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The Black Friars and the Scottish Universities

IT is to the foresight and the action of St. Dominic and his great Order of Friars Preachers—colloquially known as the Black Friars—that the first introduction into Scotland of a systematic course of education is to be attributed. No doubt, there were schools in existence in the twelfth century, and men of high literary attainments were to be found among the Roman hierarchy as well as in the monasteries; but there was no organized system of study in operation in this country until the advent of the Black Friars in 1230.¹ Among the monks of every class, education was to a large extent—in the early days at least—a mere matter of personal inclination. In the original rules laid down by St. Benedict and the other monastic founders, the leading obligation is manual labour; while study as an art is conspicuous by its absence. The celebration of the divine offices and the reading of the Holy Scriptures or of works by the Fathers, etc., formed, practically, the sole official outlet for the spiritual aspirations of the monk; and, hence, progress in education depended entirely upon the intellectual calibre of the individual. The monk who tilled the ground fulfilled his obligations equally with him who, of a higher intellect, chose to spend his spare hours in study.

St. Dominic's ideals were lofty, although, as they took ten years to arrive at fruition, they lacked the spontaneity of those of St. Francis. He sought to counteract the heresies of the Cathari, the Patarini, the Albigenses and other wild sectaries

¹ *Melrose Chronicle*, p. 143.

of his day, by equipping and training a special body of public evangelists, who, by their preaching in the streets and squares of cities and villages, and even in the fields, would not only educate the people in the tenets of the orthodox religion, but would render them immune against the insidious attacks of heresy. There lay, however, a fundamental distinction beneath the confirmation granted by the Holy See to the Franciscan ideal as opposed to that of the Dominican. St. Francis was a layman and unlearned; while St. Dominic had knowledge, and was not prepared to sacrifice ecclesiastical tradition. He was a canon regular of the Church, and he and his followers were confirmed as an Order of Canons serving God under the Rule of St. Augustine.¹ There were no lay preachers within their ranks,² and hence, so far, there was no change in ecclesiastical life as was the case with the Grey Friars. As canons, the priory church, in which the usual offices were celebrated day and night, became their principal possession, to which the other buildings formed a mere adjunct. Then, the Augustinian rule was expressly selected as a framework on which their institutes and constitutions of government—to be afterwards devised by their Chapter General—could be engrafted; and it left them free to raise their edifice in independence. To carry out his special mission of ‘universal preaching,’ St. Dominic foresaw from the beginning, that, to command success, study and knowledge were necessary corollaries. Among his opponents—the Patarini, for example—there were many powerful preachers; and he resolved to convert his friars into an Order of learned men, able and ready at all times to face an intellectual adversary. It was the educational scheme which he inaugurated for his friars that led Honorius III. to describe them as *futuros pugiles fidei, et vera mundi lumina*.³ Indeed, it may be asserted that the Black Friars were the first in Europe to devise and introduce for their students a complete and systematic course of education extending over a long period of years, and ending in a degree at a university recognized by the Order; and it is to the distinguished share, direct and indirect, taken by the Black Friars in assisting and furthering the establishment of our Scottish Universities, that attention is here drawn.

¹ *Bullarium Ord. Praed.* 1, 2, 4.

² The lay-brothers—the *laici* of the Grey Friars—were known as the *fratres conversi*, and performed the meaner offices of the priory, such as cooking, etc.

³ *Nos Attendentes*, 22 Dec. 1216; *Bull. Ord. Praed.*, i. 4.

Unfortunately, the native material at our command is singularly scanty. To whatever cause—the ignorant zeal of the ‘rascal multitude’ at the Reformation, or subsequent wanton neglect—the loss of the major portion of the vast array of ecclesiastical muniments, other than those of a purely legal nature, that undoubtedly existed in pre-Reformation times, constitutes one of the great misfortunes of our country. The Black Friars excelled all the other religious communities in the number and variety of the records which, under their statutes, they were bound to compile; and yet, but little is now extant from which any idea of their personal life can be obtained. At the headquarters of the whole Order at Rome, also, very little information relating to Scotland has been preserved;¹ but, in recent years, great literary activity has been evinced by members of the Order, and many of their records, so far as extant, have been published. These include their Constitutions—codified in 1228, and again in 1239—the *Acta* of the Chapter General and of many of the leading provinces in Europe, the more famous chronicles, etc.

Briefly stated, the Black Friars divided their scholastic system into three well-defined sections—an arrangement which has been followed down to the present day in this and all other countries where a national system of education prevails. There were, first of all, the Conventual Schools, in which the novices and young friars were trained. Then came the Provincial or Secondary Schools known as the *Studia Solemnia*, and, lastly, the International University Colleges, or *Studia Generalia*.

The priory was, of course, the principal arena of Dominican life, and it was there that the fountain of knowledge took its rise. The constitutions of 1228 to 1236—dating in reality back to the time of St. Dominic—declared that, without both a prior and a doctor, there could be no priory—‘*Conventus . . . sine priore et doctore non mittatur.*’² This doctor was practically a professor of theology, and his theological classes were open to the laity as well as to all the clergy and ‘religious’ in the neighbourhood. Hence, he was also described as a *publicus doctor*. Every friar, including the prior, was compelled, when not engaged in other special work, to attend the doctor’s classes, and in this way there was no room left for idleness within the *septa* of a priory. In the encyclic of John of Strasbourg of 1249, he orders his friars to ‘study without cessation . . . love your cell; it is the road to

¹ *Analecta Ord. Praed.* 1896, p. 646 n.

² *Analecta*, 1896, p. 642.

Heaven, do not leave it unnecessarily';¹ and, as years rolled on, the demand for study grew more insistent and imperious in all the Chapters, both General and Provincial. Latterly, the education and training of their preachers became the most important function of the Order. As a safeguard to doctrine, the doctor, prior to appointment, must have 'heard' theology for a period of not less than four years,² and, if a master of theology, he was given precedence³ over his prior in the event of the latter not having attained to academic rank. Friar William Cumyn, Doctor and Reader of Theology in the Priory of Perth, was unanimously chosen by the members of the Chapter of the See of Argyll to the bishopric. Their selection was confirmed by Gregory X., and the Bishops of St. Andrews and Dunkeld were directed to proceed with his consecration, provided that the Order consented to his elevation.⁴ In addition to these public classes of theology, others for the instruction of the novices and young friars were to be found in every convent. They were under the management of the master of the novices, the lector, and the lector *principalis*, and were not open to the general public. The novices entered at the age of fifteen, and served a novitiate, in the early Dominican days, of six months; but this period was afterwards extended to twelve months,⁵ and even, in some cases, until the novice had attained the age of eighteen. There was no compulsion on the novice on entry, although, on the other hand, only the apt student was retained.⁶ There existed in these days no false sentiment against the use of punishment, and the master of the students was given full power of correction.⁷ The lecturers conducted the arts classes, including grammar, rhetoric, and logic, and in some of the priories, moral philosophy. Young friars, however, were not permitted to attend the

¹ *Litterae Encyclicae Magist. Gen.* p. 9, ed. Reichert. At least one-third of the *Acta* of the General Chapter is devoted to the question of study.

² *Analecta*, 1896, p. 643. *Nullus fiat publicus doctor, nisi ad minus theologiam per quatuor annos audierit. Acta Cap. Gen.* i. 35.

³ *Chap. Gen.* of 1542; *Acta Cap. Gen.* iv. 296.

⁴ 24th May, 1275, *Theiner*, No. 262. It was the custom, at this date, for friars, even when raised to the episcopate, to continue to wear the dress of their Order. There were in all seven Scottish Black Friars who were promoted to the episcopal bench.

⁵ At first most of the novices were already masters or bachelors of arts, and, therefore, learned men.

⁶ The poor student to be replaced by a better. *Analecta*, 1896, p. 643.

⁷ *Item, utrum magister studencium possit corrigere et punire—Respondemus quod sit.* Douais, *Acta Cap. Provincialum, Prov. of Provence*, 16.

arts classes until they had completed a thorough course of training in singing and in the divine offices, and, in any case, not sooner than two years from date of admission.¹ The lectors were provided during office with a special *camera* or chamber,² and were freed from many of the ordinary duties such as the hearing of confession,³ taking charge of the infirmary,⁴ etc. In the event of there being other suitable friars in the province, the lectorship could only be held for a period of five years.⁵ The students were freed from many of the 'offices' or other duties which interfered with their studies; and they were also allowed to read, write, pray, sleep, and watch in their cells.⁶ Even the prior, the controlling head of the schools, required to be an efficient preacher in Latin as well as in the vernacular. The Chapter General of 1518 declared that he must be able to speak grammatically and without false Latinity—*absque falsa Latinitate, et bene intelligere grammaticam*—and be sufficiently versed in *moralibus divine Scripture* to preach the word of God in his own convent.⁷ The *Magister Studentium* had the right to denounce in the priory chapter any remissness on the part of his prior, and even to appeal, if necessary, to the provincial chapter.⁸

The second rung in the Dominican educational ladder was the establishment in every province and vicariate of one or more Secondary Colleges, to which the more advanced of the friar students were regularly sent. These Provincial Schools were under the direct supervision of the Provincial Master. For many years Scotland was only a vicariate of the Province of England, and the appointment of the vicar required confirmation by the English Provincial. Although, therefore, the Scottish Provincial School was under the immediate control of the Provincial Vicar, it was the duty of the English Provincial to send his Visitors⁹ to report to him on the condition of all the schools, provincial and conventual, in this country. In the same way, the Chapter General sent Visitors¹⁰ to far distant countries; and in 1261 a representative appeared in the person of Friar Stephen de Salanhac, Prior of Toulouse, deputed 'to visit Scotland, and to transact the other affairs in England which the Master of the Order may

¹ *Acta Cap. Gen.* i. 285. To promote the study of grammar and music, the Provincials were instructed to provide the necessary accommodation at the expense of the respective convents; *Ibid.* ii. 323.

² *Ibid.* i. 37.

³ *Ibid.* i. 11.

⁴ *Ibid.* i. 16.

⁵ *Ibid.* ii. 246.

⁶ *Analecta*, 1896, p. 643.

⁷ *Acta Cap. Gen.* ii. 380; iii. 103, 412; iv. 163.

⁸ *Ibid.* i. 65.

⁹ *Ibid.* i. 99.

¹⁰ *Ibid.* ii. 91.

put upon him.’¹ Unfortunately, his report on the Scottish Dominican Schools has not been preserved; but the ‘other affairs’ referred to the punishment awarded by the Master General to Friar Simon, the English Provincial, for disobedience—an incident to which further reference will be made. At the Chapter General at London of 1335, it was ordained that in each province there should be not less than two schools of theology, two of natural philosophy, and two schools of arts;² while in 1347 provincials were ordered to provide *studia particularia* of theology, natural sciences and logic. The lectors or professors were selected by the provincial, and each of the students received a contribution for his support from his own priory. Of the many records relating to the Scottish Provincial and Conventual Schools not a vestige now remains, but it may be assumed that, until the fifteenth century, the Provincial Schools were held in the Edinburgh Priory.³

From the commencement of the Dominican movement, it had been the practice to send friar students from all the different provinces to the *Studium Generale* at Paris; but at the Chapter General of 1246, the number from each province was restricted to three.⁴ At the same time, four provinces, including that of England, were each ordered to erect a ‘*generale studium et sollempne*’ in one of the larger convents, to which two friars could be sent. The English friars—more insular than their neighbours across the border—refused to receive their foreign brethren; and the Master General, at the Chapter of 1261, fixed peremptorily upon Oxford as the *Studium Generale* for the English Province. For his contumacy, Friar Simon was relieved of his office as Provincial, and sent in exile to be lector in the Priory at Cologne.⁵ Some of the Scottish friars are alleged to have attended this *Studium*, but the tendency in this country was, from the first, to favour that at Paris. Among the Denmyln MSS.⁶ is a letter, dated 29th September, 1349, by Jean des Moulins, the twentieth Master General, to the Scottish ‘Vicar General.’ In it the Master grants,

¹ *Acta Cap. Gen.* i. 112.

² *Ibid.* ii. 229.

³ The *Acta Capitulum Provincialium*, by C. Douais, of the Provincial Chapters of the Provinces of Provence, Rome, and Spain, 1239 to 1302, furnishes the best account of the vigorous management, even at this early date, by the friars of their Provincial Schools.

⁴ *Acta Cap. Gen.* i. 34.

⁵ *Ibid.* i. 110, 111. In view of his submission, he was permitted in the following year to return to his native country.

⁶ No. 77, Adv. Lib.

‘as a mark of our esteem, this privilege—that your Vicar who shall be for the time may assign to some *Studium Generale* of our Order a friar as a student, and recall him at his good pleasure.’¹ It is possible to assume that the friars had at last thrown off the yoke of the English Provincial, although the vicariate continued without representation in the Chapter General until the 10th June, 1481, when it was, at the request of King James III., erected into a province ‘separate and distinct from that of England.’² By the Chapter General of 1410 and subsequent Chapters, the study and practice of both medicine and surgery³ were forbidden as unnecessary qualifications for a friar preacher; while, for the study of alchemy, the severest punishments—excommunication and imprisonment—were meted out to offending friars.⁴

Owing to their steadfast pursuit of learning, the Black Friars as a body attained to a position of great eminence in the scholastic world, and there sprang from among their ranks many of the most celebrated scholars in Europe. Naturally, it brought them into close relationship with the various universities; and, amid the strife that arose in the University of Paris, two of the friars were raised to professorial rank in 1229–30⁵—a practice that was followed, with the advance of time, in other *studia generalia*. By the beginning of the fifteenth century the ground had been prepared for the establishment of universities in Scotland.

It is at this point that the loss of our native Dominican records becomes strongly felt; but assistance, to a certain extent, is to be found in the *Munimenta* of the University of Glasgow.⁶ For many years after its foundation, the Black Friars of Glasgow lent their arts class-room, their chapter house, and even their church for the purposes of this poorly endowed university. The arts class-room was repaired and utilized for the professorial arts classes; while the professors of canon and civil law made their prelections in the chapter house. It was there, also, that the ceremony of incorporating with the University the *élite* of the

¹ ‘Friar Alexander of Scotland’ is mentioned as having been assigned in 1525 to the *Studium Generale* at Paris. *Acta Cap. Gen.* iv. 206.

² *Ibid.* iii. 368, 10th June, 1481. ³ *Ibid.* iii. 139; iv. 65 and 350.

⁴ *Ibid.* i. 170, 238, 252; ii. 65, 72, 147.

⁵ The question of the Mendicant Friars and the Universities is beyond the scope of our inquiry. See *Illustrations of Mediaeval Thought*, by Dr. Reginald L. Poole; *Universities of Europe*, by Dr. Rashdall; *The Mediaeval Mind*, by H. B. Taylor, and numerous works by foreign writers.

⁶ *Munimenta Alme Univ. Glasguen.* ii.

clergy in the neighbourhood—a practice which also prevailed at the Universities of Oxford and Cambridge—was held. Among the *incorporati* were Friar John Mure, the first provincial appointed under the Act of 1481; the successive priors of the local convent, all of whom were professors or bachelors of sacred theology; and many of the friars.¹ The name of Friar Robert Lile, one of the priors, also appears as having, on 24th March, 1521-2, commenced in the priory, in the presence of the Rector, the Dean of the Faculty and other Masters of the College, the statutory lectures on the Four Books of the Sentences. Friar John Adamson, Professor of Sacred Theology and Provincial of the Order, presided over the meeting, and we may conclude that the public classes of theology devised by St. Dominic had, by this time, received the *imprimatur* of this university. Friar Lile was a distinguished *alumnus* of the University of Aberdeen, and all contemporary writers unite in commending the great scholarship and piety of the Provincial, Friar Adamson. It was to his care in the priory at Aberdeen that the Abbot of Kinloss committed his young friars to be instructed in theology.² In 1518 the Chapter General recorded its approval of the agreement entered into between the Dean of Dunkeld and the Reverend the Provincial of the Province of Scotland relative to the foundation for five or six students in the Convent of the University of St. Andrews.³ This, strange to say, is the only reference to a Scottish university to be found in the *Acta*; but from it, and from what has been already said, it is fair to assume that the priories at Glasgow and St. Andrews had both been erected into Dominican *studia generalia*, and, therefore, become incorporated, in imitation of the priories at Paris, Oxford, etc., into their respective universities. From the Lord Treasurer's accounts we also learn that, during the reign of James IV., there were among the 'studentis of Sanctandrois' several Irish friars, who no doubt preferred the Scottish studium to that of either Oxford or Cambridge. Although all university degrees required

¹ *Munimenta*, pp. 66, 67, 78, 100, 136, 156, 157, 182, 206, 208.

² See the remarks of the late Dr. Joseph Robertson in his learned preface to the *Liber Collegii*. Friar John Spens was another of the Glasgow priors who attained to great distinction. He was translated in 1519 to the Priory at Elgin, which, from the want of funds, had fallen into decay. *MS. Chartulary of Elgin*, Adv. Lib.

³ 'Approbamus pactum initum inter dominum decanum Dunclidensem et reverendum provincialem provincie Scocie super fundationem quinque vel sex studentium in conventu universitatis sancti Andree.' *Acta Cap. Gen.* iv. 173.

confirmation by the Chapter General, very few names of either Scottish or English friars are recorded in the *Acta* as having attained to academic rank. The only notice of the friar Scot is to be found in the *Acta* of the Chapter General of 1525, which approved of Friar James Crichton in the Mastership, and licensed as Bachelors Friars Alexander Campbell, Alexander Barclay, Alexander Lawson, James Chevot, Francis Carpenter, John Makcap, John Makdorod (Macdonald?), and James Pryson.¹ Although Cardinal Betoun appointed an Edinburgh Black Friar to act as his penitentiary south of the Forth,² he seems, to judge by his charities as noted in his Granitar and Chamberlain's accounts, to have favoured the Observantine Grey Friars rather than the Dominicans. The Grey Friars may not, at least in this country, have adopted the systematized educational itinerary of the Black Friars; but their scholars were the rivals of the latter in learning, and maintained an equally close connection with the Universities of Paris, Oxford, and other well-known *studia generalia*. Their school for novices was at St. Andrews, and the friars had some relationship with the College of St. Salvator. The Cardinal paid annually the sum of 2 1s. 4d. to the '*Collegio Sancti Salvatoris et fratribus Minoribus de Observantia Civitatis Sanctiandree pro eorum firma burgali.*' On the day of his murder, in 1546, this College, as well as both the Black and Grey Friaries, was committed to the flames. This incident, unnoticed hitherto by our historians, appears in the prosaic pages of the Register of the Privy Seal, in which the heritable property of Norman Leslie and his associates are recorded as having been escheated and gifted to certain followers of the Governor, the Earl of Arran.³

In this country the difficulties in tracing the genesis of our university system are great, and the above sketch, taken mainly from Dominican sources, is offered as a possible step in the inquiry. A close connection certainly did exist between the Black Friars and our Scottish universities.

W. MOIR BRYCE.

¹ *Approbamus magisterium fr. Jacobi Criton, provincie Scotie, licentiamque ad bacchalarium fr. Alexandrum Camvel, fr. Alexandrum Barclai, fr. Alexandrum Lanson, fr. Jacobum Chevot, fr. Franciscum Carpitarii, fr. Joannis Makcap, fr. Joannis Macdorod, fr. Jacobi Pryson, dictae provincie Scotie.* *Acta Cap. Gen.* iv. 206.

² MS. vol. in Adv. Lib. known as the *Rental Book of the Archbishopric of St. Andrews*. It contains only the accounts of the Granitar and Chamberlain of that See between the years 1538 and 1545.

³ *Reg. of Privy Seal*, xxi. ff. 29, 30, 32, 50.

The Reformers and Divorce

A Study on Consistorial Jurisdiction

THE struggle for consistorial jurisdiction was not a consequence of the religious reformation of the sixteenth century. The warring interests, civil and ecclesiastical, which lay behind the religious upheaval, gave momentum and sanction to the claims of the Reformers. But had the struggle been exclusively religious, the course of the Reformed Church would have been clearer, and political and constitutional cross-currents would not have so effectually confused the issues of the critical years. The Reformed Church did not in or about 1560 step into the shoes of the Church of Rome. The civil power had already asserted itself, and right through the period of the Reformation there were three contending forces—the Church of Rome, the Reformed Church and the Civil Power. The first and the last were old opponents, and had they been permitted to continue their struggle undisturbed the conflict would have been prolonged, but it would have been more logical and the subsequent history of Scotland would have been more akin to that of England or France or Spain than has been the case.

But the Reformers stepped into the arena, doctrinaire, cosmopolitan and *deracinés*, and the struggle became a triangular one. The Reformers drew their strength from the two other combatants; their weakness they brought with them from Geneva. From the Roman Church they drew the religious enthusiasm and reforming fervour which had manifested themselves in the belated reforming legislation of the Church Councils of 1543-9 and 1559. They reaped the harvest of the Indian summer of the Church of Rome which faded before the strong chill blasts from Trent. From the Civil Power they filched the bloom of its tardy youth. When under the influence of the awakening to political ideals which formed one of the developments of the Renaissance the central executive in Scotland began to be conscious of its rights and duties, the Reformers brought back with them from the

Continent the elaborately articulated and fascinating theocratic political philosophy of Geneva, and the weak and youthful aspirations of the civil spirit in Scotland appeared for a time to yield to the hardy growth which flourished on the northern soil. They appeared to yield, and for a time the Civil Power had to dress itself up in Episcopal robes to confront the Geneva gown of the Reformers, but ultimately the Cromwellian despotism beat both to the ground, and when Presbyterianism was finally established at the Revolution settlement it was a chastened figure that bore the Keys of Heaven on the steps of the Hanoverian throne.

The question of consistorial jurisdiction was only a subordinate one, but the solution of it involved the consideration of some of the ultimate grounds of political philosophy. Its beginnings can be traced back to the earlier years of the fifteenth century when the only parties involved were the laity and the Roman clergy. In its earlier stages the question in dispute was not one of jurisdiction. There was no attempt to withdraw consistorial cases from the cognisance of the spiritual courts, but there can be traced in the legislation of the period an effort to define and limit the law which was to be applied by the clerical tribunals to the cases which came before them. Thus at the Provincial Synod held at Perth in 1420 the clergy stated their claims to consistorial jurisdiction as regards the confirmation of testaments with precision and at length,¹ and five years later we find the estates enacting that 'all and sundrie the Kinge's Leiges of the Realme live and be governed under the Kings lawes and statutes of the Realme aleanarlie: and under na particular Lawes nor special Priviledge, nor be na Lawes of uther Countries nor Realmes.'² The same Parliament made an ineffectual attempt to codify the law. The Great Schism had ended in 1416, and the confusion which it had created had added strength to the civil encroachments which marked the reign of James I. During the reign of Robert III., in 1401, the Estates had regulated appeals in the spiritual courts from the Ordinary to the Conservator, and from the Conservator to the Provincial Council '*Cui ordinationi censuit clerus durante schismate, sicut caeteri regis legii.*'³ It will be observed from the last clause of this statute that the consent of the Provincial Council is expressed. This attempt to

¹ Patrick, p. 80.

² 1425, cap. 48; cf. 1503, cap. 79. On the other hand, the authority of the Canon Law is recognised in 1493, cap. 51; 1540, cap. 80; 1551, cap. 22.

³ 1401, cap. 6; cf. James II. 6, cap. 12.

carry the Church along with it marked what might be described as the intrusive civil legislation of the fifteenth century. Thus in 1426 the Estates 'ad parcendum expensis et vexationibus pauperum in cauria spirituale litigantium' laid down regulations regarding processes in which the pursuer was a layman and the defender a cleric, and the act concludes: 'Et quod istud statuatur de presente autoritate Concilii Provincialis.'¹ But as time passed, this semblance of co-operation was dropped, and by the beginning of the sixteenth century the state had begun to legislate on matters which the canonists claimed for the ecclesiastical *forum*.² It will be observed that all the legislation to which reference has been made was confined to the content of the law, and that the consistorial jurisdiction was left undisturbed. But there was grave discontent among the laity with the ecclesiastical courts, and in the synodal constitutions of Archbishop Forman (d. 1522) the attempts of 'lords temporal and other secular persons' to prohibit their dependents from having recourse to spiritual courts are denounced, and the guilty persons are threatened with excommunication.³

In 1532 the foundation of the College of Justice on the model of the Parliament of Paris marked a steady advance in the development and consolidation of the centralised secular forces within the Kingdom. It took the place of the old Session and substituted a permanent and professional tribunal for the sporadic and fitful activities of an amorphous body whose decisions were guided by extraneous and generally political considerations. Its foundation was an act of the Royal prerogative and only received legislative sanction in 1540,⁴ though its early Acts of Sederunt are commonly treated as Acts of Parliament. But to effect his purpose the King had to evoke Papal co-operation, and the new College of Justice was maintained on ecclesiastical revenues. While this material consideration was no doubt predominant, the Papal sanction was of importance as giving the new Court a prestige which it would have found it hard to acquire had it been launched by the Civil Power alone and left to compete on unequal terms with the full-fledged spiritual courts of the country and the local feudal jurisdictions. The Bulls of Clement VII. and Paul III., which were dated respectively September, 1531,

¹ James I. 6, cap. 87.

² James IV. 6, cap. 77, 'Anent the exceptions proponed anent Widowes, in hindring of them of their teirces.'

³ Patrick, 270.

⁴ Cap. 93.

and March, 1534, conferred wide powers and immunities on the new foundation, but the Popes attempted to maintain their hold on its activities by stipulating that of the senators 'media pars in dignitate ecclesiastica constituta omnino esse debeat.' The second bull added the additional proviso 'pro uno Presidente semper prelato ecclesiastico,' and the first President was the Abbot of Cambuskenneth. The Crown was conscious of the uncertain line of development of such a mixed tribunal, and the ordinances and statutes which the Lord Chancellor produced on 21st February, 1534, expressly reserved, e.g. the Treasurer's right to payment of the usual fines on the issue of letters of legitimation *per rescriptum principis*. But the lay element seems to have predominated from the beginning, and we find the Clerk Register formally protesting in the King's name against the use of inhibitions by spiritual judges to the hindrance of Royal justice and the protest entered as an Act of Sederunt of the Court on 14th February, 1538.

As the fateful year of 1560 approached and the two parties in the state began to draw apart and define themselves, the clerical members of the Court displayed an inclination to absent themselves from its sittings, and on the 27th of March, 1546, it was found necessary to pass an Act of Sederunt providing with the approval of Cardinal Beaton that the spiritual lords should remain in their places for the administration of justice. The court vindicated its independence of the Church in the case of Friar Archibald Arnot, in December, 1546, holding itself a competent tribunal in this case, which was in fact an ecclesiastical one. Yet its clerical members were drawn from fields of activity which would naturally give a strong ecclesiastical bias. On 17th February, 1547, e.g. Abraham Crichton, Official of Lothian, was admitted a senator.¹ It may be noted that the absorption of the leading ecclesiastics in civil administration gradually secularised them and gave them national sympathies. They were influenced by the gradual awakening of the country to the reality of a national civil life. They came to look for their future to the expanding civil organisation of the country, and when the time came did not find it difficult to turn their backs on the Church of Rome, which could only offer them the doubtful prospect of a purely ecclesiastical career in the midst of a hostile population. The clerical element remained in the Court of Session after the Reformation, and it was only in the year 1579 that the Estates

¹ It may be noted that by the Act, 1567, cap. 50, it was provided that commissaries should not be Lords of Session or advocates and have any other office.

dispensed with the stipulation of the original foundation that the President should be an ecclesiastic.¹

A further step in this direction is marked by the Act of the year 1584 which expressly excluded clerics from judicial office in the Court of Session.² The aim of the early Reformers to leaven the civil organisation of the country with the spirit of the true Evangel found expression in a resolution of the General Assembly of December, 1560, to the effect that all judicial officers, including Lords of Session, should be chosen from the professors of the true word of God.³ It was not, however, in accordance with their political theory that the clerical element should remain in the Court, and in March, 1572, the General Assembly decided that it was not expedient that ministers should be appointed Senators of the College of Justice, an exception being made in favour of Robert Pont, who already occupied that office.⁴ The Act of 1584 was passed to meet the claims of the restored Episcopate to the jurisdiction of the Pre-Reformation prelates and was not directed against the Presbyterian party. Any claim to participate in the administration of civil justice came from the Bishops.⁵ Thus in January, 1609, in the Memorials sent by the Bishops to King James, it was stated, 'And since our greatest hindrance is found to be in the Session, of whom the most part are even in heart opposite unto us, and forbear not to kyth it when they have occasion, you will humbly entreat His Majesty to remember our suit for the Kirkman's place according to the first institution, and that it may take at this time some beginning, since the place vacant was even from the beginning in the hands of the spiritual side, with some one Kirkman or other till now.'⁶

It cannot be too often insisted upon that the early Reformers and their Presbyterian successors kept before them with remarkable consistency two successive conceptions of the relations between the civil and spiritual elements in the state, which made it unnecessary in their view that the representatives of the latter element should intervene in the civil administration of the state. The original political theory of the reformers involved no separation of

¹ 6 James VI., cap. 93.

² 8 James VI., cap. 133.

³ *Book of the Universal Kirk*.

⁴ Calderwood, iii. 277; *Book of the Universal Kirk*, i. 264.

⁵ The claim made in 1585 on behalf of the Presbyterian party was the work of Robert Pont, and was not approved by the leaders of the party. Cf. Calderwood, iv. 454.

⁶ *Book of the Universal Kirk*, 1069; cf. 1112.

powers; there was such a subtle interfusion of the secular and sacred functions of the magistrates that, to the enthusiastic minds which directed the new movement, there did not appear any possibility of a failure on the part of the civil forces to be directed and controlled in accordance with the ideal which the Church would hold before them. The power of the Evangel seemed so overwhelming that a godly laity under its influence could be counted upon to use the power which they had seized in accordance with its teaching. The direct intervention in the administration of affairs on the part of the Church seemed neither politic nor necessary. The later political theory of the Reformers was distinctively Presbyterian, and was largely the creation of Andrew Melville. It insisted on the complete separation of powers, on the existence of two kingdoms in Scotland, and from an attitude of solicitous and paternal supervision and admonishment, the Church passed to one of opposition and imperious isolation. During this phase there was no inclination on the part of the Church to mix in matters of civil administration. The leaders of the Church party regarded the Civil Power as purely secular, and deprived it of the mysterious sanctions with which the Lutheran influences of the earlier stage of the Reformation movement had invested it.

Having thus indicated the centralising and civil forces which had been at work for some time, and indicated the line of development of the Court of Session, the most adequate embodiment of these forces, we must now turn to the eventful years which followed the casting off of Papal jurisdiction in 1560. From the point of view of this article, the most interesting feature of this great change was the resumption of jurisdiction by the Crown, based on a view of the secular origin of ecclesiastical jurisdictions. In 1560 we find the Crown, through the Privy Council and Court of Session, acting on the theory that it is the source of all jurisdictions, and, after some hesitation, dismissing the claim of the early Reformed City units to step into the shoes of the Church of Rome.¹ Just as the nobles who had seized the Church lands were determined to retain them, and the Reformed Ministry had to rest satisfied with a moderate sustenance, so the central power was determined to retain the jurisdiction which had fallen to it from the nerveless hand of the Church of Rome. The Reformed Ministry found itself confined to the exercise of ecclesiastical discipline. The civil origin of the jurisdiction of the Roman prelates was accepted by Calvin,² and it will be found that the Scottish

¹ Balfour's *Practicks* (ed. 1754), 269 and 659. ² *Institutes*, iv. cap. 11, sec. 10.

Reformers were true to their spiritual father in admitting the claims of the Civil Power. The civil origin of the consistorial jurisdiction, and the fitness of the resumption thereof by the Civil Power, are expressed in many of the symbolical documents of the period.¹ This view generally maintained its position in Scotland through all the confusion which marked the latter half of the sixteenth century,² and when the consistorial jurisdiction was conferred upon the Bishops in 1609, it came to them from the Crown, and their decisions remained subject to the appellate jurisdiction of the Court of Session.³ As has been indicated, the policy of the Reformers in regard to civil administration was one of permeation rather than absorption, of direction rather than of execution. Denying, as they did, the claims of Rome, they could not consistently treat jurisdiction on consistorial questions as within the scope of the Church, and, accepting the claim of the Crown, did not desire to intervene directly in a civil matter.

We must now turn to the different spheres in which the theory of the resumption of consistorial jurisdiction by the Crown was made effective.

(1) *The Court of Session.* The Consistorial Courts of the Roman Church dealt with cases up to August, 1560, when the authority on which they acted was repudiated. While their regular activity ceased at that date, the old hierarchy dealt with a few cases during the interregnum which preceded the foundation of the Royal Commissariots, and even after that date, a special tribunal being erected for the trial of each case.⁴ In the absence of tribunals, the Court of Session acted as a court of first instance in consistorial cases until the establishment of the Commissariot of Edinburgh in February, 1564.⁵ Thus, on 19th December, 1560, it dealt with the case *Chalmers v. Lumsden*, an action of adherence, in which the defender was assolizied on the ground of the pursuer's adultery.⁶ Similar cases were dealt with in the two following years, but in March, 1564, the Court remitted a case to the newly erected Commissary Court. While thus ceasing to act as a court

¹ *Confessio Augustiniana* (1531), art. vii.; *Confessio Helvetica* (1536), art. xxvii.; *Confessio Saxonica* (1551), art. xviii. and xxiii. But cf. *C. Helvetica* (1566), art. xxix.; *Reformatio legum*, etc.; *De officio et jurisdictione omnium judicum*.

² For denial of this view cf. Calderwood, iv. 283, 453.

³ 1609, cap. 8; Stewart's *Dirleton*, 81. ⁴ Robertson's *Statuta*, clxxiv. n.

⁵ Cf. 7 James VI. cap. 115, with reference to appeals to Rome. This Act confirmed an Act of July, 1560.

⁶ Balfour's *Practicks* (ed. 1754), p. 655.

of first instance, the Court of Session retained its appellate jurisdiction, and reduced in several cases decrees of divorce granted in the Commissary Court.¹ The Court of Session was, in fact, 'the King's great consistory,'² but, unfortunately, the central power did not maintain the rights of this Court during the interregnum which subsisted between 1560 and 1564. Had the Government looked only to the Court of Session during that period, much confusion would have been avoided, and there would have been no middle course between the claims of the Civil Power and the Roman claim formulated by the Council of Trent in November, 1563.³ But, unfortunately, the Government appears to have passed through a period of hesitation, during which the activities of the local Reformed units received undue recognition, and the powers of the Court of Session were frequently ignored.

(2) The Privy Council was largely responsible for this state of matters. This body was largely resorted to in the period of uncertainty which preceded the creation of the Commissary Courts, but, instead of directing petitioners to the Civil Court, it referred them on several occasions to the small reformed communities. Thus on 22nd December, 1560, a husband who petitioned the Privy Council to obtain a divorce on the ground of his wife's adultery had his case remitted to the Kirk Session of St. Andrews, and in a similar manner in June, 1562, the Privy Council remitted to the Kirk Session of Glasgow, which failing to that of Edinburgh, the trial of an action of divorce at the instance of the Countess of Eglinton. It is to be noted with reference to the latter case that the Countess had obtained a divorce from a Court constituted by the Archbishop of St. Andrews a month before her petition to the Privy Council.⁴ She made assurance doubly sure by taking advantage of the facilities offered by the two religions. The favour which the central executive showed to the local organisations of the Reformers caused nothing but confusion, and is difficult to explain except on the ground that to the men of the day matrimonial questions were so intimately associated with the Church that they were at first inclined to accept the theory that the Reformed Church had stepped into the shoes of the Church of Rome. This temporary hesitation was atoned for by the foundation of the Commissary Courts, which set the final seal on the theory of the civil origin of consistorial jurisdiction. After March, 1564, the Privy Council only intervened in

¹ *Ibid.* 659. Riddell, 426.

² Cf. 1609, cap. 6.

³ Session 24, cap. 20.

⁴ Robertson's *Statuta*, clxiv. n.

matrimonial cases when a question of beneficial interest was involved, e.g. in regulating the aliment to be paid during divorce proceedings.¹ But it heard appeals against the disciplinary regulations of the Kirk Sessions and the General Assembly with reference in particular to the remarriage of adulterers. Reference may be made to the cases of Carmichael of Gallowflat on 30th October, 1576,² and Balwaird of Enterkin in April, 1579.

(3) The Commissary Court was erected by an Act of the Privy Council of 28th December, 1563.³ This erection seems to have been a temporary expedient and did not receive legislative sanction until 5th June, 1592.⁴ The old local commissary courts apparently continued to exercise their functions to a limited extent, 'but subject to new regulations corresponding to the change which had taken place in the religion and ecclesiastical polity of the Kingdom.'⁵ An appeal lay from these local courts to the Commissary Court at Edinburgh and thence to the Court of Session.⁶ It is to be noted that the Commissary Court of 1563 was to a large extent the creature of the Court of Session, which was appealed to when as the years passed there seemed room for improvement in its methods. Thus in 1566⁷ a commission was granted to the Court of Session to appoint and superintend the Commissioners, and on 29th July, 1569, in response to a complaint by the General Assembly, the Regent undertook to consult the Lords of Session as to the appointment of commissaries throughout the country.⁸ Again on 1st June, 1575, the Privy Council, with reference to the abuses which had crept into the administration of the Commissaries, summoned them all to Edinburgh to give an account of their stewardship.⁹ This characteristic of the Commissary Court as being the creature of the Royal prerogative was indicated in one of the steps taken by Queen Mary in connection with her projected divorce from Bothwell. On 30th July, 1569, Lord Boyd appeared before the Privy Council at Perth as procurator for the Queen, and pursued a mandate for pursuing an action of divorce in her name against Bothwell, and asked for an order on the Commissaries of Edinburgh to deal with the case.¹⁰ Again on 12th January, 1580-1,

¹ *Register of Privy Council*, iii. 34, 108, 402, 598. ² *Ibid.* ii. 560, iii. 224.

³ *Ibid.* vol. i. 252.

⁴ 1592, cap. 64; 1606, cap. 38.

⁵ Fergusson's *Consistorial Law*, pp. 95, 102-3.

⁶ Cf. Balfour's *Practicks* (ed. 1754), pp. 655 *et seq.*, 673, 676.

⁷ Cf. 1581, cap. 56.

⁸ *Register of the Privy Council*, ii. 7.

⁹ *Ibid.* 455.

¹⁰ *Ibid.* 8.

the Provost, Bailies, Council and Community of St. Andrews and the Commissary thereof and his clerk complained to the Privy Council regarding the proposed dismemberment of the Commissaryship of St. Andrews at the instance of the Lords of Session. The Privy Council remitted the question to some of their number along with some of the Session, who determined that the Session had acted within its powers, but deferred the particular case for Royal consideration.¹ The early records of the Commissary Court are not now available, but their decisions would appear to have been based on the old canon law, subject to such modifications as it had undergone at the hands of the Court of Session and as the result of the Reformed legislation.² It is worthy of note that the Commissary Court generally declined to recognise the validity of divorces granted by the small Reformed units.³ One of the most significant features of this court was the activity of the Procurator-Fiscal. This official 'in the acknowledged capacity of *censor castigatoreque morum* ' pursued divorces before the commissaries independently of the parties involved, and e.g. in the case of *Stevenson v. Pollock*, in the year 1565, is found setting aside before the commissaries with the concurrence of the innocent spouse a pretended marriage between a divorced adulterer and his paramour.⁴ In December, 1598, in the case of *Whytlaw v. Ker* the Procurator of the Church intervened in proceedings before the Commissary Court to enforce the view that marriages of adulterers were unlawful, and in 1601 the Church appeared before the same court in the form of the Presbytery of Ayr as procurator for the Church.⁵ We observe in this curious activity of a Governmental functionary evidence of the disciplinary and criminal view which even the civil power took of sexual offences, and of the 'cumulative assistance' by the civil power to which reference will subsequently be made.⁶

(4) The activity of the civil power in the field of consistorial law was further manifested in the exercise of what may be described as the Royal dispensing power. The Crown, ignoring the

¹ *Ibid.* iii. 342.

² Cf. 1567, cap. 8 and 31; 1581, cap. 99; 1592, cap. 116; 1609, cap. 6; cf. Riddell, 450.

³ Cf. *Hamilton v. Sempil* (1568), *Maxwelle v. Hamilton* (1564), etc., but cf. Riddell, 392.

⁴ Riddell's *Peerage and Consistorial Law*, 1002-5; cf. case of *Ogilvie v. Chisholm*, *ibid.* 461.

⁵ Riddell, 396 *et seq.* ⁶ Fergusson's *Consistorial Reports* (1817), p. 363 *et seq.*

existence of the special tribunals which it had created, and the civil legislation which had been promulgated on matters which had been formerly treated as being within the spiritual field, took upon itself to dispense in individual cases with the law. Thus on 29th July, 1592, the King passed a remission and dispensation in favour of one Robert Duguid, who had married again during the lifetime of his former wife, who had divorced him for adultery. The same claim on the part of the Crown manifested itself in the creation of special tribunals for the consideration of particular cases. The leading instance of this is, of course, the restoration of consistorial jurisdiction to the Archbishop of St. Andrews for the purposes of Bothwell's divorce.

This activity on the part of the civil power coincided with an even greater activity on the part of the Reformers. Before the public recognition of the fact of the Reformation in August, 1560, the Reformers were in full activity maintaining an *imperium in imperio* and seeking a premature recognition of their claims at the hands of an indifferent and passively hostile country, half conscious of the disruptive force which the new movement contained. Faced by the increasing activity of the civil power on the one hand and by the spasmodic struggles of the Roman Church on the other, tardily conscious of the inevitable failure which awaited it, the Reformers had a difficult course to steer. It is perhaps unfair to criticise their methods: they were suited to a small unobtrusive religious organisation and failed owing to that theocratic wave which swept the indigenous growth from its roots and to the fact that through its own force the new movement began to represent an ideal of national organisation. Had their original *cadre* not crumbled under these expansive forces, the Reformed units would probably have flourished for a time as isolated and purely local organisations and then died a natural death.

The early history of Presbyterianism in England seems to indicate the normal line of its development when its theocratic pretensions did not find a favourable soil (cf. 'The Presbyterian Movement in the Reign of Queen Elizabeth, as illustrated by the Minute Book of the Didham Classis, 1582-1589'¹). The interesting documents printed in this volume give the reader a vivid picture of the activities of Presbyterian divines deprived of lay support and yet carrying on an isolated struggle to justify the faith that was in them. The following entries might be paralleled from many a Scots Kirk Session Register :

¹ *Camden Society*, iii. series, vol. 8 (1905).

3rd December, 1582. Mr. Stocton moved whether fornication make affinity; not thought convenient to be decided.

4th February, 1582-3. Another question was propounded by Mr. Dowe whether a man divorced from his first wief justly and marrying a second should retain the second as his wief; to be determined the next meetinge.

4th March, 1582-3. It was concluded that the Worde of God alloweth that a man justlie divorced from his first wief might mary a second, so his proceedinge to the second mariage be orderly and in the lorde.

1st July, 1584. Tuchinge mariage of cosins children (moved by Mr. Negus) it was determynd to be lawfule, and the conveniency of it to be waighed by circumstances of the place and people there wher such questions shall come in use (36).

The new movement first showed itself in the smaller centres of organised life. In a letter to Mrs. Anna Lock of 2nd September, 1559, Knox wrote that there were organised Reformed communities in Edinburgh, St. Andrews, Dundee, Perth, Brechin, Montrose, Stirling and Ayr.¹ In the form of these small isolated units the forces of the Reformation first showed themselves in Scotland. The General Assembly did not begin to exercise its functions until December, 1560, and Presbyteries date only from the Glasgow Assembly of April, 1581. These small city units were independent of the great territorial magnates, and when once a common interest was discovered, readily associated themselves with the smaller landed gentry, thus producing a force which soon controlled the national destinies. They were well organised and only accountable to the central power when once the old hierarchy had vanished. The declaratory, propaganda and polemical work of the Reformation was done by the Lords of the Congregation and the General Assembly, but the most effective and permanent work was done in these small city units. The leaders of the Reformed party were conscious of this, and the Parliament of 1563 expressly ratified the privileges of the boroughs. This ratification was repeated in 1571, 1578 and 1579.² Every effort was made to support the claims of the boroughs, and in the Confession of Faith of 1567 the Article on the Civil Magistrate includes in the definition of the term, 'uthers magistrates in the citties.' It will be noted that the other civil magistrates mentioned in the Article are sovereign powers, and that the right of magistrates in cities is recognised almost as an *imperium in imperio*.³

¹ Laing's *Knox*, iv. 76.

² 1563, cap 86; 1571, cap. 7; 1578, cap. 64; 1579, cap. 85.

³ Article 25. It is to be noted that the Act VII. James VI., cap. 115, which confirmed an Act of 1560, expressly confers on *inter alios* the provost and baillies of boroughs the right to deal with consistorial cases.

It is probable that the city unit appealed to the more far seeing of the early Reformers as being an organised community which had never received close definition and could be made use of without any apparent violence being done to the more prominent features of the national organisation. The boroughs, further, had shown an independence of the spiritual courts of the Roman Church in the first half of the sixteenth century which seemed to indicate that they would offer a fair field for the development of a new religious system based on the awakening of the more influential members of the community to the reality of their spiritual and moral responsibilities. These members consisted of the more educated men whom the new doctrines attracted. In the earlier stages of the Reformation the prevailing influences were Lutheran, full of that respect for the civil power which characterised the German movement, but before many years had passed the Calvinistic idea of the theocratic city community found a congenial field for its realisation in the easily controlled and comparatively isolated towns of sixteenth-century Scotland. This absorption of these self-contained units by the new political ideal gave the Church of Scotland its peculiar character. It gained precision, but it lost something in exchange; a looser hold on corporate life, a less intense absorption in the general life of small centres would have given the Reformed Church a tolerance and power of comprehension which would probably have enabled it to satisfy the requirements of the whole nation in a way in which Presbyterianism has never satisfied them.

The chief note of the Reformers was the exercise of discipline. They conceived of a moral standard higher than that which prevailed, and towards the realisation and acceptance of which the civil authorities were to be urged. This recognition was to be obtained by penal legislation and its enforcement by the state. By their persistent activities the Reformed Church obtained the legislation which it desired, but it found it impossible to get it enforced, and it remained in some respects a dead letter.

The Reformers had no desire to legislate; they were satisfied with the field of their activity, were inclined to decentralisation, to the Calvinistic idea of the Reformed City. The life of one of these communities is fully portrayed in the *Register of the Kirk Session of St. Andrews*. Their activity began before the public recognition of the Reformation. Thus on 1st February, 1559, in a petition for divorce¹ on the ground of adultery, the husband concludes

¹ Rantoun v. Rantoun; *Register of the Kirk Session of St. Andrews* (S.H.S.), i. 18.

‘to decerne the said Elizabeth to haif brokin and violated the said band of matrimony betwix me and hir, and, conforme to the law of God, that I therefore aucht and suld be fre fra the samyn band, and that I may haif fredome and libertie in God to mary in the Lord quhome I please, according to Goddes law, Christes Evangell and the richtousness therof.’ The wife’s defence is addressed to the ‘maist honorabill ministre and counsale of this cietie.’ Decree of absolvitor was granted. The wife thereupon raised an action of divorce on the same ground and obtained decree in the following terms: ‘And the said Williame to be holdin and reputte ane dead man, worthy to want his lyfe be the law of God, quhen ever it sale pleas God to stirre up the heart of ane gude and godlie magistrate to execute the same with the civile sworde; to quhome we will that our sentence prejudge nathing, bott committes the same to him, quhen it salbe thocht expedient and ganand tyme to tak forther triale and cognition heirintill, according to the law of God forsaid.’¹

It will be observed that the Kirk Session was proceeding on the Mosaic code, which punished adultery with death, and that the decree was in fact an act of discipline which placed the injured wife in the position of a widow.² Now the Estates made adultery punishable with death only in 1563,³ and expressly provided that the penalty so inflicted would not prejudice the right to sue for a divorce. But while thus acting in anticipation of a code *in embryo* the Kirk Session was careful to note any recognition at the hands of the civil power, and in a case which was decided on 15th December, 1560, the decree proceeds in the names of the minister and elders ‘being requested and charged be the Lordes of Secrete Consale, and the commissioun in wryte directed to us thereupon, haif taken cognition and tryall &c.’⁴ In an action on 20th February, 1560, decree of divorce was granted by ‘the ministrie of the Christiane congregation of this reformed cietie of Sanctantrois and parochin thereof, juges in the actioun and caus of divorce.’⁵ Again, in a case on 14th May, 1561, the decree proceeds: ‘Bayth the saidis parties submittyng tham to the

¹ *St. Andrews Register*, i. 59. Cf. *Records of Aberdeen Kirk Session* (Spalding Club), 8.

² Cf. *First Book of Discipline; Knox’s Works*, ii. pp. 227, 231, 247-9. It is not necessary for the purposes of this article to deal with the distinctions which were drawn by the Reformers and the Civil Courts when dealing with the marriage of adulterers, between cases in which the injured spouse did and did not survive.

³ 9 Mary, cap. 74.

⁴ *St. Andrews Register*, i. 59.

⁵ *Ibid.* i. 62.

jurisdiccione of this ministrie, and to the disciplin of the Kyrk.¹ The Kirk Session would not recognise the jurisdiction of the old Church, and in an action of adherence decree was granted against a husband who alleged that he had obtained divorce in a private house in the reformed city of St. Andrews on the ground of propinquity, after the date of the Reformation.² On 12th August, 1562, however, the Kirk Session accepted the validity of a Roman pre-Reformation divorce for nullity on the ground of impotency.³ The underlying idea of discipline was shown in a case on 13th January, 1563, when the Kirk Session refused to hear procurators and insisted on the parties appearing in person.⁴

The next case shows the alteration of matters produced by the institution of the new commissariots. On 9th January, 1566, one of the bailies and the town clerk of Crail appeared before the Kirk Session and protested against its taking cognisance of a case in which the parties belonged to Crail, to the prejudice of the Kirk and ministers of that town, 'and forder allegis bayth the contractyng of marraige and divorcement is provydit, be the King Quene's Maieste and Secreit Consale, to be discussit and tryed befor the commissaris of Edinburgh, deput tharto.'⁵ This contradictory protest indicated changed times, and the new spirit which was awake is shown in the report of the interesting case of Dalgleish and Wemyss, which came before the Kirk Session on 17th April, 1566. Dalgleish maintained that the Session had no jurisdiction, 'Havand na commissione or power gevyn to thaim be our sowerane's Lord and Lady or thar Session, nor any other ordinar juge havand power to gyf the sammyn,' and proceeded, 'that nan thar liegis nor subjectes suld tak upon hand or usurp any jurisdiccione of thais causis, quhilk wes wont to be tretit, cognoxit and decidit befor be the spirituale jugis Lyikas this pretendit caus and utheris sictyik war wont, in all tym bypast, to be tretit and decidit befor tham, as ordinarie jugis, tharto havand sufficient power, bayth of the spirituale and civil magistrat to that effect and be tham apprevit, be the lawes of this realm and actis of Parliament maid tharupon, standand as yit unrevocat, reducit, or tane away be only contrar statut or law, be only havand power

¹ *St. Andrews Register*, i. 64.

² *Ibid.* i. 134.

³ *Ibid.* i. 147.

⁴ *Ibid.* i. 175. A curious appellate jurisdiction exercised by the Kirk Session of Edinburgh is shown in a case on 27th January, 1564, in which on appeal a decision by the Kirk Session of Orkney was affirmed by the Edinburgh body. Cf. Riddell, p. 431.

⁵ *Ibid.* i. 257.

to do the sammyn. And suathe saidis pretend minister, eldaris and deaconis of this citie, being bot certan pryvay and ignorant personis for the maist part, ar na wayis jugis competent to cognosce in this caus, havand na power tharto, as said is, bot onlye usurpiti in his contempt of the King and Quene's Maisteis autorite and utheris mennis jurisdictione, *mittentes falcem in messem alienam*. And tharfor the saidis M. Jhon and Jonat aucht and suld be remittit to thar jugis ordinar and competent in this caus, vidz the commissaris of Edinburgh, quhair ar speciale deput to that effect, as said is.' This objection which, it will be observed, maintained the civil origin of the consistorial jurisdiction, was repelled by the Kirk Session on the strength of the Royal proclamation of 25th August, 1561, which maintained the *status quo* as it existed at the date of the landing of Queen Mary. The Kirk Session ignored subsequent civil legislation and treated the proclamation as a recognition of the claims of the Reformers.¹ Again, on 26th July, 1570, in an action of adherence the wife declined the jurisdiction of the Kirk Session on the ground that she had a divorce action pending before the Commissary Court at Edinburgh.²

In spite of the bold front maintained by the Kirk Session, the day of the small isolated Reformed units on the Geneva model was done, and the growing reorganisation of Church and State forced the local bodies to cast in their lot with the former. There is a growing body of evidence of this change in the St. Andrews Kirk Session records. Thus on 14th October, 1568, the question of the right of an adulteress to remarry was remitted to the General Assembly.³ This idea of a remit was resorted to more frequently when the Presbyteries began to come into prominence, and we find instances on 28th February, 1582, 5th June, 1583, 18th May, 1584, and 3rd August, 1586.⁴ We also find remits to the Synodal Assembly on 13th July, 1586, 24th November, 1586, and 12th July, 1587.⁵ But this tendency was not regarded with favour by the civil authorities which feared the influence of centralised Reformed organisations with theocratic and doctrinaire characteristics on the small local bodies unconsciously linked to the past, conservative, lay, and limited in their scope and jurisdiction. Thus we find the Archbishop of St. Andrews on 17th June, 1584, declaring the Royal approval of the Kirk Session and indicating that it was only Presbyteries that were

¹ *Ibid.* i. 266.

² *Ibid.* i. 340.

³ *Ibid.* i. 340.

⁴ *Ibid.* ii. 500, 503, 523, and 570.

⁵ *Ibid.* ii. 567, 579, and 595.

objected to.¹ The Kirk Sessions gradually confined themselves to the execution of discipline, and on 21st October, 1590, we find a wife asking for a certificate of her marriage to enable her to seek divorce from the secular court.² Again on 23rd August, 1592, we find a decree of divorce by the Commissary Court at Edinburgh, referred to in a disciplinary case.³ It is worthy of notice that during a considerable period of the recorded activity of the Kirk Session the Commissary of St. Andrews was numbered among its members.⁴ The disciplinary idea gradually reasserted itself. On 31st December, 1589, penance was prescribed in a case of adultery without any attempt being made to deal with the status of the guilty parties,⁵ and ten years later the ultimate stage is reached when we find the Kirk Session on 22nd April, 1599, urging the magistrates to put the Act of Parliament against fornicators into force.⁶

Church discipline was gladly undergone in the earlier years of the Reformed regime as a means of obtaining freedom from the marriage tie, and there are indications that the consistorial jurisdiction of the Kirk Session was frequently based on the consent of parties, but when the new secular commissary courts offered freedom without discipline recourse was seldom had to the Kirk Session, which could only inflict punishment, and whose decrees afforded too onerous a proof of inconstancy. Yet it is probable that this temporary consistorial activity on the part of Kirk Sessions was not in fact of assistance to them in furthering their ultimate aim: it tended to specialise their work, to transform what was intended to be a theocratic government interesting itself in every detail of the life of the community which it had chosen for its field, into a body of referees with a consensual jurisdiction limited to the acceptors of their claims, and only active when an appeal was made to it. The Kirk Session was properly an executive and not a judicial body. It never claimed any legislative powers. During a period of years it was diverted from its proper functions into a field of activity which, owing to the special circumstances of the times, offered it that scope and recognition for which it was struggling. But when circumstances changed, it relinquished this somewhat narrow field and, ceasing to combine judicial and executive functions, became a magisterial

¹ *St. Andrews Register*, ii. 529.

² *Ibid.* ii. 685.

³ *Ibid.* ii. 724.

⁴ *Ibid.* ii. 789, 802, 870, 941.

⁵ *Ibid.* ii. 656.

⁶ *Ibid.* ii. 887; cf. i. 28, 49, 112, 244, 250, 421, 422, ii. 552, 557, 580, 591, 599, 643, 645, 659, 889.

body alone. As the influence of the Reformed Church made itself more and more apparent in civil legislation, the reference of questions to the Church, which has always been common in isolated religious communities in the midst of a hostile population, ceased to be expedient. As the theocratic claims of the Reformers grew, it was seen to be a tactical error to limit the faithful to what were technically ecclesiastical courts. The whole kingdom and its organisation had become the province of the Church.

This tendency to direct the energies of the civil power is plainly revealed when we turn to the consideration of the role played by the General Assembly. This powerful body which was destined in the course of its history to determine the fate of Scotland on more than one occasion, began its recorded life in December, 1560, though it did not receive its distinctive name until two years later. Its earlier activities reflect the interest in questions of a matrimonial character which generally followed the abolition of Papal authority in August of that year. Thus we find that the Civil Power was urged to remove the old impediments to the marriage of blood relations, and at the same time to inflict the death penalty on adulterers. On the other hand it was resolved that none but adherents of the Reformation should obtain public office in towns, and it was decided to petition the Estates and the Privy Council to confer judicial offices only on such. These resolutions embody the aspirations of the members of the first Assembly. In July, 1562, it was decided regarding actions of divorce to petition the Privy Council either to give up the jurisdiction in consistorial cases to the Kirk or else to make provision of suitable judges.¹

While thus vigilantly exercising pressure on the civil authorities the central organisation of the Church was careful to maintain its internal discipline, which appeared to be threatened by the uncontrolled activity of the local units, and on 31st December, 1562, it was ordained that no minister or other bearing office within the Kirk should take in hand to decide actions of divorce except such as were given commissions by the superintendents and the superintendents themselves, and that, in the case of the former, the commission must be a special one for each case.² On 26th June, 1563, moreover, it was arranged further to petition the civil power to constitute judges in every province to deal with divorce

¹ *Book of the Universal Kirk*, i. 19.

² *Ibid.* i. 30; cf. *Aberdeen Kirk Session Records*, p. 8.

cases and to punish the guilty parties according to the Act of Parliament (*i.e.* Mary 9, cap. 74).¹ Again on 1st March, 1571, a number of articles 'to be proponit to the Regents grace and secret Council' were approved, including the following: 'Because the conjunction of marriages pertaines to the ministry, the causes of adherence and divorcements ought also to pertain to them, as naturally annexed thereto.'² Yet among the injunctions given to the Commissioners sent to the Regent all that was provided on this subject was that sexual offences should be punished, 'and Commissioners of Justice be appointed in every Province to that effect.'³ Again, in the following March, note is taken of a case in which the civil magistrate would not proceed, 'seeing the judicial law is not yet received.'⁴ In the records of the Assembly held in March, 1572, we find the right of the civil judge in consistorial cases fully recognised. In August, 1574, we find the General Assembly petitioning the Regent to appoint gentlemen in every country to punish sexual crimes, and 'that her Grace will grant commission to certain persons in every dyocie to sitt in causes of divorcement where the parties are poor.'⁵

It will be observed from the foregoing that after the first uncertainty which followed the abolition of the Papal jurisdiction, the General Assembly confined its energies mainly to the exercise of constant pressure on the civil authorities to legislate on the basis of the new marriage theory founded on the Mosaic code, and to carry such legislation into effect, and, in fact, discouraged the consistorial activity of Kirk Sessions. There were, no doubt, sporadic outbreaks of clerical ambition, but these were mainly attempts to counteract intruding activity on the part of the Civil Power. But here and there a straw showed the way the wind was blowing. On 29th December, 1563, on the complaint of John Baron, minister of Gladstone, the General Assembly directed letters to be sent to the Archbishops of York and Canterbury, requesting these dignitaries to order the minister's wife, who had deserted him and fled to England, to appear before the Superintendent of Lothian and Kirk Session of Edinburgh to answer for her conduct. This was, no doubt, a case of internal discipline, but it indicated a consciousness of affinity with the ecclesiastical organisation of England and of the reality of the independence and claims of the Scottish Church.

¹ *Book of the Universal Kirk*, i. 34.

² *Ibid.* i. 187.

³ *Ibid.* i. 188.

⁴ *Ibid.* i. 197.

⁵ *Ibid.* i. 305.

The most interesting feature of the activity of the General Assembly from the point of view here adopted was its attention to the questions of consistorial law which were referred to it for judgment by its members. From the point of view of the Reformers, the abolishing of the Papal authority implied the sweeping away of the mass of canonical jurisprudence which had been built up through centuries round the sacrament of marriage and a return to the apparent simplicity of the Mosaic regulations. We find, accordingly, the attention of the Assembly directed to such questions as the constitution of marriage by promise *subsequente copula*, the consent of parents, marriage between cousins, marriage *per verba de praesenti*, marriage with a wife's niece, divorce for desertion, enforcement of promise of marriage for immoral consideration, marriage with an aunt, enforcement of promise of marriage *per verba de futuro*, and many other cognate questions.

The Reformers conceived of themselves as having the task laid upon them of restoring all things in Christ. They conceived themselves cut off from the past and with nothing to guide them for the future but the Law of God as revealed in his Word. They approached the questions which were submitted to them with deference and circumspection, and soon realised that their judgments would be of little weight unless they were adopted by the civil power and enacted in the form of new legislation. They made no attempt to retain for the Church the ultimate decision on consistorial questions so far as legislation was concerned, and after a short period of uncertainty, devoted their energies to the effort to induce the Christian magistrate to enact the Law of God as part of the law of the country.¹

The line which the General Assembly adopted may be best illustrated by considering the question of divorce for adultery and the marriage of adulterers. In the eighteenth chapter of Leviticus adulterers were punished with death, and in the early years of the new regime the Kirk Sessions proceeded on the theory enunciated in the *First Book of Discipline*, that, the offence having been proved, the guilty party had ceased to have any rights, being theoretically dead. The injured spouse was in the position of a surviving spouse and could, of course, marry again. This was no substitution of divorce *a vinculo* for divorce *a mensa et thoro*: it was simply the recognition of a disciplinary measure with its logical consequences. But the Reformers were at once met with the difficulty that the civil power had not yet adopted their point

¹ This was not Calvin's view; cf. *Institutes*, iv. cap. 20, 14-16.

of view, and declined to impose the death penalty on adulterers. The ministers were met with applications for marriage by adulterers and their paramours, and in disciplinary cases their accusations of fornication were opposed by parties who alleged their divorce from their former spouses and remarriage with their paramours. The only way out of the difficulty was to get the state to adopt their view of the punishment of adulterers, for it was not in accordance with their theocratic ideals to cut themselves and their adherents off from the life of the nation and form an *imperium in imperio* within the state. They desired rather to permeate the civil organisation and to lead it in the way of truth.

In the spring of 1551 the Estates under the old regime had legislated regarding such as were 'manifest, commoun and incorrigible adulterers, and will not desist and cease therefra, for feare of any spiritual jurisdiction, or censures of Halie Kirk,' and provided that such persons should be denounced as rebels and put to the horn with consequent confiscation of moveables, and that no appeal from the spiritual court would be allowed.¹ This disciplinary measure, an instance of the belated reforming zeal of the old church, remained a dead letter, and as has been seen, the local judicatories of the Reformed Church in granting divorces expressly sanctioned the remarriage of the injured spouse in accordance with their view of the legal death of the adulterer. Matters remained in this unsatisfactory position until June, 1563, when an act was passed² imposing the death penalty, but containing the significant reservation that the act would not prejudice the right of the injured party to sue for divorce. The penal part of the statute was not enforced, and on 27th December, 1566, the General Assembly provided that the superintendents should 'admonisch all ministers within ther jurisdictionous, that none joyne any partie separatit for adulterie in mariage, under paine of removeing from the ministrie.' Again, on 27th June, 1567, the minute of the General Assembly bears: 'Ane man being divorceit for adulterie, Quether he may marie again lawfullie or not? The Kirk will not resolve heirin schortlie, bot presentlie inhibites all ministers to meddle with any sick mariages, quhile full decision of the question.' On 25th July and 22nd December, 1567, the General Assembly urged the penal punishment of adulterers, ordering superintendents to report to the civil magistrate, and on 3rd March, 1569, regulations were

¹ Mary 5, cap. 20.

² Mary 9, cap. 74.

approved regarding public penance 'that thereby the civil magistrates may know the crimes and pretend no ignorance thereof.' Again the real question was evaded on 16th March, 1569, when we find the following question and answer: 'A woman divorced for adultery committed be her, contracting marriage with another beareth a child to him, and desireth to proceed to the solemnisation of marriage, whither shall the man be permitted to marrie this woman. Let her present herself to the Assembly to be punished; and then let her supplicatione be given in, and she shall have ane answer.' At the sixth session of the General Assembly of March, 1571, in reply to the general question it was directed that the marriage of adulterers was unlawful.

But in August, 1574, the Regent was required by the General Assembly to give commission to certain gentlemen in every country that *inter alia* adultery might be punished, and at the same Assembly it was ordained that adulterers marrying their paramours after their wife's death should separate themselves from them 'untill the tyme it be decydit be the Judge Ordinar, whither the said mariage be lawfull or not, under the paine of excommunication to be execute against dissobeyers.'¹ Again at the Assembly of August, 1575, Robert Graham, Commissioner of Caithness, was deprived of his office for *inter alia* celebrating a marriage between a divorced daughter of the Earl of Caithness and the Laird of Innes. He pled in his defence, 'As to the marriage, grants he gave to her such liberty as the Kirk gives to others; and that she has made her repentance bareheaded and barefooted.' At the same Assembly we find another case of evasion. The question was asked, 'What shall the minister do, who is required to marry a man that has committed adultery in his wife's tyme, now his wife is departed, and he has satisfied the Kirk therefore, and desires to be married upon another woman that he had in his wive's tyme.' The only answer given was 'Ordaines to form this question better.' On 27th February, 1576, the Privy Council ordered ministers in Edinburgh and other boroughs to report adulterers and persons guilty of incest to the Lord Treasurer and Justice Clerk for punishment.² Some punishment seems to have been at times inflicted by zealous magistrates. On 6th October, 1579, the Privy Council granted, on caution being found, release from the Tolbooth of Edinburgh to William Turner who had been

¹ *Book of the Universal Kirk*, i. 310.

² *R. of P.C.* ii. 499.

imprisoned sixteen weeks for adultery,¹ and on 2nd December, 1581, John Duguid petitioned against the provost and bailies of Aberdeen who had discharged him from using his craft as a cordiner on the ground of his adultery. The question had again to be faced at the Assembly of October, 1576, and again the Assembly delayed the decision of the matter. The record deserves quotation: 'Q. Whether if a man or a woman divorced for adultery ought to be admitted to the second marriage; and if the Kirk ought not, like as they have inhibit the Ministers to marrie any such, so plainly to give their judgments in this case, and to declare it to be unlawfull, specially in respect of the great inconveniences that follow daily thereof; namely, some forge causes of adultery; some make causes indeed; and some be collusion corrupt judgements; and all in hope of a new marriage, which daily they attain unto be some hyreling smaikes, who are but suspended therefor for a while; swa that if provision be not shortly made hereunto, no man may brooke his wife, nor no wife her husband longer than they lyke; and a barbarous confusion unknown to the very Ethnicks and Turks shall enter in among us. A. The Kirk will not presently resolve the question, whither if a man or a woman divorcit for adulterie, ought to be admitted to the second marriage; but inhibites all Ministers and Reidars to marie any sick persons, under the paine of deprivationoun simpliciter, without any restitution to their offices in tymes cuming; and the persons so joynit to be chargeit to separate themselves conforme to the Act of the Assembly in August, 1574.'

It will be observed that the Act of Assembly referred to has been quoted above, and that it left the decision of the question to the 'Judge Ordinar.' The position was becoming untenable, and we find the Assembly of April, 1577, again urging the infliction of the capital punishment on adulterers, and four years later among the Heads referred by the Synod of Lothian to the General Assembly in October, 1581, the matter was brought up again. The eleventh Head is as follows: 'Seing the Act of Parliament appoins them that are convict of notorious adulterie, and through the ambiguous exposition of this word, Notorious, no execution is used thereupon: Therfor for avoyding the plagues hingand above this haile countrie for this cryme, That the Generall Assemblie wald crave that ane act may be made in Parliament for punishment of all persons to the death, quhosoevir are lawfullie convict of

¹ *R. of P.C.* iii. 224.

adulterie.’¹ The question was brought before the King by the Assembly of October, 1583, and the reply was given that the default of punishment could not justly be imputed to His Highness ‘quho has ever bein willing and ready to grant commissioun to such as the Ministers thocht mertest to execute the same, quhen inhabititie was in the Judges ordinar.’ At the General Assembly of June, 1589, ‘it was appointed, that in every Presbytery they shall dispute concerning the mariage of adulterers ; and report their judgement unto the next Assembly.’²

Apparently the local organisations had had their views modified by contact with the life of the country, and the General Assembly had begun to realise that it was a *vox clamantis* in its attempt to impose the literal interpretation of the Book of Leviticus on Scotland. Perhaps realising that the lapse of time had made their task more easy, the civil authorities took up the question at this stage, and in June, 1592, passed an Act which was retrospective to July, 1587, and which is known as 12 James VI., cap. 119. This act impliedly forbids the remarriage of an adulteress, and prohibits the alienation of her property in favour of the issue of a pretended second marriage with her paramour by a woman who had been divorced from her former husband for adultery. It will be observed that this Act, unlike that of 1563, imposes a civil penalty on the guilty spouse, probably a more efficacious measure than the infliction of penal punishment, which was, as a matter of fact, not enforced. At length, at the Assembly of 28th June, 1595, a definite conclusion was arrived at: ‘Anent mariages : The Assemblie declarit thir two sorts to be unlawfull ; first, when ane person marieth another quhom they have polluted by adulterie ; nixt, quhen the innocent person is content to remaine with the nocent and guiltie, and the guiltie will have another, or takis another.’

In the following March we find the General Assembly complaining that ‘Adulteries, fornicatiouns, incests, unlawfull mariages, and divorcements are allowit be publik lawis and Judges ; and children begotten in such mariages declarit to be lawfull’ ; and protesting against ‘Universall neglect of justice both in civile and criminall causes, as, namelie, in granting of remissions and respetts

¹ *Ibid.* i. 536. ‘Andrew Melville described the legislation of the civil power as ‘addercope webs, that takethe sillie flees, but the bumbarts breake through them.’ Calderwood, iv. 152.

² *Ibid.* i. 746 ; Archbp. Bancroft was fully cognisant of the position ; cf. Calderwood, v. 78.

for blood, adulteries and incests.' Among the 'Greivis to be proponit to his Majestie' in March, 1597, was included 'To crave ane redresse anent adulterous marriages, quhen two persons, both divorcit for adulterie committit either with uther, craves the benefite of the Kirk to be joynit in marriage.' The King's answer was as follows: 'Anent adulterous marriages: His Majesty thought good that ane supplication should be given in to the next Parliament craving such marriages to be declared null in all times coming and the bairnes gotten therein to be bastards.' Accordingly, in March, 1600, the General Assembly decided to petition the Convention on the subject. This continual agitation at length produced the Act of 1600,¹ which declared the marriage of adulterers null and their issue incapable of succeeding to their parents.

The long struggle of forty years shows clearly the functions which the General Assembly conceived it its duty to exercise; it conceived itself as a purifying and illuminating influence in the community, and as a consultative body like the old Lords of the Articles, suggesting legislation and urging its enforcement.² Its attempt to enforce criminal penalties failed, and it had to content itself with the infliction at its instance of civil disabilities. Its failure was, in fact, the failure to induce the State to incorporate the disciplinary system of the Church in the penal code. This sketch of its activity indicates that after the period of confusion which marked the first years of the new regime the most self-conscious and calculating organ of the Reformed Church, the organ which alone displays the articulated policy of the Reformers, maintained with almost complete consistency the theocratic ideal. The General Assembly would have nothing but the nation for its field of activity, shunned separation and only under the influence of the disruptive forces which the restored Episcopacy set in motion cut itself adrift from the full current of national life. It was only when the State granted recognition to a rival ecclesiastical system that the Presbyterian leaders began to differentiate between their adherents and the nation at large. The era of the covenants marked the recognition of the fact that another test than citizenship was required to define the limits of the community over whose welfare the General Assembly watched.

¹ 16 James VI. cap. 20.

² 'For, to draw out of the pure fountains of God's word an ecclesiastical canon agreeable to the same, and to sute, like humble supplicants, the approbation of the same, is the duetie of the Kirk.' Calderwood, iv. 271.

Note.—The goal towards which the General Assemblies of the latter years of the sixteenth century were making, received clear and precise definition at the hands of the theorists of the next generation. If George Gillespie's 'Aaron's Rod blossoming' be taken as a typical exposition of full blown and perhaps over-ripe Presbyterianism, we find such pronouncements as the following: 'Presbyterial government is not despotical, but ministerial; it is not a dominion, but a service . . .' 'That power of government with which pastors and elders are invested, hath for the object of it not the external man, but the inward man. It is not, or ought not to be, exercised in any compulsive, coercive, corporal, or civil punishments; when there is need of coercion or compulsion, it belongs to the magistrate, and not to the minister.'¹ Again, 'The civil sanction added to church government and discipline is a free and voluntary act of the magistrate, that is, church government doth not, *ex natura rei*, necessitate the magistrate to aid, assist, or corroborate the same, by adding the strength of a law. But the magistrate is free in this to do or not to do, to do more or to do less, as he will answer to God and his conscience. It is a cumulative act of favour done by the magistrate. My meaning is not, that it is free to the magistrate *in genere moris*, but *in genere entis*. The magistrate ought to add the civil sanction *hic et nunc*, or he ought not to do it. It is either a duty or a sin; it is not indifferent. But my meaning is, the magistrate is free herein from all coercion, yea, from all necessity and obligation, other than ariseth from the word of God binding his conscience. There is no power on earth, civil or spiritual, to constrain him. The magistrate himself is his own judge on earth how far he is to do any cumulative act of favour to the church.'² 'Magistracy, or civil power, is monarchical and legislative. . . . The ecclesiastical power is merely ministerial and steward-like.' 'The subordinate end of the civil power is, that all public sins committed presumptuously against the moral law may be exemplarily punished, and that peace, justice, and good order may be preserved and maintained in the commonwealth, which doth greatly redound to the comfort and good of the church, and to the promoting of the course of the gospel.'³ 'The fifth difference between the civil and ecclesiastical powers is in respect of the effects. The effects of the civil power are civil laws, civil punishments, civil rewards; the effects of the ecclesiastical power are determinations of controversies of faith, canons concerning order and decency in the church, ordination or deposition of church officers, suspension from the sacrament, and excommunication.' 'The eighth difference stands in the correlations. The *correlatum* of magistracy is people embodied in a commonwealth, or a civil corporation. The *correlatum* of the ecclesiastical power is people embodied in a church, or a spiritual corporation. The commonwealth is not in the church, but the church is in the commonwealth; that is, one is not therefore in or of the church because he is in or of the commonwealth, of which the church is a part; but yet every one that is a member of the church is also a member of the commonwealth, of which that church is a part.' 'They differ in a divided execution; that is, the ecclesiastical power ought to censure sometime one whom the magistrate thinks not fit to punish with temporal or civil punishments; and again, the magistrate ought to punish with the temporal sword one whom the church ought not to cut off by the spiritual sword. . . . Again, the most notorious and scandalous sinners, blasphemers, murderers, adulterers, incestuous persons, robbers, &c., when God gives them repentance, and the signs thereof do appear, the church doth not bind but loose them, doth not retain but remit their sins, I mean ministerially and declaratively; notwithstanding the magistrate may and ought to do justice according to law, even upon those penitent sinners.' 'Powers

¹ Cap. iii. 2 and 3.² *Ibid.* iii. 5.³ *Ibid.* iv. 4.

that are collateral are of the same eminency and attitude, of the same kind and nature; but the civil power is a dominion and lordship; the ecclesiastical power is ministerial, not lordly.' 'The magistrate may and ought to be both *custos et vindex utriusque tabulae*, he ought to preserve both the first and second table of the holy and good law of God from being despised and violated, and punish by corporal and other temporal punishments such (whether church officers or church members) as openly dishonour God by gross offences, either against the first or against the second table.' 'It doth properly and of right belong to the magistrate to add a civil sanction and strength of a law for strengthening and aiding the exercise of church discipline, or not to add it. And himself is judge whether to add any such cumulative act of favour or not.'

In attempting to trace in an abstracted form the development of one of the many questions which faced the Reformers there is a danger of attributing theories to historical parties and individuals of which they were quite unconscious, but this danger is slight when the subject dealt with is a phase of the Scottish Reformation. While this is so, it must be kept in view that between 1560 and 1581 there lay a period of rapid development and essential change, and that, while an attempt has been made in the foregoing pages to treat one question in an abstracted form, the surroundings were perpetually changing and giving new significance to the forces at work in the narrow field on which attention has been directed. The tendencies which revealed themselves obscurely and intermittently during the second half of the sixteenth century, and of which glimpses can be caught in the foregoing sketch, were fully disclosed in the succeeding generation. Strictly speaking, there was in fact no struggle for consistorial jurisdiction, and the Reformers declined to limit themselves to the narrow field which the question offered, but in that field can be observed the progress of a more important and far-reaching struggle the echoes of which still sound in our ears. The episode was a preliminary reconnaissance in the long campaign between church and state, and is of interest not only to the legal antiquarian but also to the student of history.

DAVID BAIRD SMITH.

Scotsmen Serving the Swede

THE tercentenary of the accession of Gustavus Adolphus, who succeeded his father, Charles IX., as King of Sweden on October 30, 1611, cannot fail to arouse sympathetic interest in this country, especially amongst those Scottish families whose annals contain some record of reputation won or achievement performed under the great champion of the Protestant faith in Europe. His brief, but brilliant, intervention in the Thirty Years War attracted many officers and men to his standard, as appears from the number of royal warrants for the levying of troops for service abroad.¹ Whilst he lived his 'valiant Scots,' as he affectionately called them, contributed in no small degree to the success of his cause; and after his death at Lützen, they remained on in Germany to gain fresh laurels under his successors, Duke Bernard of Weimar, Gustavus Horn, Baner, Torstenson, and Wrangel. Then the news of the troubles at home reached them. Writing to Secretary Windebank on September 26, 1640, Sir Thomas Rowe says:—'Advice has come to me that twenty-six of the principal colonels and officers that have served the Swede have obtained their license and got their rests in munitions of war, a course begun by Leslie the Great, and are preparing at Gottenburg to sail in three ships for Scotland.' Although the Peace of Westphalia was not concluded until 1648, the majority of officers, who had survived the prolonged struggle, returned home at the outbreak of the Civil War to take sides with King or Parliament.

In his essay on Gustavus, Archbishop Trench points out that none of his officers were more entirely trusted by the king when some difficult and dangerous exploit had to be undertaken than those belonging to the Scottish brigade.² Perhaps the hardest

¹ *Calendar of State Papers, Scotland*, Dom. Ser. 1626-32. It was about two months before Gustavus actually assumed his father's title.

² *Gustavus Adolphus and Social Aspects of the Thirty Years War*, London, 1865, p. 22.

task which fell to the lot of any of them was the defence of Stralsund by Sir Alexander Leslie against Wallenstein in 1628, just two years before the King of Sweden himself landed at Usedom to carry out his arduous work. Stralsund was one of the most flourishing cities of the north. It belonged to the Hanseatic League, and owed no allegiance to the Empire. Though nominally subject to the Duke of Pomerania, it was practically independent; and, sheltered by the Island of Rugen in the very centre of the Baltic trade, its geographical position rendered it of the utmost importance. The Emperor Ferdinand II. had seized the possessions of the two Dukes of Mecklenburg for supporting Christian IV. of Denmark, and had conferred their duchies on Wallenstein, who assumed the high-sounding title of Admiral of the Baltic and the North Seas. He sent his lieutenant Arnim to besiege Stralsund, and he was determined to have it. The town was triangular in shape;³ one side of it was washed by the sea and the other two sides were protected by wide lagoons and salt-marshes, over which three causeways led to the gates.

In February hostilities began. The garrison at first consisted of only 150 soldiers, with 2000 citizens capable of bearing arms; but it was augmented by fugitives from the Danish War and peasants seeking safety from the cruelty of the Imperialist soldiery. By May 23 Arnim had taken all the outworks, when Wallenstein arrived in person to aid him. Gustavus then allied himself with the German town against the Emperor, and sent Count Brahe and Colonel Alexander Leslie to Stralsund with 2000 picked troops. They forced their way into the fortress on July 18th, and Wallenstein, who had assembled a huge army of 25,000 men⁴ round the place, found himself opposed by a garrison of experienced soldiers. Still the odds in favour of the besiegers were fearful.⁵ Wallenstein 'tried it,' according to Carlyle, 'with furious assault, with bombardment, sap and storm; swore he would have it, "though it hung by a chain from Heaven"; but could not get it, after all his volcanic

³ *Life of Wallenstein, Duke of Friedland*, by Lieut.-Col. J. Mitchell, London, 1837, p. 117; and see map of Stralsund in *Life of Gustavus Adolphus*, by C. R. L. Fletcher, 1910, p. 84.

⁴ Gardiner does not hesitate to say that it was the most numerous and well-appointed army which had been seen on the Continent since the days of the Romans (*History of England*, vii. p. 97); *The Cambridge Modern History*, vol. iv. p. 107 (1906).

⁵ Gardiner's *Thirty Years War*, 1874, pp. 107-8.

raging.’⁶ At length rain began to fall in torrents, and the flat oozy ground upon which the invading army was encamped became untenable. The Imperialist commander gave orders on August 3 to raise the siege, and his failure marked the limit of Austria’s advance.⁷ All historians, including Carlyle, who regarded the affair as world famous, are agreed that it was an event of incalculable importance, and that if the city had fallen both Sweden and Denmark would have been excluded from further interference in Germany. Leslie received a gold medal from Gustavus, and the grateful Stralsunders, who claimed the victory as a triumph for the Hanseatic League, caused further medals to be struck in his honour.

The gallant defender of Stralsund served in the Swedish army for thirty years (1608-1638), at first under Charles IX. and then under his successor in their campaigns in Russia, Poland, Denmark, and Germany. Before the advent of Gustavus, Leslie was busily employed in 1630 recruiting along the coasts of Mecklenburg and Pomerania; and on hearing that Wallenstein, whose troops were in possession of Rugen, intended to hand it over to Christian IV. in the hope of embroiling the two Northern Powers, he promptly occupied the island and turned out the Imperialist garrison of two thousand men.⁸ He was then appointed commandant at Stettin, and when the King of Sweden continued his march to Landsberg after the storming of Frankfort-on-the-Oder on April 3, 1631, he left Leslie behind as Governor.⁹ He was present at the Battle of Lützen, where the Protestant leader fell on November 6, 1632,¹⁰ and he retired six years later from the service of Sweden with a pension of 800 rix-dollars. Then he set about organizing the forces of the Covenant. The favourite field-marshal of Gustavus, his influence in Scotland was also great.¹¹ ‘Such was the wisdom and authority of that old, little crooked soldier,’ writes Baillie the Covenanter of Leslie at Dunse Law, ‘that all with one incredible submission, from the beginning to the end, give over themselves to be guided

⁶ *Frederick the Great*, book iv. chap. v.

⁷ *The House of Austria in the Thirty Years War*, by A. W. Ward, M.A., 1869, p. 61.

⁸ *Gustavus Adolphus*, by C. R. L. Fletcher, 1910, pp. 114 and 127.

⁹ *An Old Scots Brigade*, by John Mackay, 1885, pp. 109 and 142.

¹⁰ *The Scots Peerage*, edited by Sir James Balfour Paul, vol. v. 1908, p. 374.

¹¹ *The Scottish Covenanters*, by James Dodds, 1860, p. 32.

by him as if he had been Great Solyman.'¹² He was created Earl of Leven and Lord Balgonie in 1641, but his subsequent career does not concern us. 'Excellent, though unfortunate,' is Carlyle's valediction, and he recalls his supreme achievement. 'He bearded the grim Wallenstein at Stralsund once, and rolled him back from the bulwarks there, after long tough wrestle; and, in fact, did a thing or two in his time. Farewell to him.'¹³ He died at Balgonie, Fifeshire, in 1661, and was succeeded by his grandson as second Earl of Leven. His eldest son, who was significantly named Gustavus, predeceased him.

Both Leven and his kinsman David Leslie, afterwards Lord Newark, another officer of Gustavus and Cromwell's opponent at Dunbar, were prominent at Marston Moor. The Earl brought an army across the border with Major-General David Leslie as Commander of the Horse, and occupied the centre of the field between the armies of Manchester and Fairfax. It is a debatable point whether the victory was due to Cromwell or to Leslie, but the Scottish officer's magnificent handling of the cavalry seems to have decided the issue.¹⁴ That is not surprising. Leslie had the experience of the Thirty Years War behind him, whilst Cromwell's reputation as a military commander was yet in the making. The various accounts of the battle are somewhat conflicting, but its interest for us lies in the fact that opposed to the Leslies was James King, Lord Eythin, their comrade in arms in Germany. He was second in command to the Marquis of Newcastle and led the Royalist centre. It is possible that if he had been able to co-operate freely with Prince Rupert throughout the campaign unhampered with Newcastle's sluggishness, and they had come to appreciate each other's good qualities, the day might not have proved so disastrous for Charles. However that may be, Eythin declined at Rupert's request to begin the battle late in the evening, and blamed him for drawing up his men so near the enemy. The prince admitted his fault and offered to move them to a further distance. 'No, sir,' replied Eythin, 'it is too late,' and the Parliamentarians, noticing certain signs of unpreparedness, commenced the attack.¹⁵ Clarendon says¹⁶ that King was an officer

¹² Carlyle's *Miscellaneous Essays*, edit. 1866, iv. p. 234.

¹³ *Cromwell's Letters and Speeches*, edit. 1857, ii. p. 299.

¹⁴ *History of Scotland*, by J. H. Burton, edit. 1870, vii. p. 180; *The Scots Peerage*, vol. vi. 1909, p. 440; *Cromwell's Letters and Speeches*, edit. 1857, i. p. 151.

¹⁵ Gardiner's *History of the Great Civil War*, 1893, i. p. 377.

¹⁶ *History of the Rebellion*, edit. 1720, ii. p. 509.

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JAMES KING, LORD EYTHIN.

DIED 1652.

From oil painting in the collection of Colonel Alexander J. King of Tertowie.

of great experience and ability, and that the marquis being utterly unacquainted with war, referred all matters of importance to the discretion of his lieutenant-general.

As early as 1609 King sought service in Sweden, and he attained the rank of general-major and colonel of the Dutch Horse and Foot. He became Governor of Vlotho, a fortified town on the Weser, which belonged to the Dukes of Brunswick and Counts of Waldeck.¹⁷ After the death of Gustavus he fought under his generals Baner and Wrangel, and his portrait is still to be seen with others of his adventurous countrymen in the Chateau of Skokloster, near Upsala, which belonged to the Wrangel family. He received the Swedish order of knighthood in 1639, and returned to England. He was an Aberdeenshire laird, and his Scottish title, which was bestowed upon him on March 28, 1642, is taken from the river Ythan in that county.¹⁸ The Queen sent him from Holland next year, with other officers of reputation, to join Newcastle in the North, who accepted him as his military adviser. After Marston Moor he crossed over to the continent, and Queen Christina, in recognition of his services to her father, created him a peer of Sweden with the title of Baron Sanshult and granted him estates in the district of Calmar as well as a pension of 1800 rix-dollars annually. At his death in Stockholm, on June 9, 1652, he was accorded a public funeral, the Queen attending in person, and was buried in the Riddarholm Church, where rest the remains of Gustavus and Charles XII. Lord Eythin left no children, but two of his brothers died in Swedish service.

Sir Donald Mackay of Strathnaver, Lord Reay, may be described as the recruiting sergeant for Gustavus in Scotland. Whilst assisting Christian IV. of Denmark he distinguished himself at the Pass of Oldenburg in Holstein, where in 1627, with his famous regiment¹⁹ he kept Tilly and the Imperialists at bay, being himself wounded in the engagement.²⁰ But the exploits of 'Drunken Christian,' as Carlyle calls him, soon came to an end and he was easily beaten.²¹ And so we find Mackay two years

¹⁷ *Life of Sir John Hepburn*, by James Grant, 1851, p. 167.

¹⁸ *The Scots Peerage*, vol. iii. 1906, p. 592.

¹⁹ Its achievements are set out in Colonel Robert Monro's rambling, but valuable *Expedition with the Worthy Scots Regiment called Mac-Keyes Regiment*, London, 1637.

²⁰ *An Old Scots Brigade*, p. 36.

²¹ *Frederick the Great*, ed. 1858, vol. i. p. 331.

later, back again in Scotland, collecting men on this occasion for a worthier master, the King of Sweden.²² He was present with him at the taking of Stettin and Damm when they surrendered, and was mainly responsible for the capture of Colberg in Pomerania. In an encounter with the Imperialists who had advanced to its relief, the Swedes, led by an inexperienced officer, fled without firing a shot, and if it had not been for Lord Reay's Scottish musketeers, who were in the van and stood firm, the enemy would have been victorious. In 1631 he returned home, but he was in constant communication with Gustavus regarding the raising of fresh levies. The death of his patron was a great blow to him. Of the large sums of money which he had spent to pay his recruits he received nothing back,²³ and he was compelled to denude himself of part of his estates to pay his debts.

When the King of Sweden accepted the Order of the Garter at the hands of King Charles's envoys after the Battle of Dirschau in West Prussia in the autumn of 1627, he made six knights. The ceremony took place in the presence of the whole army in front of the royal tent, and was performed with great triumph.²⁴ One of the recipients of the honour was Sir Alexander Leslie, and another Sir Patrick Ruthven, who afterwards became Earl of Forth and Brentford.²⁵ Powerfully built and covered with scars, or, as Colonel Robert Monro, the author of the *Expedition with the Worthy Scots Regiment* puts it, 'carrying the marks of valour on his body,' he was a man of great courage and a trusted leader. In spite of his propensity to hard drinking which earned him the nickname of General Rotwein (red wine), he always kept a cool head.²⁶ Scott probably had him in mind in drawing Dugald Dalgetty, for his hero is said to have acquired in these wars a capacity to bear an exorbitant quantity of strong liquor. Ruthven's career as a soldier began about 1606-9, when his name figures in the lists of Swedish officers, and he was soon appointed captain in a regiment of Scots in Sweden. Thus he joined the army at the same time as Leslie, and he must have served with him under Charles IX.

²² *The Book of Mackay*, by Angus Mackay, 1906, p. 134.

²³ *The Scots in Germany*, by T. A. Fischer, Edin. 1902, p. 91; *The Book of Mackay*, p. 136.

²⁴ *Ruthven Correspondence*, Roxburghe Club, 1858, Introd. p. ix.

²⁵ *The Scots Peerage*, vol. iv. 1907, p. 104.

²⁶ *The Scots in Germany*, p. 107.

After his accession in 1611 the attention of Gustavus was first engaged by the war in Denmark, in which Ruthven does not appear to have taken any part. But he was ordered during the Russian war to conduct certain troops to Narva, and was present at the storming of Pleskoff (1615), having in the following year the command of an East Gothland troop of 300 men; and in the campaign against Sigismund III. of Poland he shared in the successful siege of Riga (1621). He held successively the Governorships of Memel, Marienburg and Ulm, and many of his letters to Axel Oxenstiern, commencing in 1629, have been preserved.²⁷ He urges on the Swedish Chancellor the necessity of rendering Memel safe from the attacks of the enemy. When at Marienburg he defends himself against the charge of having delayed General Wrangel's departure by not supplying him with horses and conveyances. 'I did command the magistrates,' he writes, 'two days previous to be ready with their horses and carts, but what they furnished was of such miserable description that I put the mayor into prison, and sent him home after a time to provide better horse material.' He thanks Oxenstiern for allowing him the rights of fishing in the neighbourhood, and begs for money to pay his troops. As to this, he complains in one letter, dated August, 1630:—'I and my captains have ever and anon pawned our store of clothes and other things to content the men, but now the well is exhausted and I know of no other means.' Whilst in command of Ulm he succeeded by his vigilance in suppressing two conspiracies and in reducing a number of Catholic towns in the vicinity, although his garrison only amounted to 1200 men. His reward was the Grafschaft or Earldom of Kirchberg, near Ulm, worth about £1800 a year.

In May, 1632, Ruthven was raised to the rank of major-general, and was given the first command with Duke Bernard of Weimar of 800 men in Swabia, to watch the movements of the Catholic general Ossa, who was threatening Ulm. Seeing that he was engaged with Christian of Birkenfelt at the siege of Landsberg near Frankfort-on-the-Oder, in October, he cannot have been present at the Battle of Lützen in the following month. During 1634-5 he was travelling in Scotland, England and France, but he returned to Germany to take part in the Battle of Nördlingen, so disastrous for the Swedes. Later on he was lieutenant-general with Baner and assisted him in defeating the Catholics at Domitz,

²⁷ *The Scots in Sweden*, by T. A. Fischer, Edin. 1907, p. 102.

Lützen, Goldberg and Kosen.²⁸ In 1636 Ruthven retired from active service abroad. Clarendon²⁹ says that he joined King Charles at Shrewsbury, and he was appointed to command as general at Edgehill, succeeding the Earl of Lindsey who fell at this battle. His place was, however, soon taken by Prince Rupert, and the last we hear of him in connection with the country he served so well was in 1649, when he was sent on a royalist mission to Sweden.

The oldest colonel at the great battle of Breitenfeld, near Leipzig, on September 17, 1631, where, in spite of the cowardice of his Saxon allies, the King of Sweden defeated the aged Tilly with the loss of 6000 of his veterans, was Sir James Ramsay, who commanded three regiments of chosen musketeers forming the vanguard.³⁰ They sustained a furious charge by a body of cuirassiers under Pappenheim, the bravest soldier, according to Schiller, Austria possessed, whom they compelled to fall back on their main body by dint of pike and musket.³¹ This officer was usually called the Black Colonel of Scots, to distinguish him from Sir James Ramsay the Fair, Governor of Brissac. With a detachment of his countrymen he led the storming party at the capture of Würzburg in Franconia on October 10, and was wounded in the arm. Monro says that this was the greatest exploit performed during the war. The castle was approached by a bridge which had to be repaired under a shower of cannon and musket shot. Gustavus asked the Scots if they were willing to take the place by assault, knowing that if they refused it would be useless to expect any others to go upon such a forlorn hope.³² For these and other conspicuous services Ramsay received a grant of lands in the Duchy of Mecklenburg and the government of Hanau, an important fortress on the river Main near Frankfort.

After the defeat of the Swedes at Nördlingen in 1634 the Imperialists besieged Hanau, which its commander defended with the greatest skill and courage. His sallies from the town were well conducted and generally successful, and, in order to gain time and rest for his worn-out garrison, Ramsay began a series of

²⁸ *The Scots Peerage*, vol. iv. 1907, p. 104.

²⁹ *History of the Rebellion*, ed. 1720, vol. ii. pp. 40 and 57.

³⁰ *Monro's Expedition*, ed. 1637, ii. 63.

³¹ *Life of Sir John Hepburn*, by James Grant, 1851, p. 101.

³² *An Old Scots Brigade*, p. 163: *Gustavus Adolphus*, by C. R. L. Fletcher, p. 207.



PATRICK RUTHVEN, EARL OF FORTH AND BRENTFORD.

DIED 1651.

From oil painting in Skokloster Castle, Sweden, formerly the seat of General Wrangel.

The correctness of the attribution of this portrait has not been doubted.

See page 43 for another portrait of Patrick Ruthven.

sham negotiations with the Catholic general Lamboy, proposing to send an envoy to Oxenstiern and to Duke Bernard of Weimar for their condition to surrender the fortress, which he knew would never be given.³³ Undaunted by plague and famine, Ramsay held on doggedly, until the besieged were reduced to feeding on dogs and cats. He was so joyful at the success of his punitive exhibitions against Lamboy that he could afford to indulge in a grim joke at his expense. His enemy had scornfully presented him with two fat pigs, when the Governor sent him in return a gift of fifty pounds of carp caught in the moats, with the mocking request for news, especially concerning the rumour current in the town, of Hanau being besieged.

At length the brave defenders were relieved. The London apprentice, Sydnam Poyntz, who joined Wallenstein's army and wrote an account of his campaigns, bears witness to the stubbornness of their resistance to the last. 'The Comaunder of Hannow' he writes, 'who was old Coronell Ramsey, a Scotch man, having gotten notice of the Duke of Hessen's coming to succour hym and at hand, and the other side not dreaming of any Adversary nere, sallyed out of the Towne, beat the Imperialists out of their Trenches, killed and drowned in the River of Mume (Main) as good as fower thousand and levelled all their workes.'³⁴ On June 23, 1636, the Landgrave of Hesse and Sir Alexander Leslie entered the town amidst the ringing of bells and joyful shouts of the populace, bringing with them 600 waggon loads of provisions and herds of cattle for slaughter. In memory of this deliverance the so-called Lamboy festival is celebrated in Hanau to this day. Ramsay's end was a tragic one. In the same year the fortress was again invested by the Elector of Mainz, and the Governor, realising the impossibility of sustaining another siege, agreed to evacuate it on certain terms. When, however, it was clear to him that the treaty was about to be violated he retook the place, which was eventually surprised by Henry, Count Nassau Dillenburgh. Ramsay defended himself as best he could in this extremity, but he was wounded, and, after having been treated with the most cruel rigour and severity, he died a prisoner in the Castle of Dillenburgh, on March 11, 1638. He was buried in the church there, but the grave of this devoted hero has never been discovered.

³³ *The Scots in Germany*, p. 94.

³⁴ *The Relation of Sydnam Poyntz (1624-1636)*, Camden Society, Third Series, vol. xiv. p. 1908, 122. We cannot vouch for the accuracy of this writer's figures.

Next to Gustavus himself Sir John Hepburn was accounted the ablest leader on the Protestant side. He was the second son of George Hepburn of Athelstaneford near Haddington, and he may be described as a typical man of action, and one of the most famous soldiers the world has ever seen. With a genius for command, he combined quick decision and dauntless courage. Handsome in appearance and dignified in bearing, he far outshone his comrades in the magnificence of his arms and attire, and this seems to have been the only fault that the plain Swedish king had to find with him. Like Dugald Dalgetty, who is never tired of telling us that he had studied humanity at the Marischal College of Aberdeen, and had served half the princes of Europe, Hepburn was scholar as well as courtier. When the unfortunate Winter King, Frederick, Elector Palatine, lost the crown of Bohemia after his defeat by Tilly and the Catholic League at the White Hill of Prague on November 8, 1620, his bodyguard consisted of a company of Scots under Sir Andrew Gray, in which young Hepburn commanded a band of pikes. Two years later he distinguished himself with Ernest, Count of Mansfield, against the Spanish commander, Spinola, at the defence of Bergen-op-Zoom, and at the Battle of Fleurus in the Low Countries. Attracted to Sweden by the fame of its ruler, his services were readily accepted by Gustavus, who, in 1625, appointed him colonel of one of his Scottish regiments.

Thenceforth Hepburn's career is in the nature of a triumphal progress. During the King of Sweden's first campaign in Pomerania and Mecklenburg in 1630, he was sent by Oxenstiern to the relief of his fellow countryman and constant companion in these campaigns, Colonel Robert Monro, at Rugenwalde,⁸⁵ and he was rewarded with the governorship of that place. Already he had been knighted, as his name appears in the *Swedish Intelligencer* of the time as 'Sir John Hebron.' In conjunction with Kniphausen and Bauditzen he successfully intercepted the Imperialists who were advancing to succour Colberg, then being blockaded by the Swedes. In March, 1631, Gustavus formed his Scots Brigade, consisting of Hepburn's own regiment, Mackay's Highlanders, Stargate's Corps, and Lumsden's Musketters, and gave the command to Sir John. Throughout the army it was known as the 'Green Brigade,' from the tartan of the Highlanders and the colour of the doublets, scarfs, feathers,

⁸⁵ *Gustavus Adolphus*, by C. R. L. Fletcher, p. 137.

and standards of the other regiments.³⁶ The actual date of Hepburn's birth is unknown, but his biographer³⁷ claims that at the age of thirty he was at the head of the four best regiments in the Swedish army. With every allowance for partiality there appear to be sufficient grounds for this contention, judging from the subsequent exploits of the brigade. During the Thirty Years War the Saxons could not understand Tilly's veterans and always ran away, the Swedes and the Finns generally acquitted themselves nobly, but the Scots as a rule were entrusted with the most perilous enterprises and invariably stood firm.

The brigade soon had an opportunity of displaying their courage at Frankfort-on-the-Oder which was taken by storm on April 3, Hepburn and Colonel James Lumsden directing the attack on the Guben Gate, lighted petards in hand. 'Now my valiant Scots, remember your brave countrymen who were slain at New Brandenburg,' cried Gustavus in allusion to the terrible massacre of Lord Reay's Highlanders by Tilly a few days before. Monro in his *Expedition* has given a graphic account of the struggle which was stubbornly maintained on the part of the Imperialists by Walter Butler and his Irishmen. Hepburn was hit above the knee and retired for a time to get his wound dressed. 'Bully Monro, I am shot,' he jocularly called out to his friend who was passing into the line of fire with his Highlanders; at which the other tells us in his characteristic way he was 'wondrous sorry.' The enemy's guns were captured and turned upon them. In the streets the ground was contested inch by inch, the Austrians slowly retreating and begging for quarter, but to every appeal the merciless answer was 'New Brandenburg. Remember New Brandenburg!' Thus was the slaughter of the Scots avenged, for three thousand of the garrison were put to the sword.³⁸ Landsberg then fell, after a blockade of ten days, on April 16, and Hepburn, although still suffering from his wound, was actively engaged upon the operations which led to its surrender.

During the next few months the Green Brigade was encamped in the open fields, at first near Berlin and later at Old Brandenburg, where they lost many of their men by pestilence. In July Gustavus concentrated his forces at Werben, and Tilly with

³⁶ *An Old Scots Brigade*, p. 125.

³⁷ *Dict. Nat. Biog.; Life of Hepburn*, by James Grant.

³⁸ Fletcher's *Life of Gustavus Adolphus*, p. 160.

20,000 troops appeared in the neighbourhood of his camp. The Catholic leader reduced Leipzig, and his opponent, drawing out his army in full battle array, marched towards the city. After the flight of the Saxons at Breitenfeld, Hepburn's brigade, which was held in reserve, was hurried up to the assistance of Field-Marshal Horn, who commanded the Swedish left wing, and was being hard pressed by Tilly. Lord Reay's Highlanders are credited with being the first to make the breach in the enemy's ranks which decided the issue. The slaughter which ensued was fearful. About 600 of Tilly's veterans who remained alive closed round their aged leader and bore him wounded from the field. The Scottish Brigade was publicly thanked in the presence of the whole army, and Monro, who himself fought valiantly, says that whilst Gustavus principally ascribed the victory to the Swedish, Finnish, and Dutch horsemen, Hepburn's men got great praise for their foot service. Following up this success General Bauditzen and Sir John between them captured six large towns on the way to Würzburg. The latter's defence of Oxenford was a notable achievement. The Duke of Lorraine reinforced Tilly after his defeat with 12,000 troops, and the Imperialist ranks rose to 40,000 men. Gustavus ordered Hepburn to garrison this place with 800 musketeers so as to prevent the enemy crossing the Maine, and if he found the service too desperate to blow up the bridge and retire on Würzburg. So skilfully did Hepburn make his dispositions that Tilly, with his huge army imagined that a large force was behind the walls and turned aside to Nürnberg.

In December, 1631, Gustavus crossed the Rhine and attacked the first Spanish garrison at Oppenheim. After taking a strong fort or sconce on the east side of the river and putting the commandant under terms to depart to Bingen, Hepburn immediately went to the assistance of his chief in reducing the castle, which surrendered after the seizure of one of its outworks. Mainz gave the Swedes very little trouble. Such was Hepburn's reputation at this period, it is said that when Don Philip de Silvia and his Castilians saw his brigade about to storm they laid down their arms. The conquerors remained in the city till March, 1632, when they marched to Frankfort-on-the-Maine to take part eventually in the capture of Donauwörth, from which Gustavus drove the garrison after a hot resistance. At the passage of the Leck, a tributary of the Danube, where Tilly received his mortal wound, Hepburn led the van. It was, however, an artillery



PATRICK RUTHVEN, EARL OF FORTH AND BRENTFORD.

DIED 1651.

From oil painting in the Bodleian Library.

It differs in various particulars from the dated portrait of Ruthven at Skokloster (see page 44), and also from the engravings of him. Hence its identity must remain doubtful.

duel in which the Swedish guns were vastly superior.³⁹ The Austrians had taken up a position on the right bank of the river, between Augsburg and Rain, and on the night of April 3, Gustavus threw up earthworks upon which he mounted 72 pieces of artillery. The enemy were forced to retire by a converging fire, and he gained the passage of the river. With Frederick of the Palatinate in his train, the king entered Munich in triumph, a city which Hepburn knew as a subaltern in the Scottish bands of Sir Andrew Gray, and of which he was now made military governor.

The merits of the quarrel between Gustavus and Hepburn which deprived the Protestant leader of the services of his ablest general before the battle of Lützen have never been ascertained. It is sad to have to recall this unhappy termination of their friendship, but whether it was the outcome of a taunt regarding Hepburn's religion, which was Catholic, or the extreme magnificence of his armour and apparel is not very material at this date. At all events the haughty Scot took offence at some real or imagined slight, and vowed never to unsheath his sword in the service of Sweden again. He remained on, however, to perform some hazardous work for his master against Wallenstein on the Altenburg, and there was an affecting parting between him and the Scottish officers who accompanied him for a mile on the road. Within a month of his departure Gustavus fell. The Scots Brigade, having lost heavily at Nürnberg, were not present at Lützen, though Alexander Leslie and several officers of Mackay's regiment were with the king at the end. There was no need, however, for leadership at this supreme moment, for each individual Swede fought with furious courage to avenge him. 'Life falls in value, since the holiest of all lives is gone; and death has now no terror for the lowly, since it has not spared the anointed head.' Such is Schiller's tribute to the romantic devotion of the victorious army.

Hepburn's last years were spent in the wars of France, where he gained the friendship and esteem of Richelieu, and fought under the Cardinal Duke de la Valette and the great Turenne, then at the outset of his career, against his old enemies the Imperialists. Before he reached his fortieth year this brave soldier of fortune was shot in the trenches at the Siege of Saverne, assisting Duke Bernard of Weimar, on July 8, 1636, and his death was universally mourned. In his distress at the news Richelieu wrote a touching letter to Valette, extolling the worthi-

³⁹ Article on Artillery in *Encyclopaedia Britannica*.

ness of his character and deploring his loss, which had affected him so sensibly that he found it impossible to receive any comfort.

While Hepburn, Ramsay, Ruthven, Mackay, King, Alexander Leslie and Robert Monro were the principal officers 'serving the Swede,' the military achievements of three other Scottish colonels stand out conspicuously. What Gustavus would have done without Alexander Hamilton's guns, especially at the passage of the Lech, it is difficult to say. 'Dear Sandie,' as he was called, was half-brother of the first Earl of Haddington and a celebrated artilleryist. He had workhouses at Urbowe or (Örebro) in Sweden, which Lord Reay and Monro visited in 1630, and he invented 'cannon and fireworks for his Majesty.'⁴⁰ Gustavus recognised the need of mobile field artillery and used iron 4-pounder guns, weighing about 5¼ cwt. and drawn by two horses, whilst Tilly's weapons were cumbersome 24-pounders, each requiring 20 transport horses, and 12 horses for the waggons. The service of his guns was primitive and defective, but the Swedes obtained rapidity of fire by the use of cartridges in place of the old method of ladling the powder; and as two of their light guns were attached to each regiment, they had a distinct advantage over the Imperialists who had difficulty in moving their artillery during the course of an action.⁴¹ Hamilton returned home about 1635, and joined the Covenanters; and his guns were mainly responsible for the defeat of Lord Conway, who opposed the Scots under Leven at the passage of Newburn-on-Tyne.

The officer in command of Lord Reay's Highlanders, who were slaughtered at New Brandenburg, was Lieutenant-Colonel John Lindsay, grandson of David, tenth Earl of Crawford.⁴² In March, 1631, Tilly with 15,000 troops arrived before the town, where General Kniphausen was stationed with 2000 men.⁴³ His garrison included about 600 Highlanders under Lindsay, who, although in his twenty-eighth year, had seen much service, having been dangerously wounded at the Siege of Stralsund. Gustavus ordered Kniphausen to retire, as the place being in a wretched condition of defence was not worth holding against such fearful odds. The message miscarried. For nine days the heroic defenders kept the Austrian veteran at bay. At length the town,

⁴⁰ *An Old Scots Brigade*, p. 88. As to Hamilton's guns in the Civil War see *Cromwell's Army*, by C. H. Firth, 1902 (*passim*).

⁴¹ Article on Artillery in *Encyclopædia Britannica*.

⁴² *The Scots Peerage*, vol. iii., 1906, p. 30.

⁴³ *Gustavus Adolphus*, by C. R. L. Fletcher, p. 158.

after a desperate struggle, was taken, and the entire garrison, except the commander, his wife and daughter, and about sixty men, were barbarously massacred. Lindsay fell in the breach, fighting to the last with a pike in his hand, his tartaned soldiers slain in a heap around him. In the town records he is singled out as the Scottish nobleman 'Earl Lindz,' who defended his post long after all other resistance had ceased. According to Monro the first men over the ramparts at Frankfort-on-the-Oder to avenge this slaughter were Major John Sinclair and his lieutenant Heatley. They placed their backs against the wall and resisted the attack of the enemy's oncoming horsemen with a handful of musketeers until relieved. Sinclair was the third son of George, fifth Earl of Caithness, and he obtained the temporary command of Mackay's famous regiment when Monro returned to Scotland to procure recruits. He was killed at Newmarke in the Upper Palatinate in 1632, his place being taken by Major William Stewart, brother of the Earl of Traquair. Lamenting the loss of his friends during the war, Monro writes thus: 'Shortly after him (*i.e.* his own brother, Colonel Monro of Obstell) my dear Cosen and Lieutenant-Colonel John Sinclaire being killed at Newmark, he did leave me and all his acquaintance sorrowfull, especially those brave Heroics Duke Barnard of Wymar and Feltmarshall Horne, whom he truly followed and valourously obeyed till his last houre; having much worth he was much lamented, as being without gall or bitterness.' His epitaph in Latin by Joannes Narssius is prefixed to Monro's remarkable narrative.

GEORGE A. SINCLAIR.

The Hospitallers in Scotland in the Fifteenth Century

THE Knights of S. John of Jerusalem, and their brethren the Templars, were popular Orders in their early history, and as fighting forces of trained warriors their services during the Crusades and in support of the Latin kingdom of Jerusalem are recognised as valuable, and would have been still more so but for the jealousy and frequent quarrels between them.

When the Spanish Jew, Benjamin of Tudela, visited the Holy City, somewhere about the year 1170, during the time when the Order of the Hospital was governed by its fourth Grand Master, he found its special work both in war and peace being efficiently performed. He says 'The city contains two buildings, from one of which—the hospital—there issue forth four hundred knights; and therein all the sick who come thither are lodged and cared for in life and in death.' He then goes on to refer to the Templars quartered in the Temple of Solomon who numbered, according to Benjamin, three hundred knights, and 'issued therefrom every day for military exercise.'¹

About twenty years before Benjamin's visit to Jerusalem the Hospitallers had been introduced into Scotland, and had established their preceptory at Torphichen in East Lothian.² The earliest charter evidence takes us back to the year 1160, during the reign of Malcolm IV., when Richard of the Hospital of Jerusalem and Robert, brother of the Temple, appear on record.³

¹ Adler, *Itinerary of Benjamin of Tudela*, p. 22.

² *Transactions of Glasgow Archaeological Society*, vol. iii. (N.S.), 313 ff.

³ *Regist. St. Andrews*, p. 207. It is true that in the alliterative *Morie Arthure* there

'Comez a templere tyte, and towchide to þe kyng,'
and we also have a Hospitaller in

'Raynalde of þe Rodes and rebell to Criste,
Pervertede with paynyms þat Cristen persewes,'
but romance and history are not synonymous.

Owing largely to the loss of the chartularies, which must at one time have existed for both the Templars and Hospitallers, no connected narrative of the doings of the knights in Scotland is possible until the latter half of the fifteenth century is reached, when Sir Henry Livingston became preceptor. Our own Scottish records before this time tell us little of their military strength or economic position, of the succession of preceptors at Torphichen, or of the attitude taken by them and their brethren in the War of Independence and subsequent events. We can glean, indeed, some scattered facts from the muniments of the Order. Of this nature is the Bull or Act of the Grand Master Philibert de Naillac (1396-1421), dated 11th August, 1418. To M. J. Delaville Le Roulx, editor of the *Cartulaire Général des Hospitaliers* and author of other works of prime authority on the subject, we are indebted for calling attention to this document, which is recorded in the archives of the Order at Malta. Its importance as bearing on the history of the knights in Scotland in the early years of the fifteenth century admits of no question.¹

This Bull or Act presents a clear view of the policy adopted at its date by the Order in solemn assembly for the purpose of securing, as far as possible, an annual revenue from its preceptories and possessions in this outlying kingdom, and indicates a distinct resolve to deal directly with Scotland as an independent realm, and not through the prior of England.

Owing to the fact that England, Scotland, and Ireland formed a single 'langue' or division of the Order, the English prior claimed to be head and receiver-general of the revenues in these countries, a claim which the Scottish War of Independence caused to be looked upon with distrust, and which was soon repudiated. The hundred years' war between France and England, in progress when the Bull was granted, was doubtless a considerable factor in bringing about this determination to have no Scottish remittances through England. At this date three years were not past since the battle of Agincourt, and the fortunes of the English king were yet in the ascendant. Scotland, with her young ruler (James I.) still in captivity, was giving unofficial but effective help

¹ *Lib. Bull. Mag.* vol. xxvii. f. 130. The original is written on paper 11 in. by 8 in. and the writing covers 10 in. by 6 $\frac{7}{8}$ in. of the sheet.

At M. Delaville Le Roulx's suggestion, and by courteous permission of the keeper of the archives at Malta, a photograph of the pages of the volume has been taken, and a transcript and translation are appended to the present article. The writer is indebted to Mr. George Neilson, LL.D., for valuable assistance in several palaeographical difficulties.

to France in the struggle, and the Knights Hospitallers, whose Grand Master, Philibert de Naillac, before his elevation had been Grand Prior of Aquitaine, were desirous of keeping the revenue from this country free from the control of the prior of England,—the more so as there are indications that remittances through him from Scotland had been irregular.

This policy was not a new one. Upwards of sixty years before, Master David de Mar, treasurer of Moray, secretary to Queen Johanna, first wife of King David II., had a lease of a preceptory of Torphichen, evidently only a portion of the estates, and he seems to have proved a very unsatisfactory tenant. He held the property for twenty years and more, and for seven of these years he neglected to pay the rent. In 1363 Urban V. wrote from Avignon to King David II. urging him to 'favour the Master and convent of the Hospitallers in recovering from David de Mar, treasurer of Moray, what is due to them on account of a preceptory and goods of the Hospital in Scotland farmed by de Mar at one hundred marks a year, and which has been unpaid for seven years, although he has been publicly excommunicated in the Roman court.'¹ It seems safe to assume that the culprit was reduced to reason, as he kept possession for upwards of twenty years in all, which is unlikely if he had persisted in refusing to make remittances to head-quarters.

After this we find a layman in possession. He is Robert Mercer, Lord of Innerpefferay, a kinsman and member of the household of King Robert II., and a member of the well-known family of Mercer of Aldie. In the spring of 1374 he visited the Holy See at Avignon and presented to Pope Gregory XI. a petition from the king along with a letter from King Charles V. of France. The result of this influential support was a communication from His Holiness to the Master of the Hospital (Raymond Berenger) desiring him 'to grant certain property in Scotland belonging to the Hospital, accustomed as the pope has learned to be governed by laymen,'² to Mercer for a pension due to him.³ King Robert proposed to pay Robert Mercer's pension by getting for him a lease of the property of the Knights in Scotland, and for this purpose he invoked the assistance of his ally the King of France. At first they gained their end, for

¹ Bliss, *Calendar Papal Letters*, iv. 3.

² This statement is doubtful. David de Mar was an ecclesiastic. Possibly he managed the estates through a lay factor.

³ Bliss, *u.s.* p. 135.

Robert de Julliac, successor of Raymond Berenger in the Grand-mastership, granted a lease to Robert Mercer 'for ten years at a yearly rent of four hundred gold florins of Florence to be paid at Paris at the feast of the Ascension,' which the pope declared was double that paid by the prior of England. This grant was duly confirmed by the Holy See and intimation was sent to Robert II.¹

Within a few months, however, the pope found that he had placed himself in a difficult position, for Edward III. and the prior of Clerkenwell protested, the former asserting that the preceptory of Scotland pertained to the King of England's crown. To this Gregory XI. replied that he had learned that the Scottish preceptory did not belong to the priory of England, and was not in any way *inter regalia* of England, 'but had been held with the goods thereof for very many years by divers clerks and laymen, and among others was held in farm for twenty years and more by a certain David [de Mar] Clerk, a Scot, who had been wont to dwell at the papal court.'²

The pope saw that action must be taken at once, as both the king and the prior of the Hospitallers in England, Robert de Hales, were threatening to stop supplies of money and men for the crusade which lay very near to the pope's heart.³ What he did shows the strait he was in, for he disavowed his own action, writing in October next year (1375) to the Bishops of Scotland 'requesting them to assist Henry de St. Trond, preceptor of Avalterre,' Treasurer of Rhodes, to whom he had assigned the task of collecting the revenues of the Scottish preceptory pending the decision in the suit brought by the English prior against 'Robert de Julliac, master of the Hospital, he having let the said preceptory on farm to Robert Mercerii, a layman of Scotland, who obtained papal confirmation of the grant and now holds it to the injury of the said prior of England to whom of right it belongs.'⁴ He wrote in similar terms to the King of Scots, adding 'Henry is to govern pending the pope's decision.'⁵ There does not seem to be any evidence that the Treasurer of Rhodes visited Scotland

¹ Bliss, *u.s.* p. 146. The gold florin at the end of Charles V.'s reign was value for twenty shillings. See Ducange, *Moneta*.

² Bliss, *u.s.* p. 140.

³ Edward III. arrested the property of the Order in England, and thus prevented all remittances. In 1375 the pope wrote twice to the king desiring the removal of the sequestration. (Hardy, *Rymer's Foedera, R.S.*, i. p. 473.)

⁴ Bliss, *u.s.* p. 110.

⁵ Bliss, *u.s.* p. 140.

in person to collect the revenues assigned to his administration. As to the lord of Innerpeffray he disappears from the records.

The great Schism in the Church having taken place, Scotland adhered to the anti-pope, as did France, while England favoured Urban VI. The result was confusion in the Order in Britain. In 1380-2 the estates were leased to Sir Robert of Erskine, Chamberlain of Scotland, and in 1387 to his son, Sir Thomas Erskine, Keeper of Edinburgh Castle.¹

The disputes regarding administration of the Scottish preceptories and estates eventually gave rise to the determination to place these under the direct control of the Order at Rhodes. In 1410 John de Bynnyng received from the Grand Master a grant of the bailliage of Scotland for five years. Philibert de Naillac, Grand Master, appears to have visited England in this year, as he had a safe conduct on March 8th, 1410.² In 1415 Brothers Alexander of Lyghton, John of Bynnyng, and Thomas Goodwyn, Scottish Hospitallers, come into view as possessors of a safe conduct from the English king to attend the Chapter in England, and in the autumn of that year the last of these was preparing to travel to Rhodes. He was then designated Chaplain of the Scottish Hospitallers.³

Let us now turn to the Bull or Act under consideration. It begins thus: 'Brother Philibert de Nailhac, etc., Recognising what great damage to the goods, returns, revenue, rights and lordships of our order may result from want of proper administration, and that the obligation of making provision of this nature rests upon us: We make known to all men by these presents, that, after effecting the satisfactory adjustment of many difficult affairs of our order dealt with in our present assembly, bestowing keen consideration upon the administration of the property of the said order within the realm of Scotland and upon the suitable maintenance of our three brethren residing there, namely, Alexander de Lahton, John Benyn, and Thomas Gudwyn, and having heard the views of our dearest brethren in Christ, John d'Autun de Bellacombe, Garcia de Tours, Doctor of Laws, of Villa-Franca de Penedes, preceptor, and Pascal Martini de Torrellas, prior of the Church of Montressa, deputed and specially appointed by us and the said assembly for the assessment of the

¹ M. Delaville Le Roulx has found these lessees mentioned in the Archives as 'Robert Eslrin, Chevalier Seigneur d'Arqui,' and 'Thomas d'Arquin, Seigneur d'Arquin.'

² Hardy, *Rymes's Foedera*, R.S., i. p. 565. ³ Bain, *Calendar*, iv. 854, 868, 869.

value of all the property which the before-named order in the said realm of Scotland has heretofore owned and possessed and now owns and possesses, and for the blessing of the cultivation of peace, union, and brotherly affection among the said brethren, and also for the conservation of the property and legal rights of the said order existing within the said realm: By will, advice and consent of our very dear and reverend brethren in Christ'—(here follow the names of thirty-four officials and preceptors, and the deed at the end of the list continues)—‘and numerous other brethren present and taking part in the business of our assembly, Have Willed and Ordained and Do by these presents Will and Ordain in manner following.’

One may remark in passing that the meeting at which this deed was granted was not a general Chapter of the Order, which was appointed to be held at Rhodes. It is styled an Assembly (*Assembleya*), which is explained in the Statutes of the Order as a term used to describe a congregation or meeting gathered together to discuss and arrange urgent matters pertaining to the Order.¹ This assembly was held at Avignon, and was composed chiefly of French and Spanish preceptors. Thus it was only justified in making a temporary adjustment of Scottish grievances, and the final settlement is reserved to the next Chapter at headquarters in the Island of Rhodes.

Looking again at the deed itself, we find that the outstanding feature disclosed by the operative clauses is the division of the ecclesiastical property, revenues and general income of the Order in Scotland into three parts, and the assignment of these, in a specific but unequal way, to three separate individuals with varied rents payable by each. Thus the church of Torphichen, which is leased to John Binning along with certain lands adjoining, bears an annual rent of seventy-one gold crowns (*scuta auri*), the church of Balantradach, with lands in the immediate neighbourhood, assigned to Thomas Goodwin, of thirty-nine, and the other emoluments, including all dues of entry of vassals of the Order, are granted on lease to Alexander de Leighton at an annual payment of two hundred and eighty-nine gold crowns.²

The arrangement made, however, is stated to be only provisional, and was to remain firm and stable until the next

¹ *Statuta*, tit. i. § 12. Ducange, *s.v.* *Assemblea*.

² *Omnia alia emolumenta et introitus dicti religionis*. At first one is apt to consider ‘introitus’ as applying to dues payable by intrants into the Order, but none were admitted in Scotland. It is clear that the reference is to feudal rents and casualties.

General Chapter to be held at Rhodes, in which a definite agreement was to be come to.

The whole property is stated as amounting in value yearly to four hundred and fifty pounds (*franci*), each pound being reckoned as equal to sixteen shillings of Paris (*solidi Parisienses*) or to four hundred gold crowns (*scuta auri*), each crown being estimated as value for eighteen shillings of Paris.¹

The rent above mentioned as payable by the three lessees amounts *in cumulo* to three hundred and ninety-nine gold crowns, which sum is one crown short of the annual value, four hundred. This is somewhat curious, as the deed states distinctly that added together, the three sums reach four hundred scuta. One explanation that occurs is, that forty having been expressed in the original by xxx, xxxix has been written by the copyist, *per incuriam*, inserting a 1 in front of the last x.

It seems at first sight rather remarkable that the two first-mentioned brethren pay between them a rent of only one hundred and ten scuta, while Alexander de Leighton is taken bound to pay two hundred and eighty-nine. The reason of this is, that he gets possession of property yielding an indefinite and elastic revenue, described as 'all other emoluments and dues of entries of the said Order existing in the said Kingdom as well jurisdictional lordships of every kind of the said place of Torphichen, as of all other places [in Scotland] belonging to our Order.'

It is clear that these rights thus granted were valuable—the stipulated rent is more than two and one-half times that payable by the other two brethren combined—and this is explained by the fact that the Order possessed real estate, ecclesiastical and civil, all over Scotland, including churches, teinds, annual rents and other heritable subjects, and that these carried with them the feudal rights and privileges of a lord of a barony. Sir Alexander de Leighton was thus granted by an outside authority the position of a lay-lord with all the emoluments

¹ The calculation of values in francs—Torphichen 260, Balantrodach 140—is to be looked upon as a gross valuation which makes no allowance for the expense of living, upkeep, etc. (*reprise*), and it does not include the 'alia emolumenta et introitus' assigned to Leighton. These latter are not valued in gross as they are indefinite and fluctuate from year to year. We may take it for granted, that Sir Alexander de Leighton made what he considered a good bargain at 289 écus. He was on the spot, and presumably quite able to look after himself. Cf. *Registrum Epis. Aberdon.* i. 220, 228.

and immunities thereto belonging—soc and sac, thol and theme, infangthief and outfangthief. In fact, he became thus entitled, after investiture, to exercise the rights of jurisdiction, holding of courts of the barony, admitting of vassals, wardship and relief, which we find from later records were actually claimed and exercised by his successors the preceptors of Torphichen.¹ He was thus granted, what may be called the Mastership or office of prior of the Scottish 'languie,' and the other two brethren were virtually chaplains and entitled merely to the ecclesiastical revenues of the churches with a certain added return, in the case of Torphichen from the lands of Locharis, and in that of Balantrodach from the two mills and the lands of Hudspeth, Esperstoun and Utterstoun.

These properties, which lay in the immediate vicinity of the respective churches, were added in order to secure a sufficient annual stipend for the chaplains, after remitting the stipulated rent to headquarters. It is true that in the deed Thomas Goodwin, who gets Balantrodach, is called preceptor, and so he was at his own preceptory, the term thus applying solely to his position at Balantrodach. He is elsewhere styled chaplain.² He and his colleague John Bynning were clearly in priests' orders. To them was granted the cure of souls at Balantrodach and Torphichen, and they thus were made responsible for the due performance of divine service,³ while no such care is assigned to Alexander de Leighton, who, although he belonged to the clergy in the medieval sense, in virtue of his vows as a member of the Order, yet was probably not in priest's orders. He would thus represent the militant side, while Thomas Goodwin and John Binning were entrusted with the maintenance in Scotland of the religious worship and work which were undertaken by the Order in its preceptories proper.

We can readily understand that a warlike knight, although bound, as all the Hospitallers and Templars were, by the three monastic vows of poverty, chastity, and obedience, was not quite a suitable person for celebrating divine service in Latin. He was more in his element in a battle, and the arm of flesh was a weapon to which he was thoroughly accustomed. This fact is vividly brought out by an occurrence in Buckinghamshire about sixty years

¹ *Reg. Mag. Sigilli*, 1 Jac. IV. 1791.

² Bain, *Calendar, ut supra*.

³ Philibert de Naillac promulgated a Statute ordering all officers, commanders, and brethren to make it their earnest duty to have all churches and chapels under their care put into 'a good and honourable state.' Vertôt. *Hist. de Malte*, iv. p. 91.

before the date of our Charter. We quote from the Calendar of Patent Rolls: 'Commission of oyer and terminer to William de Shareshull [Chief Justice] and others on complaint by Simon Warde of Buyton [Bonington] that John de Pavely, prior of the Hospital of S. John of Jerusalem in England, Richard Wrikele [de Werkele], John Dyngele, and Robert Cherleton his confreres and others took him at Merlawe, county Buckingham, threw him in a stank of water there, and kept [him] in the water as far as to submersion, until to escape death he made oath not to sue against the prior or any other of the said transgressors by reason of any trespass done to him in the King's court or elsewhere, and that afterwards drawing him out of the stank they assaulted and greivously wounded him and likewise maimed his horse worth 100s. and cut off its tail and ears, then set him so wounded thereon and led him through the market of the town in the sight of all the people assembled there, with loud shouting (*ingenti clamore*).'¹ The gentleman thus treated by the head of the English Hospitallers had arrived in the town with the object of serving a summons upon the Order.

But to return to the document before us. It may be looked upon as an attempt to reduce administration of the affairs of the Hospitallers in Scotland to proper order and thus to secure two results,—first, the due performance of the religious services and duties attaching to the churches of the knights and those others of which they were patrons, and second, the regular payment of the revenue as stipulated to headquarters for behoof of the Order in the East. These objects were both very desirable, but could only be attained by eliminating competition and quarrels among the brethren in Scotland, and by laying down the duties which each was to undertake and the sum he was bound to remit yearly.

Of course, in order to form an idea of the total rent payable according to present-day values, one must multiply the sum of £450 by twelve or thereabouts. It would thus represent a rental of £5400 drawn by the Order from the estates in Scotland, after providing for maintenance of the three brethren and the expenses of the preceptories and churches.

We are in a position to compare this rent of the fifteenth century with an earlier valuation. It is that of 1338, a time, as will be remembered, when the fortunes of our land had sunk very low, after the defeat of Halidon Hill. At that time the English prior obtained a detailed return of the annual revenue

¹ *Calendar of Patent Rolls*, 31 Edward III. part 1, May 9, 1357.

derived from all the preceptories under his jurisdiction for presentation to the Grand Master of the Order, Elyan de Villanova. Scotland figures as capable of yielding no revenue whatever owing to 'the fierce war waged there for many years, whence,' it is declared, 'in these days nothing can be raised.' The report goes on: 'It was wont however, in time of peace, to return *per annum* 200 marks.' In the same document, when we reach the list of possessions formerly belonging to the Knights-Templars and thereafter to the Knights of St. John, we are told that, although from the same cause 'they have been completely destroyed, burned up, and annihilated, yet they used in the time of the Templars and in time of peace to yield a revenue of 300 marks.'¹ From these statements of an official character—emanating, it is true, from England, but still in all probability trustworthy—the following facts as to values emerge. First, the original possessions of the Templars, which were given over to the Hospitallers after the suppression of the former in 1312, were of greater value in Scotland than those of the Hospitallers themselves, viz., as 300 marks are to 200 marks. Second, the combined revenues of both estates in time of peace reached 500 marks, equal to £333 6s. 8d. This must have been during the reign of Alexander III., when a large measure of peace and prosperity prevailed, and thus it was during the time when each Order was drawing its own revenues. The rental at that time represents to-day an annual sum of about £4000 clear going to headquarters. Lastly, one sees the economic disasters caused by Edward III.'s devastation of the country during the reign of the weak King David Bruce. It must be borne in mind that possibly advantage was taken of the state of war between the countries to refuse all remittances to England, but this explanation does not cover the whole case, for they could have and would have been sent to France, if the Order in Scotland had been able to do so. No return whatever from any of the estates was received, and only one brother of the Order, William de la Fforde, was to be found in the country, and no one knew how he managed to live.²

In 1412 Alexander de Leighton had petitioned Benedict XIII., anti-pope, for a grant of the preceptory or priory, meaning thereby the whole estates, and he then stated the value as £500. In that petition he mentions that they have been committed to John de Benyng.³ His petition was granted, but probably he

¹ *Hospitallers in England* (Camden Society), pp. 129, 201. ² *Ibid.* p. 201.

³ *Calendar of Papal Registers, Petitions*, i. p. 598.

found that possession was nine points of the law, and that it was impossible to oust John, and thus the amicable understanding was eventually come to, which recognised the Chaplain Thomas Goodwin as preceptor at Balanrodach in Midlothian and John Binning as preceptor at Torphichen, while Sir Alexander contented himself with the general revenues of the Scottish estates of the Order. Thus our deed embodies this arrangement.

The number of members of the Order in Scotland was always small. We gather that in 1418 there were no more than three, but of course there was a considerable body of servants engaged in the varied occupations arising from the management of the preceptories and estates, and there were at least five chaplains in addition to the two who were located at Torphichen and Balanrodach.¹ These served the several appropriated churches of which the Order was rector, including the church at Maryculter on the south side of the Dee in Kincardineshire. This property came like Balanrodach to the Hospitallers upon the fall of the Templars. It formed the Barony of Maryculter, which was held by the Lords of Council and Session in 1548 to belong to the preceptory in free regality, having been 'in tymes by-past replegit fra the Schiref of Kincardin & his deputis to the fredome & privelege of the said regalite & baillies courttis thairof.'²

We know that Alexander Seton, guardian of the house of S. John of Jerusalem at Torphichen (1345-6)³, belonged to a family connected by ties both of marriage and of patriotism with the cause of Bruce, and possibly King Robert had facilitated the gaining by the Hospitallers of effective possession of the extensive estates of the Templars in the north. Of the seven churches which the Order possessed in Scotland, four were in the Aberdeenshire district.⁴ Thus we have evidence of the strong position which the Knights eventually occupied in the north-east of Scotland. Maryculter, although itself a small preceptory or camera,

¹ The churches belonging to the Order seem to have been (1) Torphichen, (2) Temple of Balanrodach, the original chapel of the Templars, (3) Maryculter in Kincardineshire, (4) Inchinnan in Renfrewshire, (5) Kilbathock or Kinbattoch, the old name of Towie parish, Aberdeenshire (see *Chartulary of Torphichen*, p. 6), (6) Aboyne, regarding which early in the eighteenth century we learn that 'the Church is but a little edifice and thatched with heather without a bell,' (7) Tullich (*Chartularies of Torphichen and Drem*, p. 9).

² *Register of Privy Council*, vol. i., 1545-69.

³ *Report Hist. MSS. Commission*, v. 646; Robertson, *Index*, p. 16, 29.

⁴ These were Maryculter, Kilbathock [Towie], Aboyne, and Tullich.

was clearly a centre of influence of an Order owning large possessions in the neighbourhood, which were controlled and administered from it.

It will be observed that in the same month in which this bull of the Grand Master was granted, Alexander de Lychtoun had a safe conduct to proceed to the Convent at Rhodes in such manner as he pleased, with sufficient retinue (*equis et armis*), and to return. He required this in order to attend the General Chapter of the Order, which was to be held forthwith. It would thus appear that he was the only one of the three Scottish brethren who attended the Assembly at Avignon, and that his presence at Rhodes was desired for a full and final adjustment of the matters now put upon a basis holding out the prospect of a satisfactory *modus vivendi* in Scotland. What took place at Rhodes we know not, but we do know that he retained his position in the Order, and returned to Scotland, and we possess indications that his interest lay in the north. Probably he made his residence at Maryculter on the Dee, as we find that, in 1422, he was a witness at Aberdeen to an important charter. He is the first witness, and is styled 'Alexander de Lychtoun, Knight, Prior of the house of Torfychyne.'¹ He was a relative, probably a brother, of Henry de Lychtoun, Bishop first of Moray and afterwards of Aberdeen, a great builder who completed the walls of the Cathedral of Aberdeen and erected the two western towers.² The bishop's effigy and epitaph are to be found at S. Machar's.

'Friar Alexander de Lychtone Knight prior of Torphikyn and guardian and governor of all the lands of Saint John of Jerusalem within the realm of Scotland,' granted, in 1423, a charter of confirmation as superior, by which he confirmed a mortification of certain lands in the regality of the Garioch, for the purpose of founding a chaplainry at the altar of S. Mary the Virgin, situated in the south choir of the Church of Aberdeen. Bishop Henry, Alexander Stewart, Earl of Mar and Garioch, 'the hero of Harlaw,' and his son Thomas Stewart, Lord of 'B'onach' [Badenoch] are the three first witnesses. Sir Alexander's close connexion with the Bishop doubtless was the reason of the privileges of his order being engrossed for preservation, as we

¹ *Reg. Mag. Sigilli*, 23 Jac. I. No. 111. If the word 'Prior' is used strictly, it indicates that he was head of the province of Scotland.

² *Macfarlane's Geographical Collections*, ii. 486. Mr. William Kelly, A.R.S.A., architect, author of *St. Machar's Cathedral*, has kindly lent his drawings and given valuable information.

find them, in the *Registrum Album* of the Bishopric of Aberdeen.¹ It appears that early in his career he held the office of rector of the hospital of S. Peter, which Bishop Matthew of Aberdeen founded in the twelfth century. This, along with the endowments, he resigned into his relative the bishop's hands, the deed recording the transaction bearing that the bishop had come to the conclusion that the management of the hospital had been for a long time lax, and the original purpose of charitable hospitality towards the poor and infirm had not been observed.² The Leightons were kinsmen of Robert, Duke of Albany, Regent of Scotland, which fact accounts in part for their influential position.³ Sir Alexander de Leighton must have been dead before October 14, 1427, for at that date 'Brother Thomas Gudwyn and John Ledal, Esquire (*Scutifer*), and of the king's household, were appointed procurators of the house of the hospital of S. John of Jerusalem, for directing, governing, and levying the lordships and possessions of the said hospital in Scotland during the king's pleasure.'⁴ This appointment was of course only temporary during a vacancy, and the nomination of Thomas Goodwin as one of the procurators shows that he (who it will be recollected got the Church of Balantrodach or Temple) was trusted by the king (James I.) as a suitable administrator. Ledal, his colleague, is apparently a layman, and possibly was not a member of the Order.

By the year 1432 Sir Andrew Meldrum emerges as on his way to Rhodes with six attendants, and by the autumn of the following year he had reached Flanders on his return with a retinue of six persons and horses, etc.⁵ His chaplain, Sir John Kyndeloch (Kinloch) appears as accompanying him in 1438 to England.⁶ He and Thomas of Torphichen, Chaplain—probably Thomas Goodwin—figure in the Exchequer Accounts for the same year as having received between them £23 6s. 8d. in lieu of the teinds (*decimae garbales*) of the Churches of 'Obyne' and 'Kylbethow' (Towie), which had been diverted two years before by royal authority to the maintenance of the king and court at the Castle

¹ The documents are Bulls of Pope Honorius III. and Pope Alexander IV. in favour of the Templars and those of Innocent IV. in favour of the Hospitallers. *Reg. Epis. Aberdon.* ii. p. 259 ff.

² *Reg. Epis. Aberdon.* i. p. 228.

³ Bliss, *C.P.R. Petitions*, i. 639.

⁴ *Reg. Mag. Sigilli*, 22 Jac. I. No. 104.

⁵ Bain, *Calendar*, iv. 1058, 1066.

⁶ *Ibid.* 1117.

of Kildrummy.¹ He is there styled Sir Andrew of Melgdrum, Knight, Master of Torphichen.

We have attempted to deal somewhat in detail with the economic and financial aspect of the administration of the Hospitallers in Scotland in the fifteenth century, because it tends to throw light upon the state and resources of the country at that period, a subject not, perhaps, adequately handled in political histories.

A considerable amount of material bearing upon the properties of the Hospitallers has been collected and published by the late Mr. James Maidment, Advocate, from MSS. in the Advocates' Library, Edinburgh, and other private sources. Among these he has printed an *Abstract of the Charters and other papers recorded in the Chartulary of Torphichen*. This was taken from a document, now lost, produced in the Court of Session in 1782. The *Abstract* embraces a period of fifteen years between 1581 and 1596. In those fifteen years the deeds granted by the superior (Lord Torphichen) to his vassals and tenants, and registered for preservation, number upwards of eight hundred; and these deal with properties scattered over the whole country from Inverness to Wigtown—excluding the West Highlands—in the somewhat pompous phraseology of the record itself *à lie limitibus versus Angliam et sic descendendo per totum regnum ab dictis limitibus usque ad Orchades*.

JOHN EDWARDS.

APPENDIX.

[*Lib. Bull. Mag. Vol. xxvii. f. 130.*]

TEXT.

ANGLIE HYBERNIE & SCOCIE
CXXX

Frater Philibertus de Nailhaco etc. Attendentes in quanta possunt nostre religionis bona redditus prouentus Iura et dominia debite regiminis ob defectum cadere detrimenta Quodque prouisionis huiusmodi nobis onus incumbit Notum facimus uiuersis presentes literas inspecturis quod post multiplicium nostre religionis

TRANSLATION.

ENGLAND IRELAND AND
SCOTLAND.

Brother Philibert de Nailhac &c. Recognising what great damage to the goods, returns, revenues, rights and lordships of our Order may result from want of proper administration, and that the burden of making provision of this nature lies upon us, We make known to all men by these presents that after

¹ *Exchequer Rolls*, v. p. 35.

TEXT.

negociorum arduorum in nostra presenti assembleya tractatorum salubrem epedicionem (sic) regiminis bonorum prefate religionis in regno Scocie existencium nostrorumque trium fratrum inibi commorancium videlicet Alexandri de Lahton Johannis Benyn et Thome Gudwyn status condecenciam (sic) nostre consideracionis aciem dirigentes audita relacione religiosorum in Christo nobis carissimorum fratrum Johannis de Autuno de Bellacomba Garcie de Turribus legum doctoris de Villa francha de Penedes preceptoris et Pascalis Martini de Torrella prioris ecclesie Montessoni per nos et dictam Assambleyam ad inquisitionem extimacionis bonorum omnium que Iamdicta Religio in dicto regno Scocie hactenus habuit et possedit et de presenti habet et possidet deputatorum et specialiter commissorum pro bono pacis unionis et concordie fraternalis dilectionis nutriendarum inter prenominate fratres ac conservacione bonorum et Iurium dicte Religionis in eodem Regno existencium De voluntate consilio et assensu Religiosorum in Christo nobis Carissimorum fratrum Galteri Crassi decretorum doctoris prioris ecclesie conuentualis nostri Rodi Johannis Gamelli preceptoris Vallifranche procuratoris nostri Rodi conuentus Johannis Flote Sancti Egidii Gaufriidi de Canadal Catalonie prioris Petri Pignatelli Anthonii de Verneto forensis Johannis de Patria de Tenale Thesaurarii dicti Conuentus Petri de Galberto Arelatensis Karoli de Busca Johannis Dotun de Bellacomba Baillui insule nostre Rodi Guillelmi de Sancto Juliano de Marchia Philiberti de Aqua de Maloleone Anthonii de Sancto Amendo de Bignes Georgii de

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the satisfactory adjustment of many difficult affairs of our Order dealt with in our present assembly, bestowing keen consideration upon the administration of the goods of the said Order within the realm of Scotland and upon a suitable provision for our three brethren residing there, viz. Alexander de Lahton John Benyn and Thomas Gudwyn and having heard the views of our dearest brethren in Christ John d'Autun de Bellacombe Garcia de Tours Doctor of Laws of Villafancha del Panadés preceptor and Pascal Martini de Torrellas prior of the Church of Montressa commissioned and specially appointed by us and the said assembly for the investigation of the value of all the property which the beforenamed Order in the said realm of Scotland has hitherto owned and possessed and at present owns and possesses, and for the blessing of the cultivation of peace, union, and brotherly affection among the said brethren, and also for the conservation of the property and legal rights of the said Order existing within the said realm By will, advice and consent of our very dear and reverend brethren in Christ, Walter Crassi, Doctor of Decrees prior of the conventual Church of our island of Rhodes, John Gamelli, preceptor of Villafancha procurator of our convent at Rhodes, John Flote of Saint Gilles, Geoffrey de Canadal, prior of Catalonia, Peter Pignatelli, Anthony de Vernet Advocate, John de Patria de Tenale Treasurer of the said Convent, Peter de Galbert of Arles, Charles de Busca, John d'Autun de Bellacombe Bailiff of our Island of Rhodes, William of Saint Julian of Marchia, Philibert de Aqua de

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Crinellis Auinionensis Michaelis Ferrendi Verone Petri de Limam de Terrento et de Cinqua Pascalis Martini prioris Montissoni Ludouici de Galbis Barchinonensis Dalmacii Patruai de Maillorqua Johannis de Bellagut degreynencis Graside de Turribus legum doctoris de Villafrancha de Penendes Johannis de Villafrancha Gabrielis de Gabalbis de Aqua Vina Bernardi de Quosqueri de Salnera Michaelis de Pena de Nouasso Gabrielis de Asineriis Montistalerii Johannis Gerandi Sancti Petri Anecii preceptoris Petri Medici Raymondi Delmas Freschine de Pereya Aymory de Sesselo Clementis de Trecis et Reginaldi Parui clerici ac aliorum fratrum nostrorum plurium in nostre assemblee celebratione nobis assistencium Voluimus et Ordinauimus Volumusque et per presentes Ordinamus in modo qui sequitur Primo eidem fratri Johanni Benyn assignamus ecclesiam de Torfychin quod decimas oblationes et alia obueniencia ratione cure animarum unacum firmis terre de Locharis infra dominium de Torfachin que omnia ducentos sexaginta francos computando sexdecim solidos Parisienses pro quolibet franco valent annuatim Item eidem fratri Thome Gudwyn pariter assignamus ecclesiam de Bartrodoch quod decimas et oblationes et obueniencia ratione cure animarum cum duobus molendinis et cum firmis terrarum Hudspeth et Esperstoun et Utherstoun que omnia centum quadraginta francos secundum predictum valorem ascendunt communiter annuatim Omnia vero alia emolumenta et introitus dicte religionis in eodem regno existencia tam dominia iuridicialia qualiacunque dicti loci de Torfychin

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Mauleon Anthony de Saint Amand de Bigny, George de Crinelli of Avignon, Michael Ferrend of Verona Peter de Limam de Terrent and de Cinqua, Pascal Martini prior of Montisson, Louis de Galbi of Barcelona, Dalmacius Patruai of Majorca, John de Bellagut de Greyman, Garcia de Turris Doctor of Laws of Villafrancha del Penedes John de Villafrancha Gabriel de Gabalbis de Aqua-vina, Bernard de Quosquer de Salnera Michael de Pena de Novaes, Gabriel de Asnières Montisvalerii (Montvalérien) John Geraud of St. Peter's of Annecy, Preceptor, Peter Medicus, Raymund Delmas, Freskin de Pereya, Aymory de Sesselo, Clement de Trecis and Reginald Small clerk and numerous other brethren present and taking part in the business of our assembly Have Willed and Ordained and Do by these presents Will and Ordain in manner following: In the first place we assign to the said brother John Benyn the church of Torfychin, the teinds oblations and other emoluments by reason of the cure of souls along with the rents of the land of Locharis within the Barony of Torfachin all which amount together annually to two hundred and sixty pounds computing sixteen Parisian shillings for each pound: Also to the said Brother Thomas Gudwyn, preceptor, We Assign the Church of Bartrodoch, the teinds and oblations and emoluments by reason of the cure of souls with the two mills and with the rents of the lands of Hudspeth and Esperstoun and Utherstoun all which amount together annually to one hundred and forty pounds according to the foresaid value: But all other emolu-

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quam de aliis quibuscunque locis eidem nostre Religioni pertinentibus eidem fratri Alexandro remanebunt Eisdem tribus fratribus quadringenta scuta auri vel eorum valorem advaluatum ad quadringentos quinquaginta francos computandos decem et octo solidos Parisienses pro quolibet scuto, nostro communi thesauro singulis annis per eos soluenda cuilibet scilicet pro sua rata de voluntate consilio et assensu predictis imponenda videlicet fratri Johanni Benyn scuta septuaginta unum dicto vero fratri Thome Goudwyn scuta xxxix et eidem fratri (sic) Alexandro de Lychon scuta ducenta octoginta nouem que simul iuncta ad summam predictorum quadringentorum scutorum ascendunt Hoc autem usque ad nostrum Generale Capitulum Rodi Diuina fauente clemencia proximo celebrandum in quo de hiis penitus concludetur firma et stabilia manere volumus, et interim per iam nominatos fratres inuiolabiliter obseruari: Datum Auinionis die undecima mensis Augusti Anno Incarnacionis Domini Millesimo cccc^{mo} xviii^{mo}

Item die xxiiij^a mensis Augusti anno et loco predictis, data fuit licencia fratri Alexandro de Lychtoun de Scocia eundi ad Conuentum Rodi quomodo voluerit cum equis et armis sufficientibus secundum statuta &c et deinde redeundi &c.

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ments and dues of entry of the said religious Order existing in the said Kingdom as well jurisdictional lordships of every kind of the said Place of Torfychin as of all other Places belonging to our religious Order shall remain in the possession of the said Brother Alexander: The said three Brethren paying each year to our common treasury four hundred gold crowns or their estimated value, calculated at four hundred and fifty pounds reckoning eighteen shillings of Paris for each crown, this sum being assessed to each *pro rata* by will advice and assent aforesaid, namely to brother John Benyn seventy-one crowns, to the said brother Thomas Goudwyn thirty-nine crowns and to the said brother Alexander de Lychon two hundred and eighty-nine crowns which added together amount to the foresaid sum of four hundred crowns: This however We desire to remain firm and stable until our next general Chapter to be held at Rhodes by Divine favour in which a definite arrangement shall be come to, and meanwhile to be observed inuiolably by the foresaid three brethren: Given at Avignon upon the eleventh day of the month of August in the year of the Incarnation of our Lord 1418.

Item, upon the twenty-third day of the month of August, year and place before written there was given licence to Brother Alexander de Lychtoun of Scotland to proceed to the Convent at Rhodes in what manner may please him with suitable horses and armed retinue conform to the Statutes &c. and to return thence &c.

Chronicle of Lanercost¹

ALL lepers who could be found in nearly all parts across the sea as far as Rome, were burnt; for they had been secretly hired at a great price by the Pagans to poison the waters of the Christians and thereby to cause their death. A.D. 1321.

In summer of the same year Humfrey de Bohun, Earl of Hereford, Sir John de Mowbray, Sir Roger de Clifford, with many other barons, knights, esquires and a great force of other horse and foot, entered the March of Wales, and speedily took and occupied without opposition the various castles of Sir Hugh Despenser the younger, who was, as it were, the King of England's right eye and, after the death of Piers de Gavestoun, his chief counsellor against the earls and barons. These castles they despoiled of treasure and all other goods, and put keepers therein of their own followers; also they seized the king's castles in those parts, and although they removed the king's arms and standard from the same, they declared that they were doing all these things, not against the crown, but for the crown and law of the realm of England. But all these things were done by advice and command of the Earl of Lancaster. These earls and barons were specially animated against the said Sir Hugh because he had married one of the three sisters among whom the noble earldom of Gloucester had been divided, and because, being a most avaricious man, he had contrived by different means and tricks that he alone should possess the lands and revenues, and for that reason had devised grave charges against those who had married the other two sisters, so that he might obtain the whole earldom for himself.

The aforesaid [knights], then, holding the castles in this manner and prevailing more and more against the king from day to day, in the following autumn they, as it were, compelled the king to hold a parliament in London and to yield to their will in all things.

¹ See *Scottish Historical Review*, vi. 13, 174, 281, 383; vii. 56, 160, 271, 377; viii. 22, 159, 276, 377.

In this parliament Sir Hugh Despenser the younger was banished for ever, with his father and son, and all their property was confiscated.

Now after the Epiphany,¹ when the truce between the kingdoms lapsed, the Scottish army invaded England and marched into the bishopric of Durham, and the Earl of Moray remained at Darlington. But James of Douglas and the Steward of Scotland went forward plundering the country in all directions, one of them raiding towards Hartlepool and the district of Cleveland, the other towards Richmond. The people of Richmond county, neither having nor hoping to have any defender now as formerly, bought off the invaders with a great sum of money. This time the Scots remained in England a fortnight and more; and when the northern knights came to the Earl of Lancaster at Pontefract, where he usually dwelt, ready to fight against the Scots if he would assist them, he feigned excuse; and no wonder! seeing that he cared not to take up arms in the cause of a king who was ready to attack him.

Howbeit, as time went on, the king, through the efforts of some of his adherents, drew to his party by large gifts and promises the citizens of London and other southerners, earls as well as barons and knights. And he granted leave for the said two exiles to return,² received them to his peace, and caused this to be publicly proclaimed in London.

When this report was received, the party of the Earl of Lancaster besieged the king's castle of Tykhill with a large army; and thus war was declared and begun in England, and the enmity between the king and the earl was made manifest.

When, therefore, the whole strength of the king's party south of Trent was assembled at Burton-upon-Trent, some 60,000 fighting men, in the second week of Lent, about the feast of the Forty Martyr Saints,³ the Earl of Lancaster and the Earl of Hereford (who had married the king's sister) attacked them with barons, knights and other cavalry, and with foot archers; but the earl's forces were soon thrown into confusion and retired before the king's army, taking their way towards Pontefract, where the earl usually dwelt. The king followed him with his army at a leisurely pace, but there was no slaughter to speak of on either side; and although the earl would have awaited the king there and given him battle, yet on the advice of his people he retired with his army into the northern district.

¹ 6th January, 1322.

² The Despensers.

³ 10th March, 1322.

Now when that valiant and famous knight, Sir Andrew de Harcla, Sheriff of Carlisle, heard of their approach, believing that they intended to go to Scotland to ally themselves with the Scots against the King of England, acting under the king's commission and authority, he summoned, under very heavy penalties, the knights, esquires and other able men of the two counties, to wit, Cumberland and Westmorland, all who were able to bear arms, to assemble for the king's aid against the oft-mentioned earl. But when the said Sir Andrew, on his march towards the king with that somewhat scanty following, had spent the night at Ripon, he learnt from a certain spy that the earl and his army were going to arrive on the morrow at the town of Boroughbridge, which is only some four miles distant from the town of Ripon. Pressing forward, therefore, at night, he got a start of the earl, occupying the bridge of Boroughbridge before him, and, sending his horses and those of his men to the rear, he posted all his knights and some pikemen on foot at the northern end of the bridge, and other pikemen he stationed in schiltrom, after the Scottish fashion, opposite the ford or passage of the water, to oppose the cavalry wherein the enemy put his trust. Also he directed his archers to keep up a hot and constant discharge upon the enemy as he approached. On Tuesday, then, after the third Sunday in Lent, being the seventeenth of the kalends of April,¹ the aforesaid earls arrived in force, and perceiving that Sir Andrew had anticipated them by occupying the north end of the bridge, they arranged that the Earl of Hereford and Sir Roger de Clifford (a man of great strength who had married his daughter) should advance with their company and seize the bridge from the pikemen stationed there, while the Earl of Lancaster with the rest of the cavalry should attack the ford and seize the water and the ford from the pikemen, putting them to flight and killing all who resisted; but matters took a different turn. For when the Earl of Hereford (with his standard-bearer leading the advance, to wit, Sir Ralf de Applinsdene) and Sir Roger de Clifford and some other knights, had entered upon the bridge before the others as bold as lions, charging fiercely upon the enemy, pikes were thrust at the earl from all sides; he fell immediately and was killed with his standard-bearer and the knights aforesaid, to wit, Sir W. de Sule and Sir Roger de Berefield; but Sir Roger de Clifford, though grievously wounded with pikes and arrows, and driven back, escaped with difficulty along with the others.

¹ 16th March, 1322.

The Earl [of Lancaster's] cavalry, when they endeavoured to cross the water, could not enter it by reason of the number and density of arrows which the archers discharged upon them and their horses. This affair being thus quickly settled, the Earl of Lancaster and his people retired from the water, nor did they dare to approach it again, and so their whole array was thrown into disorder. Wherefore the earl sent messengers to Sir Andrew, requesting an armistice until the morning, when he would either give him battle or surrender to him. Andrew agreed to the earl's proposal; nevertheless he kept his people at the bridge and the river all that day and throughout the night, so as to be ready for battle at any moment.

But during that night the Earl of Hereford's men deserted and fled, because their lord had been killed, also many of the Earl of Lancaster's men and those of my Lord de Clifford and others deserted from them. When morning came, therefore, the Earl of Lancaster, my Lord de Clifford, my Lord de Mowbray and all who had remained with them, surrendered to Sir Andrew, who himself took them to York as captives, where they were confined in the castle to await there the pleasure of my lord the king.

The king, then, greatly delighted by the capture of these persons, sent for the earl to come to Pontefract, where he remained still in the castle of the same earl; and there, in revenge for the death of Piers de Gaveston (whom the earl had caused to be beheaded), and at the instance of the earl's rivals (especially of Sir Hugh Despenser the younger), without holding a parliament or taking the advice of the majority, caused sentence to be pronounced that he should be drawn, hanged and beheaded. But, forasmuch as he was the queen's uncle and son of the king's uncle, the first two penalties were commuted, so that he was neither drawn nor hanged, only beheaded in like manner as this same Earl Thomas had caused Piers de Gaveston to be beheaded. Howbeit, other adequate cause was brought forward and alleged, to wit, that he had borne arms against the King of England in his own realm; but those who best knew the king's mind declared that the earl never would have been summarily beheaded without the advice of parliament, nor so badly treated, had not that other cause prevailed, but that he would have been imprisoned for life or sent into exile.

This man, then, said to be of most eminent birth and noblest of Christians, as well as the wealthiest earl in the world, inasmuch

as he owned five earldoms, to wit, Lancaster, Lincoln, Salisbury, Leycester and Ferrers, was taken on the morrow of S. Benedict Abbot¹ in Lent and beheaded like any thief or vilest rascal upon a certain hillock outside the town, where now, because of the miracles which it is said God works in his honour, there is a great concourse of pilgrims, and a chapel has been built. In the aforesaid town Sir Garin de l'Isle, a king's baron, also was drawn and hanged, and three knights with him. But the aforesaid Sir Andrew [de Harcla] was made Earl of Carlisle for his good service and courage.

Besides the decollation of the most noble Earl of Lancaster at Pontefract, and the slaying of the Earl of Hereford and two knights at Boroughbridge, eight English barons, belonging to the party and policy of the earl and his friends, were afterwards drawn and hanged, as I have been informed, and one other died in his bed, it is believed through grief. Four others were taken and immediately released; ten others were imprisoned and released later. Also fifteen knights were drawn and hanged; one died in his bed, and five escaped and fled to France; five were taken and released at once, and sixty-two were taken and imprisoned, but were released later. O the excessive cruelty of the king and his friends!

In addition to all these aforesaid, the following barons were taken with the earl at Boroughbridge and in the neighbourhood: Sir Hugh de Audley,² who owned a third part of the earldom of Gloucester, Sir John Giffard,³ Sir Bartholomew de Badlesmere,⁴

¹ 22nd March, 1321-22.

² Sir Hugh de Audley of Stratton Audley, youngest son of James Audley or de Aldithley of Heleigh, co. Stafford: created baron by writ in 1321. After being taken at Boroughbridge he was confined in Wallingford Castle, whence he is said to have escaped and afterwards to have been pardoned. His second son, Hugh, was created baron by writ during his father's life, 1317. He also was taken at Boroughbridge, but was pardoned and summoned again to parliament in 1326. He was created Earl of Gloucester in 1336-37. He married Margaret de Clare, Countess of Cornwall, widow of Piers Gavestoun.

³ Sir John Giffard, called *le Rych*, of Brimsfield, Gloucestershire, was son of that John Giffard who took prisoner Llewelyn, Prince of Wales, and beheaded him in 1282. He was Constable of Glamorgan and Morgannoe Castles, and was hanged at Gloucester.

⁴ Sir Bartholomew de Badlesmere in Kent, summoned as baron by writ 1309-21; hanged at Canterbury, 22nd April, 1322. His wife Margaret, aunt and co-heir of Thomas de Clare, refused to admit Queen Isabella to the royal castle of Leeds (Kent) in 1321, was besieged there, and, having been taken on 11th November, 1321, was imprisoned in the Tower, but was afterwards released.

Sir Henry de Tyes,¹ Sir John de Euer,² Sir William Touchet,³ Sir Robert de Holand,⁴ Sir Thomas Maudent.⁵ Now Sir John de Mowbray⁶ and Sir Roger de Clifford,⁷ were drawn and hanged at York with Sir Jocelyn de Dayvile, a knight notorious for his misdeeds; but Sir Bartholomew de Badlesmere was taken near Canterbury, and was there drawn, hanged and beheaded. Sir Henry Tyes was drawn and hanged in London, each of them in his own district for their greater disgrace, except the aforesaid Sir Hugh de Audley and others. Also there were imprisoned at York about sixty-seven knights, but most of these afterwards obtained the king's pardon.

After this the king held his parliament at York, and there Hugh Despenser the elder, sometime exiled from England, was made Earl of Winchester.

About this time the question was raised and discussed in various consistories and before the Pope, whether it was heresy to say that Christ owned no private property nor even anything in common; the Preaching Friars held that it was [heresy] and the

¹ Sir Henry de Tyes of Shirburn, Oxon., baron by writ, 1313-21, was beheaded. He was brother-in-law of Sir Warine de Lisle.

² Sir John de Euer. I find no baron summoned under this name till 1544, when Sir William Eure or Evers of Wilton, co. Durham, appears as Lord Eure, Baron of Wilton. His father and he were successive Wardens of the East Marches, and his son and grandson Wardens of the Middle Marches.

³ Sir William Touchet was probably the same who was summoned as baron by writ, 1299-1306. He belonged to Northamptonshire, and subscribed the famous letter to the Pope in 1301 as *Willielmus Touchet dominus de Levenhales*.

⁴ Sir Robert de Holand, co. Lancaster, baron by writ, 1314-21. He married Maud, 2nd daughter of Alan, Lord Touche of Ashley, and acted as secretary to Thomas, Earl of Lancaster; but, having failed to support him in his rebellion, he was taken by some of the earl's adherents near Windsor as late as 1328, and beheaded on 7th October.

⁵ Sir Thomas Maudent. There is no trace of a baron of this name in Edward II.'s parliaments; though Sir John Mauduit of Somerford Mauduit, Wilts., was summoned in 1342 to Edward III.'s parliament.

⁶ Sir John de Mowbray of the Isle of Axholme, co. Lincoln, had done excellent service in the Scottish war. That he was concerned in Lancaster's rebellion is one of the many proofs of the despair which the best men in the realm entertained of any good coming from Edward II. He was Warden of the Marches and Sheriff of Yorkshire in 1312-13, and was hanged at York in 1322. But there was no attainder, and the present Lord Mowbray claims, as 24th baron, to be the senior of his degree.

⁷ Sir Roger de Clifford of the county of Hereford, son of Sir Robert killed at Bannockburn. According to some accounts, he was alive in the reign of Edward III. He was the second baron: the present Lord de Clifford is the 26th baron.

Minorite Friars that it was not, chiefly on the strength of that decretal in Sextus—*Exiit quod seminat*. Of the cardinals and other seculars, some held one opinion, others another.

The king mustered an army in order to approach Scotland about the feast of S. Peter ad Vincula;¹ hearing of which Robert de Brus invaded England with an army by way of Carlisle in the octave before the Nativity of S. John the Baptist,² and burnt the bishop's manor at Rose,³ and Allerdale, and plundered the monastery of Holm Cultran, notwithstanding that his father's body was buried there; and thence proceeded to waste and plunder Copeland, and so on beyond the sands of Duddon to Furness. But the Abbot of Furness went to meet him, and paid ransom for the district of Furness that it should not be again burnt or plundered, and took him to Furness Abbey. This notwithstanding, the Scots set fire to various places and lifted spoil. Also they went further beyond the sands of Leven to Cartmel, and burnt the lands round the priory of the Black Canons,⁴ taking away cattle and spoil: and so they crossed the sands of Kent⁵ as far as the town of Lancaster, which they burnt, except the priory of the Black Monks and the house of the Preaching Friars. The Earl of Moray and Sir James of Douglas joined them there with another strong force, and so they marched forward together some twenty miles to the south, burning everything and taking away prisoners and cattle as far as the town of Preston in Amoundness, which also they burnt, except the house of the Minorite Friars. Some of the Scots even went beyond that town fifteen miles to the south, being then some eighty miles within England; and then all returned with many prisoners and cattle and much booty; so that on the vigil of S. Margaret Virgin⁶ they came to Carlisle, and lay there in their tents around the town for five days, trampling and destroying as much of the crops as they could by themselves and their beasts. They re-entered Scotland on the vigil of S. James the Apostle,⁷ so that they spent three weeks and three days in England on that occasion.

The King of England came to Newcastle about the feast of S. Peter ad Vincula,⁸ and shortly afterwards invaded Scotland

¹ 1st August.

² 17th June.

³ About seven miles from Carlisle.

⁴ Austin Canons.

⁵ The river Kent, between Westmorland and Lancashire whence Kendal takes its name, *i.e.* Kent dale.

⁶ 12th July.

⁷ 24th July.

⁸ 1st August.

with his earls, barons, knights and a very great army ; but the Scots retired before him in their usual way, nor dared to give him battle. Thus the English were compelled to evacuate Scottish ground before the Nativity of the Glorious Virgin,¹ owing as much to want of provender as to pestilence in the army ; for famine killed as many soldiers as did dysentery.

After the retreat of the King of England the King of Scotland collected all his forces, both on this side of the Scottish sea² and beyond it, and from the Isles and from Bute and Arran,³ and on the day after the feast of S. Michael⁴ he invaded England by the Solway and lay for five days at Beaumont, about three miles from Carlisle, and during that time sent the greater part of his force to lay waste the country all around ; after which he marched into England to Blackmoor⁵ (whither he had never gone before nor laid waste those parts, because of their difficulty of access), having learned for a certainty from his scouts that the King of England was there. The king, however, hearing of his approach, wrote to the new Earl of Carlisle,⁶ commanding him to muster all the northern forces, horse and foot, of his county and Lancaster, that were fit for war, and to come to his aid against the Scots. This he [Carlisle] did, having taken command of the county of Lancaster, so that he had 30,000 men ready for battle ; and whereas the Scots were in the eastern district, he brought his forces by the western district so as to reach the king. But the Scots burnt the villages and manors in Blackmoor, and laid waste all that they could, taking men away as prisoners, together with much booty and cattle.

Now my lord John of Brittany, Earl of Richmond, having been detached with his division by the king to reconnoitre the army of the Scots from a certain height between Biland Abbey and Rievaulx Abbey, and being suddenly attacked and surprised by them, attempted by making his people hurl stones to repel their assault by a certain narrow and steep pass in the hill ; but the Scots forced their way fiercely and courageously against them ; many English escaped by flight and many were made prisoners,

¹ 8th September.

² The Firths of Forth and Clyde.

³ *De Brandanis* : the Atlantic was known as *Brendanicum mare*.

⁴ 30th September.

⁵ *Blakehoumor*, Blackmoor in the North Riding, the old name of the moorland south of Cleveland.

⁶ Sir Andrew de Harcla.

including the aforesaid earl. Justly, indeed, did he incur that punishment, seeing that it was he himself who had prevented peace being made between the realms.

When this became known to the King of England, who was then in Rievaulx Abbey, he, being ever chicken-hearted and luckless in war and having [already] fled in fear from them in Scotland, now took to flight in England, leaving behind him in the monastery in his haste his silver plate and much treasure. Then the Scots, arriving immediately after, seized it all and plundered the monastery, and then marched on to the Wolds, taking the Earl [of Richmond] with them, laying waste that country nearly as far as the town of Beverley, which was held to ransom to escape being burnt by them in like manner as they had destroyed other towns.

Now when the aforesaid Earl of Carlisle heard that the king was at York, he directed his march thither in order to attack the Scots with him and drive them out of the kingdom; but when he found the king all in confusion and no army mustered, he disbanded his own forces, allowing every man to return home. The Scots on that occasion did not go beyond Beverley, but returned laden with spoil and with many prisoners and much booty; and on the day of the Commemoration of All Souls¹ they entered Scotland, after remaining in England one month and three days. Wherefore, when the said Earl of Carlisle perceived that the King of England neither knew how to rule his realm nor was able to defend it against the Scots, who year by year laid it more and more waste, he feared lest at last he [the king] should lose the entire kingdom; so he chose the less of two evils, and considered how much better it would be for the community of each realm if each king should possess his own kingdom freely and peacefully without any homage, instead of so many homicides and arsons, captivities, plunderings and raidings taking place every year. Therefore on the 3rd January [1323] the said Earl of Carlisle went secretly to Robert the Bruce at Lochmaben and, after holding long conference and protracted discussion with him, at length, to his own perdition, came to agreement with him in the following bond. The earl firmly pledged himself, his heirs and their adherents to advise and assist with all their might in maintaining the said Robert as King of Scotland, his heirs and successors, in the aforesaid independence, and to oppose with all their force all those who would not join in nor even consent to the said treaty,

¹ 1st November.

as hinderers of the public and common welfare. And the said Robert, King of Scotland, pledged himself upon honour to assist and protect with all his might the said earl and all his heirs and their adherents according to the aforesaid compact, which he was willing should be confirmed by six persons each [kingdom] to be nominated by the aforesaid king and earl. And if the King of England should give his assent to the said treaty within a year, then the King of Scots should cause a monastery to be built in Scotland, the rental whereof should be five hundred merks, for the perpetual commemoration of and prayer for the souls of those slain in the war between England and Scotland, and should pay to the King of England within ten years 80,000 merks of silver, and that the King of England should have the heir male of the King of Scotland in order to marry to him any lady of his blood.

On behalf of the King of Scotland my Lord Thomas Randolph, Earl of Moray, swore to the faithful fulfilment of all these conditions without fraud, and the said Earl of Carlisle in his own person, touching the sacred gospels; and written indentures having been made out, their seals were set thereto mutually.

Now the Earl of Carlisle made the aforesaid convention and treaty with the Scots without the knowledge and consent of the King of England and of the kingdom in parliament; nor was he more than a single individual, none of whose business it was to transact such affairs. But the said earl, returning soon after from Scotland, caused all the chief men in his earldom to be summoned to Carlisle, both regulars and laymen, and there, more from fear than from any liking, they made him their oath that they would help him faithfully to fulfil all the things aforesaid. But after all these things had been made known for certain to the King and kingdom of England, the poor folk, middle class and farmers in the northern parts were not a little delighted that the King of Scotland should freely possess his own kingdom on such terms that they themselves might live in peace. But the king and his council were exceedingly put out (and no wonder!) because he whom the king had made an earl so lately had allied himself to the Scots, an excommunicated enemy, to the prejudice of the realm and crown, and would compel the lieges of the King of England to rebel with him against the king; wherefore they [the king and council] publicly proclaimed him as a traitor. So the king sent word to Sir Antony de Lucy that he should endeavour to take him [Harcla] by craft; and if he should succeed in doing

so by any means, the king would reward him and all who helped and assisted him. Therefore Sir Antony, taking advantage of a time when the esquires¹ of the aforesaid earl and his other people had been scattered hither and thither on various affairs, entered Carlisle Castle on the morrow after S. Matthew the Apostle's day,² as if to consult with him as usual upon some household matters. With him went three powerful and bold knights, to wit, Sir Hugh de Lowther, Sir Richard de Denton, and Sir Hugh de Moriceby, with four men-at-arms of good mettle, and some others with arms concealed under their clothing. When they had entered the castle, they were careful to leave armed men behind them in all the outer and inner parts thereof to guard the same; but Sir Antony, with the aforesaid three knights, entered the great hall where the earl sat dictating letters to be sent to different places, and spoke as follows to the earl: 'My lord earl, thou must either surrender immediately or defend thyself.' He, perceiving so many armed knights coming in upon him on a sudden, and being himself unarmed, surrendered to Sir Antony.

Meanwhile the sound arose of the earl's household crying—'Treason! treason!' and when the porter at the inner gate tried to shut it against the knights who had entered, Sir Richard de Denton killed him with his own hand. Nobody else was killed when the earl was arrested, for all the earl's men who were in the castle surrendered and the castle was given up to the aforesaid Sir Antony. But one of the earl's household ran off to the pele of Highhead and informed Master Michael, the earl's cousin (an ecclesiastic) of all that had been done at Carlisle. Michael went off in haste to Scotland, and with him Sir William Blount, a knight of Scotland, and sundry others who had been particular friends of the earl. Then a messenger was sent to the king at York, to announce to him the earl's arrest and all that had taken place, that he might send word to Sir Antony how he wished the oft-mentioned earl to be dealt with.

Meanwhile, to wit, on the morning after his arrest, the earl made confession to the parish priest about his whole life, and afterwards, before dinner on the same day, to a Preaching Friar, and later to a Minorite Friar, and on the following day to the Warden of the Minorite Friars—each and all of these about the whole of his life, and afterwards repeatedly to the aforesaid Minorite; all of whom justified him and acquitted him of

¹ *Armigeri.*

² 25th February, 1322-23.

intention and taint of treason. Whence it may be that, albeit he merited death according to the laws of kingdoms, his afore-said good intention may yet have saved him in the sight of God.

On the feast of S. Cedda Bishop¹ (that is, on the sixth day after the earl's arrest), there arrived in Carlisle from the king a number of men-at-arms, with whom was the justiciary Sir Galfrid de Scrope, who on the next day, to wit, the 3rd of March, sat in judgment in the castle, and pronounced sentence upon the earl as if from the mouth and in the words of the king, condemning him first to be degraded and stripped of the dignity of earldom by being deprived of the sword given him by the king, and in like manner of knightly rank by striking off from his heels the gilded spurs, and thereafter to be drawn by horses from the castle through the town to the gallows of Harraby and there to be hanged and afterwards beheaded; to be disembowelled and his entrails burnt; his head to be taken and suspended on the Tower of London; his body to be divided into four parts, one part to be suspended on the tower of Carlisle, another at Newcastle-on-Tyne, a third at Bristol and the fourth at Dover.²

When this sentence was pronounced the earl made answer: 'Ye have divided my carcase according to your pleasure, and I commend my soul to God.' And so, with most steadfast countenance and bold spirit, as it seemed to the bystanders, he went to suffer all these pains, and, while being drawn through the town, he gazed upon the heavens, with hands clasped and held aloft and likewise his eyes directed on high. Then under the gallows, whole in body, strong and fiery in spirit and powerful in speech, he explained to all men the purpose he had in making the afore-said convention with the Scots, and so yielded himself to undergo the aforesaid punishment.³

¹ 2nd March, 1322-23.

² It appears from the Parliamentary Writs (ii. 3,971) that the destination of the earl's quarters was to Carlisle, Newcastle, York and Shrewsbury.

³ It is not difficult to discern in this most tragic fate of a gallant knight the influence upon the king of men who were jealous of Harcla's rapid rise. Harcla had been appointed by the king to treat with King Robert: he agreed to little more than what the king two months later was obliged to concede at Newcastle in fixing a truce for thirteen years. The terms of Harcla's indenture with King Robert are given in Bain's *Cal. Doc. Scot.* iii. 148.

(To be continued.)