

2. *The Kindly Tenants of the Four Towns of Lochmaben.*

By Rev. J. H. THOMSON, Hightae. 1897

The four towns of Lochmaben (said the essayist) are Hightae, the Heck, Greenhill, and Smallholm. They form a large part of the south of the parish. Their occupants are the kindlie tenants of Robert the Bruce. The tradition of the district is that their ancestors were originally the followers who kept by King Robert the Bruce during his long struggles against the English invader until after the battle of Bannockburn, and that the lands of the Four Towns were conferred upon them by him as a reward for their faithful services.

"Kindly," or "kindlie tenants," is explained by Jamieson in his dictionary as a designation given to those tenants whose ancestors have long resided on the same lands; but this explanation does not tell why "kindlie" rather than some other epithet more descriptive of their long services should not have been used. Jamieson has "kindlie" not only as an adjective but as a substantive, and his explanation is—"A man is said to have been kindlie to a farm or possession which his ancestors have held, and which he has himself long tenanted."

Since Jamieson's time it has been held that "kindlie" is allied to our Anglo-Saxon word "kin," and that it denotes a relation by consanguinity or affinity to the person that first gave the land; thus the kindlie tenants would be the far-off or the poorer relations of King Robert the Bruce. But of this relationship we have no positive evidence.

There is no manner of doubt, however, that the ancestors of the kindly tenants have held their lands from a remote period. What was the original number of the kindly tenants there are no written documents to tell. About the beginning of the century, it is said, there were upwards of seventy of them, but originally they must have been far more numerous in order to have given the effective service that the grant of the lands supposes them to have rendered. In the present day their number is not more than forty.

Sir Walter Scott, in his "Minstrelsy of the Scottish Border," first published in 1802, has a note to the ballad of the Lochmaben Harper in which he gives an account of the kindlie tenants. He had evidently taken pains to inform himself about

the matter. He gives as his main authority the MSS. of Mr Syme, Writer to the Signet, but the whole note looks like as if he had, according to his practice before writing his novels, visited and made himself well acquainted with the whole district. And it must be remembered that Sir Walter Scott was a learned lawyer. The note is therefore of special interest:—"I cannot leave the subject of Lochmaben without noticing an extraordinary and anomalous class of landed proprietors who dwell in the neighbourhood of that burgh. These are the inhabitants of four small villages, near the ancient castle, called the Four Towns of Lochmaben. They themselves are termed the King's rentallers, or kindly tenants, under which denomination each of them has a right of an allodial nature to a small piece of ground. It is said that these people are the descendants of Robert Bruce's menials, to whom he assigned, in reward of their faithful service, these portions of land, burdened only with the payment of certain quit rents and grassums, or fines upon the entry of a new tenant. The right of the rentallers is in essence a right of property, but in form only a right of lease, of which they appeal for the foundation to the rent-rolls of the lord of the castle and manor. This possession by rental, or by simple entry upon the rent-roll, was anciently a common and peculiarly sacred species of property, granted by a chief to his faithful followers, the connection of landlord and tenant being esteemed of a nature too necessary to be formal where there was honour on the one side and gratitude upon the other. But, in the case of subjects granting a right of this kind, it was held to expire with the life of the granter, unless his heir chose to renew it, and also upon the death of the rentaller himself, unless especially granted to his heirs, by which only his first was understood. Hence in modern days the kindly tenants have entirely disappeared from the land. Fortunately for the inhabitants of the Four Towns of Lochmaben, the maxim, that the King can never die, prevents their right of property from reverting to the Crown."

Sir Walter Scott says that the tradition is that the kindlie tenants are the descendants of King Robert the Bruce's menials. I have not heard of this tradition in the district, but I certainly have heard that they were the followers. And this form of the tradition is more likely to be true from the large number that there must at first have been of the kindly tenants. As might be expected, the right of the kindly tenants to occupy their lands

has been repeatedly contested. The keepers of the Castle of Lochmaben from at least the sixteenth century down to the Earl of Mansfield in 1810 have made various attempts to dispossess them of their lands or infringe upon their rights, but the rentallers by appeal to the King or by the decision of the Court of Session have ultimately succeeded in maintaining their position and privileges as the King's kindlie tenants of the Four Towns of Lochmaben.

I should now give some account of these attempts and their successful resistance. Perhaps the best way to do so is to read a part of a paper submitted to the Court of Session in the early part of last century, in which the Four Towns were defenders against Viscount Stormont :—

“The lands of Hitae, Smalholm, Heck, and Greenhill, commonly called the Four Towns of Lochmaben, in county Dumfries, being part of the property of the Crown, have been time out of mind possessed by the respondents and their ancestors, as kindly, irremovable tenants; and they have been acknowledged as such by the Crown in ancient times, and in different reigns by the Parliament itself, both in a legislative and judicative capacity, and by the former constables or keepers of his Majesty's Castle of Lochmaben, who under that title only, and not as proprietors, levied the rents of the lands in question, which were appropriated for the support of the Castle. The keepers of this Castle did early impose hardships and endeavour to levy exactions upon the tenants which gave rise to several complaints to the Crown. By a petition and complaint to King James the Sixth of Scotland, the tenants of said lands complained that, notwithstanding of their being kindly tenants and occupiers of his Majesty's farm lands, and tenandry assigned to his Majesty's house of Lochmaben, they were wracked and spoiled by thieves and extorted by the constable of the Castle of Lochmaben, &c. Whereupon his Majesty by his sign manual (12th June, 1592) ordered the keeper of the Castle of Lochmaben to desist and cease from molesting, troubling, or using of any violence against those his tenants, and to suffer and permit them peaceably to occupy their possession, as they the keepers should answer to his Majesty upon their disobedience. By another sign manual, bearing that his Majesty, understanding that his poor tenantry of his proper lands of Hitae, &c., are and had been greatly oppressed, and particularly by the constables and keepers

of the Castle of Lochmaben, and compelled to pay several duties and do services which they and their predecessors were never in use to pay or do in time past; therefore his Majesty strictly commands the constables of the said Castle, present and to come, that they in no manner of way burden or charge his said tenants and inhabitants of his said proper towns and lands to pay any duty, or do any service, further than they and their predecessors were in use to pay or do in time past."

Here there is a blank in the paper that would have held about a dozen of lines. All that remains is the opening line, which shows that it was intended to give an account of an attempt made to dispossess the kindly tenants after the restoration of King Charles II. In the Inventory of Writes pertaining to the King's kindly tenants of the Four towns left 2nd Dec., 1735, in the hands of William Johnstone, writer in Edinburgh, to defend the said tenants against a process at the instance of the magistrates of Lochmaben in the Court of Session, there is said to be "Signature by King Charles the 2nd in favours of the saids kindly tenants dated the last of June, 1664, ratifying the above signed manuals. This is superscribed by the King, and a doquet signed by his Majesty's Secretary, the Earl of Lauderdale." These "writes," as they are called, are now in the safe keeping of the Register House, Edinburgh. The paper proceeds—

"That the Earl of Annandale, keeper of the said castle, having settled the rents of the said lands in way of jointure to his lady, which, without consent of the Crown, he could not lawfully have done, she and the Viscount of Stormont, her second husband, applied to Parliament, and obtained an order or decree, decreeting the tenants to pay their rents to her (A.D., 1667)."

A new valuation was made in the lands in the county of Dumfries by the Commissioners of the land tax, whereby the respondents' interest, which had never been taxed before, was rated on account of their being kindly tenants and irremovable at one-fourth more than the appellant's, viz., at 2400 merks, and the appellant's only at 1800 merks.

From that time downward to the year 1692, the respondents and their ancestors, to prevent distress upon their lands, paid the whole land tax, and got allowance of the appellant's proportion in discharge of their rents; but from that period the appellant's father refused to make the respondents such allowance, and threatened to remove them from their possessions if they did

not submit to the payment of the whole, which at last obliged the respondents to bring their action before the Court of Session against the appellant's father to recover payment of his part of the land tax so paid by them—in the first place for declaring their immunity from paying his proportion of that tax for the future, and that they were the Crown's irremovable tenants.

Pending this suit the appellant's father brought cross action for removing the respondents from their possessions, and having it declared that they were removable at pleasure.

The respondents insisted that they were the Crown's irremovable tenants properly to the lands, that they could not be removed, and might dispoise their right to extraneous persons, subject only to pay their rents to the appellant, according to ancient usage, that they had possessed immemorably, that their right has been acknowledged by the several orders from the Crown above recited, and that their ancestors and purchasers from them had been from time to time admitted and enrolled in the Court books of the appellant, and of those under whose rights he claims.

The Court of Session decreed that the appellant should relieve the respondents of his proportion of the land tax from the time this suit was commenced, but absolved him from prior payments in regard the respondents had voluntarily submitted to them. And upon the question of right (24th Nov., 1726, 1st interlocutor appealed against) the Lords by their interlocutor found that the pursuers of the said declarator (*i.e.*, the respondents' plaintiffs in the action of declarator) had such a right.

Against this interlocutor the appellant's father preferred a petition, and the respondents put in answers (27th Dec., 1726, 2nd interlocutor appealed against).

The Lords by their interlocutor found that the pursuers of the declarator have such a right in the lands that they cannot be removed, and may dispoise their right to extraneous persons.

Against which interlocutor this appeal is brought, but the respondents humbly hope the same shall be affirmed for this amongst other reasons :—

1st. For that the respondents and their ancestors have enjoyed their possessions by this tenure of kindly, irremovable tenants of the Crown, time out of mind, and long before charters or feoffments were in use in Scotland.

2nd. For that their right to possess their lands without being removed has been constantly acknowledged by the Crown.

3rd. For that the respondents' ancestors and purchasers from them have always been admitted and enrolled in the Court books of the manor without the least objection to their title.

4th. For that on account of their being irremovable tenants they have been rated to the land tax, which could not have been done if they had been ordinary movable tenants.

Objection 1st.—That all rights of property in Scotland are constituted either by charter, infeoffment, or leases, at least by some title in writing, whereas the respondents have no such title under which they can claim.

Answer.—Here the appellant seems to mistake the point of law. In the earliest times proprietors of lands had no titles in writing, but their rights were known and ascertained by their possessions and enrolment in the King's Courts, or in the Courts of the other over Lords, and when the estate descended to an heir, or was transmitted to a purchaser, the title of the ancestor or author was cognosed by a jury, and the verdict of that jury gave them a full right. That although since the feudal law was fully adopted into the law of Scotland, titles have generally been constituted by writings. It affords no objection against the respondents, whose right is more ancient than that period of the law of Scotland, and there yet remain other ancient rights of the same kind, such as the udal rights in Orkney, where there are no titles in writing, but lands are by possession only transmitted from father to son; the titles of the tenants or rentallers of the Bishopric of Glasgow, of the Monastery of Paisley, and of those who hold under the keepers of the King's Castles of Dumbarton and Stirling, were of the same nature till of late; and several of the Bishop's tythes are held and enjoyed upon no other foot to this day.

Objection 2nd.—That the property of the lands in question belonged to the Lord Maxwell, and, by his forfeiture, did return to the Crown; were afterward dissolved from the Crown and granted to George, Earl of Dunbar, who surrendered the same in favour of the Earl of Annandale, from whom the appellant's title proceeds.

Answer.—It is denied that the lands in question ever belonged in property to Lord Maxwell, or that they came to the Crown by his forfeiture. They remained perpetually with the Crown, as the Crown's own property, and the respondents' ancestors continued still the Crown's kindly, irremovable tenants. The

heritable right of keeping the castle did indeed belong to Lord Maxwell's family, and by his forfeiture did return to the Crown, and was afterward granted to the Earl of Annandale, which appears by the appellant's own title. Particularly by the Lord Maxwell service as heir to the ancestors, by which he is retoured heritable keeper of the castle, but not proprietor of the lands in question.

Objection 3rd.—That the Earl of Annandale, the appellant, obtained a decree of removing against some of the tenants in question, *anno* 1613, and another decree of the same kind, *anno* 1634, which is an evidence that the tenants were not irremovable.

Answer.—These decrees were obtained in absence, and by default against some inhabitants of the town of Lochmaben, the nature of whose rights and possessions is not known. But against none of the respondents' ancestors; and as these decrees were obtained only in default, they never took any effect; and they were part of the encroachments which gave rise to the several complaints made to the Crown.

Objection 4th.—That the appellant's father obtained another decree of removing against several of the tenants, *anno* 1665, to which action they appeared by their counsel.

Answer.—This appears to have been only a collusive action brought by the Viscount of Stormont to turn the Earl of Annandale out of possession of the rents, for although at first there was an appearance of arguing for some of the tenants, yet so soon as the Earl of Annandale made himself party to the suit, the counsel, who pretended to appear for the tenants, withdrew their appearance, and desired that judgment might be given as in default; and immediately after, the Viscount, to quiet them, granted an obligation to the tenants never to remove them or their heirs, and so this decree took no further effect, and is now barred by prescription. Nor has any decree obtained in default the least effect, after the parties appear and plead upon their rights, as the respondents have now done.

Objection 5th.—That by Act of Parliament James VI. par. 11, chap. 69 (Scots Acts, p. 569), it is declared that rentals set by the King of Lands belonging to him in property, excepting feu rentals set to them and their heirs, shall be of no further effect than a naked life-rent, and that after the rentaller's death the King may dispose of their possession.

Answer.—The Act of Parliament has no relation to this case.

It concerns rentals or written leases intended to be granted by the Crown after that to rentallers without expressing heirs. These are declared to be only rights for life; but the respondents' tenures are much more ancient. The right of the heirs has been acknowledged by the Crown in the several deeds above recited, and particularly by the sign-manual, *anno* 1664, and though the appellant pretends this sign-manual was stopt in Exchequer, that does no way appear, nor could it possibly be true, seeing such a sign-manual is not a writing of that nature which required its being passed in Exchequer, but had its full effect by the King's subscription. That as late as the year 1692, when a question arose between the appellant's father and the respondents concerning their being subject to the land tax, the appellants insisted that they were irremovable tenants, and ought to be taxed on that account, whereby he acknowledged them to be such as they now plead.

Objection 6th.—That *anno* 1690 the tenants obtained an order of Parliament directing the commissioners of the land tax to take off their assessment because they were only tenants, and if that order has had no effect the respondents have themselves to blame.

Answer—The order was just notwithstanding of there being irremovable tenants, since it is not the tenants but the proprietors who are to pay the land tax. Nevertheless that order has had no effect, but the tenants have still been assessed; the appellant's father insisted they should be assessed, and he prevailed, for by that decree it is adjudged that they should bear a proportion of the land tax, according to the assessment made in *anno* 1667.

This able defence prevailed with the Court, and the case was decided in favour of the Four Towns. Since this decision their position as kindly irremovable tenants has been uncontested. In 1810 the Earl of Mansfield raised an action in the Court of Session to secure that the different tenants, when they divided their land into smaller pieces, should have each of these pieces entered in his roll book, but he did not dispute their right to divide their land and transfer its different portions to others.

Sir Walter Scott, in the close of his note already quoted from, says—"The kindly tenants of Lochmaben live, or at least lived till lately, much sequestered from their neighbours, marry among themselves according to the ancient Border custom. You meet

among their writings with such names as John Outbye, Will Inbye, White-fish, Red-fish. . . . Their lands are, in general, neatly enclosed and well cultivated, and they form a contented and industrious little community." What Sir Walter Scott here says of the sequestered state of the kindly tenants and their strange distinctive names is very much a thing of the past. At the beginning of the century handloom weaving was largely the occupation of the people, and it suited very well the possessor of a small piece of land, for in the intervals between one web and another, the plot could be cultivated, but machinery has put an end to handloom weaving, and railways and the increasing attractions of great cities have drawn away not a few of the once kindly tenants, and their portions have been readily bought at the market value by one or other of the surrounding landed proprietors, and Hightae and Greenhill and Smallholm are now much smaller villages than they were in the beginning of the century, when Sir Walter Scott wrote.

In closing I must not omit to notice a privilege of the kindlie tenants—the ease with which their portions may pass from one to another. The seller and the buyer have but to agree about the price, and the buyer pay over the price, and a visit be made to the factor requesting him to put out the seller's name and enter the buyer's name as proprietor in his roll of the kindly tenants, and on a small payment being made, I believe a shilling, the transaction is closed.
