees videlicet: to children male and female whom per chance failing to the true and lawful heirs of the said Walter whomsoever and their Assignees in one whole and free barony and free forest of us and our heirs in fee and heritage by all its right marches and

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divisions freely, quietly, fully, completely and honorably in woods and plains, in ways and paths, moors, marshes, and petaries, running waters, ponds and fish-stanks, meadows, plains and pastures with right of pit and gallows, toll and teame and infang-thief with tenants and services of free tenants with bondmen and their services, natives and their followers with Mills and Multures, with smithies and brewhouses and other offices whatsoever with hawkings, huntings and fishings, and with all other sorts of liberties, commodities, easements, and lawful pertinents whatsoever as well under the earth as on the earth, as well far as near, whether not named or named belonging to the said lands of Newtyle and of Kilprony or which in any manner of way may belong in future without any revocation or drawback whatsoever, the said Walter and Elizabeth his spouse and the longer liver of them and their heirs and assignees before-named, paying therefor to us and our heirs annually at the Haltoun of Newtyle at the Feast of All Saints one pair of white spurs in name of blench duty only if asked and making three suits of Court at our three head pleas to be held yearly at Forfar for ward, relief and marriage and all and singular, other secular services, customs, exactions and demands which by us our heirs or successors of the said lands of Newtyle and of Kilprony with pertinents could anyways be exacted or required, and we strictly forbid that no one without licence of the said Walter and Elizabeth his wife or the longer liver of them or their heirs and assignees cuts, hawks or hunts within the said lands of Newtyle and of Kilprony with pertinents under our full forfeiture of Ten Pounds. IN WITNESS WHEREOF we have commanded our Seal to be appended to this our present Charter before these Witnesses, the Venerable fathers in Christ, William, Bishop of St. Andrews, and Patrick, Bishop of Brechin, our Chancellor, Robert Steward of Scotland, the Earl of Streatherne our Nephew, William, Earl of Douglas, Robert de Erskyne, Archibald de Douglas, and Walter de Haliburtoun, Knights, at Edinburgh the last day of the month of February in the Thirty-fifth year of our reign. (1364.)

VI.

CHARTER by DAVID, King of Scots, in favour of WALTER OLYFAUNT and spouse.
(Duplicate of No. V.)

DAVID, by the Grace of God, King of Scots, to all good men of his whole land, Cleric and Laic, GREETING: know that whereas our beloved and faithful Walter Olyfaunt in our full Council held at Perth the eleventh day of January in the year of Grace One thousand three hundred and sixty-four in presence of many Prelates and Nobles and others, our faithful lieges there congregated, personally compeared, neither induced by force or fear nor fallen into error, but by his unbiased and free will among certain lands which he held of us in chief, there resigned and given up to us simply resigned to us and purely gave up the lands of Ochtirtyre and of Balcrag, with pertinents within our Sherifdom of Forfar by staff and baton, we have given, granted and by this our present Charter, confirmed to our foresaid beloved and faithful Walter for his good service done to us, and Elizabeth his spouse, our beloved sister, the whole

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foresaid lands of Ochtirtyre and of Balcrag with pertinents to be held and had to the said Walter and Elizabeth his spouse and the longer liver of them two, and the heirs procreated or to be procreated between them and their assignees videlicet, children male or female whom by chance failing, the true and lawful heirs of the said Walter whomsoever and their assignees in one whole and free barony of us and our heirs in fee and heritage by all right marches and divisions freely, quietly, fully, completely and honorably in woods and plains, ways and paths, moors, marshes, petaries [places for cutting peat], running water and ponds, fish-stanks, meadows, plains and pastures with right of pit and gallows, tholl [the right of exacting toll] and theam and infangthief with tenants and services of free tenants with bondmen and their services, natives and their followers with Mills and Miltures, with smithies and brewhouses and other offices whatsoever with hawkings, huntings and fishings and with all other sorts of liberties, commodities, and easements and lawful pertinents whatsoever, as well under the earth as on the earth, as well far as near whether unnamed or named belonging to the said lands of Ochtirtyre and of Balcrag or which in any way justly may belong in future without any revocation or drawback whatsoever, the said Walter and Elizabeth his wife and the longer liver of them and their heirs and assignees foresaid paying therefor to us and our heirs annually at Ochtirtyre at the Feast of St. Martin in winter three broad arrows in name of blench duty if asked only and three suits of Court at our three head pleas to be held yearly at Forfar for ward, relief, marriage and all other and sundry secular services, customs, exactions and demands which by us our heirs or successors of the said lands of Ochtirtyre and of Balcrag with pertinents, could anyways be exacted or required; IN WITNESS WHEREOF, we have commanded our Seal to be appended to this our present Charter before these Witnesses, the Venerable fathers in Christ, William, Bishop of St. Andrews and Patrick, Bishop of Brechin our Chancellor, Robert Steward of Scotland, the Earl of Stratherne our Nephew, William Earl of Douglas, Robert de Erskyne, Archibald de Douglas and Walter de Haliburtoun, Knights, at Edinburgh the last day of the month of February in the Thirty-fifth year of our reign. (1364.)

VII.

CHARTER by JOHN WALLACE of Craigie, in favour of the REGENT MORTUN, of the lands of Thuristoun, etc., dated 24th and 28th days of February 1575.

To all who shall see or hear this Charter, John Wallace of Craigie, son and heir of the deceased John Wallace of Craigie, GREETING in the Lord Eternal; know that I with express consent and assent of Hugh Wallace of Carnell, John Wallace of Dundonald and Mr. Michael Wallace of Wausfuird, my Curators for their interest in implement and observance of my part of a certain contract between a noble and very powerful Lord, James, Earl of Mortun, Lord of Dalkeith, etc., the regent of our Sovereign Lord the King and his Kingdom and lieges on the one part, and me with express consent and assent of my said Curators for their interest on the other part, of

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date at Edinburgh and Ayr respectively twelfth and eighteenth days of the month of December current, to have sold and by title of pure sale to have alienated, and by this my present Charter confirmed, as I sell, alienate and by this my present Charter confirm to the foresaid James, Earl of Mortun and his heirs male and of tailzie underwritten and assignees ALL and WHOLE my forty merks of land of old extent of Thuristoun, Wodhall and Waddilie in property and tenandry, videlicet, Twenty Pounds of the lands of Thuristoun and Wodhall in property and ten merks of the lands of Waddilie in tenandry with their sundry pendicles and pertinents lying in the barony and within the Sheriffdom of Renfrew by annexation for a certain sum of money paid to me in my known great and urgent necessity beforehand by the said noble and powerful Lord thankfully and completely paid in counted money and entirely applied for my benefit, of which sum of money I hold myself well contented and fully and completely paid and therefore I for me and my heirs, executors and assignees quit claim and exoner the said James, Earl of Mortun, his heirs and Executors of the same by the tenor of this my present Charter in all time coming to be held and had ALL and WHOLE the before mentioned forty merks of the lands of old extent of Thuristoun, Wodhall and Waddalie in property and tenandry videlicet, the said Twenty pounds of the lands of Thuristoun and Wodhall in property and the foresaid ten merks of the lands of Waddalie in tenandry with their respective pendicles and pertinents by the said James, Earl of Mortun and his heirs male and of tailzie contained and specified in his new infeftment of his lands and heritage of his earldom of Mortun and assignees from me and my heirs of our sovereign Lord the King as Prince and Steward of Scotland and his successors in fee and heritage forever by all its right marches ancient and divided as they lie in length and breadth in houses, buildings, woods, plains, moors, marshes, roads, paths, running waters, ponds, lakes, brooks, meadows, fields and pastures with Mills, multures and their sequels, hawkings, huntings, fishings, petaries, turbaries [places where turfs are cut], coals and coal pits, rabbits and rabbit warrens, pigeons and dove-cots, smithies, brewhouses and heaths, broom, woods, groves, and brush-wood, timber, quarries, stone and limestone with Courts and their fines, herczelds, bloodwits and merchets of women, with common pasturage and free entry and exit and with all other and sundry liberties, commodities, profits and easements and their just pertinents whatsoever whether not named or named, as well under as on the earth, far and near belonging to the foresaid lands with their sundry pendicles and pertinents or which in any manner may justly belong in future, freely, quietly, fully, completely, honorably well and in peace without any revocation, contradiction or obstacle whatever; paying therefor annually the said James, Earl of Mortun and his heirs male above written and assignees to our said sovereign Lord the King and his successors Princes and Stewards of Scotland the right and service of the said lands with their sundry respective pendicles and pertinents formerly due and wont only as for all other burden, exaction, question, demand or secular service which from the foresaid lands with their sundry pendicles and pertinents by any one whomsoever can be justly exacted or required in any manner of way, and I the said John Wallace of Craigie and my heirs, with express consent and assent of my foresaid Curators for their interest ALL and SINGULAR the beforesaid forty merks of the lands of old extent of Thuristoun, Wodhall and Waddalie in property and

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tenandry namely the said twenty pounds of the lands of Thuristoun and Wodhall in property and the foresaid ten merks of the lands of Waddalie in tenandry, with their sundry pendicles and pertinents to the beforenamed James, Earl of Mortun and his heirs male and of tailzie above written and assignees as freely and quietly in all and by all forms equally and to the effect as is before said, also from all wards, reliefs, non-entries, forfeitures, escheats, recognitions, terces of ladies, liferents or annual rents, joint infestments, other infestments or alienations and with all other rights, titles and perils whatsoever, bygone according to the form of said contract we warrant, acquit and forever defend against all mortals, moreover to my beloved Andrew Home of Law and to anyone of you conjunctly and severally our Baillies in that part specially constituted GREETING: We command and order you that immediately heritable state and sasine equally and corporal possession actual and real of ALL and WHOLE the foresaid forty merks of land of Thuristoun, Wodhall and Waddalie in property and tenandry as aforesaid with their sundry pendicles and pertinents to the beforenamed James, Earl of Mortun or his sure Attorney bearer of these presents according to the tenor of our before written Charter which from us he has or justly may have that ye do and deliver without delay, and this in no manner you shall omit, and each of you conjunctly and severally our Baillies in that part for said my full and irrevocable power for doing which I commit to you by the tenor of these presents; IN WITNESS WHEREOF to this my present Charter containing in itself a precept of Sasine subscribed by my hand and the hand of my said Curators in token of their consent and assent as fore-said, my Seal is appended at Edinburgh and Air respectively the Twenty-fourth and Twenty-eighth days respectively of December in the year of our Lord One thousand five hundred and seventy-five, before these Witnesses, William Wallace, my servitor, Michael Wallace and William Wallace, sons of the said Mr. Michael, Hugh Wallace the Uncle and Thomas the brother of the said John Wallace of Dundonald and William Wallace in Tarbert with divers others.

HEW. WALLACE, OF CARNELL.

JOHN WALLACE, OF CRAGY.

JHONE WALLACE, OF DUNDONALD.

MICHAEL WALLACE, OF VAUSFURDE.

VIII.

PRECEPT by GEORGE, Lord Halliburton, in favour of WALTER BOYD and spouse, of the lands of Miltoun of Abernit, dated 1st July 1473.

GEORGE HALLIBURTON of that Ilk and Baron of the Barony of Abernit to our lovites David Ogilvie of Inchmertyne, Alexander Blair of Bathiok, Peter Spens of Kinspindy, Alexander Wardroper of Gothynnis, Laurence Crechtoun of Rossy and Andrew Kinross, our Baillies of our foresaid Barony of Abernit in that part specially deputed GREETING: Whereas we have given and granted heritably ALL and SUNDRY our lands of Miltoun of Abernit with pertinents in our foresaid Barony and within the Sheriffdom of Perth to our lovites Walter Boyd of Petkindie and Marjory Scot his

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spouse conform to the tenor of our Charter thereof granted in their favor, therefore, we require and ordain you so soon as these presents are seen without delay ye shall give or either of you shall confer sasine and heritable state and possession to the said Walter and Marjory his spouse or their attorneys or attorney bearers or bearer of these presents of the said lands of Miltoun of Abernit with pertinents according to the tenor of the beforementioned Charter which to do we commit to you, conjunctly and severally in that part, our full power by the tenor of these presents: IN WITNESS WHEREOF our Seal is affixed to these presents at Perth the first day of the month of July in the year of our Lord One thousand four hundred and seventy-three these honourable and wise men being present, Master Patrick Scot, Notary Public; Master Robert Bunch; Sir Andrew Russal, Chaplain; Robert Blair; Andrew of Kinross; John Ochtre and James Covintree with divers others and subscribed with my own hand.

GEORGE LORD HALYBURTOUN.

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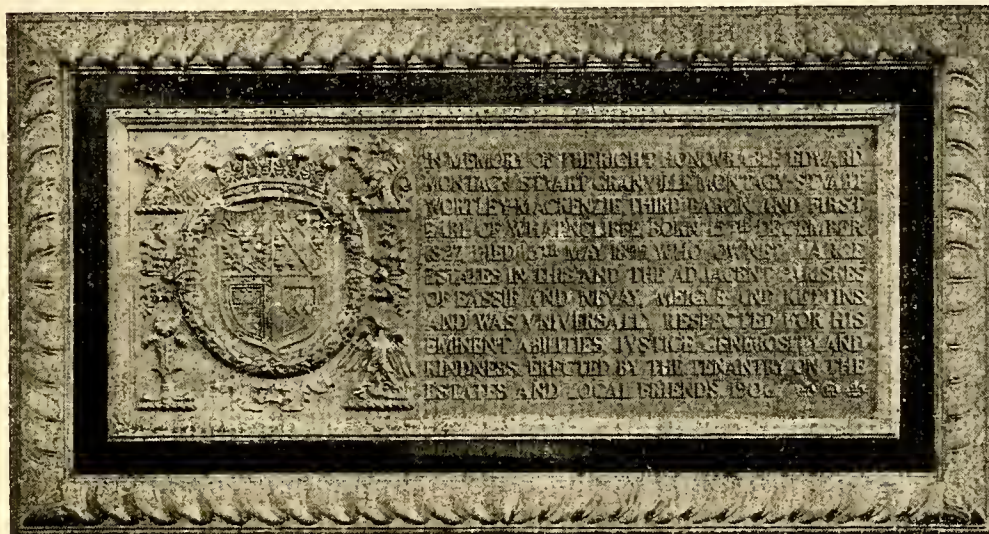
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S. 24.61

THE LATE EARL OF WHARNCLIFFE.
STRATHMORE AND THE STUART WORTLEY FAMILY.



THE tablet of which the above is a reproduction was recently erected in the Parish Church of Newtyle in memory of the late Earl of Wharncliffe, who died at the family house in Curzon Street, London, on the 13th May 1899. It was designed by Sir R. Rowand Anderson, of Edinburgh, the cost being borne by the tenantry on the Mackenzie-Wharncliffe estates in the counties of Forfar and Perth and other local friends. The necessary arrangements were most satisfactorily completed by Mr. Alexander Simpson, Hatton of Newtyle, and Mr. George Kidd, Mains of Drumkilbo. Both the design and workmanship are greatly admired.

Since the late Earl's death the beautiful estates in Strathmore, the greater part of which belonged to his predecessors and himself for upwards of 200 years, have been sold; and the connection of the family

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with the district being therefore ended, it may be thought not inappropriate that a short biographical notice of the late Earl and an explanation of how the family of Wortley of Wortley, in the West Riding of Yorkshire, came to be large landowners in the shires of Forfar and Perth should be given.

The Wortley family claims a traceable descent from the time of King Stephen of England, and the estate of Wortley (the word meaning 'The Field of Herbs') is both of great value and of great beauty. It includes the Wharncliffe Wood and the Wharncliffe Chase, of which a description will be found in Sir Walter Scott's novel of *Ivanhoe*. Wortley is situated near Sheffield, in a district rich in minerals. There were iron works at Wortley from the time of the Romans, and very valuable seams of coal are worked at the present time.

The name of Montague was added to the family designation of Wortley of Wortley by the marriage of Anne, daughter of Sir Francis Wortley, Bart., to the Hon. Sidney Montague, second son of the first Earl of Sandwich. The second son of this marriage, Edward Wortley Montague, was a man of great ability and acquirements, and an intimate friend of Addison and Steele. When he was twenty-two years of age, he met for the first time Lady Mary Pierrepont, daughter of the first Duke of Kingston, who although only fourteen years of age had already achieved a reputation for learning. Her abilities were brilliant, and her diligence in acquiring knowledge was so great that, unaided, she became a competent Latin scholar. Mr. Wortley proposed for her hand, but her father, not being satisfied with the settlements which the former proposed to make upon his marriage, declined to give his assent, and the couple eloped and were married in August 1712. In 1717 Mr. Wortley was appointed British Ambassador at Constantinople, and in that city his wife had a daughter, who ultimately became Countess of Bute, wife of the third Earl, the well-known Prime Minister. Lady Bute upon her father's death became owner of the Wortley estates. When Lady Mary Wortley Montagu was in Constantinople she was attacked with small-pox, and this induced her to inoculate her only son, a child four years of age. He was the first European so treated. On her return to England, Lady Mary succeeded, in spite of the opposition of certain of the medical

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profession, in getting inoculation generally introduced. In 1737 she left England for the Continent, and resided there for twenty years apart from her husband. The reason for this voluntary expatriation is not well explained, although a certain eccentricity, combined with great freedom in speech and writing, and her consequent quarrel with the poet Pope, who unmercifully assailed her, may have been one cause of her leaving England. One result of her Continental residence was the volumes of charming correspondence of which several editions have been published, and which are even now read with pleasure and admiration.

The Honourable James Archibald, second son of the third Earl of Bute, succeeded to his mother in 1794 in the Yorkshire and Cornwall estates, assuming in 1795 the additional name of Wortley. In 1803 he also succeeded to his uncle, the Right Hon. James Stuart Mackenzie, who was for many years Lord Privy Seal of Scotland, and proprietor of the estates in Ross-shire, Forfarshire, and Perthshire which had descended to him from the famous Sir George Mackenzie of Rosehaugh, Lord Advocate to Charles the Second and James the Second. On succeeding to his uncle, Mr. James Archibald Stuart Wortley assumed the name and arms of Mackenzie of Rosehaugh. James Stuart Mackenzie, who was a great favourite of George the Third, continued to be a man of much influence, to which his abilities and wealth well entitled him. He married Lady Betty Campbell, a daughter of the Duke of Argyll, who brought him a considerable fortune. She died without surviving issue, and her husband, who was devotedly attached to her, followed her in a very short time to the grave. The Lord Privy Seal was an excellent and successful administrator of his extensive estates, to which he made large additions. He sold his Ross-shire property, retaining only a superiority thereof as a freehold qualification. With the price he built Belmont Castle, at a cost of £10,000. This mansion was seriously injured by fire about twenty-three years ago, but much of the old castle is incorporated with the handsome modern structure erected by Sir Henry Campbell-Bannerman when he purchased the castle, grounds, and adjoining farms.

The estate included the Hill of Kinpurney, on which is the observatory tower that makes so conspicuous a landmark, and is visible from a large stretch of country on both sides of the Sidlaw range of hills.

THE LATE EARL OF WHARNCLIFFE

Mr. Stuart Wortley did not establish his right of succession to the Mackenzie estate without much trouble. He had to run the gauntlet of the Scottish Courts, and also of the House of Lords, in an action to which the Marquess of Bute and Lord Herbert Windsor Stuart, his second son, were parties. The Judgment of the House of Lords in Mr. Stuart Wortley's favour was given in March 1803.

The succession to the estates of Sir George Mackenzie forms another admirable illustration of the folly of the lawyer, however eminent, who prepares his own will. Although Sir George was the author of the famous Entail Act of 1685, he so framed his own deeds of entail that very shortly after his death their meaning had to be determined by the Court of Session. His only son who reached manhood having died unmarried, the succession to his estates was contested by the then Earl of Bute's only son, Lord Mountstuart, whose mother was Agnes Mackenzie, the eldest daughter of Sir George Mackenzie, and by her younger sister, Lady Langton, as she was called, who had married as her second husband Sir James Mackenzie of Royston, a Senator of the College of Justice, under the name of Lord Royston. Lord Royston was also a party to the litigation. Although the case was most interesting in itself, and underwent some startling changes during its progress, it is unnecessary to say more about it now than that the Bute family made good their contentions.

The son of James Archibald Stuart Wortley was the first Baron Wharncliffe, so created in 1826. He was a man of the highest ability, and a very eminent and influential politician. He was Lord Privy Seal in 1834, and in 1841 became Lord President of the Council. So much reliance was placed on his sagacity and tact that he was intrusted with the mission of effecting a compromise between the Duke of Wellington and Earl Grey as to the Reform Bill, and at the time of the repeal of the Corn Laws his good judgment and influence were brought to bear successfully in soothing the feelings of the members of the old Tory party. This Peer's name has been long associated with railway law. Shareholders know well what a 'Wharncliffe' meeting is. His son, John Stuart Wortley, became the second Lord Wharncliffe in 1845. He is described as having been 'a man of scholarly tastes and habits,'

THE LATE EARL OF WHARNCLIFFE

taking honours at Oxford. In 1835, 1837, and 1841 he contested the election of members of Parliament for the West Riding of Yorkshire. On the last occasion alone was he successful.

The second Lord Wharncliffe died in 1855, and was succeeded by the late Earl, who was third Baron and first Earl of Wharncliffe, taking as a second title that of Viscount Carlton. The earldom was conferred in 1876. In 1880 the late Earl and his brother Francis (the father of the present Peer) assumed by royal licence the prefix surname of Montagu.

The late Lord Wharncliffe married in 1855 Lady Susan Charlotte Lascelles, the second daughter of the third Earl of Harewood, who still survives. They had an only son, who died in childhood, and consequently on the late Earl's death in 1899 he was succeeded by his eldest nephew, the present Earl. After serving for five years in the Grenadier Guards, the late Earl occupied another five years in prolonged travels, not only through Europe, but also in America, India, Ceylon, Australia, and New Zealand, thereby fitting himself for discharging efficiently the duties falling upon a member of the House of Lords. He achieved during these travels, in company with Sir Samuel Baker, the reputation of a 'mighty hunter' of big game. He was a noted rifle and game shot. He was deeply interested in the Volunteer movement, and was Colonel of the 2nd West York Rifle Volunteers. He presided at Wimbledon Camp for many years, and some of the older Scottish Volunteers will still remember how generously and successfully the duties falling on Lord and Lady Wharncliffe were performed. While not an orator, and not indulging much in public speaking, the late Earl was a cultured man of high ability, possessing great sagacity, judgment, tact, and prudence. He was a strong Conservative in politics, and did much for his party, his wise counsel being highly valued. He was an excellent man of affairs, with great shrewdness and business ability, and few men not professionally trained are such excellent accountants as he was. Possessing these qualifications, it is not surprising that he was long Deputy-Chairman of the Manchester, Sheffield, and Lincoln Railway, and afterwards first Chairman of the Great Central Railway.

It is difficult to speak too highly of his Lordship as a landed proprietor. He was a man of the strictest honour, and he was therefore

THE LATE EARL OF WHARNCLIFFE

essentially just to every one ; but he was more, he was full of sympathy with tenants who had innocently fallen into misfortune, and held out a generous hand of help in every deserving case. At the same time, his knowledge of human nature and his shrewdness were such that he easily detected any claim upon him which was not well founded. 'He was not to be fascinated by roseate fictions.' He was proud of his Scottish estates and of his Scottish tenants. The latter received constant kindness and encouragement from him. Although the Scottish estates had been long greatly encumbered and were latterly of little pecuniary value to him, he expended very large sums in maintaining them. During his ownership of them he must have spent upwards of £100,000 in new farmhouses, farm buildings, drains, fences and other improvements, notwithstanding that the rent-roll had, before his death, in consequence of the depression in agriculture, diminished by thirty per cent., and the capital value of the estate had lessened even in a greater proportion. When he died there was no estate in Strathmore in higher order and better equipped. During his Lordship's lifetime the estates of Bendochy, Ardler, Camno, and Belmont Castle had been sold. On the other hand, he had purchased the beautiful estate of Drumkilbo (now the property of Mr. Edward Cox of Cardean) and the property of Myreside of Fullarton, lying between Drumkilbo and Belmont Castle. His Lordship's management of his English estate was equally wise and generous. He expended £30,000 in providing an adequate water-supply for the Wortley Estate. He nearly rebuilt the village of Wortley. He spent large sums in new schools and farm buildings, and in substituting new houses with all modern requirements for all old-fashioned and poorly-built houses on his English estates.

He was a deeply attached member of the Church of England, and expended large sums on its behalf. He built, on the plans of Sir George Edmund Street, a church at Carlton, costing £14,000, and another at Hardrow, in Wensleydale, which cost him £6000. He also adorned and beautified Wortley Church, which stands near to the park gates of Wortley Hall. He also built the present picturesque and substantial parsonage house at Wortley. He was extremely well read in English literature, and was accordingly a delightful conversationalist, and ready to impart

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out of the ample stores of his knowledge interesting information on any topic which might be under discussion. He was one of the contributors to the little society newspaper called *The Owl*, which was founded by Laurence Oliphant in 1864.

In his later years especially, he was a patron of art, and deeply interested in it. Sir Edward Poynter, President of the Royal Academy, painted his portrait, which hangs in the billiard-room at Wortley, and there are in a saloon of the hall, which was decorated from Sir Edward's designs, four great pictures of his, viz. : (1) *The Dragon of Wantly*, (2) *Perseus and Andromeda*, (3) *Nausicaa and Her Maidens*, and (4) *The Race of Atalanta*. He was also owner of Burne Jones' famous picture of *King Cophetua and the Beggar Maid*, which, on his death, was purchased by a few admirers of that artist, and presented by them to the National Gallery in London. Among other famous pictures at Wortley are Sir Joshua Reynolds' portrait of Lord Bute, the Prime Minister, and Romney's portrait of Edward Wortley Montagu, Lady Mary's son ; and an excellent portrait of Sir George Mackenzie of Rosehaugh. There are also examples of Cosway's invaluable miniatures, and interesting miniatures on agate of the Regent Morton, Arabella Stuart, and other historical persons.

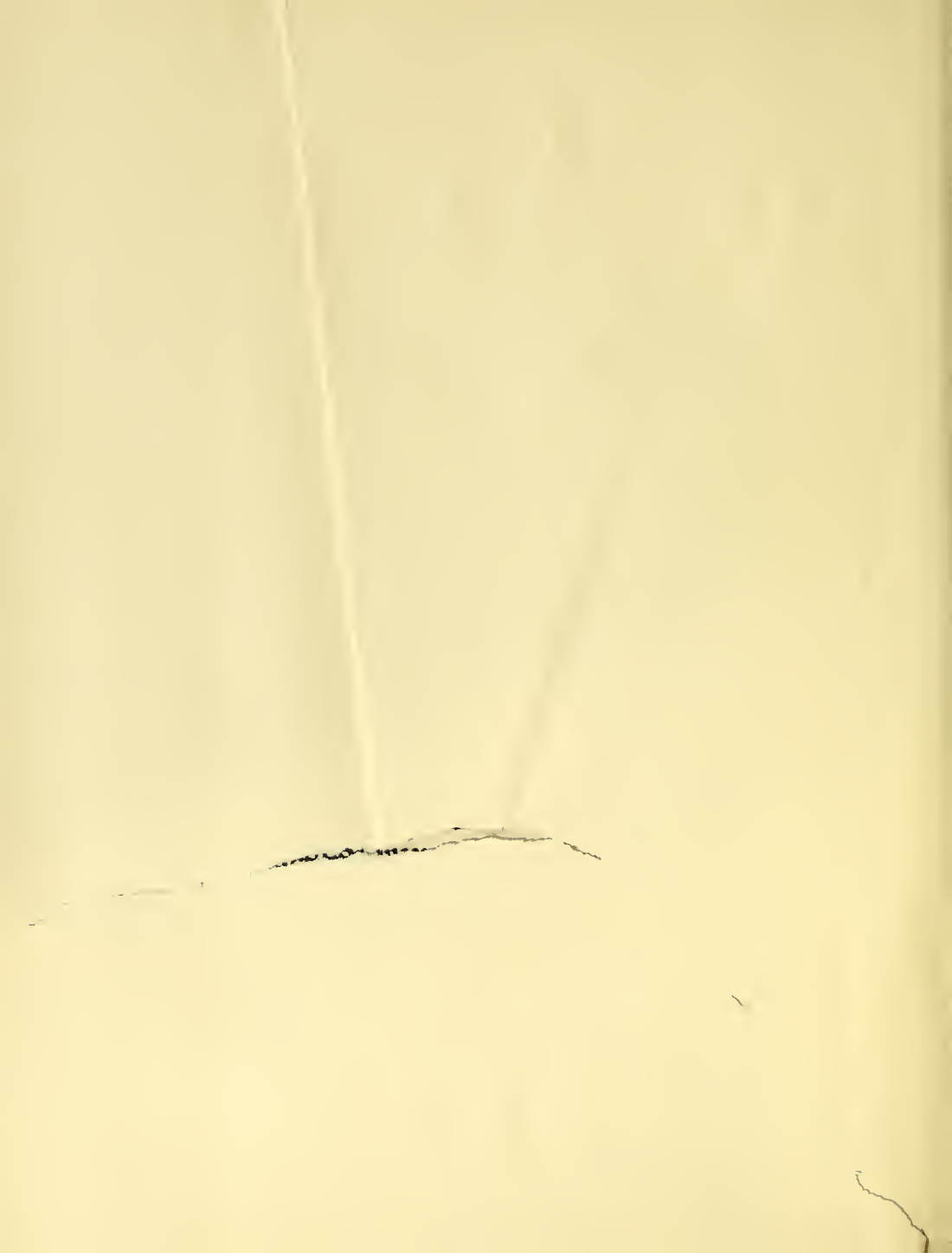
To the Scotsmen who attended the Earl's funeral at Wortley the contrast between the grandeur of the surroundings and the extreme simplicity of the funeral was very striking. Wortley Hall is a beautiful building, erected in an extensive park full of noble specimens of the English oak, and is in every respect the fitting residence for a great nobleman. The late Earl was well aware of the respect which ought to be paid to the representative of an ancient and honourable family, who was also a Peer of the realm ; but at the same time his 'massive common-sense,' his 'sober-mindedness,' and his excellent judgment were such that he recognised the levelling effects of death, and chose that he should be committed to the grave with rites as simple as those made use of at the burial of a tenant or retainer. He was laid between his mother and a brother in an inconspicuous corner of the village churchyard, near to a common highway, and in a grave unornamented save with mosses and green leaves.

THE LATE EARL OF WHARNCLIFFE

General regret is felt in Strathmore that the connection between the district and the ancient family of Stuart Wortley Mackenzie has ceased. This is intensified by the fact that the present Earl of Wharncliffe, who was a commander in the Royal Navy, is a most worthy successor to his uncle, the late Earl, and even although he had a very limited term of ownership of the Scottish estates, proved himself to be a most kind and considerate landlord, and he and his Countess were universally respected by the tenantry.

J. W. BARTY, LL.D., Dunblane.

[This supplement originally appeared as an article in the *Dundee Advertiser*, and it is now reproduced by the kind permission of the Proprietors of that paper.]





73
De Carite in manus meas per futurum.
Hanns Cumpu de Drechproum in Duce
nobis omnino quietu clamant pro de et
mo Chifant qum dilecto et fidei
endam. eidem filio. et hereditibus suis
iure plenarie et honorifice cu omnimodis
Optare Valentibz in futurum quoquo modo.
citu mo. et Scotia Seruicium. De pda
mas apponi a Testibz venabili in xpo
ffst. Gualfo Comite de Strachepu
Regni in Ducefimo. . .

comptiam dicit unificas ppa
ob ipso omnes ipas est ipas
cononai dicit p omes suas
li. a sic p alta via bngi a p
i bnd pto dino. h. ad. sus
com. d. italy. a. ay. namor. ade
ms po. it. dan. p. ecodi. sed
f. b. h. p. nono. denans. p. bngi
unos. f. lingo. quos. ro. ap. so. le
potnt. p. p. q. m. p. les. p. o.
omnes. mortales. m. omib. a. p.
m. p. m. d. ayto. m. o. f. o. c. m. o.
p. to. de. G. r. a. m. o. p. r. a. d. e. a.
m. o. d. o.



Valentis obsequium in pleno consilio nro tunc apud Perth.
tunc non di aut metu ductus si errore lapsus est mera
valens cu puenit infra diciturata de factis nobis p
fidei nro pro bono finis suo nobis impenso et Elizabeth
eor alii ducis ducem ac Gedilz nre ipos pcreatis de
us assignatis in dnam integram et liberam bardiam
bosas e plains dyis et scencis morie marcesye e pe
liberemenciu. cu bondis bondagye et ratiue et eoz seque
liberant condicantz assignatis et iustis pueniens quibzcuqz
modo iuste spectare valentibz in futurum sine aliq tenora
Ac assignat pnotati amati apud Obedire et facti
et apud facti pro Warda telemo marcesye et omibz alijs
balens cu pueniens aliquo modo exigi potunt. Delre
o Ego Brethm. Cancell nro. Robto Senesc Scoe Brit
pud. Edinburgh. Ultimo die mjs february Anno



in pleno consilio nro
ad in aut metu ductu
et m^o p^o rices ad p^o r^o r^o
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me ipos p^o r^o r^o r^o r^o r^o
ajomiam, ac libam foresta
Agus. r^o r^o r^o r^o r^o r^o r^o
no, am r^o r^o r^o r^o r^o r^o r^o
p^o r^o r^o r^o r^o r^o r^o r^o
et nobis, et h^o r^o r^o r^o r^o r^o
t^o r^o r^o r^o r^o r^o r^o r^o
ndm^o r^o r^o r^o r^o r^o r^o r^o
et r^o r^o r^o r^o r^o r^o r^o
et r^o r^o r^o r^o r^o r^o r^o
lonay foyffaciam
Tobio Conestallo
Febuar. Anno Regni





Gorgeus Halliburton de eod de baro barome de Abernith dilectis nris David Ogilvy
 de Inchebrum Alexandro Blair de Barriof petro spars de fempundy Aligando
 Andro de Gorchymit lamudo Cretory de Vffo (audra finceff Callid nris Dajome
 and de Abernith audra in hys pte fualit deputat Salut Quia omid et fmgla
 pte nra de militon de abernith ad ptem d baronia nra audra et infra vid de pte
 hedrane didimus et confirmat dicit nris Walter Boyd de pte nra et audra
 frot frote sine iuxta tenore carte nre et de sup ofite dicit et ptem nra
 datus quod hys pte nra Audra de Barriof et audra sine frote ptem
 auoznat et auoznat lateribz pte nra ptem de dno hys de militon de
 Abernith ad ptem datus hedrane fctum et pte nra iuxta tenore
 carte nra ofite fcti alio vtz ofite de q fctum dicit et dms
 nra tenore ptem d hys pte ptem nra ptem d hys cum dms
 auoznat sigillo nris ptem est appofit dicit ptem dms dms
 Anno dno millesimo quadringentesimo feptuagesimo tertio videlicet honozabilibz
 et dilectis vris magno patri frot pte nra magno vobis dms dms
 capellano Robert Blair Andria de finceff Tolyam orit et ptem nra
 ofite alio et ptem nra fctum

GEORGE LORD HALLIBURTON

PRECEPT by George, Lord Halliburton, in favour of Walter Boyd and
 spouse, of the lands of Miltoun of Abernith, dated 1st July 1473.

Mr Robert Bunker

D.

Sir

Bath May 28th
1701

I had a letter from my Cousine near a month ago in which he told me that he had desired you ~~to~~ to send those six guineas ^{with} all possible hast; and really I wonder you omitted it since you knew I was to be at London against coronation for ^{the} so many of our countrymen ^{there} that were lately come up that I am sure you could not want an occasion to send them but for now that I am at the Bath where I believe I may have as much occasions ^{for them} as in London; that you'll let me have them immediately, and I think the best way for that is to send the next ^{post} after receiving my letter your answer with a bill enclosed in ^{the} it to value of six guineas which I hope you will not fail to do. pray give my service to your spouse and to Mr. Anderson. I am

Sir
Your very humble servant

Geo: McKenzie

Sir.

when I came from London I got credit from Mr. Coates upon a merchant house for thirty pound sterling supporting the residue of the fifty would not for to us, which may be upon you for it next week and the same charges take this paper for advice so that he can have two weeks, I don't know how we may stay because R. B. has had some thought to go for the fleet before it sails therefore I will be Oxford as formerly, I am yours
I have you a letter for the last, Mr. P. & I am
I have you a letter for the last, Mr. P. & I am

LETTER from Mr. George M'Kenzie, Sir George Mackenzie's son and heir, dated Bath, May 28th, 1701.

