

# NOTES ON THE FACULTY ROLL

Note 1, page 43, line 8.

*"The flocks round Brodie's Stair."*

Sir James Dalrymple, Viscount Stair, was President of the Court of Session in 1671 and subsequently, and was a chief actor in the Scottish politics of the day. He was the author of 'Stair's Institutions,' a work on the law of Scotland, which was published in 1681, and has always been considered a high authority on the law of Scotland.

An edition of the 'Institutions,' with copious notes, and additions stating the changes which had taken place in the law since Stair's time, was published in 1826-31 by Mr George Brodie, Advocate, who entered the Faculty in the year 1811. It is the work alluded to as 'Brodie's Stair.' Mr Brodie was also author of a 'History of the British Empire from the Accession of Charles I. to the Restoration,' and held the appointment of Historiographer-Royal of Scotland from 1836 till his death in 1867.

Note 2, page 43, line 9.

*"Who ruminates on Shaw and Tait."*

Mr Patrick Shaw was compiler of a series of Reports of Cases decided in the Court of Session for a number of years subsequent to 1822, and his Reports have always been accepted as authorities under the name of 'Shaw's Reports.' He was also Editor of a very useful 'Digest' or analysis of reported cases, and of an edition of 'Bell's Commentaries.' Mr Shaw entered the Faculty in the year 1819, and was Sheriff of Chancery from 1848 to 1869, when he resigned.

The reference to "Tait" applies to a copious Index of Reported Cases, which was published in 1823 by Messrs W. & C. Tait, booksellers, Edinburgh.

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Note 3, page 43, line 11.

*"Although our Brough'm you've stolen."*

Lord Brougham entered the Faculty of Advocates in the year 1800. He did not continue in practice, having joined the English Bar; and after a most distinguished career, both as a barrister and a politician, he became Lord Chancellor of England in the year 1830.

Note 4, page 43, line 13.

*"He may be spared—our hoary Baird."*

Mr Thomas Walker Baird entered the Faculty in the year 1793, and was entitled to be called "hoary" when the song was written. He was an eminent Chamber Counsel, and especially conversant with questions of feudal law and conveyancing. He died in 1846.

Note 5, page 43, lines 15 and 17.

*"And though you've got some kindly Scotts,*

*We've the rest, and the best."*

The family name of Lord Chancellor Eldon and of his brother Lord Stowell was Scott. Both were members of the English Bar. At the Scottish Bar, at the date of the song, were Mr G. R. Scott, who entered the Faculty in 1786, and Sir Walter Scott, Bart., who entered in the year 1792. Sir Walter held the offices of Principal Clerk of Session, and Sheriff of Selkirkshire, and is doubtless referred to as "the best." Sir Walter died in 1832. His works are too well known to require any notice here.

Note 6, page 43, line 19.

*"To garrison old Morison."*

Mr William Maxwell Morison entered the Faculty in the year 1784. He was compiler of a Dictionary of De-

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cisions of the Court of Session, consisting of 40 vols. quarto, and extending from nearly the first institution of the Court. It is a work of standard authority, and is quoted under the name of 'Morison's Dictionary.'

Note 7, page 43, line 22.

*"Our Brown, Reid, White, and Gray."*

Several gentlemen of the name of Brown were members of the Faculty at the period of the poem. Mr Robert Broun entered in 1780, and was alive in 1832. Mr M. P. Brown entered in 1816; Mr H. H. Broun in 1822; Mr Thomas Brown of Lanfine (a nephew of Lord Jeffrey) in 1825; and Mr James Browne in 1826.

Sir James J. Reid of Mouswald, Dumfriesshire, entered the Faculty in 1827. He was one of the Royal Commissioners on Ecclesiastical Endowments, and afterwards Chief Justice of the Ionian Islands. The family have been hereditary members of the Bar and the legal profession. Sir James's father entered the Faculty in 1798. Mr J. J. Reid, his eldest son, entered in 1870, and became Queen's Remembrancer in the Scottish Exchequer. Mr R. T. Reid, his second son, was a distinguished Queen's Counsel at the English Bar, and is now (1916) an ex-Lord Chancellor with the title Earl Loreburn.

Mr Alexander White entered the Faculty in 1797. Mr William L. White of Kellerstain entered the Faculty in 1816.

Mr J. H. Gray of Carntyne, a Deputy-Lieutenant of Lanarkshire, entered in 1825.

Note 8, page 43, line 24.

*"You've seen their distant Rae."*

Sir William Rae, Bart., entered the Faculty in the year 1791. He was Lord Advocate for Scotland under the Administration of Lord Liverpool, and again under the Administrations of the Duke of Wellington and Sir Robert Peel, and M.P. for Buteshire.

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Note 9, page 44, line 3.

*“And ne'er roam from their Home.”*

Mr Francis Home, son of Professor Home of Cowdenknowes, entered the Faculty in 1825. He was Sheriff-Substitute of Kinross-shire, and afterwards of Linlithgowshire, which office he held for forty-one years. This ancient family were proprietors of Cowdenknowes, on Leader Water, for five or six centuries.

Note 10, page 44, line 11.

*“The Lothians, Ross, and Sutherland.”*

Mr Edward Lothian entered the Faculty in 1815. Mr Alexander Lothian in 1821.

Mr Charles Ross, son of Lord Ankerville, entered in 1789. Mr George Ross, son of Admiral Sir John Lockhart-Ross of Balnagown, entered the Faculty in 1797. He was one of the Judges of the Commissary or Consistorial Court, now abolished.

Mr David Ross entered in 1820.

Mr George Sutherland of Forss entered in 1833.

Note 11, page 44, line 15.

*“One foot of Erskine's Institute.”*

Mr John Erskine of Carnock entered the Faculty in the year 1719. He was Professor of Scots Law in the University of Edinburgh from 1737 to 1765, and was the author of ‘Erskine's Principles of the Law of Scotland,’ published in 1754, and of ‘Erskine's Institute,’ published in 1773—works which, like ‘Stair's Institutions,’ have always been regarded as of the highest authority on Scottish law. Many editions of the ‘Institute’ have been published by subsequent editors.

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Note 12, page 44, line 18.

*“Should never move Shank More.”*

Mr J. Shank More entered the Faculty in the year 1806. He was editor of editions of ‘Stair’s Institutions’ and of ‘Erskine’s Principles,’ and was Professor of Scots Law in Edinburgh University.

Note 13, page 44, line 19.

*“Our Marshall’s Steele, the knaves should feel.”*

Mr John Marshall entered the Faculty in 1818. He was specially eminent as a Chamber Counsel. He was elected Dean, and was afterwards a Judge of the Court of Session under the title of Lord Curriehill.

Mr William Steele entered the Faculty in 1824, and was for many years Sheriff-Substitute of Dumbartonshire.

Note 14, page 44, line 21.

*“Have at them with a plump of Spiers.”*

Mr Graham Spiers entered the Faculty in the year 1820. He was Sheriff of Elgin and Moray, and afterwards of Mid-Lothian, and one of the leaders of the party which ultimately formed the Free Church, and is designated by Lord Cockburn in his ‘Journal’ as “the Apostolic Spiers.”

Note 15, page 44, line 23.

*“Let the thieves meet our Neaves.”*

Mr Charles Neaves entered the Faculty in the year 1822. He was Solicitor-General for Scotland under the Administration of Lord Derby, and was afterwards a Judge of the Court of Session under the title of Lord Neaves. He was a man of great wit and humour, and the author of

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many exquisite songs, in one of which he happily says of the "Permissive Bill" of the day—

" Oh ! it's a little simple Bill,  
That seeks to pass *incog.*,  
To *permit* ME—to *prevent* YOU—  
From having a glass of grog."

A small collection of songs was published by Messrs Blackwood in 1868, under the title of 'Songs and Verses, Social and Scientific, by an old contributor to *Maga*.'

After the death of Mr Henry Glassford Bell, the Sheriff of Lanarkshire, there was found among his papers the following graceful tribute to Lord Neaves which had not been included in any of the Sheriff's published works:—

"There was a boy, a bright-eyed boy, the dux of all the school,  
Who kept the place at midsummer which he had gained at Yule;  
Through Horace, Terence, Juvenal, he cantered at his ease,  
Nor boggled at the hardest bits of old Thucydides.  
No mathematics daunted him; he needed small instruction  
To dive at once into the depths of algebra and fluxion.  
There's not a dry eye in the school the day on which he leaves,  
Yet little did the rector know that boy would be Lord Neaves.

There was a lad, an eager lad, who studied day and night,  
Whose spirit, through all realms of thought, pursued a lofty  
flight;  
Who walked away with every prize in every class at college,  
And left unopened not one gate of all the gates of knowledge.  
And yet he was no cold recluse, but *débonnaire* and free,  
As one who feels that social ties exalt philosophy;  
Professors smiling, shake his hand, the Principal believes,  
The day may come when that finelad may live to be Lord Neaves.

There was a man, an earnest man, who took to study law,  
He waded through old Morison, he swam ahead of Shaw;  
He took the marrow out of Stair, the entrails out of Bell,  
He sucked the egg of Erskine, and left nothing but the shell.  
He quoted case and precedent, unravelled every twist,  
From darkened legal quiddity he cleared away the mist;  
The judges gaze in wonderment, and whisper in their sleeves,  
'That man, whene'er the Whigs go out, is sure to be Lord Neaves.'

There was a father who had wed a fair and gentle dame,  
And more than all his honours prized a husband's, father's, name;  
Who, as he trod the road of life, through all its weary miles,  
Found ever at his own fireside sweet faces and fair smiles.  
Ah! better than ambition's fire, or triumph, or success,  
Soft eyes that look into our own, loved hands our own that press;

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'Tis never for himself alone a father, toils, achieves.  
'Tis for the well-known voice that says, 'Papa will be Lord  
Neaves.'

There is a judge whom all the land esteems as wise and good,  
Most fixed in what he deems the right, yet never harsh nor rude ;  
Clear in his office, faithful, just, more pleased to bless than ban,  
And proving that the soundest law comes from the kindest man.  
For him, the dux of all the school and student ripe, survives  
Youth's freshness, age's wisdom still unite the noblest lives ;  
And every compeer lovingly, and with delight receives,  
The valued friend, the honoured judge, the unspoilt man—Lord  
Neaves."

Note 16, page 45, line 4.

*"'Tis the land of Ivory."*

Mr James Ivory entered the Faculty in 1816. He was Solicitor-General for Scotland under the Administration of Lord Melbourne, and was afterwards a Judge of the Court of Session under the title of Lord Ivory.

Note 17, page 45, lines 11 and 12.

*"Our Hall is all surrounded  
By Forrest, Loch, and Shaw."*

Mr James Hall, son of Sir James Hall, Bart. of Dunglass, entered the Faculty in the year 1821.

Sir James Forrest of Comiston, Bart., entered the Faculty in 1803, and was afterwards Lord Provost of Edinburgh.

Mr James Loch entered in 1801, and Mr Patrick Shaw in 1819. Shaw's works have been already noticed.

Note 18, page 45, lines 13 and 14.

*"A Park, such as you never trod,  
A Hill you never saw."*

Mr John Park entered the Faculty in 1829. He was the last Advocate of modern days who appeared at the Bar without a wig.

Mr Norman Hill entered in 1802. He was a very intimate friend of Outram.

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Note 19, page 45, lines 15 and 16.

*"We rest among the summer Hay,  
Beside the Gowan fair."*

Sir John Hay, Bart. of Park, entered the Faculty in 1821, and was Sheriff-Substitute of Stirlingshire. Mr John Hay entered in 1811. Mr John Wilson Hay entered 1826. Mr William Gowan entered in 1831.

Note 20, page 45, line 21.

*"We gather Wood and Burnett."*

Mr Alexander Wood entered the Faculty in 1811. He was Dean of Faculty, and was afterwards a Judge of the Court of Session under the title of Lord Wood.

Mr Arthur Burnett entered the Faculty in 1819, and was Sheriff-Substitute of Peeblesshire. He was a descendant of the well-known Lord Monboddo.

Note 21, page 45, line 24.

*"The Wilde is White with snows."*

Mr J. Wilde entered the Faculty in 1785, and died in 1840. He was Professor of Civil Law in Edinburgh University from 1792 till 1800.

Mr William L. White entered in 1816, as already noticed.

Note 22, page 45, line 25.

*"Our Taylor, and our Hozier."*

Mr Richard Taylor entered the Faculty in 1812.

Mr James Hozier of Mauldslic, a Deputy-Lieutenant of Lanarkshire, entered in 1815.

Note 23, page 46, lines 3-5.

*"With Thomson's Acts, through Lord Kames' Tracts,  
And Fountainhall, and Stair."*

Mr Thomas Thomson entered the Faculty in the year 1793. During the greater part of his life he was Deputy-



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Keeper of the National Registers of Land Rights, &c., and he also did most important and valuable work, in the historical or literary department of the Register House, and in the department of Registration of deeds and land rights. Besides his careful and judicious superintendence, copious digests and indexes of the various registers of land rights were prepared by him, which have proved invaluable as keys to the registers, by which they were for the first time made really and easily serviceable for general use. Many years were devoted by him to this great and most important work. Amongst other labours of a historical and literary kind he arranged and published a large folio edition, in eleven volumes, of the 'Acts of the Scottish Parliament,' with copious illustrations. Mr Thomson was appointed one of the Principal Clerks of Session in 1828. He was President of the Bannatyne Club in succession to Sir Walter Scott. Cockburn in his 'Memorials' characterises him as "formidable in dignity and in antiquarian learning."

Henry Home, afterwards a Judge of the Court of Session under the title of Lord Kames, was admitted a member of the Faculty in the year 1723. He published various collections of decisions of the Court, and was the author of 'Essays on British Antiquities,' published in 1747; 'Essays on the Statute Law of Scotland,' in 1757; and 'Principles of Equity,' in 1767.

Sir John Lauder of Fountainhall entered the Faculty in the year 1668, and was Judge of the Court of Session under the title of Lord Fountainhall. He published a collection of decisions from 1678 to 1712, and was the author of various works in history and chronology. An edition of his 'Chronological Notes of Scottish Affairs,' edited by Sir Walter Scott; an edition of his 'Historical Observes of Memorable Occurrents in Church and State,' edited by Mr Adam Urquhart and Mr David Laing; and an edition of his 'Historical Notices of Scottish Affairs,' edited by Mr Laing, were printed by the Bannatyne Club.

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Note 24, page 46, line 6.

*"We've three Milnes, and six Millers."*

Mr G. W. Mylne and Mr David Milne (afterwards Mr David Milne-Home of Milne Graden) entered the Faculty in the year 1826. The latter gentleman did not continue practice at the Bar. He was distinguished as a geologist and meteorologist, and in science generally. He was President of the Edinburgh Geological Society, and Chairman of the Scottish Meteorological Society.

Mr Nicol Milne of Fauldonside entered the Faculty in 1827, the same year in which Mr Outram entered.

Sir William Miller, Bart., afterwards a distinguished Judge under the title of Lord Glenlee, entered the Faculty in the year 1777, and was on the bench from 1795 till his resignation in 1840. Mr T. H. Miller, son of Mr Patrick Miller of Dalswinton, entered in the year 1802; Mr John Millar of Ballingall in 1806; Mr James Miller in 1819; Mr William Miller in 1823; Mr James Miller, son of Lord Glenlee, in 1825; and Mr John Miller, jun., in 1829.

Note 25, page 46, line 8.

*"We've two Weirs, and a Lister large."*

Mr Thomas Weir entered the Faculty in the year 1831. Mr William Weir entered in 1827, and became editor of the 'Daily News' (London). Mr John Lister entered in 1832.

Note 26, page 46, line 10.

*"A Horsman too, without a horse."*

The Right Hon. Edward Horsman, a nephew of the 9th Earl of Stair, entered the Faculty in 1831. He did not continue practice at the Bar, having devoted himself to political life. He was M.P. for Cockermonth, Stroud, and Liskeard in succession, and was for some time a Lord of the Treasury, and was Chief Secretary for Ireland under the Administration of Viscount Palmerston.

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Note 27, page 46, line 19.

*"Sometimes a joint to Boyle."*

The Right Hon. David Boyle entered the Faculty in the year 1793. He was Solicitor-General for Scotland under the second Administration of the Duke of Portland, and M.P. for Ayrshire from 1807 to 1811, and was appointed Lord Justice-Clerk in 1811, and Lord President of the Court of Session in 1841.

Note 28, page 46, line 20.

*"But still Cheape's head and Trotters."*

Mr Douglas Cheape entered the Faculty in the year 1819. He was Professor of Civil Law in Edinburgh University. Mr Cheape was a noted humourist, and was the author of many witty and pungent poetical squibs, chiefly political.

"Cheape's head and Trotters" are to be read as "*sheep's head and feet*"—a favourite old Scottish dish.

Mr J. P. Trotter entered the Faculty in the year 1826. He was Sheriff-Substitute of Perthshire at Dunblane, and afterwards of Dumfriesshire.

Mr Richard Trotter, a Deputy-Lieutenant of Mid-Lothian, son of General Trotter of Morton Hall, entered the Faculty in 1823.

Note 29, page 47, line 5.

*"But for religion!—Clerks, alas!"*

Mr John Clerk entered the Faculty in 1785. He was Solicitor-General in 1806, and was raised to the Bench as Lord Eldin in 1823. He was an eminent wit, very cynical and sarcastic, and especially independent. He was a prosy speaker, and on one occasion, when pleading before a judge whose father had been a distinguished member of the Bench under the same judicial title, he was in-

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terrupted by a petulant remark that it was impossible to sit all day listening to a reiteration of "also and likewise," —to which he promptly replied that his lordship seemed to consider these words synonymous, and added, in his sharpest tones, that they were not so: "You're lordship's father was Lord ——. You're Lord —— *also*, but I doubt if you're *likewise*."

Mr William Clerk entered the Faculty in the year 1792. He was Clerk of the Jury Court when it existed separately from the Court of Session.

Note 30, page 47, line 6.

*"And Bells we have to spare."*

Mr George Joseph Bell entered the Faculty in 1791. He was author of a learned and valuable work on 'The Mercantile Law of Scotland, in relation chiefly to the subject of Bankruptcy,' which was published in 1804, and is usually quoted as 'Bell's Commentaries,' and of other works upon the law of Scotland, which have always been considered of high authority. Mr Bell was appointed Professor of Scots Law in Edinburgh University in 1822, and one of the Principal Clerks of the Court of Session in 1831.

Mr Archibald Bell entered the Faculty in the year 1798, and was appointed Sheriff of Ayrshire in 1815. Mr Robert Bell entered in the year 1804: he was Procurator for the Church of Scotland. Mr George Graham Bell of Crurie entered in the year 1819. Mr J. M. Bell entered in the year 1825, and was Sheriff of Kincardineshire. Mr William Bell entered in 1824. Mr Henry Glassford Bell entered in the year 1832, and was for many years Sheriff-Substitute, and afterwards Sheriff, of Lanarkshire. He was a very intimate friend of Mr Outram, and edited the first edition of the 'Lyrics.' He was author of a Life of Mary Queen of Scots, of a volume of poetry, and other works.

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Note 31, page 47, line 9.

*"Our most devout have Dirleton's Doubts."*

Sir John Nisbet of Dirleton entered the Faculty in the year 1633, and was a Judge of the Court of Session under the title of Lord Dirleton. He held at the same time the office of Lord Advocate, a combination which has never occurred since. He was the author of a work entitled 'Doubts and Questions in the Law, especially of Scotland.' It is usually referred to as 'Dirleton's Doubts,' and was published in 1698, after his death, being edited by Sir William Hamilton of Whitelaw.

Note 32, page 47, line 13.

*"We've but one Torrie in our ranks."*

Mr T. J. Torrie entered the Faculty in the year 1830.

Note 33, page 47, line 17.

*"Because we've the Tawse."*

Mr John Tawse entered the Faculty in the year 1808.

Note 34, page 48, line 1.

*"Though we've got but one Groat."*

Mr A. G. Groat entered the Faculty in 1834.

"Note 35, page 48, lines 5 and 6."

*"Our live stock's scarce, we have but  
A solitary Hog."*

Mr James M. Hog, son of Mr Thomas Hog of Newliston, entered the Faculty in the year 1822.

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Note 36, page 48, line 7.

*“ One L’Amy on his Trotters stumps.”*

Mr James L’Amy entered the Faculty in the year 1794. He was Vice-Dea of the Faculty, and for many years Sheriff of Forfarshire.

Mr Trotter has been already noticed.

Note 37, page 48, line 8.

*“Secure from Wolf or dog.”*

Mr James Wolfe-Murray must be indicated, as there was no gentleman of the name of Wolf in the Faculty. Mr Wolfe-Murray entered in the year 1782, and was afterwards a Judge of the Court of Session under the title of Lord Cringletie. When he was appointed, doubts were expressed by some as to his legal acquirements, and the well-known cynic, John Clerk of Eldin (who is noticed above), expressed his view in these lines :—

“ Necessity an’ Cringletie  
Are fitted to a tittle ;  
Necessity has nae law,  
An’ Cringletie as little.”

The cynic, however, was wrong. Lord Cringletie proved an excellent judge, and on one occasion the House of Lords, on appeal, reversed a decision from which he had differed, and adopted his opinion as the judgment of the House.

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Note 1, page 54, line 6.

*"There the Dean stands profound as the depths  
of the sea."*

The "Dean" is the Dean or Preses of the Faculty of Advocates, who has a position of seniority at the Scottish Bar. The Right Hon. John Hope was Dean at the date of the song. He entered the Faculty in 1816. He was Solicitor-General for Scotland under the Administration of the Earl of Liverpool. He was afterwards a Judge of the Court of Session, and was Lord Justice-Clerk in the Court of Justiciary. He was a grave and powerful pleader.

Note 2, page 54, line 8.

*"And Snaigow—as smooth as its surface could be."*

Mr James Keay of Snaigow entered the Faculty in 1799. He was a polished and able speaker.

Note 3, page 54, line 10.

*"And Rutherford—sharp as the rocks on the lee."*

The Right Hon. Andrew Rutherford entered the Faculty in 1812. He was Solicitor-General for Scotland under the Administration of Viscount Melbourne, and Lord Advocate under the Administrations of Viscount Melbourne and of Lord John Russell, and was M.P. for the Leith Burghs. He was afterwards a Judge of the Court of Session under the title of Lord Rutherford.

While Lord Advocate, he was the author of a number of most valuable and carefully framed Acts of Parliament, in regard chiefly to conveyancing, which greatly simplified Scottish deeds, and materially lessened their expense. He was also the author of an Act by which entails were greatly modified. It bears his name, being usually quoted as the "Rutherford Act." He was a most

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accomplished lawyer and powerful pleader, and was equally eminent in literature and science.

Note 4, page 54, line 14.

*“And there stands M’Neill, ‘with his nostril all wide.’”*

The Right Hon. Duncan M’Neill of Colonsay entered the Faculty in the year 1816. He was Solicitor-General for Scotland under the Administration of the Duke of Wellington and that of Sir Robert Peel, and Lord Advocate under the latter Administration, and was M.P. for Argyllshire. The poor law of Scotland was reformed and placed on its present footing under his auspices. Subsequently he was a Judge of the Court of Session under the title of Lord Colonsay, and thereafter Lord President of the Court of Session, and Lord Justice-General in the Court of Justiciary. Ultimately he was raised to the peerage, and sat in the House of Lords as Lord Colonsay.

Note 5, page 54, line 17.

*“And Cunninghame’s there with his papers untied.”*

Mr John Cunninghame of Duloch entered the Faculty in 1807. He was Solicitor-General for Scotland under Lord Melbourne’s Administration, and afterwards a Judge of the Court of Session, under the title of Lord Cunninghame. He was in large practice when at the Bar. It was sometimes thought that occasionally he was not very careful in reading his briefs, to which the “papers untied” seems to allude. But however this may have been, his clients never suffered. He was a man of much tact and ready resources.

Note 6, page 54, line 23.

*“And Peter the Great looks to Adam the Tall.”*

Mr Patrick (or as he was more usually called, *Peter*) Robertson entered the Faculty in 1815. He was Dean



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of the Faculty of Advocates, and ultimately a Judge of the Court of Session under the title of Lord Robertson. He was a man of rare wit and humour, and his rich jokes and sayings, which, if collected, would fill a volume, were greatly enhanced by his portly person, and somewhat heavy and stolid-looking countenance, the gravity of which he could preserve while those around him were convulsed with laughter. His appearance is referred to in a short colloquy with Sir Walter Scott, which went the round of the Parliament House in a few minutes. Before the authorship of the Waverley Novels was acknowledged, Sir Walter happened to be in a group round one of the Parliament House fireplaces, and Peter approaching them, hailed him as "Peveril of the Peak" (an allusion to his high forehead and hair). Sir Walter at once replied, to the amusement of the bystanders, "Better Peveril o' the Peak than Peter wi' the painsh" (paunch).

Mr Douglas Cheape, who was mentioned in the notes of the "Faculty Roll," had a very neat squib upon Mr Robertson. He was a stanch Tory, but it was commonly said that, after the passing of the first Reform Bill, when Lord Grey's Liberal Administration was in office, Peter lost hopes of his party, and offered his services to the Whigs through Lord Brougham, then Lord Chancellor. Mr Cheape embalmed the incident in the following lines, alluding to Mr Robertson's somewhat unusual bulk:—

"When Brougham by Robertson was told  
That he'd consent a *place* to hold—  
Surveying, with astonished eyes,  
A rat of such enormous size—  
Said Brougham, 'That may be very true;  
But where's the place that could hold *you*?'"

Mr Adam Anderson entered the Faculty in 1818. He was Solicitor-General for Scotland under Sir Robert Peel's second Administration, and was afterwards a Judge of the Court of Session under the title of Lord Anderson. He was very thin and tall, and hence the *sobriquet* of "Adam the Tall."

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The experiences and griefs of the various litigants or claimants are graphically given, and made the means of introducing various forms of Scottish procedure in apt and peculiar terms, which, however, are scarcely intelligible to those unacquainted with Scottish procedure and forms. A brief explanation of these terms will show the author's happy play upon the words.

Note 7, page 55, lines 6-10.

*"That she had not disposed in liege poustie was plain,  
For she ne'er went to kirk or to market again—  
So maintains her apparent heir, Donald M'Bean."*

As the law of Scotland stood when the song was written, any conveyance of real property could be set aside by the heir-at-law (heir-apparent of the song) if, at the time of the execution of the deed, its granter was labouring under the disease of which he died, and did die of that disease, within forty days of its date, without having during that period been either at church, or in a public market, unsupported. The law held that in such circumstances the maker of the deed was not in a fit state to grant it—not being *in legitima potestate*—abbreviated in legal phrase into the "*liege poustie*" of the song.

A suit to set aside such a deed could be prosecuted only by the heir-at-law of the granter, so this plea is put in the mouth of the "heir-apparent" of poor Janet.

Note 8, page 55, lines 18-20.

*"So what with arrestments, where'er funds could be,  
And charges on bill and extracted decree."*

"Arrestment," as explained *ante*, p. 49, is an attachment of personal funds and effects. A "charge" is a formal requisition made by an officer of the law, in virtue of a legal warrant, to a debtor, to make payment within a

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specified time, under the penalty of execution against him and his effects, if payment be not made.

Note 9, page 56, line 11.

*"She swears 'tis an action of 'double distress.'"*

An action or suit of multiplepoinding falls under the class of actions which are technically called "actions of double distress." "Distress" means the legal distress, or impediment, caused to a party by the use of arrestments in his hands.

The unhappy claimant's experience leads her to apply the term in a sense more literal than its technical one.

Note 10, page 56, lines 14-17.

*"The landlord claimed rent—and he'll best tell you how  
He got into the process by poinding a cow;  
His hypothec is quite hypothetical now."*

Under the Scottish law until recently, a landlord had a special and preferable remedy, against a tenant for payment of rent, by a writ to sequestrate, or attach and sell, the effects of the tenant upon the farm. This remedy was called the landlord's *hypothec*.

Note 11, page 56, line 20.

*"The Suspender was bothered to such a degree."*

A "suspension," as already explained (*ante*, p. 50), is a suit seeking a stay of execution of a judgment or a "charge." The party instituting it is called the "suspender."

An "arrester" is the party enforcing a writ of arrestment. A "forthcoming" is a suit which an arrester institutes to obtain payment or possession of funds or goods arrested. The arrester is here supposed to be himself in jail, with no means of *forthcoming*, or getting out of it.

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Note 12, page 57, line 1.

*“ One brought a Reduction—but he has retired.”*

A “reduction,” as noticed *ante*, p. 50, is a suit to set aside a deed executed to the prejudice of the party using it.

Note 13, page 57, line 4.

*“ The Adjudger—as well as the Legal’s expired.”*

An “adjudication” is a suit in which a creditor seeks to have real property “adjudged,” or transferred from his debtor to himself; and judgment in the suit transfers the property to the creditor, who is called the adjudger. The property may, however, be redeemed by the debtor, upon making payment of the creditor’s claim within the period of ten years, and these ten years are technically termed the “legal” of an adjudication. These years are supposed to have expired, and the creditor himself to have died, during the slow progress of the multiplepoinding.

Note 14, page 57, lines 7–11.

*“ No more will the poor Heir-Apparent appear—  
By way of a seisin they’ve seized all his gear;  
He’s absconded—and now his Retour, it is clear,  
Can’t be hoped through the Multiplepoinding.”*

The title of an heir to his ancestor’s real estate was, at the date of the song, completed or established by a writ called a “seisin,” under which he was infest or seized in the estate. His “seisin” was usually preceded by a “service,” which was a proceeding instituted by a writ from the Scottish Chancery Office, under which the claim of the heir was submitted, by a short form of process, to a jury, by whom he was served or declared to be the heir, if he proved his propinquity. The verdict of the jury was “retoured” (or returned) to the Chancery Office, and the writ issued thereon by that Office declared the verdict of

# THE MULTIPLEPOINDING

the jury, and was technically termed a "retour." The "seisin," as a separate writ, is now abolished, but the "service" is still in use, in a different form.

Note 15, page 57, lines 15, 16.

*"But the fund, though in medio, has gone to pot too."*

The "fund *in medio*" is the fund or estate for which the different claimants have been contending. The protracted endurance of the suit has exhausted the fund, as well as the claimants.

Note 16, page 57, lines 21-22.

*"And he whom they call Common Debtor, alone  
Has uncommon good luck—he's got off with his own!"*

The "common debtor," as explained *ante*, p. 50, is the person for whose funds the claimants have been contending, and he, being a passive onlooker, is represented as the only one who has not come to grief through the multiplepounding.

NOTES ON  
THE PROCESS OF  
AUGMENTATION

Note 1, page 70, line 9.

“*Though some may hold their lands cum decimis inclusis.*”

A title to lands *cum decimis inclusis* (i.e. with Teinds included) places the teinds of these lands in a very favourable position, as such lands are exempted from all augmentations of stipend. The following song in Lord Neaves' volume, noticed *ante*, p. 172, refers, in amusing terms, to the position of lands held “*cum decimis inclusis*,” and to a danger which may arise if the terms of the clause are not technically complete. It also refers specially to this song of Outram's, the humour of which Lord Neaves richly relished:—

“I've often wished it were my fate,  
Enriched by Fortune's bounty,  
To own a little nice Estate  
In some delightful county;  
Where I, perhaps, with some applause  
Might cultivate the Muses,  
And till my lands, and have a clause  
*Cum decimis inclusis.*”

Wherever no such clause appears,  
You're doomed to much vexation;  
The Minister, each twenty years,  
Pursues his augmentation.  
Like any fiend he grabs your teind  
Unless the Court refuses.  
And all are sold who do not hold  
*Cum decimis inclusis.*

That strife to tell, would answer well  
This tune of Maggie Lauder,  
When half the Bar are waging war  
About the extra cha'der.  
But Outram's wit that scene has hit,  
And all so much amuses,  
That I refrain, and turn my strain  
To *decimis inclusis.*

# THE AUGMENTATION

A friend of mine had such a grant,  
And did not get it *gratis*;  
But when produced, 'twas found to want  
The *nunquam separatis*.  
An Heritor with such a flaw  
His whole exemption loses,  
And might as well possess, in law,  
No *decimis inclusis*.

Then ere you buy, your titles try,  
For fear they're in disorder :  
An Old Church feu 's the thing for you,  
From some Cistercian Order.  
Demand a progress stanch and tight,  
For nothing that excuses,  
And see your *nunquam antea*'s right  
As well as your *inclusis*.

Then free from fear and free from strife,  
Your cares and troubles over,  
You'll lead a gay and easy life  
Among your corn and clover.  
The whole Teind Court you'll make your sport,  
Which else such awe diffuses,  
'Augment away,' you'll blithely say,  
'I've *decimis inclusis*.'

Note 2, page 71, line 4.

"'Tis partly paid in Bear, and partly paid in Barley."

In the scheme of locality, the stipend is fixed or allocated in grain, the value of which, as converted into money by the Clerk of Court in the "Scheme of Locality," is paid to the clergyman.

Note 3, page 71, lines 18-20.

"A small mortification  
Just keeps my wife in clothes."

In Scottish legal phraseology a "mortification" is the term applied to land, vested in perpetuity in trustees or otherwise, for payment of the annual income or produce to such person, or for such purposes, as may be directed in the deed of mortification. In the city of Aberdeen there is a considerable amount of property so destined

# THE AUGMENTATION

which is under the charge of a civic officer, who is there styled the "*Master of Mortifications.*"

Note 4, page 72, lines 19 and 20.

*"The hale o' the teind,  
Parsonage and Vicarage."*

Parsonage teinds are payable from crops ; vicarage, from small articles such as poultry.

Note 5, page 76, lines 6-11.

*"The Court . . . thus modify."*

The fixing of the stipend is termed its "modification."

Note 6, page 77, lines 9-13.

*"The process now must tarry  
Till the Junior Ordinary  
Proceed to prepare,  
With his usual care,  
A scheme of locality."*

The Court having "modified" or fixed the amount of stipend, remit the case to a single Judge, called the Lord Ordinary, to have the scheme of locality, apportioning the amount payable by each heritor, prepared.

Note 7, page 80, line 6.

*"My Manse requires repairs."*

The minister, being indignant at the result of the augmentation, seeks consolation in devising a new source of vexation, by procedure in the Teind Court, for the repair and enlargement of his "manse" or dwelling-house and offices, which the heritors of the parish are bound to maintain.



# NOTES ON THE LAW OF MARRIAGE

Note 1, page 83, lines 7 and 8.

*"No matter!—I espoused a maid of twenty  
By promise, and a process subsequente."*

By the law of Scotland marriage may, in certain circumstances, be validly constituted by an interchange of promise of marriage between the parties.

Note 2, page 84, lines 3 and 4.

*"The feudalist may learnedly explain  
When its avail is single and when double."*

Under the old Scottish feudal law a proprietor of land was liable to pay to his feudal superior, or over-lord, a "casualty" or fine on various events occurring, and among others upon his being married. It was termed "the avail of marriage," and varied in amount according to circumstances—hence the legal term "single or double avail."

Note 3, page 84, line 18.

*"The Lords dispensed, they told me, with the habit."*

This refers to the suit of *cessio bonorum*. By the old law of Scotland a bankrupt was bound to wear a particular description of dress or habit. By the judgment in the suit of *cessio bonorum*, the Court "dispensed with," or relieved, the debtor, from the obligation to wear that dress, which was technically styled in the judgment as "dispensing with the habit."

Note 4, page 85, line 9.

*"I then attempted Vitious Intromission."*

One who takes possession of the property of a deceased relative without the legal authority of "confirma-

# THE LAW OF MARRIAGE

tion" or probate, is called a "vicious intromitter," and his dealings with it "vicious intromission." In the line, theft, of course, is implied.

Note 5, page 85, lines 13-16.

*"No letters came to me of Open Doors;  
Criminal letters, though, came postage free.  
The air I breathed just added to my cares,  
Reminding me of coming Justice Ayres."*

Letters of open doors form a writ, or portion of a writ, authorising prison doors to be opened—or in other words, the liberation of a prisoner. "Criminal letters" are one form of the indictment or charge under which an accused party is brought to trial. "Justice Ayres" are meetings of the Court of Justiciary for the trial of prisoners.

NOTES ON  
IS THE HOUSE WARM YET?

Note 1, page 131, line 20.

*"When Bell begins to falter in his boisterous career."*

Mr Henry Glassford Bell, noticed previously under "The Faculty Roll," *ante*, p. 178.

Note 2, page 132, line 1.

*"And Mackenzie's merry voice begins to sound a little queer."*

Thomas Mackenzie, Esq., advocate, who was Solicitor-General for Scotland under Lord Aberdeen's Administration, afterwards on the Scottish bench as Lord Mackenzie. He was a contemporary of Outram at the Bar, and an early and attached friend, and of a very kind and genial temperament, with no small spice of quiet humour.

Note 3, page 132, line 3.

*"And Hill's becoming tuneless."*

Mr D. O. Hill, of the Royal Scottish Academy. He held a high place as an artist. One of his pictures is a view of Edinburgh from the Castle, which was engraved, and is esteemed as one of the best views of the city. He was a very sweet singer, and had a large repertory of curious old songs. He and Outram were most attached friends.

Note 4, page 132, line 8.

*"When Rhind begins, with husky throat, to overture the chair."*

Macduff Rhind, Esq., advocate, for many years Sheriff-Substitute of Wigtownshire. He was a contemporary of Outram at the Bar, and a very intimate friend.

## NOTES ON

Note 5, page 132, line 10.

*“And the joyous-hearted Crutherland seems quite  
o’ercome wi’ care.”*

John Smith of Crutherland, LL.D. of Glasgow University. He was editor of many of the publications of the Maitland Club, and intimately acquainted with all the literary men of the day.

Note 6, page 132, line 12.

*“And Ellis seems at sea.”*

Mr William M. Ellis, advocate, a contemporary at the Bar, and intimate friend of Outram, and a keen yachtsman.

Note 7, page 132, line 18.

*“When Macnee confuses Archie wi’ the little Paisley  
boy.”*

Sir Daniel Macnee, afterwards President of the Royal Scottish Academy, a well-known and highly esteemed artist, and most lovable man. At the time the song was written, and until he became President of the Academy, he was resident in Glasgow, and filled a high place in Glasgow society. He had a marvellous collection of original stories, in which he delineated character with infinite effect—touching the peculiarities of the Highlander, and of the denizens of Glasgow, Paisley, and Greenock, with most amusing faithfulness and grace. In the song he is represented as making a muddle of two of his stories. He was a very intimate and attached friend of Outram.

Note 8, page 132, line 20.

*“And Dunbar’s tongue is motionless by sheer excess of  
joy.”*

Mr William Dunbar, advocate, noticed in “The Faculty Roll.”

# IS THE HOUSE WARM YET ?

Note 9, page 132, line 21.

*“ And Spens calls it doubly hazardous.”*

Mr William Spens became manager of the Scottish Amicable Insurance Company in 1839. He was a fellow of the Faculty of Actuaries in Scotland, and of the Institute of Actuaries of Great Britain and Ireland.

Note 10, page 133, line 2.

*“ When Salmond breaks his glass and seeks to justify the deed.”*

Mr George Salmond, Procurator-Fiscal for the county of Lanark. In the Glasgow Directory of 1855-56, he is called Commissary and Admiral of Lanarkshire.

Note 11, page 133, line 4.

*“ And the Doctor frae Gartnavel tries to stand upon his head.”*

Dr William Hutchison, resident physician of the Gartnavel Lunatic Asylum from its opening in 1842 to 1850.

## NOTES ON AN APPEAL FROM THE SHERIFF

Mr Henry Cockburn, the author of the "Epigram," entered the Faculty in the year 1800. He was Solicitor-General under the administration of Earl Grey, and was afterwards a Judge of the Court of Session under the title of Lord Cockburn.

During the greater part of his life Henry Cockburn kept a journal, which (or copious extracts from it) was published after his death. It is highly interesting and amusing, and contains at the same time much valuable information upon most of the public questions of the period.\*

Cockburn was in his day the most eloquent and persuasive orator at the Scottish Bar. With his impressive oratory, his expressive face and fine eye, his mellow voice and his pure and homely Scottish dialect, he was almost irresistible with a jury, or in the General Assembly of the Church, in which he was often engaged as counsel.

On the trial of the infamous Burke and his wife, in 1829, for numerous murders of unfortunate creatures whom they lured into their den and murdered, and whose bodies they sold, for dissection, he acted as counsel for the woman. The trial lasted till five in the morning of the second day, and after sixteen or seventeen hours' previous exertion, he addressed the jury, in one of the most impassioned and powerful speeches he ever delivered. He spoke for an hour, and literally held the jury and the audience spell-bound. His chief aim was to break down the evidence of Hare, and his wife, who were *socii crimines*, and had been admitted by the Crown as approvers. While the

\* "Memorials of his Time." New Edition, with Introduction by Harry A. Cockburn, and Portraits in colour by Sir Henry Raeburn, and other Illustrations, 6s. net.

## APPEAL FROM SHERIFF

miserable woman was giving her evidence, she had a child in her arms, who continued to scream almost incessantly. After drawing, in scathing and terrible words, a picture of her and Hare's atrocities, whom he represented as the real criminals, he ascribed the screaming of the child to terror, "as if it had felt the fingers of the murderous hag clutching its little innocent throat." His peroration, delivered with a glistening eye, in tones of the utmost solemnity and pathos, put it to the jury that there was no real evidence except that of the approvers, and that if they found the accused guilty upon such evidence as that of the two Hares, these (pointing with a tremulous hand to the accused) "will be murdered, and these" (pointing to the jury) "will be perjured." Horrified as all those in Court had been at the fearful atrocities disclosed on the trial, there was, when he sat down, a universal hum of sympathy from the large audience. His speech saved the woman's life; for, while the jury found the man guilty, their verdict in the case of the woman was "not proven."

For racy wit and humour Cockburn was equally distinguished as he was for eloquence. Like Peter Robertson's, his jokes and quips would fill a volume. As examples, the following may be given:—

On one occasion he was engaged in a case in which some miscreant had ill-used and maimed a farmer's cattle by cutting off their tails. At the conclusion of a consultation, at which the farmer was present, some conversation took place as to disposing of the animals. Turning to him Cockburn said the cattle might now be sold, but that he must be content to sell them wholesale, because he could not *retail* them.

On another occasion he was counsel for a man accused of a capital crime, for which, if found guilty, the punishment was death. The evidence was quite conclusive as to the man's guilt. When the jury had retired to consider their verdict, his client roundly taxed him with not hav-

## APPEAL FROM SHERIFF

ing done him justice in the defence. He bore the fellow's insolence for some time, but at last he gave him the pithy reply: "Keep your mind easy, my worthy friend, you'll get *parfait justice* about this time six weeks"—six weeks being then the period allowed to elapse between a sentence of death and execution.