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In Memoriam

SIR ARCHIBALD C. LAWRIE, LL.D.

REV. PRINCIPAL LINDSAY, D.D., LL.D.

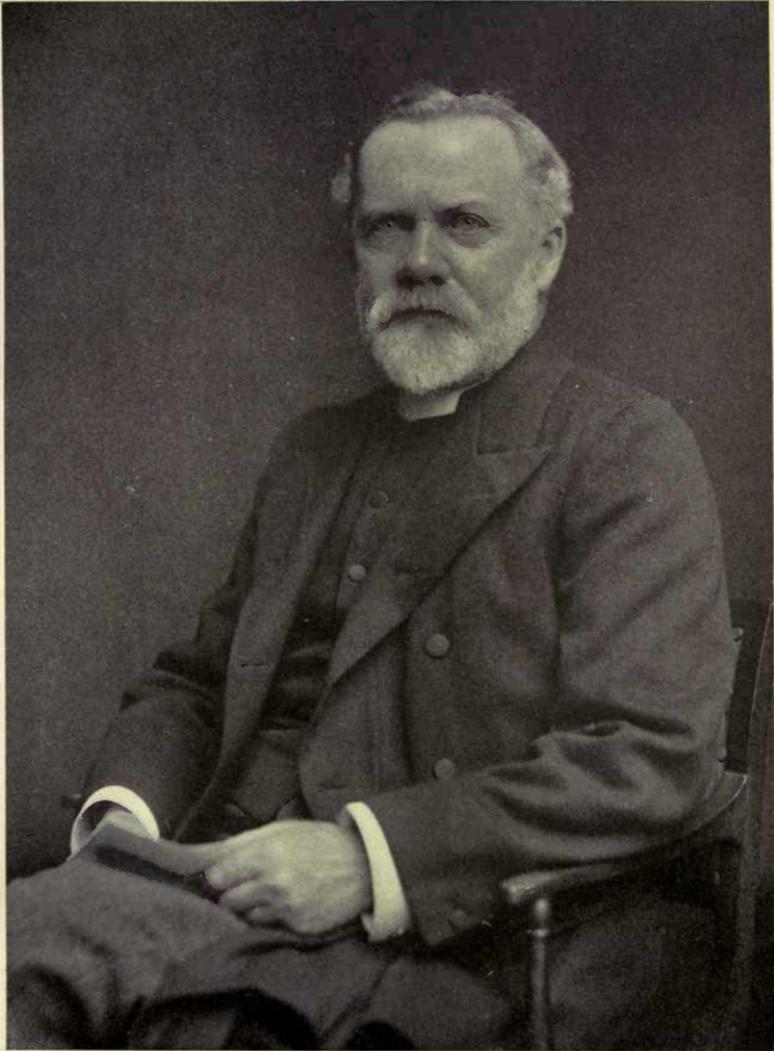
THE *Scottish Historical Review* lost by death two of its most distinguished contributors last year. Sir Archibald Lawrie, LL.D. (1837—11th May, 1914), will long be gratefully remembered by all who use the great *Index* which, whilst still at the Scottish Bar, he compiled in Volume XIII. of the *Acts of the Parliaments of Scotland*. His *Gazetteer of the Central Province of Ceylon* represents a wonderful collection of historical and topographical material gathered during the years of his judicial service in Ceylon. His *Early Scottish Charters and Annals of Malcolm and William*, compiled and edited after his retirement from the bench, are indispensable adjuncts of feudal study. Of all writers on Scottish history he most resembled Lord Hailes; particularly in a sceptical and critical attitude towards both chronicle and charter, in a thoroughgoing search for evidence and in a prevalent economy of inference. Sir Archibald was suspicious of all generalisation. Whether for a charter date or a pedigree or a dubious annal, he sifted every fact with dispassionate rigour; and though once or twice the ultimate verdict appears to go against him, his standpoints as a sturdy doubter have served history sometimes almost as well as his positive demonstrations. Only the very few friends who have had the opportunity of making a scrutiny of the piles of manuscript notes

and studies he has left, can adequately appreciate the immense patience, the industry, and the variety of erudition he devoted to his work. A tireless genealogist and commentator on charters, he earned a secure place among historical authorities by the manner in which he worked out the Scottish aspect of the European feudal movement.

The other contributor we have lost was Principal Thomas Martin Lindsay, D.D., LL.D. (1843—6th December, 1914), whose lines of study lay across the great European religious movement which had its centre in Germany, and some of its most signal manifestations in Scotland. Principal Lindsay's career as a scholar in philosophy, a theologian, and an ecclesiastical administrator lies beyond our sphere of notice: he ranks among the leading names of modern Europe in virtue of the use he made for history of his profound knowledge of German thought and life in the middle ages. His *History of the Reformation in Germany* is his chief work. The immense learning that book incorporates has been universally recognised, though perhaps insufficient attention has been drawn to the vigour and somewhat Carlylean character of its style, notable, like all Principal Lindsay's writing, for his objective method of pictorially visualising his heroes and their environment.¹

In many ways these two men differed widely. Their opinions and manner of looking at political and social questions were far apart; but they were alike in their genial, loveable character, in their warm friendships and wide sympathies, in their power of drawing out and encouraging younger men, in their staunchness of character, their sincerity and their independence. The Editor of the *Scottish Historical Review* has reason to remember with gratitude the help, advice, and stimulus which he has received from these two unfailing friends of the *Review*.

¹ A member of his family who has seen a proof of this notice writes: 'When he was working at the *History of the Reformation* he would work away all morning, and would bring to lunch with him sheets of typewritten MSS. or a rough half-sheet with crowded lines of small handwriting in pencil, and he would read what he had written. 'Is it quite clear?' 'What picture does that give you?' He never grudged writing pages over again until his meaning was quite clear.'



The kindly

Parliamentary Representation in Scotland

I. LOWER CLERGY, LAIRDS, AND OFFICERS IN PARLIAMENT.

MY object in these papers is to present the evidence, from Scottish records, which throws light upon some problems in Scottish institutional history which, so far as I am aware, have not yet been fully considered. I propose, as a rule, to confine myself, meanwhile, to Scottish evidence, and to reserve for future treatment the general question of the influence upon Scotland of the growth and development of institutions in other countries. It is easy to assume that when one finds a parallel in England or in France one has discovered the origin and the explanation of a Scottish custom, but in many cases I have not yet been able to satisfy myself about the relation of these parallels to each other, and I prefer, at present, to follow what has been described as the professorial method of looking a difficulty boldly in the face and—passing on.

I propose here to examine the extant records of the membership of the Scottish Estates to discover if they throw any light upon the history of the right of officers of State to be present, *ex officio*, in Parliament. As the title I have chosen suggests, I think we may obtain some guidance from a brief survey of the history of the representation of the lower clergy and of lairds or 'barons' (in the Scottish sense) during the period between the War of Independence and the Reformation.

Except for a remark in the Preface to the first volume of the *Acts of the Parliament of Scotland*, the presence in Parliament of clergy under the degree of bishop, abbot, or prior, seems to have been generally ignored by writers on the constitution (including myself in my Stanhope Essay on the Scottish Parliament before the Union of the Crowns). Bishop Dowden, in his *Mediaeval Church in Scotland*, has devoted some pages to the topic, and has made some important suggestions, to which I hope to

return in a later article. I am not here concerned with the original basis of their attendance; it is sufficient to show that they were a recognized part of the spiritual Estate. As early as the reign of Alexander II. we have a record of the presence of a dean and an archdeacon in a Great Council (*A.P.* i. p. 404); in 1315 archdeacons and deans are mentioned along with bishops, abbots, and priors, and other clergy as well are said to have been present (*Ibid.* p. 464); and in a very important document of the year 1369 there is a complaint that few of the inferior clergy were present in Parliament (*Ibid.* p. 507). Such lists of members of Parliament as we possess for the end of the fourteenth century show that some of the inferior clergy did attend. There are instances of their being present as proxies for the higher clergy, but the complaint of 1369 makes it clear that this was not their sole right to attend. By whom they were elected, or if there was any election at all, we cannot tell; there is not even material for a guess. But we notice that a considerable proportion of the few lower clergy whom we know to have been present in Parliament between 1367 and 1369 held official positions, *e.g.* William de Biggar, Rector of Errol, who held the great office of Chamberlain, and John de Carron, who had the humbler post of a clerk in the Exchequer (*Exch. Rolls*, ii. pp. 359, 436 n.). From 1369 till about 1460 we have no adequate lists, but we may note that George Shoriswood, Rector of Culter, whom we know to have been in Parliament in 1451 and 1452, was then Clerk of Register. From 1466 to 1560 we have a very considerable amount of information, and the names of many of the lower clergy who were present in Parliament. I have compared these names with the evidence about the royal officials which is available in the Acts of Parliament, the Register of the Great Seal, Exchequer Rolls, the Treasurer's Accounts, and other sources, and in a large majority of instances I have been able to identify the lower clergy present in Parliament with officials and clerks. Between 1535 and 1560 all were officials.¹ The royal secretaries and clerks of the Household, and the clerks of the Chancery, the Exchequer, and the Treasury, were, naturally, men in Holy Orders. It is, I think, at least possible—in view of the evidence of 1369—that such men originally came to Parliament as inferior clergy, and that, as time

¹ There is one possible exception. 'Robert, minister of Failford,' attended in 1546 and in 1560. But the 'Minister Domus de Failford' was the Provincial of the Trinity Friars, and probably was regarded as a prelate.

went on, only those of the inferior clergy who were officials attended. It is important to notice that we are not dealing solely with the great officers of State, but also with 'civil servants' of much humbler position who could never have been given places in Parliament in virtue of their offices. From about 1445 we have entries in the Parliamentary records of the presence of officials whose offices are mentioned in the records, and it may be that about that time the attendance of lower clergy was definitely passing into the right of royal officials to be present in Parliament. Officers who were clerks continued to be described as part of the clerical estate, and there are instances (one in 1488 and several after 1540) of the inclusion in the list *pro clero* of lairds who happened to be officials.

It is conceivable that civil servants may have been selected from inferior clergy who came to Parliament, and this might be inferred from the fact that their names sometimes appear in the fifteenth century Parliamentary lists a few years before we know of their holding an office ; but it is equally possible that when their names first appear they were the occupants of inferior positions in the civil service, and there are some instances in which we can trace such promotions.

The suggestion that the attendance of the inferior clergy came by the end of the fifteenth century to mean only the presence of greater and lesser officials who were clerks gains some support from the fact that in an extant writ of summons of the reign of James IV. there is no reference to the inferior clergy.

The history of the attendance of the lower barons or freeholders is curiously parallel to that of the attendance of the inferior clergy. Originally all tenants-in-chief, small and great, had an undoubted right to be present, or an undoubted obligation to attend. We know that in the reign of James I. the smaller barons did not attend, and that he failed to compel them either to go to Parliament in person or to send procurators or representatives. But the Act by which he gave them the unused power of electing commissioners to represent them contemplated the elevation of the greater barons into Lords of Parliament, and was ultimately, though not immediately, followed by the practical elimination from the Estates of all barons who were not Lords of Parliament. The proportion of such barons in the few fourteenth century Parliamentary lists is naturally large, because there was only a small number of earls and there were no lords of Parliament. When our detailed information for the fifteenth century begins

(c. 1440), only a few lords had been created, and as late as 1472 we find present in Parliament 16 *domini* or lords, and some 34 barons or lairds (*A.P.* ii. 102). The lords and the lairds were recognized as forming one estate. They are sometimes classed together as 'barones,' and in January, 1488, they are all called 'domini.' The first distinction I have noticed occurs in a Parliament later in the same year, in which 'the lord A' is distinguished from 'the laird of B'; but all form one Estate. On the whole, in the fifteenth century we do not find any suggestion of the disappearance of the lairds, though their representation on the Lords of the Articles is very meagre.

It is different in the sixteenth century. For the early years of that century we have only lists of committees. In these lists a few names of lairds occur, some of whom were certainly officials. But in December, 1540, in a Parliament for which we have a full list, there were no lairds, and from this date, when lairds are present, we can almost always identify them as officials. The last list in which they appear (August, 1546) will illustrate the kind of evidence which is available. The seven lairds present are described as Lochinvar, Cessford, Drumlanrig, Bargany, Blairquhan, the Sheriff of Ayr, and George Douglas. James Gordon of Lochinvar and James Kennedy of Blairquhan were connected with the Exchequer. Walter Kerr of Cessford and Hew Campbell of Loudoun, Sheriff of Ayr, belonged to the Royal Household (*Mag. Sig.* iii. Nos. 645 and 731). George Douglas of Pittendreich (father of the Regent Morton) was one of a chosen body of advisers to the Regent Arran, and James Douglas of Drumlanrig was a member of the Privy Council. I have not been able to discover any official position held by Alexander Kennedy of Bargany. The presence of two Douglasses and two Kennedys is obviously connected with the political activities of Angus and Cassilis in 1546.

Thus the few lairds whom we know to have been present in Parliament from about 1520 to 1558 had almost invariably some official position. It is possible that in one or two exceptional cases—perhaps Alexander Kennedy of Bargany in 1546—an ancient right may have been asserted for special purposes and under the protection of a great nobleman. But the famous petition of the smaller barons to be allowed to be present and to vote in Parliament in 1560 is ample evidence that their real constitutional claim was totally misconceived, and when, in November, 1572, a Convention was held for the election of the Regent

Morton, so dubious was the position of the smaller¹ barons that, though they were allowed to vote, they were carefully excluded, in the official record, from the list of the 'sederunt' of the Lords Spiritual and Temporal and the Commissioners of the Burghs. Their names appear in a separate list, headed 'Astiterunt,' and Morton is recorded to have been elected 'by plurality of votes of the said Estates and others above written.' The very memory of the ancient right of the freeholders had passed away. Whether the personal honours conferred after 1427 were merely titles or were peerages in the modern sense of the word is a question for lawyers; from the point of view of the historian, the fact that, except for royal officers and civil servants, the Lords of Parliament came to monopolize the baronial Estate, is the essential feature. Whether he did so legally or not, James I. practically began the creation of a peerage which, between 1500 and 1560, superseded the barons as an Estate of Parliament. It is true that many of the names which occur in fifteenth century lists of lairds occur in sixteenth century lists as Lords of Parliament; but, in spite of this, the numbers of the Estate had decreased. Before the admission, in 1587, of commissioners from the smaller barons, the baronial Estate consisted of one Duke, 23 Earls, and 26 Lords of Parliament—a potential total attendance of 50. But in 1472, about a century earlier, we have an instance of an actual total attendance of 53 (5 earls, 14 lords, and some 34 lairds).

There are, then, reasons for believing that the presence of royal officials in Parliament may have been connected with the attendance of the lower clergy and the lairds. As the Crown was unlikely to have any officers who were not (a) Lords Spiritual or (b) Lords Temporal or (c) tenants-in-chief or (d) inferior clergy, all its officers would naturally have a right to be present in Parliament, and would be expected to be present. In the documents relating to the period before the Reformation, there is no certain trace of the presence in Parliament of officials who did not belong to one or other of these classes, although it is possible that one or two of the non-clerical persons entered in the list *pro clero* may not actually have been barons holding land from the Crown. When non-official lairds and non-official clergy ceased attending, officials continued to attend, and their right to do so would come to be regarded as dependent on

¹ The term 'smaller barons,' which in 1427 meant the less important barons, had come by 1560 to mean all barons (even considerable landowners) who were below the degree of Lords of Parliament.

their office and not on their personal *status*. Yet, though after 1540 we have what are really lists of officials, these officers, as a rule, continued to be classed in the Parliamentary records with the Estate, barons or clergy, to which they naturally belonged. Before the Reformation there are no separate lists of officers, and before 1540 it is rare to find any reference to an office.

Between 1560 and 1587 (except for the revolutionary meeting of Estates in 1560), Parliament was composed of Lords Spiritual (titular bishops, abbots and priors, and commendators of religious houses), Lords Temporal (noblemen) and commissioners from the burghs. We have no instance after the Reformation of the presence in Parliament of minor officials such as the officers of the Exchequer and the Treasury, and the members of the Royal Household ('*familiares regis*'), whom I have identified in the earlier lists. But we do find, immediately after the Reformation, a new category of members, the great officers of State. In the first Parliament of 1567 (the last Parliament of Queen Mary) they occur only in the lists of the Lords of the Articles. The names of the elected members of that committee are given '*una cum officariis*' (*A.P.* ii. p. 547). The officers present on that occasion were the Treasurer, the Secretary, the Keeper of the Privy Seal, the Clerk Register, the Justice Clerk, and the Advocate. In the second Parliament of 1567 (the first Parliament of James VI.) the officers are placed in the full list of members. They were the Treasurer, the Secretary, the Comptroller of the Exchequer, the Clerk Register, and the Justice Clerk. All these offices had been frequently held before the Reformation by the lower clergy and lairds, to whose presence in Parliament we have referred. It was evidently felt to be desirable that the holders of such offices should continue to attend, and they were therefore constituted into a new category of officials. The practical effect of the Reformation was to put an end to the attendance of minor officials in Parliament and to give a new technical Parliamentary status to the great officers of State.

The number of these great officers varied until 1617 from five to eight. In 1592 the Chancellor, the Treasurer, the Secretary, the Comptroller, and the Justice Clerk are described as the '*ordinary officers of State*'; in the following year the Treasurer-Depute and the Collector-General of Taxes are also included in the same description. The Master of Requests was also occasionally present as an officer. In 1617 a question about the number of officers was raised in Parliament. The Clerk of Register reported that

the number had been sometimes greater and sometimes smaller than eight (in this calculation he must have included the Chancellor, who since 1561 had always been a nobleman), and he announced the royal pleasure that there should never be more than eight men sitting *qua* officers of State. In 1640 the Act amending the constitution of Parliament, which abolished the ecclesiastical Estate, ordained that all future Parliaments should consist only of noblemen, barons (*i.e.* commissioners of the shires), and burgesses, and in 1641 this Act was explained to involve the exclusion of officers of State, and all Acts giving them seats in Parliament were declared to be repealed. No such Acts were specified, and I am not aware of the existence of any. In 1661, before the Acts of 1640 and 1641 had been repealed by a General Act Rescissory, the Treasurer, the Clerk of Register, and the Advocate, along with the Treasurer-Depute (who had appeared on the list of officers only in 1593 and 1617) took their seats. No objection seems to have been made, and in 1662 the officers of State were included in the lists of members, and seats were assigned to them upon the steps of the throne.

Between the Restoration and the Revolution nine offices of State were represented at various times—the Chancellor, the Privy Seal, the Clerk of Register, the Advocate, the Treasurer-Depute, the Justice Clerk, the Treasurer, the Secretary, and the President of the Council (who appears for the first time in 1662). The number of officers of State varied in different Parliaments, but the Chancellor, the Privy Seal, the Lord Advocate, the Clerk of Register, and the Justice Clerk were generally present. When officers of State were bishops or noblemen, they were enrolled in the Estate in which they belonged, and the category of ‘Officers of State’ was reserved for those whose qualification was their office—usually the Clerk of Register, the Advocate, and the Justice Clerk. In the Convention of 1689 and in the Parliament of June, 1689, we have no trace of the presence of officers, but between 1690 and 1707 the familiar nine officers appear in the Rolls. A distinction was drawn between greater and lesser officers of State, but the test was not the nature of the office but the rank of its occupant. The offices of Chancellor, Treasurer, Privy Seal, and President of the Council were always held by noblemen. The office of Secretary was ranked with the greater offices when held by a nobleman or (after 1700) by noblemen. The attendance of officers was more frequent and more regular between 1690 and 1707 than between the Restoration and the Revolution. The

chief differences are the regular attendance of the Secretary or Secretaries from 1693 and of the President of the Council from 1696. The presence of the Secretary is only once recorded between 1661 and 1686, and the presence of the President of the Council only twice. The Treasurer and Treasurer-Depute also attended more frequently after the Revolution.

The jealousy with which Parliament, in the constitutional period after the Revolution, regarded the presence of these officers of State is evident from an Order passed in July, 1689. Under the Stuarts, officers of State had always been on the Committee of Lords of the Articles, which monopolized the efficient power of Parliament; e.g. in 1581 eight out of twenty-six members of that committee were officers; in 1633, eight out of forty; in 1669, five out of forty. The officers of State who sat on the Articles were nominated by the Crown. The resolution of 1689 ordered that no officers of State should be members of any committee unless they were elected to that committee. Members of committees were elected after 1689 by and from each of the three Estates separately, and no officer who sat *ex officio* was eligible for election, as he did not belong to any of the Estates (noblemen, commissioners of shires, burgesses). In 1690 this Order was modified so far as to allow such officers as the King or his Commissioner might appoint to sit and debate in committee without the power of voting. The right of the noblemen to elect on committees officers of State who were noblemen was, however, protected (*A.P.* ix. 113), but this exception did not apply to the other Estates, and it was guarded so strictly that when in 1696 Sir James Ogilvie, the member for Cullen, was 'appointed by His Majesty to have place and vote in Parliament as Secretary of State,' a new warrant was issued for Cullen (*A.P.* x. 11; App. p. 3). The effect was that the Secretary of State could not claim to be eligible for election as a voting member of any committee.

II. LAIRDS AS COMMISSIONERS OF BURGHS IN PARLIAMENT.

In the end of the seventeenth century there were some well-known constitutional cases connected with the election of non-burgesses as commissioners for burghs. Mr. Porritt, in his useful book on the *Unreformed House of Commons*, has, with less than his usual caution, inferred from this circumstance that 'the move-

ment of the landed classes to obtain control of the Parliamentary representation in the burghs . . . did not begin until the closing years of the reign of Charles II.,' and he says that this effort 'had then no success, and was attended with none until the Scottish Parliament was nearing its end' (vol. ii. p. 53), and Mr. Porritt's authority has been accepted by Professor Terry. It seems to me that the movement began a century earlier, and that it was almost uniformly successful.

There is evidence in burghal records (*e.g.* Aberdeen), about the end of the fifteenth and the beginning of the sixteenth century, of the interference of barons of the county in municipal affairs, and Acts of Parliament, passed in 1487 and in 1535, had ordered that all who held any jurisdiction in burghs must be resident indwellers of these burghs. It may have been doubtful if these Acts applied to Commissioners to Parliament, but the Convention of Royal Burghs in 1574 forbade the issue of Parliamentary commissions to such as were not 'merchants and traffickers, having their remaining and dwelling within burgh, and bearing burden with the neighbours and inhabitants thereof,' and it repeated this injunction in 1586. The exact amount of authority to be attributed to acts of the Convention at this date must be reserved for further discussion; but in this particular instance the action adopted by the Convention received in 1587 Parliamentary confirmation from an Act that every member of Parliament must 'duly occupy the place of the self estate wherein he commonly professes to live and whereof he takes his style.' In spite of this legislation, we find the Convention complaining in 1598 about the return to Parliament of 'persouns who haid litill skeill or experience . . . and als littill cair and guid will' in burghal affairs. The old rule was reaffirmed by the Convention, and the terms used give us the clue to the nature of the complaints. Commissioners must not be '*above* the rank and degree of a merchant trafficker and indweller.' There is plenty of evidence of the justice of these complaints, both in the lists of noble and landed provosts of burghs about this time, and in the Parliamentary records. The laird of Minto, for example, represented Glasgow in 1581 and 1594, the laird of Dairsie represented St. Andrews in 1585, 1587, 1593, and 1600, and the laird of Bonhard represented Linlithgow in 1594, 1598, and 1599. In 1600 the burgh of Dunbar sent to a Convention of Estates at Perth (the records of which are not extant) a certain William Lauder as its commissioner. He was 'nocht of the qualities' prescribed for burgess

representatives, and—what evidently was the height of his and his burgh's offending—he had by his vote opposed the rest of the commissioners of burghs. The Convention fined the burgh of Dunbar £40. In 1601 it raised the fine in similar cases to £100, and in 1603 it still more strictly defined the qualification of a commissioner. He must be 'sic ane persoun that may tyne or wyn in the commoun caus of burrowis or in the particular of his own brugh.'

All these efforts failed to secure obedience. We find, in 1621, lairds sitting for Lanark and Culross, in 1639 for Inverness, New Galloway, and Peebles, and in 1643 for Inverness. There are many instances in which the provosts who sat for the burghs were lairds. The question was raised during the negotiations for Union with England in 1652, but the Convention of Royal Burghs was forced to acquiesce, under protest and 'without prejudice,' in the decision of the English judges that no conditions could be considered except those laid down in the Declaration of the Parliament of England. After the Restoration the proportion of landed burghess members became larger than ever, and in 1674 King Charles II. addressed to the Convention of Royal Burghs a letter of protest against the return of burghess members not 'actual residenters within the burghs commissionating them . . . or such as can lose or gain in any of their concerns.' The king regarded the practice as 'directly contrary to the ancient constitution of the burghs and to many of their acts,' and he ordered an end to be put to the abuse. The letter produced extraordinary results. It was read on the 17th August, 1674, and a reply was sent asserting that no such limitation of freedom of election had ever existed, and that non-residenters had always been recognized as lawful members of Parliament, 'notwithstanding of any acts formerly made.' This inconsistent story was followed by the significant statement that non-residenters were specially devoted to the king's service. But in January, 1675, the Convention apologized for the 'impertinent and insolent' reply sent by 'some turbulent persons,' and thanked the king for the restoration of their privileges. In the following July the Convention passed an act confirming their old regulations, but without reference to the Act of Parliament of 1587.

In the next Parliament (1678) objection was taken to the return of John Johnstone of Elshieshields, who had sat for Lochmaben since 1665. The question was remitted to the committee on disputed elections; apparently the result was in Johnstone's favour, for he sat again in 1681. But in the same Parliament

the member for New Galloway was disqualified on the ground that he was not a 'residenter or trafficker in the burgh.' In 1681 the objection was again sustained in the cases of George Sintie of Balgony, who had been returned for North Berwick, and Sir Patrick Murray, who had been returned for Selkirk, while John Dempster of Pitliver, Provost of Inverkeithing, whose return was also disputed, was found to be 'a trafficking-merchant in the said burgh.' It is important to note that the Parliament of 1681, approving the reports of its committee, laid it down quite definitely that 'no person could be elected Commissioner to represent a Burgh in Parliament unless he be a burghess and a residing trafficking merchant in that Burgh.' The disqualification was therefore not merely a rule of the Convention of Royal Burghs (a body less important than it had been a hundred years earlier). The Court of Session gave an equally clear decision when the Convention of Royal Burghs prosecuted the town of Selkirk for a fine. The Court found that the fine had been incurred and that the Acts of the Convention of Royal Burghs were obligatory (Fountainhall's *Decisions*, i. 148).

The rule, for the first time rigidly enforced, almost immediately fell into desuetude, and strangely enough Sir Patrick Murray, who had led the burgh of Selkirk into the extravagance of a fine, was again the person concerned. Murray had sat for Selkirk from 1669 to 1674, and after his disqualification in 1681, he sat for Dunfermline in both sessions of the Parliament of 1685, without, apparently, any objection being taken. In 1690 he appeared as Commissioner for the burgh of Stranraer, but the old objection was raised and the precedent of 1681 was quoted. The defence made was the non-legal argument that the same objection applied to many members both of the Convention of 1689 and of the existing Parliament, and no action was taken (*A.P.* ix. App. p. 139). Murray was their Majesties' Receiver-General, and it is probable that the decision (like many similar decisions in the Convention, according to Dalrymple) is to be explained by personal and political considerations. The original reply of the Convention of Royal Burghs to Charles II. suggests that the maintenance of the restriction was no longer desired by the burghs, and, indeed, the royal letter of 1674 may have been part of the policy of Charles II. and James VII. towards municipal corporations. The precedent of 1690 was regularly followed, and when the question was raised long afterwards, in a disputed election for the Wigtown Burghs in 1774, a committee of the House of Commons decided

that it was not necessary for a representative to be a burgh of a burgh in the district of burghs for which he sat.

The disqualification insisted upon by the Convention of Royal Burghs in 1574, affirmed by implication in an Act of Parliament of 1587, and adopted by Parliament in 1681, was, therefore, really effective only between 1678 and 1689, and by that time the Convention of Royal Burghs had ceased to regard it as important.

III. THE REPRESENTATION OF VASSALS OF SUBJECT-SUPERIORS: BURGHAL TAXATION AND REPRESENTATION.

Parliamentary representation in Scotland was, until 1832, confined to tenants-in-chief of the Crown and to Royal burghs. This is the rule, as it has been frequently, and correctly, stated; but like all other rules, it has its exceptions. In the counties there was only one exception—Sutherland. In Sutherlandshire, and there alone, vassals holding of subject-superiors could vote for, and could be chosen as, commissioners to Parliament. The privilege dates from the effective creation of Sutherland into a separate county. It had been a regality since 1345, and was part of the shire of Ross until the seventeenth century. In 1601 James VI. made it an independent county under the hereditary sheriffdom of the Earls of Sutherland (*Reg. Mag. Sig.* vi. No. 1170), but this grant does not seem to have been effective, for, in 1631, Charles I. gave a charter to the same effect and promised to have it ratified in the next Parliament (*Ibid.* viii. No. 1847). The whole, or almost the whole land in the county belonged to the Earl of Sutherland, and the Caroline charter gave power 'to the free barons *and the other inhabitants* of the county' to choose commissioners to Parliament. This unique privilege was ratified, with the rest of the charter, in 1633 (*A.P.* v. p. 62), and Sutherland was represented in 1639. Two years later a special Act was passed ordering the heritors, feuars, and life-renters in the county of Sutherland to share with the free-holders the expense of paying the commissioners, 'because there is only two inhabitants within the said shire holding land of the King's Majesty.' This Act fell under the General Act Rescissory, and was re-enacted in 1661 (*A.P.* vii. p. 328; cf. also vi. ii. p. 720). Regulations about the precise qualifications for a vote were not made until 1743 (16 Geo. II. cap. 11), when it was enacted that £200 of valued rent was sufficient for a vote in the county. This followed the

principle of the extension of the vote to feu-holders of the Crown in 1681, but the qualification was only half of the £400 of valued rent demanded in the other counties. By the same Act, a Sutherlandshire tenant-in-chief of the Crown, if he was a commoner, was declared to have the same rights as his fellows in other counties. He could vote in virtue of his superiority, and his vassal had no privilege. But, where lands in Sutherlandshire were held of the Crown by a peer, the owner of the property had the claim to a vote (if he satisfied the pecuniary conditions), and no vote could be claimed in virtue of a superiority.

An attempt was made in 1649 to obtain for Caithness the privilege which had recently been granted to Sutherland, but without result (*A.P.* vi. ii. pp. 351, 720), and a similar situation arose in the shire of Kinross, where most of the land was held by the Earl of Morton and Lord Burleigh. Except in the Protectorate Parliaments, in which Kinross-shire shared a member with Fife, the county appears never to have been represented until 1681, although the Act of 1427, the provisions of which, in this respect, were adopted in the effective Act of 1587, ordered that it should have one member. In 1681, Sir William Bruce of Balcaskie appeared in Parliament armed with a royal letter, declaring that the shire of Kinross ought to be represented and that the records of Parliament showed that it had been represented until almost all the shire came to belong 'to the Earl of Morton and the Lord Burleigh, who being themselves noblemen, did in parliament represent their own lands.' By 1681, Sir William Bruce had purchased Morton's lands, forming the greater part of the shire, and had been elected by himself and the other free-holders. He apparently anticipated some objection to his taking his seat, and Charles II., being 'well satisfied with the dutiful deference shown to us by the said Sir William in the prosecution of that his right,' ordered that Kinross-shire should enjoy its old privilege of representation (*A.P.* viii. p. 239).

In the representation of the burghs there are some exceptions to the rule that only Royal burghs could send commissioners to Parliament. The rule was based on the fact that Royal burghs alone contributed to the payment of special taxes. In return for this privilege, and for the burden of representation, they possessed a monopoly of the trade of the kingdom. That monopoly, originally conferred, or recognised, by their charters of incorporation, was confirmed by various Acts of Parliament, *e.g.* in 1466, 1488, 1503, 1592, and 1633. But from a very early date certain

trading privileges had been given to burghs which held not from the Crown but from an abbey or a bishop. The most important of these were Glasgow, Arbroath, St. Andrews, Brechin, and Dunfermline. William the Lion's charter to Joscelin, Bishop of Glasgow, for example, gave to the burgh the right of holding a market with all the freedoms and customs possessed by any burgh in Scotland, and later charters gave it most of the privileges of a Royal burgh; though a Glasgow burgh, as an episcopal and not a 'free' burgh, might have found, in the event of a dispute, that he was not worthy to challenge and do battle with a burgh of a Royal burgh (cf. Sir James Marwick's Introduction to *Charters of the City of Glasgow*, vol. i. pp. v *et seq.*). A burgh possessing such privileges might fairly be expected to take its part in the payment of national taxation, and a burgh paying its share of taxation might find itself represented in Parliament.

It is, however, necessary to inquire how far the actual payment of a share of taxation was regarded as an essential condition for the representation of burghs which were indisputably Royal burghs. The few burghs which we know to have been represented in the fourteenth century—Aberdeen, Dundee, Montrose, Linlithgow, Perth, Edinburgh and Haddington—were all indubitable Royal burghs, as were also all except two (St. Andrews and Brechin) of the 27 burghs which appear for the first time on the rolls of Parliament in the fifteenth century. All of these burghs are to be found in the Exchequer Rolls making payment to the Royal Exchequer, but the real test is the payment of the special taxation imposed from time to time upon the three Estates represented in Parliament. The burghs were allowed to assess among themselves the total amount of taxation payable by their Estate, and we possess a series (not by any means complete) of these assessments or stent-rolls. The earliest of them is a roll made in 1483 and preserved in the records of the burgh of Aberdeen, but it applies only to the burghs north of the Forth (*Rec. Conv. R.B.* i. p. 543). Two Royal burghs which were represented in Parliament in the fifteenth century—Kinghorn and Inverkeithing—do not appear in it; but on the first occasion on which they appear in a stent-roll (1578), their contributions are included with that of Edinburgh (*Ibid.* i. p. 73), and they may, therefore, have paid their share regularly, although no record appears of the payment. The first complete stent-roll is dated 1535, and between that date and 1705 we have some thirty rolls. In the rolls for the period 1535-1583, there are, except for one abnormal occasion, thirty-five

Royal burghs always named, and all of these were represented in Parliament ; but four Royal burghs appear regularly which were not represented until after 1583 (Cullen, Whithorn, Dysart, Kirkcaldy). Hamilton, which had been made a Royal burgh in 1549 (*Mag. Sig.* iv. No. 270) appears in 1550, but it lost or resigned its status, and does not appear again. It never appears in the Parliamentary lists. Pittenweem, which had been created a burgh of barony for the prior of Pittenweem in 1526 (*A.P.* ii. p. 316), became a Royal burgh in 1541 (*Mag. Sig.* iii. No. 2294), was added to the stent-roll by 1575, and thereafter appears regularly. It was not represented in Parliament until 1579.

After the year 1583 there was a large increase in the number of Royal burghs, but owing to gaps in the series of stent rolls we cannot trace a constant correspondence between the appearance of a burgh on these rolls and its representation in Parliament. Seven burghs created in or after 1583 (Anstruther E., Anstruther W., Bervie, Culross, Kilrenny, Sanquhar, and Stranraer) and three ancient burghs (Annan, Kirkwall, and Lochmaben), were represented in Parliament either after or simultaneously with their appearance in the stent rolls. For six new creations (Burntisland, Campbeltown, Dornoch, New Galloway, Queensferry, and Wick) no evidence is available. There are, however, four clear instances of the representation of burghs which did not appear on the stent rolls. Dingwall was represented in 1587 and 1593 and not again until 1656 ; it appears on the tax roll for the first time in 1649. Inverurie and Kintore were enrolled by the Convention of Royal Burghs in 1661, and they make their appearance in the stent rolls in 1665 ; but Inverurie had been represented in 1612 and in 1617 (but not again till 1661) ; and Kintore had been represented in 1579, 1617, and 1621 (but not again till 1662). Inverary was represented regularly from 1661 to 1707. It had appeared on the tax roll of 1649, but it is not found in those of 1665, 1670, and 1683.¹ I do not know of any special circumstances (unless it be the extreme poverty of the burghs) that explain the representation of Kintore and Inverurie long before they were enrolled as free burghs, on the usual condition of conforming to the regulations of the Convention of Royal Burghs and bearing their burdens according to the tax roll (*Rec. Conv. R.B.* iii. p. 534). But there are special circumstances in the cases of Dingwall and Inverary.

¹ The references for all these stent rolls will be found in the Index to the *Records of the Convention of Royal Burghs*, p. 150, *sub voce* Tax Roll.

Alexander II. had made Dingwall a burgh with all the privileges belonging to Inverness (*Reg. Mag. Sig.* ii. No. 2387). Robert I. granted it to the Earl of Ross (*Ibid.* i. App. 2, Nos. 370, 380). James IV. in 1498 confirmed the charter of Alexander II. (*Ibid.* ii. No. 2387). James VI. in 1584 granted the superiority of the town of Dingwall to Andrew Keith, Lord Dingwall, and confirmed the grant in August, 1587 (*Ibid.* v. No. 1337). But, according to the evidence given to a committee of the House of Commons in 1793, James VI., in the September of the very year in which he confirmed the grant to Lord Dingwall, granted another charter confirming the charters of Alexander II. and James IV. This charter of September, 1587, is not recorded in the Register of the Great Seal, and there is later proof of renewed grants of the superiority (*Ibid.* vi. No. 2152, ix. No. 275), but the evidence produced before the Commons' Committee in 1793 doubtless explains the representation of Dingwall in 1587 and 1593. The Convention of Royal Burghs, which in 1579 (before the grants to Lord Dingwall) had refused to acknowledge Dingwall as a Royal burgh (*Rec. Conv. R.B.* i. 104), agreed, presumably on the evidence of the same charter, to enrol it in 1638, and thereafter it is found regularly in the stent rolls.

The absence of Inverary from the tax rolls from 1661-1685, during which period it was represented in Parliament, is connected with an unfulfilled promise made by the House of Argyle. Inverary had been enrolled on the usual terms in 1649, after some discussion (*Rec. Conv. R.B.* iii. pp. 339, 345-6), and in 1654 its proportion of the tax was fixed (*Ibid.* iii. p. 386). But in 1657 the Convention complained that Argyle had not kept his promise to give up the superiority of the houses in Inverary, all of which belonged to him, and to allow them to be held in free burgage. No satisfactory answer could be obtained from Argyle in 1658, and the Convention, on a report in 1659 that no payment had ever been made from Inverary, ordered arrears to be claimed from 1649. In 1697 another effort was made to obtain the fulfilment of Argyle's promise, on the strength of which, the Convention asserted, the burgh had been enrolled, and in the same year arrears were remitted (*Rec. Conv. R.B.* iii. pp. 456, 472 ; iv. pp. 90, 233).

These facts, the interest of which has led me to state them at somewhat greater length than is requisite for my argument, show that, though payment of taxes was not always followed immediately by representation in Parliament, even in the case of Royal burghs, yet enrolment on the tax rolls of the Convention of Royal

Burghs was, in normal circumstances, an invariable accompaniment of representation in Parliament, and that burghs not yet enrolled appear only spasmodically on the Parliamentary lists; there is no instance of regular representation until after entry on the tax rolls. It is also clear that the Convention of Royal Burghs insisted (as in the seventeenth century Parliament also did) upon the production of evidence of the creation of a burgh as a Royal burgh.

But in all the stent rolls there appear the five ecclesiastical burghs mentioned at the beginning of this discussion—Arbroath, Brechin, Dunfermline, Glasgow, and St. Andrews. Of these, St. Andrews was represented in Parliament as early as 1456, Brechin in 1478, Glasgow in 1558, Arbroath in 1579, and Dunfermline in a Convention in 1593, but not in a Parliament till 1612. No one of them, with the possible exception of Dunfermline, became a Royal burgh until after its first appearance in the Parliamentary records. The interval between the representation of Arbroath in 1579 and its erection as a Royal burgh in 1599 is very short, and its status, like that of Dunfermline, may have been uncertain. But St. Andrews was represented, while holding from a subject superior, from 1456 to 1620, Brechin in 1478 and 1481 and from 1585 to 1641 (or 1695), and Glasgow from 1558 to 1636. Some doubt has been expressed about St. Andrews and Brechin, but it is quite clear that the Archbishop of St. Andrews continued to be the superior of the city until the seventeenth century (*A.P.* iv. pp. 515-517), and that Brechin was similarly a vassal of the Bishop of Brechin (*A.P.* v. p. 542; ix. p. 510; *Cart. of Brechin*, i. p. xix), in spite of the fact that in a charter of James III. it is described as a 'free burgh, paying taxes and contributions like the other burghs' (*Cart. of Brechin*, ii. p. 122; cf. *A.P.* v. p. 542). The words just quoted suggest that the payment of taxation was, in the reign of James III., regarded as a test of a Royal burgh, but there are several occasional instances of such payments by burghs which were not Royal and which never had a seat in Parliament. Why did St. Andrews, Brechin, and Glasgow obtain the privilege or bear the burden of representation as well as taxation? St. Andrews received from David II. fresh privileges which included a right over customs (*Mag. Sig.* i. No. 134), and from the end of his reign the customars of St. Andrews pay dues to the Exchequer in the same way as the customars of Royal burghs. This further association of St. Andrews with the Royal burghs might be regarded as part of the explanation, but, on the other hand, this

consideration does not apply to Brechin and Glasgow; and Arbroath, which received a similar privilege in 1392 (*Ibid.* No. 862), and the custumars of which paid dues to the Exchequer, was not represented until 1579.

Is the explanation to be found in hard cash? The proportion of taxation paid by Brechin, Glasgow, and St. Andrews may best be understood from actual instances. In 1535, when the Royal burghs of Rutherglen, Selkirk, Dunbar, and Lauder paid £22 10s. each, and the Royal burghs of Cullen, Nairn, and North Berwick paid £11 5s. each, Glasgow paid £67 10s., Brechin £56 5s., and St. Andrews £50; in 1545, when the burghs in the two groups just given paid £18 each and £9 each respectively, St. Andrews paid £80, Glasgow £54, and Brechin £45. Similar results are to be found in other stent rolls. The sums paid by the three ecclesiastical burghs are by no means the highest. Edinburgh always paid much more than any other burgh, *e.g.* in 1535 its contribution was £833, and in 1545 £666 13s. 4d.; next to it came Dundee, paying in the two given years £321 17s. 6d. and £337 9s. 7d., then Aberdeen (£315 and £252), and then Perth (£247 10s. and £198). Haddington, Stirling, Ayr, and sometimes Montrose, also paid more than any one of our three ecclesiastical burghs. But Brechin, Glasgow, and St. Andrews, each paying regularly more than any one of the larger number of the Royal burghs, were too important, and their aid was too valuable for the Royal burghs to despise them. Where a prosperous burgh bore the obligation of public burdens, it might equally well bear the obligation of attendance in Parliament. The difficulty about this explanation is that it applies equally to Arbroath and Dunfermline, which always paid their share of taxes, but were not represented until after the Reformation; and that Glasgow, which always paid more than Brechin, was not represented until eighty years after Brechin. It is possible that Arbroath, Glasgow, and Dunfermline may have been represented earlier in Parliaments for which we have no burghal lists; but between 1478 and 1558 (the dates of the first recorded representations of Brechin and Glasgow) we possess some sixteen separate lists of burghs represented in Parliaments, and the chances are that if these burghs had sent commissioners we should have some trace of them, as we have of so many others.

Whatever the explanation may be, it is certainly remarkable that under a constitution which adhered so tenaciously to the theory that only immediate vassals of the Crown should be repre-

sented in Parliament, these three ecclesiastical burghs should have sent commissioners to the Estates. St. Andrews is by far the most notable instance, for it was represented regularly from 1456. Not less remarkable is the security of their position among the Royal burghs. In the beginning of the seventeenth century, when the jealousy of non-Royal burghs was very great, and while St. Andrews and Glasgow had still their respective archbishops as their superiors, they were so little conscious of any weakness in their title that they entered into a dispute with Stirling, Linlithgow, and Inverkeithing about their precedence. The question came before the Convention of Royal Burghs in 1611 (*Rec. C.R.B.* ii. 315), and in 1612 the Convention gave a temporary decision, instructing the commissioners from Stirling, Linlithgow, St. Andrews, and Glasgow 'that nane of thame sitt doun in this present conventione quhill they be placed and called.' The commissioner for Linlithgow protested that the commissioner from St. Andrews had produced 'ane letter missive direct to the burrowes [*i.e.* the Convention] be the Archebischope thair of quhairin his lordschip calles himself superior and lord of that citie,' and he fortified himself by asking instruments thereon (*Ibid.* ii. 345, 401). We do not know how the dispute was settled, or whether attention was drawn to the same loose joint in Glasgow's armour. Long afterwards, in 1663, when the status of both St. Andrews and Glasgow was secure, a similar dispute was raging over precedence in the 'ryding at parliament,' and on that occasion St. Andrews and Glasgow were placed immediately after Stirling and Linlithgow.

We may sum up by saying that, while their wealth and importance and their regular contributions to taxation would have entitled five, and five only, of the burghs holding from a subject superior to the dignity and the burden of regular representation in Parliament, only one of the five (St. Andrews) can claim a continuous representation from the fifteenth century. Two (Breachin and Glasgow), while still burghs of regality or barony, had a continuous representation from the latter half of the sixteenth century, and two (Arbroath and Dunfermline) were not represented until about the time when they became Royal burghs. Their inferior status clearly delayed the representation of all of them, as compared with many much less wealthy and important Royal burghs; but there is no record of any opposition to their exercising what, by the end of the sixteenth century, had come to be a right rather than a burden, and this in spite of the fact that, by the constitution

134 Parliamentary Representation in Scotland

of the kingdom, they possessed no such right. It is a curious paradox that, while Glasgow in 1558 asserted a non-existent right and was continuously permitted to exercise it, the smaller barons in 1560 asserted a claim with a much stronger foundation and did not succeed in establishing it for a quarter of a century.

ROBERT S. RAIT.

(To be continued.)

A Seventeenth Century Bishop :

James Atkine, Bishop of Galloway 1680-1687

THE history of Scotland from the Restoration to the Revolution is mainly concerned with the struggle between Presbyterianism and Episcopacy, but there was one brief episode when the two sides combined in resisting a determined attempt by James VII. to re-establish the Church of Rome. His policy never had much chance of success, but it was promoted by methods which for a time intimidated most of the leading Protestants, laymen and ecclesiastics, and Bishop Atkine, the subject of this article, deserves to be remembered as one of a small group of fearless men, who braved the risks of opposition in defence of their Church. On the battlefield of Parliament they made a successful stand, and forced the King to follow the unconstitutional courses which brought Scotland into line with England in accomplishing the Revolution.

James Atkine was a younger son of Harry Atkine or Aitken,¹ Commissary of Orkney and Zetland, by Elizabeth Turnour his wife.

The Atkine family came from the neighbourhood of Culross in Fife. In 1541 John 'Atkyn' and his son William (the grandfather and father of Harry) obtained from the Abbey of Culross a lease of the lands of Burwane or Burrowin² lying about three miles north-west of the town, and five years later the holding was converted into a feu,³ which remained in the elder branch of the family for several generations.⁴

Harry Atkine moved to Kirkwall in 1611 on being nominated Commissary by James Law, Bishop of the diocese,⁵ himself a man of Fife. He was also appointed Sheriff-Clerk of Orkney. He

¹ The name is variously spelt ; the Bishop signs 'Atkine' in the signature reproduced in Rev. J. B. Craven's *Church in Orkney, 1558-1662*, p. 206 ; his father was generally called 'Aitken.'

² *Laing Charters*, No 456.

³ *Great Seal Register*, 1580-93, No 1111.

⁴ *Inquisitiones*, Perth, No. 542.

⁵ *Privy Council Register*, ix. 182.

acquired in feu the properties of Groundwater in the parish of Orphir and Hornersquy in the parish of St. Ola,¹ and remained in Orkney till his death in 1643.

The future Bishop was born about the year 1613, and received his early education at Kirkwall Grammar School. He graduated Master of Arts at Edinburgh on July 23, 1636, and studied divinity at Oxford in 1637-8 under Dr. John Prideaux, Regius Professor and Rector of Exeter College.²

He was at once plunged into the sea of ecclesiastical strife on appointment as Chaplain to James, Marquis of Hamilton, the King's Commissioner in Scotland, who had to face in November, 1638, the first General Assembly of the Church of Scotland which had met since the promulgation of Laud's liturgy—'a disorderly affair if ever any was,' as Bishop Burnet calls it.³ Seizing the opportunity to attack the bishops, the Covenanters summoned them to appear. They refused the summons, whereupon, in spite of protests by Hamilton, who formally dissolved the Assembly, the Covenanting majority proceeded to deprive the bishops and demolish the whole fabric of Episcopacy.

On July 27, 1641, James Atkine was through Hamilton's influence presented by Charles I. to the living of Birsay and Harray at the north-west of the mainland of Orkney. He satisfied his trials before the Presbytery with a thesis *De invocatione Sanctorum*, and subscribed the Covenant, but notwithstanding appeals from the congregation the Presbytery delayed his admission because of a rumour that he had spoken against the Reformation. The evidence against him was based on a 'conference' between him and Mr. Patrick Waterstoun, junior, a brother minister. Mr. Waterstoun had trailed his coat with the remark that 'Episcopacie was anti-Christian,' to which Mr. Atkine made the guarded reply that 'many good divines thought the contrary.' As Mr. Waterstoun was notoriously quarrelsome and disputatious, the Presbytery wisely found 'nothing provin,' and they admitted Atkine to his charge on June 26, 1642.⁴

In February, 1647, while he was Moderator of Orkney Presbytery, a complaint against him was lodged by one John Sinclair before the General Assembly, who remitted it to the Provincial Assembly.

¹ Peterkin, *Rentals of Orkney*, No. 5, p. 5; *Orkney Sasines*, May 8, 1639.

² *Athenae Oxonienses*, Anthony à Wood, ed. 1813, iv. 871.

³ *Memoires of James, Duke of Hamilton*, p. 27.

⁴ *The Church in Orkney, 1558-1662*, Rev. J. B. Craven, pp. 205, 206.

No action followed for two years, so the Assembly instructed Mr. Andrew Cant to take measures for 'rypning a report,'¹ and in July, 1649, Atkine was deposed.² The nature of the offence is not stated in the records, but probably it was political, for next year he is found giving active support to Montrose's expedition on behalf of Charles II. Montrose landed in Orkney on March 26, and was received by the ministers of the Presbytery with an address of welcome composed by Atkine.

It set forth :³

' . . . We do from our soul detest that continual rebellion, maliciously hatched and wickedly prosecuted against his sacred Majesty of blessed and happy memory ; and do from our hearts abhor his delivering over to bondage, imprisonment, horrid and execrable murder, and all damnable and pernicious practices executed against him by the rebellious faction of both kingdoms ; The which we shall never fail hereafter to preach unto our people, and witness on every day of our calling ; and also of our fruitful acknowledgement, prayers and wishes for the happy establishment of His present Majesty unto all his just rights ; and particularly that it may please God to give a blessing to this present expedition of his Excellency, James Graham, Marquess of Montrose and Capt. General of his Majesty within the Kingdom of Scotland. All which we shall faithfully stand to advance, without giving the least thought or practice to the contrary. So help us God.'

This defiance was visited by the authorities with civil and ecclesiastical penalties. The whole Presbytery was deposed ; Atkine was excommunicated, and the Council of State issued a warrant for his arrest, but his kinsman, Sir Archibald Primrose, gave him timely warning to escape.

A letter to Sir James Sinclair of Murkle, dated [May] 6, 1650, states :⁴ ' Our Governour, Sir William Johnstoune, hes takine ane shipp and gone to the sea with the wholl monitione and arteyllarie. . . . Mr. James Aickine [is] gon alongis with the Governour : they heave my Lord of Mortoun's wholl Jeualls and pleatt with them ; yit it hes pleased God that the shipp that the Governour and his traine was in they ar rune on upone the

¹ *General Assembly Commission Records* (Scott. Hist. Soc.), i. 213 ; ii. 274.

² *Index to Unprinted Acts of Assembly*, session 11.

³ *The Orkneys and Shetland*, J. R. Tudor, p. 583.

⁴ *Wodrow MSS.* (Advocates' Library), fol. 67, no. 95.

Skerries of Skea in Wastray firth and will never winne off. I pray you doe that ye can to obtaine a warrand from the Leiventant generall to tak them, since they ar so suir upone the Skerrie.'

However, the ship's company were taken off by a frigate and reached Norway, whence Atkine made his way to Holland. He stayed there for three years, and from 1653 to 1660 he was in Edinburgh,¹ but within three months of the Restoration he went to London to petition the King 'for presentation to the first benefit that shall be in His Majesty's gift.'² His petition stated that he had suffered excommunication, exile and loss of all his property for his loyalty, and he produced testimonials from Thomas Sydserf, Bishop of Galloway, the only surviving prelate in Scotland, and from Dr. George Morley, Bishop of Winchester, certifying that he was an able, blameless minister, and had been a great sufferer.

The petition had some effect, for he was at once presented to the Crown living of Winfrith, Dorsetshire, and on May 15, 1661, the Scots Parliament passed an Act ordering the Collector of vacant stipends in Orkney to pay him £100 sterling.³

Atkine's record as Rector of Winfrith during the next fifteen years is a blank; but his ambitions were by no means satisfied, and he continually pressed his claims to a bishopric. In 1676, on the death of the Bishop of Orkney, he induced the Bishop of Winchester to promote his candidature for the vacant see. The Duke of Lauderdale wrote to Archbishop Sharp on July 18:⁴ 'Receiv heir inclosed a 2^d letter w^{ch} I have receavd from my Lord Bp. of Winchester. The trouthe is, I thinke, the great importunity of Mr. Atkins puts the good Bp. to all this trouble. He brings cōstantlie to me his own recōmendations. I have often said that I neither can nor will meddle, seing the King hath put the power of recōmēding into better hands. . . . But nothing can put him off. Therfor I beseech yo^r Gr. to write to me whom you will pitch on to yo^r vacant Bpricks and thin we shall be quiet.'

Indirectly Atkine's importunity was successful, for though the Bishop of Moray obtained the see of Orkney, he was selected for the Bishopric of Moray. The *congé a'élire* was issued on September 9, 1676,⁵ and his election took place on November 1.

¹ Scott's *Fasti*, iii. 393. ² *S.P. Dom.*, 1660-1, p. 226. ³ *Thomson's Acts*, vii. 202 b.

⁴ *Lauderdale Correspondence* (Scott. Hist. Soc. Miscellany, i. 275).

⁵ *S.P. Dom.*, 1676-7, p. 318.

The appointment was received in the diocese with some misgivings. Alexander Brodie of Brodie, one of the leading laymen, wrote in his diary :¹ '1676, Oct. 14. I heard that the Chapter and ministers of this Sinod wer stumbl'd at Mr. Atkins who was nam'd to be Bishop and at his excommunication. . . . Nov. 3. I heard that the Chapter delay'd to choos Aitkins to be Bishop becaus he stood excommunicat. But the votes wer equal except one.'

On May 9, 1677, the royal warrant was signed empowering the Archbishop of St. Andrews to consecrate and install him.²

His masterful character soon made itself felt. Brodie has an entry on July 4, 1678 :³ 'I yesterday reaceavd a boasting letter from the Bishop, and answerd it as I could, but remitted it to Spini⁴ if it might pass. The Lord restrain that man.'

His record, however, as Bishop of Moray, was that of 'a pious, respectable and prudent prelate, who kept his diocese in peace.'⁵

In consequence of a dispute with the Marquis of Huntly and the Earls of Moray and Dunfermline about the fishings on the Spey, these noblemen 'prevailed' to have him transferred, and accordingly he was appointed Bishop of Galloway in 1679. The *congé d'élire* is dated October 15, and he was provided on February 6, 1680.⁶

He was given a special dispensation to live in Edinburgh, 'because it was thought unreasonable to oblige a reverend prelate of his years to live among such a rebellious and turbulent people as those of that diocese were : the effects of whose fiery zeal hath too frequently appeared in affronting, beating, robbing, wounding, and sometimes murdering the curates.

'He had the oversight of the said diocese for seven years, which he so carefully governed, partly by his pastoral letters to the Synod, presbyteries and ministers, and partly by his great pains in undertaking a very great journey for a man of his age and infirmities to visit his diocese, that had he resided on the place, better order and discipline could scarce be expected.'⁷

¹ *Diaries of the Lairds of Brodie* (Spalding Club), pp. 368, 369.

² *S.P. Dom.*, 1677-8, p. 118.

³ *Diaries of the Lairds of Brodie*, p. 400. This proves that his consecration was not delayed till 1679. See Dowden's *Bishops of Scotland*, p. 419.

⁴ Alexander Douglas of Spynie.

⁵ *Annals of Elgin*, Robert Young, p. 131.

⁶ *Great Seal Register, Paper Register*, x. 141.

⁷ *Athenae Oxonienses*, iv. 871.

The emoluments of the see appear to have amounted to £6264 Scots per annum, derived from the feu-duties and teinds of the Bishopric itself, the priory of Whithorn and the abbacies of Tongland and Glenluce.¹ In only two sees, those of St. Andrews and Glasgow, were the revenues higher.

It was no exaggeration to describe the state of the diocese as turbulent. Nowhere in Scotland had there been more determined resistance to Charles II.'s policy of forcing Episcopacy upon an unwilling people, and in the Bothwell Bridge rising of 1679 the men of Galloway took their full share.

Bishop Atkine was one of the signatories to four encyclical letters addressed by some of the Scottish Bishops to Archbishop Sancroft and his brethren of the English bench between July, 1680 and March, 1683.² The object of the correspondence was 'to transmit frequent accounts of our state and case, as God in his holie and wise providence shall order it, that we may have the benefite of your devout prayers, counsells and assistance.' Their Lordships refer to 'the unhappines and distraction of the tymes' and 'the dangerous impressions unreasonable men make upon the unitie and order of our Church'; and they transmit documents published by 'our most sanguinarie enemies' as evidence 'to what height of rage and furie these wicked schismatics are arrived.'

In the light of subsequent events it is curious to note that one feature common to all four letters is an acknowledgment of the Church's debt to the Duke of York as Commissioner in Scotland. The Bishops write on March 9, 1683: 'Since his Royall Highneses coming into this kingdome, we find our case much changed for the better, and our Church and order (which, through the cunning and power of our adversaries, were exposed to extrem hazard and contempt) sensible releevd and rescued; which, next to the watchfull providence of God, we can ascribe to nothing so much as to his Royall Highneses gracious owning and vigilant protection of us.'

Since 1662 the Bishops had seats in Parliament, and Bishop Atkine attended regularly. He signed the Declaration of the Estates in 1681 that leagues and covenants, and particularly the National Covenant and the Solemn League and Covenant, were unlawful; but this pronouncement proved a *brutum fulmen*, and

¹ *Register of Deeds* (Mackenzie), March 21, 1684.

² *Letters of Scottish Prelates*, ed. W. N. Clarke, pp. 13, 21, 25, 61.

early in 1682 drastic measures were taken for the coercion of Galloway. John Graham of Claverhouse, who had been employed there three years before in suppressing conventicles, was appointed Sheriff of Wigtownshire and commissioned to scour the country with his dragoons in search of fugitive rebels from Bothwell Bridge and generally to harass the Covenanters.

The absentee Bishop gave him what support he could. The Lord Clerk Register, Sir George Mackenzie (afterwards Earl of Cromartie) wrote to Lord Chancellor Haddo (afterwards Earl of Aberdeen) on October 11, 1682 :¹ 'The B. of Galloway is heer [Edinburgh], and tels me that the supporting of Clevres [Claverhouse] there is positively essentiall for the quiett of that Shyre, and thinks the consequences will be bad if that be not done, and that the doeing of it will bring that Shyre as weell to a reall and true as to outward submission.'

Though Claverhouse punished many prominent Covenanters, his mission had no real success in promoting conformity, and it may well be that the Bishop realized the hopelessness of the situation. At any rate next year he began canvassing for an expected vacancy in the see of Ross.

Claverhouse wrote from Edinburgh to the Marquis of Queensberry on October 12, 1683 :² 'I spok this day with the Bishop of Galloway to knou if there wer any hopes of his translatione, but he told me by what he could learn from the primat, Dumblean was fixed in Ross.' This forecast proved correct.

Bishop Atkine was inclined to ride at the top of his commission. Fountainhall mentions an instance :³ '27 and 28 November, 1684.—18 Ministers, being the Chapter of Glasgow, meit at Edinburgh (because the Bisshop of Galloway, who is ther suffragan and conveiner, was not able to travell to Glasgow) and . . . choise Mr. Cairncrosse to be Archbisshop of Glasgow. The 2^d Act of Parliament in 1617, with immemoriall possession, ordains the Dean of Glasgow to be *praeses* of that meeting, but the Bisshop of Galloway usurped the office at this tyme.'

James VII. came to the throne in 1685, and next year started on his policy of Catholic emancipation designed to lead to Catholic supremacy. The Royal Letter, with which Parliament was opened on April 29, 1686, contained the following passage :⁴

¹ *Letters to the Earl of Aberdeen* (Spalding Club), p. 89.

² *Historical MSS. Commission—Buccleuch MSS. at Drumlanrig*, i. 285.

³ *Historical Notices* (Bannatyne Club), ii. 576.

⁴ *Thomson's Acts*, viii. 580.

‘Wee can not be unmindfull of others our innocent subjects, those of the Roman Catholick Religion, who have with the hazard of their lives and fortunes been alwayes assistant to the Crown in the worst of Rebellions and Usurpations, though they lay under discouragements hardly to be named. Them Wee doe heartily recommend to your Care, to the end that as they have given good experience of their true Loyalty and Peaceable behaviour, soe by your assistance they may have the Protectione of Our Lawes, and that security under our Government which others of our subjects have, Not suffering them to lye under obligations which their Religion can not admitt of, By doeing whereof you will give a demonstration of the duety and affection you have for us, and doe us most acceptable Service.’

At the present day this appeal to toleration sounds moderate and harmless; but toleration is a plant that will not grow on a recent battlefield, and the King’s proposals aroused intense indignation. The Government was strong: Lord Chancellor the Earl of Perth, and the Commissioner, the Earl of Moray, were recent converts to Rome, and the King had already impetrated from the Archbishop of St. Andrews and the Bishop of Edinburgh a declaration that it was reasonable to repeal the sanguinary laws against Papists, so far as they exercised their religion in private houses.¹

During the first month of the session the Commissioner was active in securing a majority by the private use of threats, and the King sent down a letter to the Privy Council ordering the removal from office of Lord Advocate Sir George Mackenzie, Lord Pitmedden, a Lord of Session, and the Earl of Glencairn and Sir William Bruce, both Privy Councillors. ‘Thir warning shots ware to terrify and divert other Members of Parliament from their opposition.’²

These methods were so far successful that in the last week of May the draft Act passed the Lords of the Articles—the legislative committee of Parliament—by eighteen votes to fourteen.³ The Archbishop of St. Andrews and the Bishop of Edinburgh were, as might be expected, in the majority: Bishop Atkine, with his brethren of Glasgow, Brechin and Aberdeen, was in the minority. The last three prelates seem to have carried their

¹ *Hist. MSS. Com., Mar and Kellie MSS.*, p. 217.

² *Fountainhall, Historical Notices*, ii. 723.

³ *Mar and Kellie MSS.*, p. 219.

opposition no further ; but Atkine was not susceptible to pressure, and when the draft Act came before the full Parliament he was joined by the Bishops of Ross and Dunkeld and continued the fight. Though he was so enfeebled by age and sickness that he could not walk, he was carried daily to the Parliament House. The opposition stood firm, and on June 15 the session ended without the obnoxious measure having been passed.

Wodrow, who is seldom a witness friendly to Episcopalians, says :¹ 'It was but two or three at most of the bishops who had the courage to oppose the Court in this important affair. Some of them, ashamed to appear in so black a cause, chose to be silent or withdraw. The rest, contrary to their oath, office and plain interest, fell in with the King's darling design, and my informations bear, the chief of them were active for the removal of the penal statutes, which heightened the aversion the nation had for them. I hear Bishop Atkin of Galloway, an old man, made a noble stand, and died shortly after ; otherwise probably he had been turned out. And Bishop Bruce of Dunkeld, who had a remarkable sermon at that time, much commended, opposed the [repeal of the] penal statutes, and was put from his office.'² I find Bishop Ramsay of Ross used great freedom with the Commissioner, and came to no small trouble therefore.'

The sequel was that the King abandoned the attempt to deal with Parliament, and coerced the Privy Council into issuing proclamations to dispense with the penal statutes and to grant the Catholics the use of the Chapel Royal of Holyrood—measures which largely contributed to the Revolution so far as Scotland was concerned.

Bishop Atkine married, while minister of Birsay, Anna or Alison, daughter of Thomas Rutherford of Hunthill, near Jedburgh,³ and had three daughters. They all married, and received provisions of 4000 merks each from their father.⁴ Lillias, the eldest, married (1) Mr. Patrick Smyth, advocate, (2) Mr. George Cheyne, surgeon in Leith ; Marion, the second daughter, married (contract dated September, 1678)⁵ Mr. William Smyth, minister

¹ *History*, ed. Burns, iv. 365.

² The King deprived him on June 3, 1686, without reason assigned.—Fountainhall, *Historical Notices*, ii. 728.

³ *Scots Peerage*, vii. 378 ; Special Service in the Sheriff Court of Roxburghshire, Nov. 14, 1648, where she is called 'Anna.'

⁴ Fountainhall, *Decisions*, i. 552.

⁵ *Register of Deeds* (Mackenzie), March 7, 1684.

of Moneydie, near Perth, a first cousin of Mr. Patrick Smyth; Alison, the youngest, married Mr. Duncan Robertson, Sheriff Clerk of Argyle.

Bishop Atkine died of apoplexy at Edinburgh on November 15, 1687,¹ aged seventy-four, and was buried in Greyfriars Churchyard. His widow lived till March, 1692.²

His episcopal seal bore the device—*Or*, a chevron *azure* between two cocks and a buckle *gules*.³

Various eulogies, both in prose and verse, were pronounced upon him. Wood says:⁴ ‘His death was sadly regretted by all good and pious men, who knew him to be a man of great reputation for his sincere piety, constant loyalty, singular learning⁵ and true zeal for the Protestant religion.’

Dr. Archibald Pitcairn wrote an epitaph which was fixed on his coffin:⁶

‘Maximus, Atkinsi, pietate et maximus annis,
Ante diem, invita relligione, cadis;
Ni caderes, nostris inferret forsitan oris
Haud impune suos Roma superba deos.’

An anonymous poet in the vernacular published a broadside of the usual exuberant style:

‘Ah! art thou gone, thou great and gallant mind,
And has not left thy parallel behind;
Was in thy youth devoted unto God,
A pious bud of Aron’s sacred rod;
In whom the mitre long with purity
Did flourish, and decor’d our dark’ned sky.

So have I seen ane earlie rising lark
Spring from her turf, makeing the sun her mark,
Raiseing her selfe aloft, yet higher, higher,
Till she had sung her selfe unto Heav’ns quire.
So did he rise in pray’r, and in a trice
His soule became a bird of Paradiçe;
Where now hee duells for ay, and doth supplie
A place in that celestial hierarchie.
There his Creatour and Redeemers sight
Inebriats him with intranceing light.’

JOHN A. INGLIS.

¹ *Edinburgh Testaments*, March 6, 1688.

² *Greyfriars’ Register*, where she is called ‘Alison.’

³ *Blazon of Episcopacy*, W. K. R. Bedford, p. 196.

⁴ *Athenae Oxonienses*, iv. 872.

⁵ In the inventory annexed to his testament his library is valued at 700 merks.

⁶ *Selecta Poemata*, 1727, p. 3.

Military Papers of the Time of Charles the Second

THE originals of the papers printed below were found in a bundle, docketed 'Papers Anent the Militia,' containing some twenty documents, mostly rough scrolls, which appeared amongst a mass of seventeenth century deeds in the charter chest of the Marquess of Tweeddale at Yester, of the contents of which the transcriber is editing a Calendar for the Scottish Record Society. The old family history of the Hays says that Tweeddale (then second Earl, afterwards first Marquess), after his imprisonment in 1661, 'going to Court recovered himselfe so much in ye King's favour as to be nam'd on of ye extraordinary Lords of Session in ye year 1666, in ye year 1667 a commissioner of the Treasurie, & ye year 1668 a counsellour of England in which station he continued in great quiet till ye year 1674, in which year the Earle of Lauderdale being then Commissioner, & having made use of him in all the steps of his subaltern government begun to grow jealous yt he might carrie from him ye goodwill he had purchas'd in being instrumental with the King for disbanding the army after pentland & by the government of the Revenue with the assistance of Sir Robert Murray, so much to ye advantage of the croun & Kingdome yt ye Kings debts he contracted in Scotland being pay'd the expense of the goverment fully satisfied, the whole fees, & pensions payd, the Kings houses, & fortesses repair'd, the whole list of pensions pay'd punctually at ye term, & all precepts ye King drew answer'd as bills of Exchange, the magazins fil'd with arms & ammunition to serve 24000 men a militia setled wherin all the Noblesse & Gentry had command amounting to 20000 foot, & 2000 horse & they all arm'd, & yet no sesse lying upon the Countrey.' In fact at this period Tweeddale was virtual head of the administration in Scotland.

The following statement from the introduction to Dalton's *The Scots Army* may be quoted: 'The unfortunate dearth of

military records among the Scottish archives, between the years 1660-1667, and the total absence of commission registers relating to the Standing Army prior to December 1670, has been severely felt by those interested in the military history of the Restoration period. We all know how difficult it is to make bricks without straw.'

C. CLELAND HARVEY.

CHARLES R.

I. AN ESTABLISHMENT FOR A NEW REGIMENT OF FOOT-GUARDS to his Matie consisting of six hundred Souldiers to begin from the first day of May 1662.

		PER DIEM.		
		<i>l.</i>	<i>s.</i>	<i>d.</i>
Colonell as Colonell	- - - - -	00	12	00
Leivetenant Coll: as Leivt Colonell	- - - - -	00	07	00
Major as Major	- - - - -	00	05	00
Chaplain	- - - - -	00	06	08
Chirürgion iiij ^s and one Mate ijs vj ^d	- - - - -	00	06	06
Quarter Master and Marshall to be executed by one Person		00	04	00
Total		02	01	02
His Maties owne Company				
Captaine	- - - - -	00	08	00
Leivetenant	- - - - -	00	04	00
Ensigne	- - - - -	00	03	00
Two Serjeants each att xvij ^d	- - - - -	00	03	00
Three Corporalls each at xij ^d	- - - - -	00	03	00
Three Drumers each at xij ^d	- - - - -	00	03	00
One hundred and Twenty Souldiers each at x ^d p. diem		05	00	00
		06	04	00
Colonells Company				
Colonell as Captaine	- - - - -	00	08	00
Leivtenant	- - - - -	00	04	00
Ensigne	- - - - -	00	03	00
Two Serjeants each at xvij ^d	- - - - -	00	03	00
Three Corporalls each at xij ^d	- - - - -	00	03	00
Two Drumers each at xij ^d	- - - - -	00	02	00
One hundred and Twenty Souldiers each at x ^d p. diem		05	00	00
		06	03	00

Charles the Second

147

Leiveten ^t Col: Company						<i>l.</i>	<i>s.</i>	<i>d.</i>	
Leivetenant Coll: as Captaine	-	-	-	-	-	00	08	00	
Leivetenant -	-	-	-	-	-	00	04	00	
Ensigne -	-	-	-	-	-	00	03	00	
Two Serjeants each at xvii ^d	-	-	-	-	-	00	03	00	
Three Corporalls each at xij ^d	-	-	-	-	-	00	03	00	
Two Drumers each at xij ^d	-	-	-	-	-	00	02	00	
One hundred Souldiers each at x ^d p. Diem	-	-	-	-	-	04	03	04	
						<hr/>	05	06	04
Majors Company						<i>li.</i>	<i>s.</i>	<i>d.</i>	
Maior as Captaine	-	-	-	-	-	00	08	00	
Leivetenant -	-	-	-	-	-	00	04	00	
Ensigne -	-	-	-	-	-	00	03	00	
Two Serjeants each at xvii ^d	-	-	-	-	-	00	03	00	
Three Corporalls each at xij ^d	-	-	-	-	-	00	03	00	
Two Drumers each at xij ^d	-	-	-	-	-	00	02	00	
One hundred Souldiers each at x ^d p. Diem	-	-	-	-	-	04	03	04	
						<hr/>	05	06	04
Two other Company's						<i>li.</i>	<i>s.</i>	<i>d.</i>	
Two Captaines	-	-	-	-	-	00	16	00	
Two Leivtenants	-	-	-	-	-	00	08	00	
Two Ensignes	-	-	-	-	-	00	06	00	
ffower Serjeants each at xvii ^d	-	-	-	-	-	00	06	00	
Six Corporalls each at xij ^d	-	-	-	-	-	00	06	00	
ffower Drumers each at xij ^d	-	-	-	-	-	00	04	00	
One hundred and Sixty Souldiers each at x ^d p. Diem	-	-	-	-	-	06	13	04	
						<hr/>	08	19	04

	PER DIEM.	PER MENSEM.	PER ANNUM.
	<i>li.</i> <i>s.</i> <i>d.</i>	<i>li.</i> <i>s.</i> <i>d.</i>	<i>li.</i> <i>s.</i> <i>d.</i>
The Totall is	38 : 00 : 02	952 : 04 : 08	12413 : 00 : 10

(NOTE. In the original, which is a large sheet of parchment signed at the top by the king, the wages are given in three columns, per diem, per mensem, and per annum, but only one is transcribed above. This appears to be the earliest known official document anent the corps now called the Scots Foot Guards.)

II. LIST OF OFFICERS FOR THE MILITIA And overturs theranent whereof the principal sent to E(arl) lawderdale. july 20 1667.

Proportions of shires for levyng 20000 foot, & 2000 hors.

Roxburgh & selkirk	Cols foot D(uke) Buccleugh	Troops of hors
1333 foot 148 horse	E(arl) Roxburgh	Duke of Buccleugh
	Lievt Col. Sr Francis Scott ¹	and L(ord) New-
	lievt ^t Col. Macairston	batel
	Ma(jor)_____ ²	
	Ma._____	

Barwickshire 800 f. 74 h.	Col E(arl) Hume L. Col. Plandergaist Ma. _____ 3	Troop Polwart
Edinburgh 800 f. 74 h.	Col E(arl) Laud(erdale) L.C. _____ M. _____ 4	Troop L(ord) Ramsey
Hadington 800 f. 74 h.	Col E(arl) Tweedd(ale) or l(ord) y(ester) L.C. Linplum M. _____ 5	Tr(oop) Sr J. Hamilton or L(ord) kingston
Linlithgow & peebles 600 f. 71 h.	Col E(arl) Winton L.C. E(arl) Lithkow or Blackbarrony 6	Troop Lord Torphichen Blackbarrony or Sr James Primrose 7
	Provost for the time being	
Edinb(urgh) leith & Cannygate 800 f.	C(ol) S. A. Ramsey or Col lothian L.C. Coll. Lothian Ma. _____ 8	The P(rovost) of Edr for the tyme being
Dunfreiss 800 f. 88 Hors.	Col E(arl) Annandale L.C. Craigdaroch M. _____ 9	Tro. L(ord) Drum- langrig
Wigton 800 f. 88 H.	Col. L(ord) kennedy or L(ord) Garles E(arl) Galway L.C. _____ Ma. _____	Troup sherife of galoway 10
Air & Ranfrew 1333 f. 176 h.	Col. E(arl) Eglinton & E(arl) Glencairn or L(ord) Loudon L.C. Sr Jo. Shaw of Greinock L.C. Sr Jhon Cochran of ochiltree M. _____ M. _____	Tr. L(ord) Ross & Mr of Cochran Lord bargany 11
Lanerigh 1000 f. 148 h.	Col. D(uke) Hamilton L.C. Sr Thomas Hamilton Ma. _____	Troops Marquis of Douglas 12
Sterling & Clack- mannan 666 f. 88 h.	Col. E(arl) Calander or Amont L.C. Laird of Buchanan M. _____ 13	Ld. Cardros Tr. illegible or Polmeis

Fife & kinros 1600 f. 176 Hors.	Col ^s E(arl) Rothes & E(arl) Weims E(arl) Kellie L.C. Laird of Ardros L.C. Sr James Lumsdain yonger M. _____ M. _____ 14	Troops E(arl) Kelly Weims E(arl) kincardin
Perth 1600 f. 176 h.	Col ^s E(arl) Athol and E(arl) Perth Montros L.C. Inchbraiky L.C. Glenurchy M. _____ M. _____ 15	Tro E(arl) Tullibairn Perth L(ord) Madertie E(arl) Tullibairn
Forfar 1000 f. 103 H.	Col. E(arl) Kingorne E(arl) Southesk or L(ord) Carn(egy) 16	Airly or Dundie Tr. E(arl) panmure
kincardin & part of Aberd(een) 800 f. 74 h.	Col. E(arl) Marshal L.C. G : keith M. _____	E(arl) Panmure Tr. G. keith
Aberdeensh(ire) & Bamf 1066 f. 176 H.	E(arl) Mar Col. E(arl) Airoil L.C. _____ M. _____ 17	E(arl) Mar Tr. L(ord) Fyvie
Elgin, Nairne, & part of Invern(ese) 1000 f. 88 h.	Col. E(arl) Moray L.C. Laird Innes M. _____	Tr. Innes Lord Düffus
Invernese seof(?) & louit 666 f. 88 h.	Col. E(arl) Seafort L.C. silas Makingee M. _____	Tr. L(ord) Louit
Sutherl(and) kaithn(ess) and rest of Invern n(ess) 1066 f. 88 h.	C. E(arl) kaithness L.C. dumbeth M. _____	Tr. L(ord) Strathnaver Innis of sansid
Argyle Dunb(arton) & but 800 f. * & the lands holding of E(arl) Argile in the shir of Invernes *	Col. E(arl) Argyle L.C. leghinyell M. _____ 18	

Orkney 666 foot

Col. E(arl) Morton

L.C. _____

Ma. _____ 19

The Majors to be soters of fortune & nominat by the Collonels.

The Captains to be nominat by the collonels wt advice of the comissioners of Assessment * the Militia * who ar to be declared Comittees of war the justicis of pac.

The leivtenants Cornets And Ensings

It wilbe for that the Justices of peace be declaired Comittees of Warre for it is hopd the Comissrs of Assesment will expyre. The Justices of peace are a constant court & the nomination of the persons always at his Maties pleasure, to change or add.

The establishment of the forces to be thus. All Generall officers to be cut off. The Col. and staff officers of Hors to be cut off & the Troops left independent & to be upon occasion commanded & required as his Majesty shall please. And the pay being reduced to that of 1649 the monethly expence at 12 Moneths in the year will not exceed 25000 lib to all the forces now on foot reckoning 150 horse at one forth more than the rest.

The whole forces to be payed according to the present establishment till the end of June 1667

* The Militia to be subject to noe comand bot the General colinel and the general when in the filds & not to be subject to a court Marshal nor the Articles of war except when in the filds that all difficultys Arising anent the levieng arming and maintaning, or any thing which may concerne the Melitia both hors and foot be referred to the priviee council.

to remember that the story of Mr of Ramsay.

That Military imployments doe officers & souldiers be not eximpted from the executione of law ethir in cassis criminal or civile & or for payment of ther debts.

In That all casis of complaints between the country & souldiers that they be judged by the ordinar courts and judicators as the wer formerly befor any forcis wer levied and that the country peopel mak ther aplications to the respective judicators for that effect only.*

Note. The words enclosed in square brackets have been deleted, and the parts between the asterisks added later.

Another "List of the shyres & Princill officers of the Militia," 1674, agrees with the foregoing in the main, although it does not mention the numbers of the foot and horse, and gives the following further information :

1. Sr James Scot of Thirlstane, Lievt Colonell ;
2. George Pringle of Corsouth and Robt Ker of Newhall, Majors ;
3. Alexr Home of Huthill, Major ;

4. Sr John Nicolson, Leivt Colonell ; and Sr John Cowper, Major ;
5. Sr James Hamilton, Major ;
6. Murey of Blackborronie yo^r Leivt Colonell ; James Cornwall of Bonhard, Major ;
7. Ch. Maitland of Halton, Captain of Horse.
8. Col. James Hay, Leivt Colonell ; and Sr And. Ramsay yo^r Major ;
9. Sr Ro^t Dalyeel, Leivt Colonell ; and John Dalyeell son to Carnwath, Major ;
10. Wigton & Kirkcudbri^t Lord Maxwell and Lord Garlees, Capts. of Horse, the other officers' names not filled in ;
11. E. Eglinten, E. Cassills, and M^r of Cochran, Capts of Horse, the other officers' names not filled in ;
12. D. Hamilton, M^r of Carmichell, and Sr Th. Hamilton of Preston, Capts. of Horse, the other officers' names not filled in ;
13. Laird of Touch yo^r Major ;
14. Earl of Rothes and E. Weymes, Cols., Leivt Col. as before, James Law of Brimton and George Halson of Cragton, Majors, E. Kincardine and Lord Newark, Capt^s of Horse ;
15. E. Atholl & E. Pearth, Cols., Glenurchie yo^r & Jnchbraikie Lt Cols., Murey of Achtertyre & John home of Argatie, Majors, E. Tullibardine & Leivt G. Drommund, Capt^s of Horse ;
16. E. Southesk, Col., Ja. Carnagie of bonanno ? Lt Col., Jas. Grahame of Monargo, Major, E. Aerley & E. Kinghorne, Capts. of Horse ;
17. Kincardine Aberdeen and Bamfe—E. Marshall & E. Erroll, Colonells of foot, Ger. Keith his brother & Sr Jo. Kieth Knigt Mar^{ll} Lt^s Col., Arthur fforbes of brux & Jo. Straichan of Moulcthy, Majors, Vist Arbuthnett, L. ffyvie, & Laird of Philorth yo^r Capt^s of Horse ;
18. Laird of Luss, Lt Col., Meinzie's of Culdards, Major ;
19. Inverness, Caithness, Sutherland, and Orkney are not given in this list.

Parliament had offered to raise a militia of 20,000 foot and 2,000 horse in 1663, which the King accepted on the 29 April, 1668, the draughts of his letter and instructions being among the documents in this bundle. His list does not include Dumfries, Wigtown, Ayr & Renfrew, Lanark, which were settled on the 13th August ; Dumbarton & Bute, and Aberdeen & Banff which were settled on the 29th Sept. ; nor Elgin, Nairn, Inverness, Sutherland, Caithness, and Orkney, which apparently had no militia.

The two lists of 1667 and 1674 are fuller than those in the Privy Council Register.

III. INFORMATIONE CONCERNING THE SETTLING AND ORDERING THE MILITIA OF PERTHSHIRE (1667).

Seing ther are tua Regiments of foot to be Levied in Perthshyre One whereof under the Comand of the Marques of Monterose and the Laird of Glenurchy as his Lew^t Coll. And the other by the Earle of Atholl and Inchbreckie as his Lew^t Coll. It will be necessar for avoiding differences and animosities the saids tua Regiments be proportioned and raised in maner following viz :

The Marques of Monterose his Regiment out of the presbetrie of dumblaine consisting of paroaches - - - - -	12
The presbetrie of Ochterardor consisting of paroaches - - - - -	15
The paroaches of Methven, Tippermoore, Rind, Regortowne, Forteviot, Forgondeine, dumbarnie, Dron, Abernethie, Aringosk and Oruall being a pairt of the presbetrie of Perth Lying nixt and contiguous to the presbetrie of Ochterardor consisting of paroaches	11
The Lairds of Glenurchy and Lawds ther Lands in the paroaches of Weem and düll w ^t Glenlyone Glenquait and Strabraane Killin and Kenmoir paroaches being very litle more then Tüa paroaches	02
Suma paroaches for the Marques of Montrose - - - - -	40

For the Earle of Atholl his Regiment the whole other halfe of the shyre viz.

Dundie presbetrie Lying in Perthshyre Including Jnnergowrie consisting of paroaches - - - - -	07
The rest of Perth presbetrie besydes these in the other divisione consisting of paroaches - - - - -	11
The presbetrie of Megill w ^t in Perthshyre consisting of paroaches -	05
Jn dunkell besydes what is in the other divisione consists of paroaches	18
Suma paroaches for the Earle of Atholl - - - - -	41

Reasones for this divisione

1°/ This divisione is most equall every way, for both regiments will consist both of highlands and Lowlands And the divisiones ly so proportioned as will give the most generall satisfacione to the shyre.

2°/ In the Marques of Monteroses divisione ther is some very litle of the Earle of Atholls interest which cannot be weill avoided Jn respect of the Lying of the Countrey And in the Earle of Atholl his divisione Ther are some of the Earle of Argyll & his freinds Interests wpon the same reasone.

3°/ It wes alwayes ane uncontraverted prin^{ll} in Levieing the highlands & countries bordering ther w^t as a most effectuall expedient for promoveing the Kings Service at all tymes so farr as wes possible And the mapp of the Countrey could allow off That the tennents and others wer comanded by ther LandsLords & cheiff or others appointed by His Matie. Whom ther inclinatione should Lead them most to follow And which is neir observed in this divisione as possible ffoir the Marques of Montrose his own Interest and the Earle of Argylls The Earle of Menteith The Earle of Murray and some of the Earle of Perthes My Lord Cardroise & severall other noblemen

and gentlemen wt the greatest pairt of the Lairds of Glenurchy, Lawdis, Edinainple, Glenlyone & other gentlemen freinds & vassalls of the Earle of Argylls who have the specciall in the highlands wt in the marques of monteroses division and who doe all cordiallie Jncline to be in his divisione as Coll. and Glenurchy as Lew^t Coll and they more willing to comand that divisione then any other.

And in the other divisione foir the Earle of Atholl as it hath ane equall mixture wt the other of highlands & Lowlands So also his whole interest (excepting a very litle) Js inclined wt the rest of the Earle of Argyll E: of Perthes interests the interest of the Earles of Kinghorne Northesk Midletoune the viscount of Stormonth Lord Cowper & severall other noblemen & gentlemen who are considerable such as are the Lairds of Weem, grantullie, Balhowsie & some gentlemen of the name of Campbell & others who ar it is thought will be abundantlie satisfied to be in the Earle of Atholls divisione as Coll. and Jnchbreckie as Lew^t Coll.

Jf this modell & method be not followed it will occasion extream much confusione & disorder nor can ther be such effectuall or cordiall service expected nor can the animosities & differences be other wayes setled Which other wayes would inevitable ensue.

IV. ANE ESTABLISH: FOR 3 TROUPS OF HORSE AND 100 FOOT SENT TO EARLE LAWD. (LAUDERDALE) THE 14 AGUST 67.

Foot	a day	The whole
20 Capt. - - -	3 0 0	a day { 34 1 8 a week { 238 11 8 Month of { 28 dayes { 963 5 0 12 Moneths { 11559 0 0
20 Lieut. - - -	1 5 0	
20 Enseigns - - -	1 0 0	
20 Sergeants - - -	1 6 8	
30 Corporalls - - -	1 10 0	
20 Drummers - - -	1 0 0	
2000 Sogers - - -	25 0 0	

	The whole
Colonel - - -	a day { 1 4 0
Lieut ^t Col. - - -	a week { 8 8 0
Maioir - - -	Moneth of {
Prou. Marshall - - -	28 dayes { 33 12 0
Quar ^r M ^r - - -	12 Moneths { 403 4 0

Horse	The whole
3 Cap. at 16s. - - -	A day - 29 2 0
3 Lieut ^t 8.0 - - -	a week - 203 14 0
3 Cornets 7.0 - - -	Moneth of {
3 Q ^r 4.0 - - -	28 dayes - 814 16 0
9 Corp. 3.0 - - -	year {
180 Tr. 2.0 - - -	12 Mont. - 9777 12 0
60 1.6 - - -	11559 0 0
	403 4 0
	<hr/> 21739 16 0

V. ESTABLISHMENT FOR THE MILITIA PROJECTED AGUST 28 1668.

Establishmint of the Militia

for A regiment of foot.

A Major to haue 2 months pay at 5 shill. a day & 28 days to the month is	- - - - -	14	00	0
20 leivtenants to haue a months pay at 4sh. per diem is in 28 days to each leivt. 5ll. 12s. in all is yearly	- - - - -	56	00	0
23 Sergeants to haue a month pay at 18d. per diem is to each of them in 28 days 2ll. 2s. inde to the hole yearly	- - - - -	48	06	0
12 Drumers to haue a months pay at one s. per diem is to each of them in 28 days 28 shillings inde to the hole yearly	- - - - -	16	16	0
		135	02	0

ll.

this charge for 15 Regiments of foot Amounts to - - 2011 10 0

For a troupe of horse.

A leivtenant to horse two months pay at 10s. per diem 28 days is	- - - - -	28	00	0
A cornet to horse on months pay at 9 shill. per diem is 12ll. 12s. J say	- - - - -	12	12	0
A trumpet two months pay at half a croune a day in 28 days is 3ll. 10 inde for two months	- - - - -	07	00	0
		47	12	0

This charge for 22 troupes of horse will amount to yearly - 1047 04 0

Inde of Both - - - - - 3058 14 0

the pay of the chanclors troupe is yearly 4597ll. 12. 0.

VI. ESTABLISHMENT FOR 3 NEW TROOPES.

With the Account of what the Militia of cledesdaile Air & galloway will cost these shys. (28 Aug. 1668.)

Capt. 6s. per diem & 2 horse	- - - - -	10s.
lieut ^t 4s. & 2 horses or —	- - - - -	7
Cornet	- - - - -	6
Quart ^r Mr	- - - - -	4 d.
Corporalls each 2sh. 8d. two of them	- - - - -	5 4
Trumpet	- - - - -	li. 2 —
Troopers 16d per diem for 50	- - - - -	3 6 8
		5 1 0
Three Troopes	- - - - -	15 3 —

on troop per month of 28 dayes	14li. 8s.	12 moneths	-	1696li. 16sh.
3 Troopes of 150 hors per annum	- - - - -	- - - - -	-	5090 8sh.

Lanrick shire Militia will cost the first year		<i>li.</i>	<i>sh.</i>
Muskets for 640 men at 11sh. 6d. a pece will cost		368	0
pikes for 360 at 4sh. 6d. a pece - - -		81	0
pistoles for 148 horse at 1li. 2sh. 6d. - - -		167	15
5 dayes pay 1000 foot at 6d. a day - - -		250	0
4 dayes for 148 at 16d. a day - - -		44	0
		<hr/>	
		910	15 0
	GALLOWAY.	<i>li.</i>	<i>sh.</i>
Muskets 520 - - - - -		299	0
pikes 280 - - - - -		62	0
Horsemen pistoles 88 pair - - - - -		99	0
5 dayes for 800 foot - - - - -		100	0 <i>d.</i>
4 dayes for 88 horse - - - - -		23	9 4
		<hr/>	
		581	9 4
	AIR.		
Muskets 878 - - - - -		504	7 <i>d.</i>
pikes 455 - - - - -		102	7 6
pistoles 176 - - - - -		198	— —
5 dayes 1333 - - - - -		166	12 6
4 dayes 176 horse - - - - -		46	18 8
		<hr/>	
		1018	05 8
	ADDITIONAL CHARGE.		
	CLIDSDALE.		
198 horse 20li a pece - - - - -		2960	0 0
In inglish money yearly - - - - -		246	15 0
to the horse men one - - - - -		592	00 0
for cornets Colours drums and trumpets - - -		66	00 0
to the drumers yeirly - - - - -		10	00 0
		<hr/>	
		914	15 0

VII. TWEEDDALE ACCOUNT BOOK, 1663-1676

Oct. 1668

Sadles for the Militia	To Geo. Childers sadler for 7 pad sadles for yr. Lops. troupe horse to ye militia wt all furniture whereof 3 to east Lothian shyre & 4 to Tweeddale shyre at 1oll. 16s. ye peece - - -	<i>li.</i> 75 <i>s.</i> 16 <i>d.</i> 0
Swords & belts to ye militia	24 swords for yr Lops. proportion of ffoot & horse for east loathian & tweeddale shyre qrof 12 sent to each of them at 4ll. 10s. ye peece is 10oll. and 24 belts at 12s. peece 14ll. inde - -	122 08 0

Nov. 1669

Robt. Mill merc ^d for armes to ye militia	To him for musketts pistolls hulsters bandeleirs and uther armes for your Los. proportion of foote and horse Jn the shyres of east louthean mid louthean tueddale and forrest as by accompt and receipt - - - - -	693 13 04
Alex ^r Hay for pikes	to him for pikes and particulars for your los. proportion of the shyres as above as pr. accompt and Receipt - - - -	108 17 04

April 1670

Militia Hattes for East louth- ian schyre	To James broune haberdasher for 44 hates for your los militia souldeours Jn East louthiane schyre at 30s. the pec. -	66 00 00
---	--	----------

29 June 1673

Militia horse gunpouder	To the militia horsemen in Tueeddale and mid louthian - - - -	04 16 00
	ffor a pound and a half of gunpouder to them - - - - -	01 16 00

July 1674

Militia	To 26 militia footmen 3 days pay -	23 08 00
	To 3 horsemen for eastloathian 5 days pay	13 10 00
	To one horseman for midlothian one day	00 18 00

Some Medieval House-Burnings by the Vikings of Orkney

INHABITED house-burning or slaughter by arson was resorted to in Viking feuds of old, and was sometimes accompanied by the appropriation of all the valuables which could be laid hands on.

The following account of some eleventh and twelfth century 'burnings' in Orkney, Shetland, Caithness and Sutherland—the old Norse earldom—and in Scotland and England, is taken from the *Orkneyinga Saga*, *Flateyjarbók* and *Hákonar Saga*. The Orkney Saga is the sole continuous historical record of the north of Scotland for the three centuries, 872–1171. As the Saga only chronicles the burnings in which the earls and chiefs were concerned, these were probably a small percentage of the whole.

A favourite amusement, and sometimes a spiteful trick, among the youth in the north to-day is to go to a cottage at night, fasten the doors, block the chimneys and thereby give the inmates a good smoking. In addition to the smoke of the house-fires, other manufactured smoke of a disagreeable odour is plentifully blown into the house through any convenient hole. This may be the modern offspring of the ancient burnings.

Icelandic burnings will be familiar to readers of Dasent's *The Story of Burnt Njal*, which is a translation of the Icelandic *Njáls Saga* or *Njálá*. The Icelandic name *Njál* was borrowed from the Gaelic *Niall*, and the Icelandic form was borrowed into English as *Nigel*, *Neil*, whence *Nelson*, etc.

Slaughter by house-burning was practised by all the Scandinavian races and by the Gaels in Ireland, whence came many of the Norse settlers in Iceland, thoroughly imbued with this form of petty warfare.

In old Norse law, the technical legal term for slaughter by arson is *brenna*, burning (e.g. 'Njáls brenna'), or *brenna inni*, to burn [one alive] in [one's house]; an arson-murderer was called *brennu-maðr*, burning's man, and when he was outlawed he was termed

brennu-vargr, 'burning's wolf,' an incendiary. A legal action for burning was termed *brennu-mál*, burning's process.

The first five burnings on record took place during the rule of Earl Thorfinn the Great (*hinn ríki*), 1014-1064. This earl was almost a pure bred Gael, through his Gaelic mother, grandmother and great-grandmother.

I. MUDDAN'S BRENNAS, 1014/30.—Earl Thorfinn held Orkney and Shetland in fief from Norway, and Caithness and Sutherland from Scotland. His mother was a daughter of Malcolm II., King of Scots. When the succeeding King of Scots demanded tribute from Earl Thorfinn for Caithness, the latter promptly refused, as he looked upon Caithness as his maternal inheritance. Whereupon the king transferred the earldom to Earl Muddan, who took up his residence in Thurso with a great force. Earl Thorfinn's friend, Thorkel, went, by stealth, to Thurso, seized Muddan's house and set it on fire. Muddan slept in a loft, and as he leapt down from the balcony of the loft (*loft-svalir*),¹ Thorkel hewed at him, struck him on the neck (*háls*, halse), and took his head off. Many men were slain, some fled and others surrendered and got peace.

II. 'SOUTH IN FIFE,' 1014/30.—Earl Thorfinn carried the war into the enemy's camp and devastated 'south in Fife.' This expression 'south in Fife' occurs also in the old lay of Gudhrun in the *Poetic Edda*, a coincidence which has been noted by Vigfussion. The Scots, after craving for and getting peace, played the earl false, with the result that, the inhabitants having fled to the woods and forests, he burned all the thorps and homesteads in that district, so that not a cot remained. All the able-bodied men were slain, many were taken captive and put in bonds. In the words of Arnór, 'the earls' poet' (of which the following is a literal translation):

Destroyed were the homesteads when he burnt—
Failed not that day danger,
Lept into the smoky thatch
Red fire²—the Scots' dominion;
The slaughter-master dealt to men
Harm; in one summer
Got they, by the prince,
Three times worsted.

III. IN ENGLAND, 1037/45.—Earl Thornfinn and his joint-earl

¹ An external balcony to the upper floor or loft of a Norwegian wooden house.

² The parenthesis: 'Failed . . . fire,' is characteristic of old Norse verse.

and nephew, Rögnvald, sometime in 1037-1045 (when King Hardicanute was away in Denmark), made an expedition into England, to avenge an indignity he had received from the English the previous year. Here he fought and won a great battle on a Wednesday morning,¹ and then fared far and wide over England and harried and slew men and burned the habitations wherever he went.

IV. THORFINN'S BRENNA, 1046.—Mischief-makers succeeded in estranging Earl Thorfinn (who ruled Caithness) from his joint-earl and nephew, Rögnvald (who ruled Orkney), with the result that they came to blows. Earl Rögnvald, who had been in Norway, returned to Orkney unexpectedly, and came unawares upon Earl Thorfinn at night. He made fast the doors of the house. Most men had gone to sleep, but Earl Thorfinn sat up drinking. Earl Rögnvald bore fire to the homestead and it was soon on fire. Earl Thorfinn advised his men to get what terms they could, with the result that the women and thralls were allowed to come out. Earl Rögnvald said that Earl Thorfinn's bodyguard would be no better to him alive than dead, and so they were burnt. However, Earl Thorfinn broke through a wooden partition at the back of the house and escaped with his wife in his arms. It was pitch-dark without any moon (*nidh-myrrer*), and Thorfinn got away unseen under cover of the smoke and darkness. He rowed in a boat, alone, that night over to Caithness. Everyone thought that he had been burnt in the house.

V. RÖGNVALD'S BRENNA, 1046.—Earl Rögnvald now took possession of the islands. Just before Yule he went from Kirkwall, with a large company, to an island to get malt to brew for Yule. Here they were to remain all night. In the evening they sat long over a baking fire (*bak-eldr*, a fire at which to bake the body and limbs). The person who kindled the fire remarked that the firewood was getting low. Then the earl made a slip of the tongue (*mis-mæli*), he said, 'Then are we *full-old* when these are burnt,' he had said 'full-old' (*full-gamlir*) instead of 'full-warmed' (*full-bakadhir*). When he discovered his slip, he remarked that he had never made one before and related what King Ólaf had said to him at Sticklestead, when he had caught the king making a slip, 'If it ever so happened that I should make a slip in my speech I should not expect to live long after it. It may be

¹ Called in the Saga *Yggsmorgin*, Yggr being one of the names of Odhin.

that my kinsman Thorfinn is still alive.' At that moment the house was surrounded by Thorfinn and his men, who bore fire and laid a pile before the door. All the inmates were allowed to escape except the earl and his men. When most had come out, a man came to the door, clad in a linen garment, and bad Thorfinn to lend a hand to the 'deacon'; but, at the same time, he steadied his hands on the balk (a wooden bar across the doorway) and leapt out over the balk and over the heads of the ring of men, so that he landed far outside of them and disappeared in the night-mirk. Thorfinn recognised Rögnvald's agility and ordered his men to give chase. One went along the seashore and heard a dog barking—Rögnvald had his lap-dog (*skikkju-rakki*) with him, which betrayed him—and there the earl was found and slain among the rocks.

Earl Thorfinn remained on the island all night, and next morning he slew those men who had escaped. He then rowed to Kirkwall, making it appear as though he were Rögnvald returning with his malt. Here he was met by Rögnvald's men, unarmed, who were forthwith seized and slain.

Earl Thorfinn ended his days as sole earl. He visited Rome in the same year as Macbeth, and built the first cathedral in Orkney at Birsá, where he died in 1064. His widow, Ingibiörg, married King Malcolm III., and was the mother of King Duncan II.

VI. THORBJÖRN'S BRENNÁ, 1108/16.—In the early years of the joint rule of Earls Hákon and St. Magnús, they were friendly and acted together. The Saga quotes a now lost poem (*kvæðhi*) which had been composed about them, as to their having taken the life of Thorbjörn in Burrafirth in Shetland, a nobleman of good family but defective morals. The Saga then relates that, in accordance with hearsay, the earls took Thorbjörn's house and burnt him inside (*brennt hann inni*).

Svein Ólafsson or Ásleifarson (1128–1171), commonly, but erroneously, called 'the last of the Vikings,' is the central figure in the following series of burnings, No. VII.–X. and XIII. The Saga describes him as 'the most masterful man in the Westlands, both of old and now, of those who had no higher rank than he.'

VII. ÓLAF HRÓLFSSON'S BRENNÁ, 1136.—This, the first of a series of burnings in a great feud, can be traced to the rivalry of the two half-brothers, Earls Pál the Silent (*úmalgi*) and Harald the Smooth-speaking (*slétt-máli*) sons of the former Earl Hákon.

Earl Harald met his death through donning the famous poisoned or bewitched garment which his mother had intended to be the bane of his half-brother, Earl Pál, and for which Earl Pál promptly cleared his step-mother Helga and her sister Frakök and all their crew, bag and baggage, out of Orkney. They returned to their home in Caithness where they spent the remainder of their days in plotting and mischief.

Ólaf Hrólfsson, of Duncansby, was Earl Pál's steward and representative in Caithness and had also estates in Orkney.

In 1136, Ólaf fought, along with Earl Pál, in a sea-fight against Ölvi the Unruly (*rosta*), the grandson of the deported Frakök, who was in league with another rival earl, Rögnvald, to turn Pál out of the earldom. Ölvi was defeated but escaped.

In the same year, three nights before Yule, Ölvi took Ólaf by surprise and burnt him and six of his men, alive in his house at Duncansby and took everything of value which he could lay his hands on.

VIII. THORKEL'S BRENNIA, 1136.—Svein Ólafsson was henceforth called Ásleifarson after his mother. That Yule, in which his father was burnt, he spent with Earl Pál at Orfir in Orkney. His brother Valthjóf (Waltheof) was drowned on his way to this same feast. During the festivities Svein quarrelled with his namesake, Svein Breastrope (*brjóstreip*), and slew him. As Svein fled the country, without atoning for the manslaughter, he was outlawed and his estates confiscated by Earl Pál. The farm which his brother Valthjóf had owned was given by the earl to Thorkel Flat or Flake, because he had found out and told the earl where Svein was in hiding.¹ Svein's kinsmen, Jón Wing (*vængr*) of Hoy and his brother, Richard of Stronsey, burnt Thorkel and nine men inside Svein's brother's house and thereafter transferred their allegiance from Earl Pál to his rival earl, Rögnvald.

IX. FRAKÖK'S BRENNIA, 1139/48.—When Svein was outlawed, the Bishop of Orkney sent him to Holdbodhi Hundason in Tyree. From there he went to Atholl to visit Earl Maddadh and his wife Margrét, a sister of Earl Pál and the daughter of Earl Hákon and Helga. Svein now set to scheming with the enemies of his former earl, Pál, and promised to aid Margrét in getting her son Harald made Earl of Orkney, which he ultimately brought about. From Atholl he went to Thurso, and there met Earl Óttar (the brother of Frakök), by whom he was compensated for

¹Thorkel was nicknamed *flatr*, flat, and *fettir*, flake, and may have been a tall, slender man.

the part Frakök had in instigating her grandson, Ölvi, to burn Svein's father. Svein also agreed to champion the claim of Óttar's grand-nephew Erlend (the son of Earl Harald, who had donned the fatal garment) to a share of the earldom. Svein then went stealthily to Orkney and kidnapped Earl Pál and took him to his (the earl's) half-sister, Margrét of Atholl, after which nothing more was heard of that earl.

Earl Rögnvald was now sole Earl of Orkney, Caithness and Sutherland, and Svein quickly made his peace with him. Through Svein's influence, Earl Rögnvald accepted, as his joint earl the boy, Harald, son of Earl Maddadh of Atholl and Margrét, Earl Hákon's daughter. Svein now became a powerful man and regained all his forfeited estates.

He still owed a grudge to Frakök for the burning of his father, notwithstanding the compensation which had been paid to him by her brother, Earl Óttar, and the end of it was that he plotted her death.

Frakök and her grandson Ölvi lived in Helmsdale in Sutherland. Equipped with two well-manned ships, Svein, in order to put them off their guard, steered his course to the south of Scotland and then crept back north along the coast to the river Oikel. From here, with the assistance of Earl Maddadh's guides, he went inland and northwards, away from the tracks of man, until he came out into Helmsdale, near the centre of Sutherland. Although Ölvi had spies constantly on the outlook in anticipation of reprisals from Orkney, he did not expect danger from the direction in which Svein came. Ölvi was therefore unaware until Svein and his men arrived at the back of the house. Ölvi and his men joined battle with Svein. There was a short struggle and a great slaughter of Ölvi's men. Ölvi escaped and fled, and was never again heard of. Svein then plundered the house and burnt it with Frakök and all those who were inside. Such was the end of Frakök, whom Earl Rögnvald had described as 'a useless old hag.'

Thorbjörn the Clerk (*klerkr*), the son of Thorstein the Freeman (*hóla*), a grandson of Frakök and the brother-in-law of Svein, afterwards slew two of the men who had been with Svein at Frakök's burning.

X. SVEIN AND HOLDBODHI, 1139/48.—Holdbodhi, who had formerly sheltered Svein when outlawed, sent an urgent message to Svein to come and help him in one of his feuds. Svein promptly responded. Holdbodhi, however, having come secretly

to terms with his adversary, played Svein false and even tried to burn him in the house in which he was living, but without success.

On Svein's return to Orkney he got ships and men and set out to punish Holdbodhi, who wisely fled and was never heard of again. Svein, however, plundered and burnt far and wide in the Southern Isles. Svein's unfair division of the booty was the cause of Thorbjörn the Clerk divorcing his wife, Svein's sister.

XI. EARL VALTHJÓF'S BRENNNA, 1139/48.—A Scottish earl, Valthjóf (Waltheof), slew Thorstein the Freeman (*höld*), the father of Thorbjörn the Clerk (*klerkr*). On one occasion when Thorbjörn was sent to Scotland (in pursuit of Svein who had fled from Earl Rögnvald) he fared to the house of Earl Valthjóf. Thorbjörn agreed with his men that if they would help him against the earl he would, unlike Svein, share the booty equally with them. When they arrived at the earl's house he was feasting. They secured the doors and set the house on fire. The earl offered an atonement for the slaughter of Thorbjörn's father, but it was refused. The earl and his men then sprang out of the burning house, but they were so worn out with the fire that they were overcome and slain.

XII. EARL RÖGNVALD, 1151.—When on his famous crusade to the Holy Land, in 1151, Earl Rögnvald burnt the stone castle of a tyrant in Galicia, by burning wood around the walls. The castle men poured out burning pitch and brimstone, which did little harm. The walls of the castle crumbled before the fire when the lime gave way, and great breaches were made in it. When the castle was taken the owner and his treasures were not to be found, and it was rumoured that the leader of the Norwegian division of the assailants had, under cover of the smoke, been bribed by the owner to effect his escape with the treasures.

XIII. EARL HARALD'S BRENNNA, 1152, 1155.—When Earl Rögnvald was away on his crusade, Svein allied himself with Earl Erlend (who had got a share of the earldom from the King of Norway) against Earl Harald, who would not recognise Erlend's claim. On one occasion they besieged Harald in a castle and attacked him all day with fire and weapons. Harald made a stout defence, but, if it had not been for the fall of night, he would have been worn out and forced to surrender. The end of it was that peace-makers brought about a settlement by which Harald gave Erlend a share of the earldom.

On a later occasion, in 1155, when Svein was at feud with Earl Harald, who had taken possession of Svein's house in Gairsey, Svein went there at night and wished to fire the house thinking that the earl was inside. It was with difficulty that Svein was dissuaded from doing so, although his wife and daughters were inside and would have been burnt also. However, it turned out that the earl was away at the time, and Svein's wife, who was a kinswoman of the earl, would not reveal his whereabouts. Svein broached all his liquor and took his wife and daughters away with him.

XIV. EARL ST. RÖGNVALD'S ASSASSINATION AND THORBJÖRN'S BRENNA, 1158.—Thorbjörn the Clerk ultimately fell out with Earl Rögnvald, and, in 1158, when Earls Harald and Rögnvald were hunting in Caithness, Thorbjörn came on them unexpectedly and assassinated Rögnvald. Thorbjörn and his men were chased into an *erg* or shieling which was set on fire. When the burning house began to fall on them they came out, and as they were much worn out by the strength of the fire, they were slaughtered, nine in all. Earl Rögnvald was canonised. He had built St. Magnus' Cathedral in honour of his uncle, Earl Magnús, and in fulfilment of his vow to do so should he succeed in gaining his share of the earldom.

Here the Saga ends and the following 'burnings' are taken from *Flateyjarbók* and *Hákonar Saga*.

XV. BISHOP ADAM'S BRENNA, 1222.—Adam, bishop of Caithness, a foundling, over-tithed his flock. When once he was in the cathedral (*hákyrkja*, high church, *i.e.* cathedral, at the place now called Halkirk), the people held a consultation close by and surrounded the high church, where the bishop and the lawman were drinking in a loft. The people came to the loft, and a monk (the evil counsellor of the bishop) who went to the door was struck down dead. The bishop then told the lawman to tell the people that he wished to be reconciled to them. After this the bishop went out to the people, who seized him and put him into a small house, which they set on fire and burnt him alive. His body was but little charred when found.

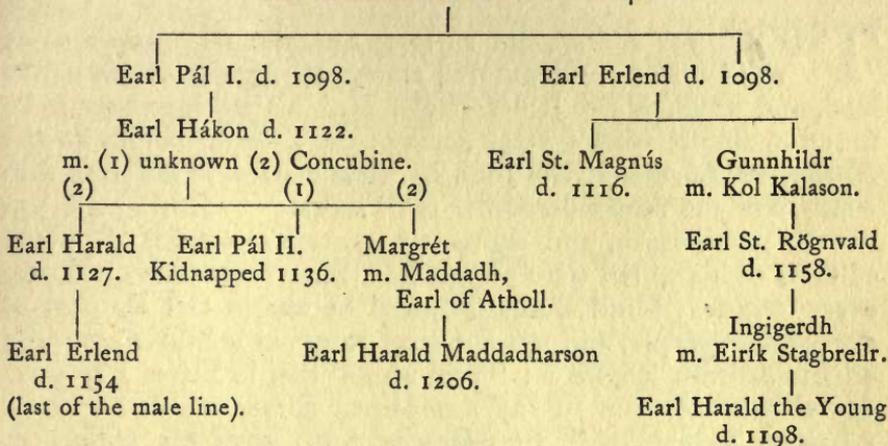
XVI. IN CAITHNESS, 1263.—King Hákon, before setting out on his famous expedition to Scotland, sent eight ships, in advance, to the West. Part of this squadron, under the command of Erling Ívarsson, Andrés Nikulasson and Hallvardh the Red (*raudhr*), sailed in under Scotland and landed at Durness (Dýrnes) in Caithness. Here they stormed a castle, from which the men

fled, and then they burnt more than twenty homesteads, after which they sailed into the Southern Isles or Hebrides.

ALFRED W. JOHNSTON.

GENEALOGY OF THE EARLS MENTIONED.

Earl Thorfinn the Great d. 1064.



Sir David Lindsay: 1490-1555

THERE was a time, not so long ago, when Lindsay's name was familiar and honoured among the people of his native land, and when, as Dr. James Taylor says, his writings were to be found in almost every cottage north of the Tweed. In his *Scottish History and Literature*, Dr. John M. Ross testifies to the piety with which Scotland remembered her old 'makar.' 'During the sixteenth, seventeenth, and eighteenth centuries upwards of twenty editions of his works were published. His verses were on almost every tongue. Until Burns appeared he was in fact *the* poet of the Scottish people, and was appealed to as an infallible authority on the Scottish language; "ye'll no fin' that in Davie Lindsay," was a fatal objection to any new-coined phrase which a speaker ventured to employ.' In *Marmion* Scott pays his tribute to Lindsay in familiar lines:

Still is thy name in high account,
And still thy verse has charms,
Sir David Lindsay of the Mount,
Lord Lion King-at-Arms!

and in a note is disposed to apologise for the anachronism of introducing the poet as Lion-Herald sixteen years before his appointment. The poetic licence is, however, a small matter compared with the evidence as to the maintenance of Lindsay's popularity. This was genuine and long-enduring, though now, save by a few, the poet is 'unknown, and like esteemed.' Andrew Lang said of his verses that 'they are full of historical hints, but merely as poetry, are now seldom read, as Henryson may be read, for pleasure.' It may be assumed that, at first and for long, Lindsay's vogue was due to the vigour with which a man in his position attacked the ignorance, the greed, and the vices of the clergy; as poet, Lion King, and the friend of his sovereign he achieved a kind of *succès de circonstance* by the mercilessness of his satire. His immunity must have greatly added to the force of his attack, since it must have suggested sympathy in high quarters,

and his immunity was bound to strike observers as very remarkable, for, as Mr. W. L. Mathieson notes, a year or two before the *Satire of the Three Estates* was acted (1540), Friar Killor paid for a somewhat similar boldness by being burned as a heretic. Yet, the share Lindsay had in hastening the downfall of the old Church cannot be the whole, or even the larger part, of the explanation of a popularity that extended so far beyond the Reformation period, linked as it was with the name of John Knox. Much allowance has to be made for the medium in which Lindsay worked.

Quharefore to colyearis, cairtaris, and to cukis,
To Jok and Thome, my rhyme sall be directit ;

and it is true that a good deal of Lindsay's verse has a frankness and an intimacy and a Rabelaisian humour that have commended it to the popular taste.

The facts belonging to the first years of Lindsay's life cannot be determined with precision. He was born in or about 1490, the son of David Lindsay, of the Mount, near Cupar-Fife, and Garmylton (Garleton), East Lothian. At which of these places he was born is unknown. It is assumed that he attended St. Andrews University, and it is the fact that the records of the incorporated students in St. Salvator's College, 1508-9, show in immediate succession the names Da. Lindsay and Da. Betone (the cardinal to be). It does not follow, of course, that the Da. Lindsay of the register is the future poet, and in this connection Mr. T. F. Henderson has directed attention to lines in *Ane Dialog* where Lindsay seems to speak, with some sense of loss, of those

That, in thare youth, be deligent labour,
Hes leirnit Latyne, Greik, and ald Hebrew ;
That I am nocht of that sorte sore I rew.

This may be the expression of regret either for misused opportunities or for the loss of opportunity. Mr. Henderson also notes that Lindsay's business at the Court of James IV. was rather to nurse and amuse the young prince, the future James V., than to instruct him.

Quhen thow wes young, I bure thee in myne arme
Full tenderlie, tyll thow begouth to gang ;
And in thy bed oft happit thee full warme,
With lute in hand, syne, sweetlie to thee sang ;
Sumtyme, in dancing, feiralie I flang :
And sumtyme, playand farsis on the flure ;
And sumtyme, on myne office takkand cure :

And sumtyme, lyke ane feind, transfigureate ;
 And sumtyme, like the greislie gaist of Gye ;
 In divers formis oft tymes disfigureate,
 And sumtyme, dissagyist full plesandlye.

Such duties, it is suggested, are hardly those suited to a university man, and Mr. Henderson is inclined to doubt whether the David Lindsay who was an equerry in the Royal household in 1508 could have been the undergraduate of that same year. It is a still more doubtful tradition that sends Lindsay on a continental tour after the conclusion of his university course.

We are on surer ground from 1512 onwards ; in that year Lindsay was made usher to Prince James, and thereafter it is possible to follow his doings as Lion King, ambassador, Parliamentary representative, and poet.

His attention to literature followed upon the overthrow of the Douglasses. The see-saw of politics that took place in Scotland after the death of James IV., and during the minority of his successor, gave Angus his opportunity in 1525, and he seized it, to draw to himself by degrees the supreme power in the State. In 1524, by what is called 'the erection of the King,' the Queen Mother had freed James V., a lad of some twelve years, from tutors and guardians and made him the titular ruler of Scotland, while the real authority was grasped by her party, but, two years later, Angus had become master of the King's person, and induced the Estates to declare that James was now of age to assume his power and reign, a proceeding that, in the circumstances, made Angus the real ruler of the country. As may be supposed, the environment of the young Prince was too troubled to favour his education, and in his *Complaynt* Lindsay speaks of this :

Imprudentlie, lyk wytlis fuilis,
 Thay tuke that young Prince frome the scuilis,
 Quhare he, under obedience,
 Was lernand vertew and science.

He had apparently little store of either. As regards his 'science,' Professor Hume Brown gives authority for saying that at the age of twelve James V. could not read an English letter without assistance, and even in manhood could speak very little French. One result of these political struggles was that Lindsay was retired on pension ; he withdrew, it is likely, to Garmylton, where he mused and wrote, as he watched the progress of events. He

had left the Court and his duties as attendant on the Prince. These had been sufficiently multifarious. He had been

Sumtyme, Seware, Coppare, and Carvoure ;
 Thy purs maister and secreit Thesaurare,
 Thy Yschare, aye sen thy natyvitie,
 And of thy chalmer cheiffe Cubiculare ;

and the narrator 'of antique storeis, and deides marciall.' In 1528 the King escaped from the Douglasses, and ruin, swift and complete, fell upon them. With the scattering of that faction the cloud rolled from Lindsay's spirit, and he uttered himself in *The Dreame*, his first poem, written in 1528, but not published till after his death.

It is desirable now to leave for a time the troubled region of politics and to undertake the more pleasing task of determining Lindsay's place in the succession of poets.

Lindsay took the view of the poet's function insisted on by Wordsworth. 'Every great poet,' said the bard of Rydal Mount, 'is a teacher ; I wish to be considered as a teacher or as nothing.' On the very questionable thesis here set up Lord Morley observes : 'It may be doubted whether his general proposition is at all true, and whether it is any more the essential business of a poet to be a teacher than it was the business of Handel, Beethoven, or Mozart,' and it is very certain that the obsession of a desire to improve or to instruct is disastrous to art ; the Muses are feminine enough to scorn a divided allegiance. Nevertheless, verse and didactic may be deliberately combined as an electuary by a writer who relies on form to make the content palatable or to veil a dangerous satire. It is barely possible that some may prefer to read their Church history in metre ; Christopher Tye, it seems, thought so when he paraphrased the *Acts of the Apostles* in this wise :

It chanced in Iconium,
 As they oft times did use,
 Together they into did come
 The synagoue of Jews.

It is certain that Lindsay's bold diatribes against the vices of his time were neither less effective nor less safe because they could be scanned, and therefore won praise and popularity ; he would have found it dangerous to play 'the gloomy Dean' in prose. They were aided in their work by a *grossièreté* that to modern taste seems 'a note above E La,' but our ancestors were less

squeamish, and neither royal squires nor royal dames found it impossible to enjoy *Ane Satyre of the Thrie Estaitis* at Linlithgow, on January 6th, 1539-40. On that occasion the King was so impressed by the performance that he charged the Bishop of Glasgow and the other Bishops present to reform or he would send them to Henry VIII., and doubtless Scott had this kind of effect in his mind when, in his lines on Lindsay, he spoke of

The flash of that satiric rage
Which, bursting on the early stage,
Branded the vices of the age
And broke the Keys of Rome.

It was a rude age, when people called a spade a spade, and spoke freely of subjects not now mentioned 'to ears polite.' Recognition of this fact checks surprise at James Melville's statement that, as a boy, he got benefit from his sister's reading and singing passages from David Lindsay; even at a much later date, in England, Heywood pandered to popular taste by introducing a perfectly abominable catch into his *Rape of Lucrece*.

At the same time, Lindsay could write true poetry; he was a student of the poets, and, as Professor Saintsbury points out, he has an undeniable command of verse forms. As a rule, his 'satiric rage' burns up the fuel that should sustain his poetic fire, but, especially in the *Dreme*, though not there exclusively, there is a glow of the pure flame. The description of Winter in the *Prologue* has been often and justly admired; but even in the body of the poem where he visits Hell, and, with an eye to the reproof of the living, enumerates those he finds 'in flam of fyre rycht furiouslie fryand,' and thereafter hurries his readers through cosmogony, geography, theology, and politics—even there the description of the moon as 'quene of the see, and bewtie of the nycht,' the obvious delight in 'the sweet hailsum arromytyke odours,' 'the hevinlie hewis of the fragrant flouris,' in Phebus that

Dois foster flouris, and garris heirbis spryng
Through the cald eirth and causis birdis syng;

and the tenderly expressed concern for the weal of Scotland, remind us that Lindsay has always his singing robes at hand. The observant reader finds patches of genuine poetry adorning and relieving the bitterest invective; these lines, for example, from the merciless *Testament and Complaynt of the Papyngo*:

The sound of birdis surmontit all the skyis,
 With melodie of notis musycall;
 The balmy droppis of dew Tytane updryis,
 Hyngande upone the tender twystis small.
 The hevinlie hew, and sound angelicall,
 Sic perfyte plesoure prentit in myne hart,
 That with gret pyne, from thyne I mycht depart.

Such fringes of gold are all too scanty on Lindsay's mantle of grey, but they reveal, in their quality, a mine of true ore. Within the realm of satiric poetry his power is unmistakable, while his value as an authority on the life, manners and politics of his time is of the highest. He speaks, indeed, as if he thought little of the form of his verse in relation to the gravity of its content, refraining from elaborating a purple patch in the *Dreme*, with the remark (this) 'I leif to Poetis, because I have no slycht,' though later in the same poem he has the fine lines :

The Angellis brycht, in nummer infynyte,
 Everilk ordour in thair awin degre,
 War officiaris unto the Deitie.

In his study of the poets it seems probable that Lindsay's 'sober wishes never learned to stray' beyond a small group, but these he had read to excellent purpose. In his *Testament and Complaynt of the Papyngo*, he mentions Chaucer, Gower, Lydgate, Dunbar, Henryson, and Douglas among his honoured brethren, and he has more or less conventional references to Ennius, Hesiod, and Boccaccio. But reading with an eye to machinery for his didactic compositions, he did not require to read widely, and it is evident that what poets he did study he examined minutely. There is in some quarters a tendency to underestimate his acquaintance with Chaucer, but repeated reading of Lindsay rather strengthens the impression that his work is full of Chaucerian echoes, faint, no doubt, but genuine. The dream-*cliché*, the rapid survey of the names and deeds of antiquity, the love of bright colours, the obvious delight in the freshness of nature and in animal life, especially birds, some words, epithets and turns of expression, and a heartiness of narrative in *The Historie of Squyer Meldrum*—the sum total of these brings a conviction that Chaucer was a favourite with Lindsay. Other debts to other creditors are more definite. Douglas had written of the seasons, and Lindsay's most noted passage is the fine description of Winter in the *Dreme*; the former's translation of the *Æneid* may

have suggested the visit to Hell in the same poem. *The Tragedie of the Cardinall* is in the vein of Lydgate's *Fall of Princes*; 'flyting' is traditional in Scots poetry; Gower's influence may be responsible for Lindsay's versified catalogues; Dunbar is his *exemplar* in satire, and equally, perhaps, in the high solemnity with which he can address himself to lofty and serious subjects. With regard to the frequency of passages too rudely realistic, one is bound to admit that Lindsay follows joyously the stercoraceous trail that runs broad blazed across a wide tract of Scots literature.

It is, however, in his verse forms that Lindsay most clearly reveals what he owes to the older poets. Two of his principal metres are the same as Chaucer's, rhyme royal and four accent couplets, and both are handled with ease. Chaucer's third favourite metre, five accent couplets, is used in the coarsely farcical *Justing*, and at times in *Ane Pleasant Satyre*. But Lindsay does not confine himself to these. He uses the 'eight banded lines' of Chaucer's *Monk's Tale*, the nine-line stanza on two or three rhymes of Douglas's *Palice of Honour*, the *ballat royal* with four beats of Henryson. *Ane Pleasant Satyre* is particularly interesting to the metrist both from the intricacy and the variety of its measures and the evidence it supplies of careful study of Chaucer, Dunbar, Douglas, Henryson, romances, and the general body of Scots verse. Groups of lines from two to sixteen in number are employed, and these introduce an attractive number of verse devices, including alliteration. Lindsay, in fact, is notable among Scots poets for his variety and technique as a metrist.

'Sir David Lindsay has been rightly called the poet of the Scottish Reformation, but the reformation sought by him in the most active years of his life was far more social than doctrinal.' This is Professor Morley's judgment, and on the whole it accurately defines Lindsay's position. The poet's severe strictures on the priests are directed against vices that disgraced the professors of Christianity and brought discredit on the Church. In *The Dreame*, 'proude and perverst prelatys,' and all their kind, are fiercely attacked for their ignorance, neglect of duty, fawning flattery to win promotion, greed, abuse of the Kirk, gross immorality ('thay dispone that geir on cartis, and dyce, on harllotrie, and huris'), nepotism in providing for their bastards, 'symonie and covatyce'—for their exemplification, in short, in their own lives of the seven deadly sins; and in *Ane Satyre of the Thrie Estaitis* the onslaught, if conducted with more humour, is none the less

effective. It is probable that the uproarious fun and vivid realism of *Ane Satyre* did more to drive home Lindsay's teaching than even the merciless wit of the Papyngo's last hours when, under the guise of the Magpie, the Raven and the Kite, he exposes the greed of the clergy. Yet at times he goes outside the sphere of satire and passes from gibes at the walk and conversation of priests to what were more dangerous topics. In *The Complaynt to the King*, he prays him to compel the priests

To preche with unfenyeit intentis
 And trewly use the Sacramentis
 Eftir Christis institutionis,
 Levyng thair vaine traditiounis,
 As superstitious pylgramagis,
 Prayand to gravin ymagis,
 Expres aganis the Lordis command.

In *Kitteis Confessioun*, where Lindsay points out the true work of the Church, he is equally outspoken on the subject of auricular confession :

Freiris sweiris, be thair professioun,
 Nane can be saif, but this Confessioun,
 And garris all men understand,
 That it is Goddis awin command :
 Yit it is nocht but mennis drame,
 The pepill to confound and schame.
 It is nocht ellis but mennis law
 Maid mennis mindis for to know,
 Quharethrow thay syle thame as thay will,
 And makis thair law conforme tharetill ;
 Sittand in mennis conscience,
 Abone Goddis magnificence ;
 And dois the pepill teche and tyste
 To serve the Pape the Antechriste.

This is bold writing, and, if it prevents one from wondering that Lindsay, as Knox himself tells us, was among those that called the Reformer to the office of preacher, it certainly causes one to marvel that, even in the shadow of the King, the poet should have so greatly dared. It is true that the Estates took steps to check 'the dishonesty and misrule of Kirkmen, baith in wit, knowledge, and manners,' but they did not go the whole way with Lindsay, who, whether or not he was ready to go as far as the Reformers, must have done much to prepare men's minds for the upheaval of the old order.

Scotstarvet's 'Trew Relation' ¹

WITH all & qhatsumever other chartours precepts instruments of sasin procuratories and instruments of resignation tacks assedations commissions and other wryts titles and securities qhatsumever granted to the saids defenders or any of them thare authors or predecessors to qhom they have or may succeed *jure sanguinis* be us or our umqhill deceasit father King Ja. 6 or be queene Anna our mother or be the abbots underwrittin viz umqhill Harry Pitcarne abbot of Dumfermlin or be umqhill Patrick master of Gray an other of the said abbots or be umqhill Francis somtyme erle of Bothwell abbot and commendator of Kelso or be umqhill Harry lord Ker an other of the said abbots and commendator[s] of the abbacie of Kelso. With all and qhatsumever pretended acts of parl^t ratifying and approving in favours of the saids defenders or any of them or their forsaidis there saids ry^{ts} and infestments To be seene & considered be the lords of our counsell and session and to heare & see the samyn reduced retreated rescinded cassed annulled decerned & declared to have bein from the beginning to be now and in all tyme coming null & of no force effect nor availe as if the samyn had never bein made nor grantit nor *in rerum natura* And als civillie & lauffullie improven *per testes insertos et omni alio modo quo de jure* And als to heare & see it found & declared that we have good & undoubted right to all & qhatsumever the forsaidis lands barronies mylns woods fishings at leist to the superiorities therof and few maills few fermes the rents & dewties of the samyn And als to heare & see it be found & declared that the saids persewars and there vassals are and sall be vassals to us in the saids Lands and others above specifeit for the reasons following :—

1 In the first all and qhatsumever chartours infestments & other rights of qhatsumever Lands baronies patronages teyndis and others pertening of before to qhatsumever benefices annexed to our croune aucht & sould be retreated and reduced because be

¹ Continued from *Scottish Historical Review*, vol. xii. p. 76.

the annexation therof it is provyded at the least the nature of the annexatione is such that the samyn sould remane with our croune in all tyme coming after the form tennor and order of the annexation maid be K[ing] Ja. 2d p. ii 41¹ be the qhilk annexation it is ordained that the annexed propertie sould not be given away in fee and heritage to any persone of qhat estate or dignity qhatsumever but with advyse deliverance & decreet of the haill parl^t and for great seene & reasonable cause of the realme and if [it] sould happen to be otherwise disposed the alienation to be of nane availl and it is Lawfull for us to ressave these lands qhenever it lykys us to our use but any process of Law and the takers to refound all profits that they have taken up off these Lands againe to the King for the tyme and the king to be sworne at his coronation to keepe this statute in all poynts Bot swa it is that the haill infest[men]ts wryts & others generally and particularly called for are made and granted be us and our umqhill dearest father K[ing] Ja. 6 of our annexed propertie conforme to the severall acts of annexation² without advyse of parl^t ergo—

2 Be the 233 and 236 acts of our dearest father K[ing] Ja. 6 parl. 15 it is statute that all infest[men]ts alienations rentalls assedations pensions gifts discharges and other dispositions qhatsumever of the annexed properties made or given after the annexation and before dissolution in parl^t or made and given after the dissolution & contrare to any conditions of the samyn are null of the law be way of action or exception in all tyme bygone and to come Lykas be the 234 act of that same parl^t³ it is decerned & declared that the annexed propertie cannot be sett nor disponed but in few ferme allanerlie Bot swa it is that the infest[men]ts and others called for are made & granted of the Lands & others therin contened being of the annexed propertie before Lawfull dissolution made therof in parl^t at leist contrair to the condition therof, and trew it is that the infest[men]ts and others called for are made & granted of our said annexed propertie holden blench or ward and not in few ferme they are granted in diminution of our rentall within the availl of the few fermes qhilk were payable to us before the granting of the sds infest[men]ts at leist the sds ry[ch]ts and infest[men]ts were granted before lawfull dissolution or after the

¹ 4 August, 1455, *Acts Parl. Scot.* ii. p. 42.

² Annexation by James VI. *Acts Parl. Scot.* iv. p. 131, 1597, capp. 4, 7.

³ *Acts Parl. Scot.* iv. 131, 1597, cap. 5.

death of our dearest father at qhat tyme the samyn was dissolved without any dissolution made be us.

3 Be the 238 act of the forsd parl¹ it is decerned & declared that all free gifts of our propertie or any part therof with fees casualities and priviledges belonging therto sall be null & of nane avall so that we and our comptroller may freelie intromett with the rents of the samyn as if the sds gifts & dispositions had never bein made and the 239 act [of] our dearest father and estats of parl^t rescinds & annulls all here[tabi]ll infest[men]ts and other dispositions made of any part of the few dewties pertening to us furth of the annexed temporality or benefices of the annexed propertie or of any part of the patrimonie of the croune Bot swa it is that the instru[men]ts and other ry[gh]ts called for are free gifts of the kings annexed properte at leist are rights granted for payment of imaginary & small dewties no wayis considerable nor proportionable to the rent and value of the Lands and others disponed and swa in effect are free gifts of the Law at leist the samyn ry[gh]ts and infest[men]ts does carrie the superioritie and consequentlie the few dewties payable by the vassals of the sds Lands and swa are contrair to the last of the sd 2 acts.

4 Be the 219 act of our dearest father K[ing] Ja. 6 and be the 295 act p. 14 it is ordained that no erections of kirk Lands or teyndis made since the act of annexation sall be ratified & given in the forsd 12 parl^t nor in any tyme therafter and in case any erection hapned declaring the samyn to be null Bot swa it is that the infest[men]ts and other rights called for are past at leist ratified in parl^t since the forsd 12 parl^t qhilk was anno 1592.

5 Be the oath given be us at our coronation founded upon the fundamentall Lawes of this our kingdome and be all our predecessors since King Ja. the first we were sworne to maintaine the trew religion and to preserve and keepe inviolated the ry[gh]ts and rents with all just priviledges of the croune of Scotland and not to transferre nor alienate the same conforme to the 8 act of K[ing] Ja. parl 1² and the forsd act of annexation of K[ing] Ja. 2^d Bot swa it is that the infest[men]ts and ry[gh]ts called for have bein by importunitie sollicitation and indirect dealing drawne from us and [our] noble fathers hands to the hurt & prejudice of the rights & rents of our croune

6 Be the fundamentall Laws of this kingdome namly be a statute made be King Ro^t the 3^d it is statute³ that it sall not be

¹ *Acts Parl. Scot.* iv. 131, 1597, cap. 9. ² *Acts Parl. Scot.* ii. p. 5, 1424, cap. 8.

³ *Acts Parl. Scot.* i. 575-6 (red ink pagination) : parl. 21 February, 1401.

lawfull to the king to interpone a superior betwixt him and his vassals without consent of the vassals Bot swa it is that be the instru[men]ts and rights called for the parties to qham the samyn are granted are interponed betwixt us and our vassals qho be the annexation of the forsd kirk Lands to our croune became vassals and [P. 19] immediat tennents to us without whose consent by no infest[men]ts impetrate from us they could be removed from being vassals to us to our and there great prejudice, our prejudice being manifest for if it were Lawfull to us to interpone superiors betwixt us and the vassals of the kirklands of the kingdome we sould therby amitt & lose neerely a 3^d part of the superiorities of this kingdome profits casualities & commodities belonging therto and if there were a reason for interposition of superiors betwixt us and the vassals of our annexed propertie the same reason might militat against us and our vassals of ward and blench lands all our vassals being immediat tennents to us thought for a different reddendo Lykas our vassals prejudice is most greivous & manifest if they sould be thrust from the libertie bounty & favour ordinarily bestowed on them by us qhen entry & casualities falls and returned over in the hands of rigorous & crude persons superiors thair fellow subjects to be legally oppresst be them be an infinit number of proces of reduction improbation declaration of escheit lyferent nonentress clauses irritant and many more to be expeded[?] than ever they suffered under prelatz Lykeas they sould be prejudged of the libertie they have being vassals to us to voyce in the election of commissioners of parl^t or to be commissioners themselfs or to have thair lands erected in barronies tennendries or other liberties ay & qhill they sall be changed from being immediat vassals to us to be immediat vassals to a subject than qhich nothing can be more greivous nor prejudiciall to our vassals libertie

7 Be the 243 act of the forsd 15 parl¹ bearing that forsamikle as there are certane generall & originall lawes qherby expresse provision is made that our property & annexed temporality of benefices may not be dilapidate nor disponed in prejudice and derogation of the sds lawes it is therfor in the sd act statute & ordained that the sd generall lawes sall have there full effect and that no derogation sall be made therto be qhatsumever gift or disposition notwithstanding the samyn be particularly ratified in parl^t except the sd ratification and new disposition be made be expresse & speciall dispensation of the generall lawes and be

¹ *Acts Parl. Scot.* iv. p. 132, 1597, cap. 14.

advyse of the estates to be specialie mentioned therin and that the lords of the session sall judge acording to the generall lawes without respect of any particular derogation made therunto to our hurt & prejudice and contrair to the tennor of the sds acts But swa it is that all the forsd ratifications in parl^t called for are made in particular derogation to the sd generall Lawes to our hurt and to the prejudice of our vassalls Lykeas in the severall parliaments qherin the sd ratifications were obtained there are expresse acts insert in the sd severall parliaments at the closing therof *salvo jure cujuslibet* qhilk acts were not only made for the maintaining of the generall and fundamentall lawes in favours of our croune & kingdome but also for the maintaining of the subjects rights & liberties & consequently of the vassals of kirklands Lykeas by the last act¹ of our first parl^t it is declared that no particular acts made in favours of any of our subjects sall prejudice us of the acts & statuts made in our favours viz the act of our revocations the act anent the superiority of erections the act anent the regality of erection and the act made anent our annexed propertie declaring the sd particular acts & acts of ratifications made in their favours in so farre as may prejudice us or [our] successors to be null be way of exception or reply And sicklyke it is statute & ordained² the forsd acts and acts of ratification sall not prejudice a 3^d party of there lawfull rights nor of there actions & defenses competent therby before the making of the sds acts but that the lords of session and other judges sall be obliged to judge betwixt the parties acording to there rights standing in there persone before the making of the sd particular acts and that in respect the samyn are made without the hearing of the parties having interest and therfor are *salvo jure cujuslibet* Lykeas we and our estates declared that this is & was the true meaning of all the acts made in the preceding parliaments intituled *salvo jure cujuslibet* and consequently the forsd acts of ratification purchased in parl^{ts} of the infest[men]ts and rights called for as they can no ways prejudice us so can they noways prejudice the vassals of the sd kirklands or there rights & liberties granted to them by the generall Lawes of the land and by there particular infest[men]ts Lykeas the infest[men]ts ratified therby being null & against the Lawes of the kingdome the samyn ratification therof aucht to fall in consequence.

8 All infest[men]ts granted before the annexation 1587 upon the dimission or resignation of the prelates are null becaus it was

¹ *Acts Parl. Scot.* v. p. 45: parl. 1633, act 31.

² *Ibid.*

not lawfull to them nor any kirk-man within this kingdome to dispone dilapidat or put away their benefices in haille or in part nor any Lands patronages teyndes or others belonging therto in prejudice of the kirk or there successors it being only lawfull for them to sett their Lands in feue for increase of policy and augmentation of their rentall and to grant tacks of teyndes without diminution therof and in lyke maner if the granters of the sd dimissions or resignations were noways lawfullie provyded to the sd benefices be deceis or deprivation of the incumbent or any other Lawfull way.

9 After the death of our most noble father and [our] entrie to the crowne we according to royall right & lovable custome of our predecessors having made and published a revocation¹ of all rights & infett[men]ts made be us and our progenitors in hurt or prejudice of our crowne namly in our annexed propertie and namlie of the kirklands & others erected in temporall lordships and having therupon caused intend and raise summons and action of reduction of the same against the lords and others pretending ryghts to the saids erections upon dyverse and many good reasons We therfore gave commission² under our great seale to dyvers noblemen and others to treat with the lords and others having ryght to the erections and to doe theranent in maner contened in the sd commission dated at Whythall 17 jan. 1627 Lykas therafter in the month of etc³ 1628 ane submission was made to us by the lords of erection titulars gentrie & heritors of Lands qherin the sds lords and others having right to the erections ratifie and approve an act made be the sds commissioners dated 29 june 1627 qherby they have found that all superiorities of erections sould be freely resigned & surrendered in his majesties hands without composition and because the commissioners could not uniformly agree anent the composition to be payed for the few fermes few maills & other constant rent of the superiorities nor yet anent the true estimation raits pryces & quantities of the same Therefore be another act of the same dait it was condescended that the determination sould be referred to us and the forsds persons submitters agknowledging in all humility our royall & princely care providence & wisdome with our fatherly & tender

¹ *Acts Parl. Scot.* v. p. 23, dated 12 October, 1625, but ratified by parliament 1633, cap. 9.

² Printed in Connell's *Treatise respecting Tithes*, Appendix No. 40. Connell's copy dates it 7th January, 1627, not 17th.

³ 23 Feb. 1628, *Acts Parl. Scot.* v. p. 189.

affection for removing all the sds questions & controversies and to the publik weill & good of the kingdome they not onlie ratified the forsd acts but granted procuratories of resignation for surrendring and resigning of the sd superiorities in our hands Lykeas accordingly resignations were made¹ and referred to us the determination anent the composition & satisfaction to be given for the few maills few fermes & other constant rents of the samyn superiorities in maner at lenght contened in the sd submission qherin we therafter gave out our decreet arbitrall² as the same fully proports Qhilk submission procuratorie [P. 20] of resignation therin contened was trewly subscryved by the haill defenders at leist by their predecessors to qhom they are airis or successors and many of them subscryved for themselffs and in name & behalff of their sones as the erle of Eglintoun Lauderdale & others expresly for themselffs and there sones and swa the matter being past *in rem judicatam* anent the sds superiorities and erections with consent of the defenders and there sd predecessors to the publick good & weill of the kingdome, it was not lawfull for any therafter under qhatsumever colour or pretence to the hurt & prejudice of our croune and to the manifest prejudice of the vassals of the sds erections & consequently to the publik weill of the kingdome to procure or impetrat any new³ infest[men]ts therafter of the sds erections superiorities & others therin contened Lykeas in our first parl^t halden at Ed^r the 28 june 1633 & tent act⁴ therof we with advyse of our estats ratified & approved the haill annexations made be our predecessors of our croune lands & rents to remane therwith acording to the provisions therin contened and specially acording to the act of annexation made be K[ing] Ja. 2^d anno 1455⁵ and farder declared that the right and title of the superioritie of qhatsumever Lands & others pertening to any benefices of qhatsumever estate degree or title erected in temporall llo/ [=lordships] baronies or livings befor or after the generall annexation⁶ made in July 1587 with the haill few maills few fermes other rents & dewties of the sds superiorities to be annexed and remane with the croune for ever reserving to such lords & titulars of erections qho subscryved the generall surrender few fermes & few maills of the sds superiorities ay & qhill they receive satisfaction acording to our declaration

¹ 14 May, 1628, *Acts Parl. Scot.* v. p. 192.

² *Acts Parl. Scot.* v. p. 197.

³ Word 'erection' here deleted.

⁴ *Acts Parl. Scot.* v. p. 27.

⁵ *Acts Parl. Scot.* ii. p. 42.

⁶ *Acts Parl. Scot.* iii. p. 431, 1587, cap. 8.

Lykeas we and our sds estates ratified & approved the particular acts under writtin viz the act of parl^t made be our umqhill dearest father parl^t 15 c. 233¹ intituled ‘anent the annexation of the kings annexed propertie’ together with the 234 act² intituled ‘the annexed propertie may not be dispoed but in few ferme allanerly’ and also the 236 act³ of the sd parl^t intituled ‘disposition of the annexed propertie made before the dissolution or not conforme to the condition therof’ is null And sicklyke the 243 act⁴ anent ratifications or dispositions made in parl^t and ordained them to have full force and effect in all tyme coming declaring all deeds done in the contrare to be null & of nane availl be way of action exception or reply And farder we be the 13 act of the sd parl^t⁵ ratified and approved that head & article of the act of parl^t in July 1587 c. 29⁶ anent the annexation of the temporality of benefices to the crowne qherby there right & privilege of regalitie qhilk pertened to qhatsumever abbacies pryories or other benefices qhatsumever is annexed to the crowne with this declaration that the airis of the vassals of heretabill tennents sall be entred by breives furth of the chancellarie to be direct to the provest & bailzies of the baronies of the sd regalities and therin is cassit annulled & rescinded with all rights & other titles made be us our dearest father to qhatsumever persons of the ryghts & priveledges or regalities pertening to qhatsumever abbot or pryor preceptors or other beneficed persone qhatsumever at any tyme preceding the dait of the sd act and it is therin declared that the right & title of qhatsumever regalities within this kingdome qhilk pertened to qhatsumever benefices particularly or generally above specifeit at any tyme preceding the generall annexation of kirklands without respect to any exception mentioned in the sd act of annexation to pertain to us or our successors in all tyme coming without reservation contened in the sd act and be the 14 act of the said parl^t⁷ anent the superioritie of kirklands we with advyse of parl^t declared & ordained that we and our successors sould have good & undoubted right to all superiorities of all and sindry Lands barronies woods mylnes fishings appertening to qhatsumever abbacies pryories pryresses preceptories & qhatsumever other benefices of qhatsumever estate degree title name or designation of the same be erected in temporall llo/ [= lordships]

¹ *Acts Parl. Scot.* iv. 131, 1597, cap. 4.

² *Ib.* cap. 5.

³ *Ib.* cap. 6.

⁴ *Ib.* p. 132, cap. 14.

⁵ *Ib.* v. p. 31, 1633, cap. 13.

⁶ *Ib.* iii. p. 431, 1587, cap. 8.

⁷ *Ib.* v. p. 32, 1633, cap. 14.

baronies or living befor or after the generall annexation of kirklands in July 1587. and to the hail casualties of the sds superiorities not disponed before the dait of the generall commission with reservation contened in the sd act of the few fermes to the titulars untill they be satisfied therfore conforme to our decreit and of there proper Lands but the samyn is still to be halden of us As also the estats of parl^t by the 33 act of our 3^d parl^t upon the petition of certane barrons gentlemen and other fewars of kirklands craving the acts 1633 and 1641 made anent the superioritie of kirklands to be ratified of our sds estats renuned all bygone infest[men]ts & ryghts of superiorities of kirklands past the seales since the yeir 1633 to the decision of the lords of session and all bailzieries & commissions given to any persone for entering of vassals to the lands in our name lykwise to there decision legall and fand & declared that the lords of exchecker & keepers of the seales sould not have any power to grant or passe hereafter any new grants ryghts or infestments of the superiorities of the sd kirklands and discharged our treasurer principall & depute and remanent lords of exchecker and keepers of seales from all passing or expeding any new grants or infest[men]ts of any of the forsd superiorities of the forsd kirklands and from all passing of any warrands tacks commissions bailzieries or deputations for entering of vassals therto be the qhilk acts it is manifest that it was noways Lawfull to us to grant nor to the defenders nor there predecessors to receive any new infestments of the sds superiorities regalities & others above written as being not only past *in rem judicatam* be the submitters but also being fully decyded in plaine parl^t anno 1633 and all infestments granted be us or our predecessors qherby we may be prejudged in brooking and joyning the sds superiorities & hail benefit therof in manner therin contened declared null of no avail force nor effect.

10 Lastly all and sindry the pretended chartours & infestments of regalities called for aucht and sould be reduced & declared null because the same is a part of our prerogative & sovereignty royall or *pars mei imperii* qhilk cannot be disponed to any subject heretabily and qhilk is so annexed to our awin persone & the persons of our successors and swa individuall therfra that no subject is capable therof in part or in whole Lykeas the speciall acts of parl^t made be K[ing] Ja. 2^d our noble progenitor all dispositions of regalities are prohibited¹ and oft it may appaere by the sd acts regalities may be granted being past

¹ *Acts Parl. Scot.* ii. p. 43: parl. 1455, act 4.

the delyverance of parl^t the condition of the sd act requyres that regalities salbe past by delyverance of parl^t and swa requyres ane decreet and ordinance of the 3 estates to preceed the giving of any infestments of regalities qhilk be the forme of the solemnity prescryved be the sd act most be followed *in forma specifica* and cannot be supplied be any ratification interponed therto after the granting of the same becaus ane ratification in parl^t is not ane decreet & delyverance in parl^t and swa does not equall nor fulfill the condition requyred by the sd act And trew it is that all & sindry the sds infestments called for are granted to the hurt & diminution of our prerogative royall soveragnity & jurisdiction contrare to the inhibitions contened in the acts of parl^t : lykeas also the sds pretended infestments are nowayis granted with consent of the estats of parl^t but on simple grants & dispositions and swa null in themselffs lykeas they are granted to the prejudice of our vassals contrare to the act¹ of our first parl^t qherby they pertain to us in manner above specifeit And therefore the sd pretended infestments aucht and sould be reduced etc

¹ *Acts Parl. Scot.* v. p. 25 [i].

(*To be continuud.*)