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Scottish Influence on Orkney

ORKNEY and Shetland were colonized by the Norwegians in the seventh, eighth and ninth centuries, as were also the Hebrides, Caithness and Sutherland.

The Norwegian earldom of Orkney and Shetland was founded by King Harald Hairfair about the year 880. Caithness and Sutherland were subdued and ruled as an independent state by the earls of Orkney from about the year 890 until 1014, when Caithness was definitely annexed as a Scottish earldom. This happened during the reign of the first king of all Scotland, whose daughter became the second wife of the Earl of Orkney. The son by that marriage was made the first earl of the Scottish earldom of Caithness, while his half-brothers, by the first marriage, succeeded to the Norwegian earldom of Orkney.

However, two lines of earls of Orkney and Caithness did not start here, because the first earl of Caithness succeeded in claiming a share of the earldom of Orkney as well, and in time his line became sole earls of both Orkney and Caithness, and thus owed allegiance to two sovereigns, a position which they manipulated in their political interests from time to time. The subsequent detachment of Sutherland, and the vicissitudes of the earldom of Caithness need not concern us here.

Norway ceded the Hebrides in 1266, and wadset Orkney in 1468, to Scotland.

The new surroundings of the Norwegian colonists, which would influence their customs and laws, were : geographical—proximity

to Scotland or Pictland; topographical—their settlement on the existing Pictish townships and cultivated lands; social—contact with the Picts and Scots; and racial—intermarriage.

The result of proximity and actual intermixture of the Norse, Picts and Gaels, naturally resulted in a certain amount of equilibrium taking place. In the early days of the colonization the influence was greater on the part of the Norse, *e.g.* in place-names, laws, customs and language—many Norse words were borrowed in Gaelic, while very few Gaelic words were used in the Norse of the colonists; whereas in the later days it was all the other way—the Norsemen in the Hebrides now speak Gaelic, and those in Orkney the Lowland dialect of English. Contrariwise, one must not forget the Western influence on Norway in Viking times, influences derived from the west and carried back to Norway.¹

The influence of proximity, in trade and exchange, would certainly be expected to modify such customs as the Norse brought with them—they very readily adapted themselves to new circumstances when it was to their advantage.

Racial influence was particularly strong. Excepting the first three earls of the ninth century, all the earls of Orkney, by intermarriage, were half Gaelic until 1139, when a Gaelic line succeeded and ruled till the fourteenth century, when it was succeeded by a Lowland family. There being little in common between the Gaelic and Norse tongues, the latter remained unaffected until the advent of the Lowland earls and their Lowland followers.

The Gaelic settlers in Orkney would at once assume Norse patronymics which corresponded with their own practice, similarly as the Norsemen who settled among the Gaels became *mac-* this and that. When the Lowland settlers, with fixed place-surnames and speaking a kindred language, arrived, they quickly asserted their preponderance. Fixed place-surnames and Lowland English were introduced, and have since held sway. The early Lowland settlers undoubtedly were the first to assume Orkney place-names as their surnames, with little 'ilks' all to themselves. A Scottish fugitive or 'broken Hielan' man' would thereby be rewarded for his extinction by a new and unique name and a glorified designation 'of that ilk.'

The change from Norse to kindred Lowland English was easy, encouraged by commercial convenience and the definite transference of the islands to Scotland in 1468. With the

¹ Alexr. Bugge, *Vesterlandenes Indflydelse paa Nordboernes Samsfundsforhold.*

Lowland earls the Norse language ceased in charters in Orkney, although it lingered in charters in Shetland until the sixteenth century, and in the dialects in isolated districts until the eighteenth century. It is related that Kirkwall was already a Scottish Royal Burgh while Orkney was still Norwegian territory, and it certainly had town-bailies in 1433. The Earl of Orkney was Chancellor of Scotland in 1454, so that these changes need not surprise one.

Let us now consider various indications of Scottish influence in detail.

Land Valuation. In order to levy *skatt* or taxation for the support of the government, land valuation was a necessity on the foundation of the earldom and on the conquest of the Hebrides, Caithness and Sutherland. *Skatt* is still levied in Orkney on a 'pennyland' valuation which is peculiar to Orkney, Shetland, Caithness and the Hebrides. There is every indication that this is the original valuation. The pennyland valuation had no prototype in Norway. We do not know anything of early valuation in Scotland. We only know that the oldest valuation in Scotland, called 'old extent,' was much later than the pennyland, because the pennylands in the Hebrides are valued in old extent, and it is generally believed that old extent dates from the time of the Alexanders. In 1326, old extent is referred to as 'of the time of Alexander III.' (1249-1286), but as it is also referred to as 'old extent' in *Bagemon's Roll*, of 1275, and as being different from the then actual value of land, it is a question whether a valuation made by Alexander III., at the most only twenty-six years previously, could be then described as 'old.'

A taxation was made in the time of Malcolm IV. (1153-1165), which presupposes a valuation,¹ and one would expect that at the

¹ In Seebohm's *The English Village Community*, it is shown that the English *hide* of 120 acres corresponded with the Scottish *ploughland* and the Irish and Manx 'quarter' of a *bailebiatagh*; and Professor Mackinnon, in *Place and Personal Names in Argyll*, states that the *dabhach* or *davoch* corresponded with the *tirung* or ounce-land, and contained about 104 Scots acres, or 120 English acres. In a document of 1424, quoted by Dr. Erskine Beveridge in *North Uist*, 41, the *tirung* is equated with the *davach*.

The English division of land into ploughlands, or hides of 120 acres, was probably introduced into Scotland in the time of King Malcolm, 1005-1034, or soon after, when English influences were at work. From the fact that 'old extent' valuation is uniformly 40s. *per* ploughland it would appear that the division into ploughlands was contemporary with that valuation. Its late date is indicated by the fact that the older *davach* was variously equivalent to from one to four ploughlands. In the case of North Uist, the ounce-land was valued at

very latest a valuation of Scotland was made in the reign of the first king of all Scotland, 1005-1034.

However, there is no relation between the 'old extent' and the 'pennyland' valuations. Scottish land denominations were oxgate, husbandland and ploughgate, and the Pictish davach, whereas in Orkney and the Hebrides there are pennyland and ounceland (O.N. *peningsland*, *eyrisland*, Gaelic, *peighinn*, *tirunga*). The pennylands of the Hebrides were valued in marks of old extent, probably on their cession to Scotland in 1266, in the time of Alexander III. It is quite possible that old extent was rectified in his time, which may account for that valuation being ascribed to him, as already mentioned.

In Orkney and the Hebrides an *eyrir* or *unga*, $\frac{1}{8}$ mark, was divided into 18 pennies, and not into 20 pennies, as in the case of the English, and later Scottish, marks.

An ounce of 18 and a mark of 144 pennies is unknown in Norway. The old English mark, which would be current in Scotland, contained 13s. 4d., or 160 pennies, of which $\frac{1}{8} = 20d.$ In 1538, in Shetland,¹ a pure silver mark = 12 Shetland shillings of produce [= 96 pennies of cloth = 48 ells of cloth + 48 pennies of butter = 8 lispunds of butter], $\frac{1}{8}$ of which mark = 18 pennies; which gives the clue to the puzzle. But why was the Norse mark = 144d. or 12s.? Here we have an instance of probable Scottish influence.

Seebohm² shows that the old Norse mark, or half of a 16 oz. lb., was founded on the Merovingian pound, of which the penny = 28.8 wheat grains, as compared to the penny of 32 wheat grains of Charlemagne's *nova moneta*, which became the standard of England.

It will thus be apparent, on calculation, that the Norse mark = 12 shillings of English money, exactly as it was reckoned in Shetland in 1538. From this it may be concluded that the old

6 marks or 80s. 'old extent' = 2 ploughlands, and in Islay the ounceland = 10 marks or 133s. 4d. = $3\frac{1}{3}$ ploughlands (*A Gaelic Dict.*, 1902, s.v. *peighinn*), which bears out MacBain's statement that the *dabhach* was equivalent to from one to four ploughgates.

An indication of the date of 'old extent' is found in *Rotulus Redituum* of Kelso Abbey in 1290, in which it is stated that a husbandland was let, without *stult*, or outfit, for 18s. This was an increase of 80 per cent. on the 'old extent' valuation of 10s., which appears to carry it back to the time of Malcolm.

It, therefore, appears to be proved that the Orkney ounceland was originally founded on the davach, and that it consisted of 120 acres or thereabout.

¹ *Orkney and Shetland Records*, i. 75.

² *Tribal Custom in Anglo-Saxon Law*.

Norse mark (of 160 pence of 28·8 wheat grains each) was used as the basis of the Orkney and Hebridean pennyland valuation, and that it was called a 'twelve shilling mark'¹ and subdivided into its actual value in old English pennies, viz. 144d., an ounce or $\frac{1}{8}$ of which = 18 pence. This would certainly have been a convenience, if not a necessity, if the English penny was alone current, as it probably was, seeing that the bulk of the trade and exchange would have been with Scotland, in which English money was in use. This unusual division of the ounce into 18 instead of 20 pence has hitherto baffled and puzzled every writer on the subject.

The value of the old Norse mark was thus 12s. English (= $12 \times 3 = 36$ s. modern English coins), as compared with the old English mark of 13s. 4d. (= 13 s. 4d. $\times 3 = 40$ s. modern English coins). Down till the fourteenth century a 12 oz. lb. of silver was coined into 20 shillings in England, but from that time down to the sixteenth century, the English coinage was depreciated in weight until one lb. was, and now is, coined into 60s. In Scotland the depreciation went on until, in 1600, the lb. was coined into £36, so that the ratio of sterling to Scots is 1 : 12—£1 Scots = 1s. 8d. stg.

Land-purchase Valuation. In Orkney and Shetland there is a land-purchase valuation which is not found in early times in Scotland or elsewhere, so far as the writer knows. This valuation must have been made a long time after the pennyland or rent-valuation, which will be apparent from the following illustration. In 1299, one pennyland, in Shetland, was valued at one pure gold mark = 8 pure silver marks,² or 1152 years' purchase (8×144 d. = 1152). It is also stated that the rent of the mark of land was $1\frac{1}{2}$ mællir (= 9d. Shetland, *i.e.* stg., see Goudie's *Shetland*, 178, 1 shilling Shetland = 2 meillis), or $\frac{1}{16}$ the purchase price. This is what was called in Shetland a '9 penny mark,' a mark of land which paid 9d., or produce of that conventional value; these pennies of rent varied from 4-12 per mark, representing from $\frac{1}{36}$ to $\frac{1}{12}$ the purchase price. This also proves that the mark purchase valuation had been made long before 1299, as otherwise the rent of a mark of land would have been uniformly 6d., or $\frac{1}{24}$ the purchase price, which was the recognized ratio at that time. Another important feature

¹ In the same way as a Norwegian mark, which was worth three English shillings, was called a 'three shilling mark' in Norway itself.

² *Orkney and Shetland Records*, i. 38.

is also proved, viz., that the mark valuation was fixed and not subject to rectification to suit altered values—this was accomplished by means of the varied rent. A tirunga in North Uist¹ was valued in old extent (c. 1266) at 6 marks rent = $53\frac{1}{3}$ d. rent *per* pennyland, as compared with the above-mentioned Shetland pennyland at 72d., which proves conclusively that the mark valuation of the Hebrides was, as it is actually called, 'old extent' rent-valuation, and not a Norse purchase-valuation, for which there was no need.

Why was there a purchase valuation in Orkney and Shetland and not in the Hebrides? Two historical events point to the necessity for such an unusual valuation: first, *circa* 890, Orkney and Shetland were fined 60 gold marks (= 480 silver marks) as wergild for the slaughter of the king's son. As the islanders were unable to pay that sum, the earl paid it for them, in return for which the landowners gave up their estates to the earl and thus became his tenants *in capite*. This sum would represent about 12 years' purchase of the pennylands in the islands. But, as undoubtedly the pennylands differed in value even at this early date, a purchase or redemption valuation would have been required in order to fix the amount at which the estates could be redeemed—it is distinctly stated in the Saga that the owners hoped to redeem their estates. In 1137, we are informed that the earls were the universal heirs of all men, and that the representatives or 'heirs' of these men could only redeem their ancestral holdings for a lifetime, after which the lands again reverted to the earls.

The second event which required a purchase valuation occurred in the year 1137, when the earl ran short of money with which to complete the building of St. Magnus' Cathedral. He thereupon made an offer to the tenants that he would allow them to buy back their estates outright for one mark for each *plógsland*. Captain Thomas suggested that the existing mark-valuation was made at that time. A *plógsland*, and a mark of land in Orkney, is estimated at about one acre. On this basis we get the following result: marks of land in Orkney and Shetland about 28,000 = £16,800 old English, less $\frac{1}{3}$ for earldom and church lands = £11,200 old English = £33,600 in modern English money, available to complete the cathedral.

The indication that the mark-valuation was an old one in 1299 seems to carry it back to 1137, which was only 162 years before.

¹ Erskine Beveridge, *North Uist*, 41.

Norse and Scottish Law. Scotland as a united kingdom began in 1105. Cosmo Innes states that its laws and charter forms were derived directly from England. For this reason great care has to be observed in dealing with unusual legal terms in Orkney, because many Norse, English, and Scottish terms are identical. It is only by the peculiar application of the terms that one can detect their source. A few instances will suffice.

In Shetland, in the eighteenth century, there was a distinction drawn between a wound inflicted above or below the 'end.' Scotch, *aind*, breath; O.N. *önd*, breath, *anda*, to breathe. There is no such word in Old English. In Norse law there was no distinction between the penalties for wounds inflicted in the body or the head, while in Scotch law there was, and the regular forensic terms are 'above' or 'below the *aind*.'

The Scottish expression 'borg and haimold' occurs in Shetland. O.N. *borg*, a pledge, *heimoll*, property in one's full possession. In Scots law this referred to a pledge which the seller had to give the buyer that the goods bought would be delivered into his full possession. In O.E. *heimoll* does not occur. As there is no phrase in Norse law corresponding to this, the occurrence of the term in Shetland must be traced to Scotland.

How did Scotland come by these Norse terms, with a meaning peculiar to Scotland and unknown in England? 'Wreck, waith, hafwreck' occurs in Orkney and Shetland English charters of the sixteenth century and after, but not in their Norse deeds. The regular Scotch phrase is 'wreck, waith and ware,' wreckage, waif and driven sea-weed. The term *haf-rek*, sea-wreck, is pure Norse, and does not occur in O.E. The Icelandic term is *vág-rek*, wave-wreckage. Scotch, *waith*, (1) hunting, (2) what is caught in hunting, (3) stray animals; O.N. *veiðr*, (1) do., (2) do.

The writer is unable to find any reference to strayed animals in old Norse law, but there are plenty of Icelandic words for such, e.g. *sauða-hvarf*, *villu-ráfandi sauðr*, stray sheep, etc. What does 'waith' in Scottish charters mean? Scotch and Orkney *chemys-place*, a head house, manor; O.N. *heimilis-*, *heimis-garðr*, a homestead, but the O.N. for head house or manor is *höfuð-ból*.

Scotch and Orkney *landimers*, boundaries; O.N. *landa-mæri*; O.E. *ge-mære*.

Scotch and Orkney *steel-bow*, a farm let with the stock. Scotch *bow* is used for stock, corresponding with O.N. *bú*, and *steel* might well be O.E. *stille*, fixed. The corresponding

terms in O.E. are *land setene*, and *stuht*, the latter occurring in Kelso in 1290.

Scotch and Orkney (fifteenth century) *goodman*, a landowner. In Scotland, *probi homines*, good men, was applied to vassals or subjects. A goodman was one who held lands of a subject-superior. When these vassals were promoted to crown holdings they were designated by the higher title of 'lairds' (Cosmo Innes). In Scotch juries the members were described as good men and true in 1261 and after; and later we find the members of the large jury described as gentlemen, whether they were so socially or not. In Norse law *göðir-menn*, good men, was applied to any respectable men, tenants or landowners, as members of a jury or other judicial body, and socially it was applied to all householders, whether tenants or owners; whereas *bestir-menn* was applied to the upper ten. In Orkney, in c. 1426, in a Norse document, while various 'good-men' are mentioned, it was decided that a proposed deputation to the King of Denmark should consist of the 'best men.' In 1433, 'goodmen' was applied to the common people in Norway, while in charters of the fifteenth and sixteenth centuries it is applied to tinkers, tailors, soldiers and sailors as witnesses, etc.

The *lögrétta* (assize) of the Lawthing in Orkney and Shetland consisted of members nominated by the government officials, precisely as in Scotland, with this difference, that the members of the Norse assize were chosen from the goodmen tenants and landowners, whereas the early Scottish assize was chosen from the goodmen landowners.

Now, curiously enough, in the fifteenth century we find the Orkney assize restricted to landowners in accordance with Scottish practice, and further we find the members of the *hirömannastefna* (formerly a meeting of the earl's bodyguard, but then a sort of Scottish great assize dealing with land disputes), called 'gentles,' corresponding with the 'gentlemen' of the large assize in Scotland. The whole forensic terminology is borrowed direct from Scotland: witnesses, 'bystood, saw and overhead,' the assize were 'maist worthy and quha best knawis the verity'; they gave 'domes,' 'suith-saying,' etc. All these are unadulterated Scottish forensic terms, used in Orkney while it was still Norwegian territory, but then its earl was Chancellor of Scotland, and the islands were flooded with Lowland settlers.

It is remarkable that in the transition from Norse to Scottish charters in Orkney, there is a marked change in the enumeration

of the appurtenances, emoluments or pertinents. The Norse charter contents itself with the general term *lunnindi*, emoluments, whereas the Scottish charter of the same period enumerates these emoluments in a string and jingle of corrupt Norse words. Did the Scottish lawyer note down, from oral tradition, such unusual terms as 'ryth royth samy eng,' etc.? Possibly Scottish charters would be used to place on record consuetudinary privileges comprehended in the *lunnindi* of the Norse charters, especially as the Norse language and customs were fast dying out.

In charters of conveyance of *óðal* (udal estates) the reason of the sale is frequently given as 'the great need,' poverty, etc., of the seller. In Norse law no such 'need' is required, except in the case of the next heir of the *óðal*, to whom it must be first offered. If the next heir can plead poverty he can thereby have the time limit for purchase extended. Was the 'great need' of the seller expressed in Scottish charters?

The Old Norse *veizlu-jörð*, feoff, became *borlan*, *bordland*, a term which came from England *via* Scotland, and was quite at home in Orkney in 1500.

O.N. *á veizlu*, guest-quarterming, the burden of entertaining the ruler or landlord when on circuit, was by the Caithness people, in 1152, called '*on kunn-mið*,'¹ Gaelic, *commaid*, conveth. Cosmo Innes was doubtful as to the Gaelic form of conveth, but there can be little doubt that it was similar to the Norse custom. The O.N. *á-sætis-kaup* of Shetland, in the sixteenth century, corresponding to the Scottish *gersum* and the Norwegian *tredieaars-tage*, a fine payable every third year for the renewal of the three years' lease, amounting to one year's rent, included a sum in lieu of the entertainment of the landowner, which was called, O.N. *landbólavetla* for *landbólaveizla*, afterwards called *watile* (N.G.L. iv. 441 n.).

The Scotch and Orkney *ligepoustie* occurs in Orkney in 1557,² a Scottish forensic term, meaning in sound health; O.Fr. *ligepoesté*. This word is derived by the editor of the document: 'Apparently from O.N. *liggja* or Sc. *lig*, to lie or recline, and Sc. *postit* or *post* used in connection with sickness (see Jamieson): *i.e.* when he lay bed-ridden'! This shows the danger of seeking a Norse derivation without regard to Scottish forensic terms.

Topographical Influence. Captain Thomas has traced the Orkney township settlements back to the *pet*, *foir* and *dún* of the Pict

¹ *Ork. Saga*, text.

² *Records of the Earldom of Orkney*, Scot. Hist. Soc. 7, 262.

and the *baile* of the Culdees ; the *pet* and *baile*, the enclosed lands of the Kelts, became the *tún* of the víkingar, its rough surrounding wall, the *tún-garðr* and the Keltic *sleibh*, the hill-side, was the *brekka*, *mýrr* and *fell* of the Northmen.

Is it not the case that the inhabitants of Orkney and Shetland are, from an anthropological point of view, identical with those on the east coast of Scotland, where, of course, there is a large strain of Norse blood ?¹

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¹The writer hopes that this paper may elicit further information from others who may have given special attention to one or other of the wide range of topics noticed.

Seventeenth Century Receipts

THE following receipts are transcribed by Mr. Robert Lamond from the final pages of the Diary¹ of the Rev. Robert Landess of Robroyston, who about the year 1670 records them as 'singular remedies' and 'physical receipts.'

However they may strike us at the present day, they were accepted without protest by practitioner and patient alike a couple of centuries ago. They do not seem attractive either in their preparation, or composition, or application, but there are others quite as bad, if not worse, extant in the old hand-books of medicine for popular use. For this is only a brief selection from the many that exist, and it would be easy to enlarge it with others of the same sort. It must not be supposed that those under consideration were invented by the writer of the manuscript from which they are now printed. On the contrary one or two at least were known centuries earlier, and a good number are contained in immediately antecedent and contemporary literature. Though some I have failed to locate, I have little doubt that with a sufficiently large library to consult, they also would be found in print.

It may be worth while to indicate where some of the receipts can be found, if not word for word, at least without essential alterations.

The first receipt to cure the gout is to be found in *The second part of the Secretes of Maister Alexis of Piemont*, 1563, f. 76, and, with a few verbal changes, in Sir Hugh Plat's *Closet for Ladies*, 1656, f. 58.

If the sufferer should have any scruples about the preparation as given, there is another of like character which he might prefer. It is taken from *A Rich Storehouse or Treasure for the Diseased*, by G. W., 1630, p. 188, and is as follows :

Take a fat Goose and plucke her, and dresse her as if she should be eaten : then stuffe the belly of her with three or foure young Cats well

¹ See *S.H.R.* vi. 373.

chopped into small pieces, with a handfull of Bay-salt, and twenty Snailles, and then sew up her belly againe, and roast her at a small fire, and saue all the dripping of her, and keepe it for a precious Oyntment, as well for the Gowt, as also for all other kinde of diseases in the ioynnts. Probatum est.

But these are not all, and the two following may be quoted as a sample of the variety of cures under the different diseases which are recorded in the books.

Brugis (*The Marrow of Physicke*, 1640, p. 31) supplies another savoury preparation :

Take a fat Dogge, and kill him, and take out his Guts, and Bowels, and Gall, but keepe in the Heart, and Lungs, and Liver, then fill the body full of Frogges, and blacke Snailles, and sowe him up strongly, and rost him on a Spit, as long as he will drop one drop, then put the Liquor in a cleare Vessell, and put thereto a pint of Oyle of Bay, and blacke Soape one ounce, and temper them together, and anoint the grieved Part therewith.

Levens (*The Path-way to Healthe*, 1632, f. 78) has still another treat in store for the man who has done himself too well :

Take an old fat Cat and flea her, and draw forth her guttes, and bray the Cat, and put her altogether in a fat Ganders belly, and put thereto halfe a pound of Pepper, Mustard-seede, and Parsly seede, of each four ounces, Worme-wood and Garlicke a good quantity. Bole armoniack sixe pennywaight, then rost it, and the greace that droppeth from the same, keepe it, and annoynt the Patient withall, and by the grace of God the ache will goe away, for being throughly annoynted therewith, it presently helpeth him.

There are many remedies for pains in the head; this one is given by Alexis, *Secretes*, Part II., f. 77.

The use for pains in the ears of goose grease with earth wormes or with garlick and saffron is to be found in *The thyrd and last parte of the Secretes of Maister Alexis of Piemont*, 1562, f. 36. The same cure is also recommended in *A Rich Storehouse*, p. 138, and by Lancelot Coelson, *The Poor-Mans Physician and Chyrurgion*, 1656, p. 75.

Hyssop boiled with vinegar for toothache is among the cures in *A Rich Storehouse*, 1630, p. 309, and in Sowerby's *The Ladies Dispensatory*, 1652, p. 53; the decoction of frogs boiled in vinegar and water as a remedy against toothache is mentioned on p. 51.

Milk of spurge dropped into a hollow tooth is recommended in *The Ladies Dispensatory*, p. 54, and by Robert Lovell, *A Compleat Herball*, 1665, p. 413. Tippermalluch (*Receipts*, 1712, p. 43) prescribes washing of the mouth every month with decoction of spurge. Mezereon, or spurge-olive, is said to be still used to

relieve toothache, but as it is very acrid, it must be carefully applied. Its irritant effects were known to the old writers.

'To remove the pain and grief of the gout' by means of the skin of a vulture's foot is contained in Alexis' *Secretes*, Part II., f. 14. No doubt, as he says, it 'is a marvelous thing.'

This prescription is specially interesting, because it belongs to a different category from the others, which involve the preparation of certain raw materials, so as to develop their curative properties. In this case, however, there is no preparation, and the cure is a *sympathetic* one, or, as Oswald Crollius would say, by *similitude*.

Many remarkable properties are possessed by the vulture, according to Kiranus, but the haunting doubt in the present case is whether the 'great foule called a Vultur,' as Alexis has it, was so abundant at Robroyston some two hundred and fifty years ago, that the Reverend compiler of the present receipts could lay hands on one and apply the proper foot, whenever he had a twinge in his own. The initial difficulty of Mrs. Glasse fades into insignificance by comparison.

The receipt for frog ointment for gout I have not observed in the books.

Betony infusion or powder for gout or sciatica is included both in *The Ladies Dispensatory*, p. 174, and in Lovell's *Herball*, p. 41.

The two receipts 'To stay Vomiting' are given by Tippermalluch, p. 66, and the second by Brugis, *The Marrow of Physicke*, 1640, p. 33.

The mugwort, as a bitter tonic, and the fennel, as an aromatic stimulant, might have some effect.

Mastic is an astringent, but is not much used in medicine.

Agaric here seems to be that which grows on the larch. The powder is irritant, but the infusion, either in mead or muscadell or in syrup of vinegar (Lovell, *Herball*, p. 136), is said to heal a cough. The syrup of maidenhair has no great virtue, but has been used for catarrh. Agaric, made into pills with frankincense and juice of hyssop, is good for the cough, according to Alexis (*Secretes*, 1562, III., i., f. 7).

Elecampane is an aromatic tonic, and has been used as an expectorant. Along with honey it is mentioned in *The Ladies Dispensatory*, 1652, p. 67, and as good for a cough by Lovell, *Herball*, 1665, p. 137.

As beneficial for a cough beans and radish are quoted in *The Ladies Dispensatory*, p. 69, and cherry tree gum in white wine,

p. 68. Lovell (*Herball*, p. 82) says that the gum with wine and water heals old coughs. All the receipts are enumerated by Tippermalluch, *Receipts*, p. 50. The gum is emollient and demulcent.

Brimstone in a half-roasted egg is given by Alexis, *Secretes*, III., i., f. 38, and a more exact preparation in Part I., i., f. 34. It is contained also in *The Ladies Dispensatory*, pp. 67 and 71, and in Tippermalluch's *Receipts*, p. 50.

The cures for the falling of the uvula are mentioned by Petrus Hyspanus, Pope John XXI., in his compilation *Thesaurus Pauperum*. The author died in 1277, and the book was printed in 1494, in Italian, so unless they were interpolated later, the receipts are of long standing. They are contained in the Italian edition of 1531 (e iiiii and vj), and in the English translation by Humfre Lloyd, of which an edition appeared in 1552 and at other times (see Copland's edition, *s.a.*, H vj and viij). From that source they may have passed into Tippermalluch's *Receipts*, p. 48.

A gargle of hyssop in vinegar as a cure for the squinancie is in *The Ladies Dispensatory*, p. 59, but it may be observed that the same decoction is used for toothache.

The ventosing process is described by Valescus de Tharanta, *Philonium*, 1535, f. cxxviii.¹

For the squinancie or quinsy, the first remedy seems to have been highly esteemed. It is given by Petrus Hyspanus (1531, e iiiii, English translation H vj) with the substitution of a bull's gall for the honey, and the second also is recommended. The first reappears in the seventeenth century with some modifications, for in Salvator Winter's *Pretious Treasury*, 1649, the ashes of centory are added, whereas in W. Lovel's *Approved Receipts*, 1663, the material is to be boiled in milk and drunk night and morning, and both by Winter and Lovel a white dog is specified. Varignana requires (*Secreta*, 1520, f. 30) that the dog shall have been fed on bones. But, unfortunately for the reliability of the cure, Timothy Bright quotes it (*The Sufficiencie of English Medicines*, 1615, p. 113) for epilepsy: 'Feede a white dogge tyed up for 14 daies together with bones onely, and the fifteenth daie take a spoonefull of the dung burnt and give it fifteene daies together, against the falling sicknesse'; where both conditions

¹ Valescus lived in the latter half of the fourteenth century. After thirty-six years' study and practice he began to compile his book in 1418, but it was not printed till 1490. It is a full conspectus of the medicine of his time.

are united. All the receipts are included practically in Tipper-malluch's list, p. 49. Such stercoraceous remedies recur over and over again in these old medical receipt books, and their general use and importance are emphasized by Valescus, *Philonium*, f. cxxvij.

They are not of modern origin, by any means, but were in use among the Greeks and Romans, judging by Galen's denunciation of them and of Xenocrates, who apparently advocated them, for his works have not come down to us; 'no need to mourn,' is Schelhammer's comment. In the seventeenth century the subject seems to have been revived with some vigour. Daniel Becker, of Königsberg, made a compilation entitled *Medicus Microcosmus*, published at Rostock in 1622, and at London in 1660. He wrote, too, on the weapon-salve and on the Prussian knife-eater (a predecessor of the present man); his choice of subjects was, therefore, unusual.

Johann David Rulandus, of Ratisbon, wrote *Pharmacopœa Nova*, Nürnberg, 1644, which seems to be almost a burlesque, and a suitable motto for which would be 'Every man his own drug store.'

Christian Francis Paullini wrote what he called a *Dreck-Apotheke*, Frankfurt a. M., 1696, which is sufficiently descriptive. The subject is referred to by Caspar à Reies, *Elysium Jucundarum Quæstrionum Campus*, 1670, Quæstio VII., and there is other literature.

Winter, p. 10, quotes peony roots in sack for the falling sickness. The seeds and root of the plant seem to have been a standard and official remedy. It is mentioned by Varignana, *Secreta*, 1520, f. 8; by Bright, *English Medicines*, 1615, p. 118; by Lovell, *Herball*, 1665, p. 333.

The two receipts for diseases of the eyes will be found in Alexis's *Secretes*, Part III., f. 36. But if the 'salammoniak' specified is what is now known by the same name, the 'burning' of it is not quite intelligible.

Fennel was a recognized specific for troubles of the eyes. The decoction of the roots in water dropped in the eye is given by Petrus Hispanus (Italian, 1531, b. viii.; English, E iv.). 'Omnis feniculus prodest visui et eius usus visum acuit,' says Benedetto da Nursia (*De Conservatione Sanitatis*, Romæ, 1475, cap. xlv.), and it comes up a couple of hundred years later in *The Ladies Dispensatory*, 1652, p. 26, and in Lovell's *Herball*, 1665, p. 143, where the present receipt is given.

The cure for deafness is contained in Alexis' *Secretes*, 1562, III., i., f. 33, and later in *A Rich Storehouse*, 1630, p. 142, with modifications.

Vinegar poured into the ears to stop bleeding at the nose is mentioned by Alexis, Part III., f. 37.

Sage, mugwort and smallage had various virtues assigned them, as will be seen both in *The Ladies Dispensatory* and in Lovell's *Herball*, but the mixed decoction of them in wine drunk for the colic is not amongst them, nor would it be of much use, if colic then meant what it does now.

For the gout a poultice of rosemary, darnel meal, and vinegar is recommended in *The Ladies Dispensatory*, p. 170.

The cure for the itch is not confirmed by any of the authorities consulted.

The specific for quenching thirst is in Alexis, Part III., f. 39.

Tippermalluch, p. 100, quotes the remedy for purging by vomit, and in *The Ladies Dispensatory*, p. 315, rind of radish, drunk in honied water, is prescribed.

There are receipts for fastening the teeth and keeping the body laxative, in most of the books, but they are different from those here recommended.

The catching of wild fowl by a decoction of Belenge is described in *The Vermin-Killer*, of which there were many editions. So too the killing of rats and mice is effected in a great many ways. One similar to this is included; only cork is used instead of sponge.

As is plain from the receipts the origin of the disease, its treatment, and the specific and its action were unknown. There was a pain or trouble; but what caused it, why there was a pain at all, why it was where it was rather than somewhere else—all was beyond the conception and skill of the household practitioner. The airy way in which palsy, epilepsy, jaundice, deafness, cataract, calculus, fever, gout, and so on were treated and pronounced curable in a few days by decoctions of some common plants, or less attractive matters, must have been very cheering to those afflicted.

When these seventeenth century receipts are taken as indicative of the medical practice of the time, when there was no sanitation and people were afraid of fresh air, is it surprising that in 1665 London had a visit of the plague? and is it not surprising that sick people after doses of such preparations ever recovered?

To the investigations of pure science the nation is indebted after all for an improved medicine and a more reasonable pharmacopœia.

Would not the nation be equally remunerated in every other direction by a whole-hearted fostering of scientific research and its indispensable assistance to industry and general well-being ?

JOHN FERGUSON.

RECEIPTS FROM THE DIARY OF THE
REV. ROBERT LANDESS.

A Singular Remedie for gout or cramp.

Take a fatt young whelp, scald him like a pige, take out ye gutts at ye side therof Then take Netles and stamp them with 2 unces of Brimston with 4 yoks of eggs and 4 unces of Turpentine, Incorporat all together and put it in the whelps bellie, so sowl up that nothing of this composition come out, Then Rost the whelp at a soft fire, keep the Dropings that comes from him and anoint the grived place therwith : and in the mean time Rub the paidn place softlie befor you anoint it.

Here are some physicall Receipts which have been found verie profitable and helpfull to severall persons under ye following diseases.

To ease any payn of ye head.

Take violet oyl and woman's milk of each a like quantitie, and mix in them ye yoke of a hen's egg ; when wrought together, and lay it on cadass or tow plaister wise, warm to ye place wher the payn is.

For payns in ye ears.

Take ground worms and boyl them in gooss grease, and when they are well mixt take and strayn them and then pour in a litle of that liquor in the ear that is paynd.

Or take the Juice of onyons with garlik or saffron and mix them well wh^h gooss greass and when it is tollerablie warm and straynd put a litle therof in ye paynd ear.

For the toothake.

Take a handfull of hyssop when it is Boyld with a Mutchkin of fresh vinager untill ye half of the vinager be consumd, Then wash yo^r Mouth wh^h ye water therof, and it will remove the payn of ye tooth.

Another for ye same use.

Boyl frogs with water and vinager and wash yo^r mouth therwith.

Another for ye same.

Take the root of Spurge and boyl it with whyt wyn and of y^t decoction take & wash yo^r mouth once in ye month ; and it will remove ye payn.

For removing guttish payn.

Apply the Skin of ye right heel of the big vultur to ye right heel of the patient and the Skin of the left heel of ye same fowl unto ye left heel of the patient.

Another for the same.

Boyl a frog in oyl olive untill ye flesh therof be divyded from ye bones and when this ointment is warm anynt the paynd place therwith.

Another for ye same.

Let the person that is paynd with the gout or Sciatica use the herb Betony steeping it in his drink and sometymys eating the conserve of it and at sometymys let him boyl it in his broth, and in ye winter tyme let him take the powder of Betonie dryd in the Sun or Winde.

And for allaying the swelling of this payn Let him take the Leavs of tobacco anoynted w^h the oyl of Roses.

To stay Vomitting.

Take the roots and leavs of Mugwort, wormwood and fennell brayd together and taken w^h a little warm honey, this stops vomitting; Or aloes mixt with cold watter and drunk.

Another for ye same troubl.

Take Mastik and bray it and then mix it with the whyt of an egg and vinager, and lay it plaister ways on tow or cadess and apply it to the breast, this strengthens the stomok and stays vomiting.

For the cough.

Forbear all salt, sharp and strong liquors.

Some comend the infusion of agarik viz. two drahms therof brayd and laid to steep at night in a cup of Meath or Muscadell, in the morning strayn it and therin put a litle of the Syrup of Maidenhair and drink it up.

Somtymys thrie parts of sugar candy and a fourth p^t of Enula compana. i.e. alacompayn provs verie helpfull.

But to aged persons: Sallet oyl & sweet wyn is most beneficial.

Another to ye same troubl.

Beans taken in meat, or radish boyld and eaten is good for an old cough.

Or an Onion roasted under the embers and eaten w^h sugar candie and fresh butter.

Or cherrie gum drunk in whyt wyn mixt with water.

Another for ye same.

Take the powder of brimston als much as you can take up w^h yo^r thrie fingers and put it in an egg half roasted & give it to ye patient fasting fo^r five mornings together.

But if the patient be a chyld give it only thrie mornings.

For the falling of ye Uvula or palat of ye throat.

Boyl hysop in vinager & gargaziz¹ the throat therwith.

Or shave the croun of ye head and sett a ventese² theron.

Or salt made verie hott and tyed to ye Nap of ye Neck in a cloath. or the pith of a wheat Loaff mixt w^h salt & applyed hott.

*For ye Squinacie.*³

Dry mans dung or dogs dung and bray it to pouder, then mix it with honey and when it is warm apply it to ye patients craig.

Or take the pouder of amber or dogs dung and Blow it in the throat of the patient w^h a pen or pype.

For ye falling sicknes.

Take the roots of Piony pouderd and drink it in aill or warm broath, this will relive the patient if taken befor ye disease continue long.

This hath been known to cause a woman have an easie deliveranc in childbearing.

For dimness in the eyes.

Take Salt armoniak burnd & well brayd & mix it with ye pish of a young chyld and therwith anoint yo^r eyes often.

Another for ye same.

Take the Juice of fennell roots brayed and mix it w^h honey & boyl both with a slow fyr untill they be thick as honey then put it in a box of brass; and when you make use of it, mix it w^h womans milk and it will be helpfull.

For deaffnes.

Tak a quik Eale and rost it alyve on a spitt Then take the greass y^t dropeth from it and keep it in a clean cup: Then take a garlik head roasted on clean sinders and when it is roasted take a cod or husk of ye garlik at a tyme & put it into the greass when warm and put it hott into ye ear when warm, holding that ear up for a litle spac, and you shall see a filthie humor come out of ye ear which hinders hearing.

But if ye deaffnes be occasiond by cold or other accidents then take the Juice of colworts and mix it w^h warm water & drop it in ye ears.

For bleeding at ye Nose.

Take vinegar and pour it in ye ear on that side; & if both bleed, put it in both ears.

For ye Collike.

Take Sage, Mugwort and Smallage a like quantitie of each and boyl them in a pynt of whit wyn untill the thrid part be consumd, then strayn it and give it to ye patient to drink when it is milk warm, at least 4 unces or therby at a tyme.

¹ So spelled = gargarize, i.e. gargle.

² So spelled = ventose.

³ So spelled = equinancie, i.e. quinsy.

For preventing the gout.

Take the roots of rosemarie and boyl them well in vinager & wash the feet & legs w^h ye decoction.

For removing ye Itch in children or others.

Take a handfull of green Mints & lay it in old pish 24 ho^{rs} or therby, that it grows tender, & then yo^r body therwith washen when warmd befor you goe to bed at night, will remove the Itch.

For quenshing thirst.

Take ye yoke of a hens egg well roasted and mixt w^h oyl olive and swallow it down.

A safe receipt for purging by vomit.

Take half a mutchkin of Sack and seeth in it tuo spoonfull of radish ; and when it hath boyl'd half in strayn it & drink it up w^h a litle of Sallet Oyl, this helps to remove the cough.

But if ye vomit do not work then take a litl of ye Syrup of Oximell and put yo^r midl finger in yo^r mouth as farr as you can reach it and this will help you. If you vomitt too much, wash yo^r feet w^h hott watter.

For fastening the teeth.

Take whyt coral, or harts horn, burnt mirh & sanguis draconis, of each a like quantitie, pouder and search¹ them & then use them in a peice of lining cloath for a dentrifice.

A safe mean for keeping the body laxative.

Let everie housholder y^t hath a garden mynd to have ye herbs of, Mercuri, Mallows, Leetice, Beets and Spurge growing therin, wherof a laxative broath may be made therof ; thus, first Boyl a litl fresh beef or a chicken in water w^h ye 4th p^t of Spurge & 3 p^{ts} of ye rest of ye herbs, and add to these a litl Marygold ; this solubill broath may be used ofen in ye Spring & at ye fall of ye leaff, which is a great help to health.

A Trap or bait for takeing of Wyld Fouls.

Take the roots and seed of Belenge and steep them in water the space of 24 ho^{rs} or therby ; Then Boyl all in that Water wherin they wer steept, so that ye seed drink up the water.

Then lay it wher ye wyld foul useth to hant : and when ever they pike it, they fall a sleep, so you may take them w^h yo^r hand.

A receipt for killing of rats without poysion.

Take so much of Spung as you think fitt and cutt it smal in peeces to ye quantitie of a pease or litl bean, Then anoynt it w^h Butter or dipt in Tallow and alse many of these as you think fitt spread them in a litl burnt Meill in a reteird plac wher the rats hants ; and after they have swalloed these they swell in ye rats and causeth them to dy.

¹i.e. searce or searse=to sift finely.

The Last Episcopal Minister of Moneydie

A RECENT number of this *Review*¹ contained a memoir of James Atkins, Bishop of Galloway, and the present article deals with his son-in-law, Mr. William Smyth,² who was minister of the parish of Moneydie, in Perthshire, at the time of the Revolution, and was a strenuous champion of Episcopacy. Wodrow and other writers have described the 'sufferings' of the Presbyterians in full detail, but comparatively little attention has been given to the corresponding persecution of the Episcopalians, and Mr. Smyth's case is typical of the hardships endured by the clergy in the central counties of Scotland.

William Smyth belonged to an old Perthshire family, the Smyths of Braco and Hoill,³ who claimed descent from Thomas Smyth, physician to James III.⁴ William Smyth's father, Patrick, laird of Braco, a direct descendant five generations removed from the physician, was left an orphan in 1603, and along with his younger brother, Andrew, was committed to the charge of George Graham, Bishop of Dunblane.⁵ In 1615 the Bishop was translated to the see of Orkney, and took the boys with him to his

¹ *S.H.R.* xii. 135. Since that article was published Miss Dowden has kindly lent me an account-book of the Bishop's covering the years 1662-8, when he was Rector of Winfrith, in Dorsetshire. It reveals a certain number of personal details. It shows that by this time he always spells his name 'Atkins,' not 'Atkine.' His wife is seldom mentioned except when he pays her milliner's bills—a very moderate expenditure—and she took little part in the household management, which was in the hands of her daughters. Lillias, the eldest, married at the end of 1666 (Hutchins, *History of Dorset*, i. 164) her cousin, Mr. Patrick Smyth, son of the Rector's sister, Rebecca. I may take this opportunity of correcting a mistake in the previous article (*S.H.R.* xii. 143, near the foot): Lillias Atkins did not marry twice; it was her daughter, Lillias Smyth, who married Mr. George Cheyne.

² The name was always pronounced 'Smith.'

³ Two small properties near Scone: Braco is not to be confused with another property of that name near Greenloaning.

⁴ *Great Seal Register*, 1424-1513, No. 1357.

⁵ *Edinburgh Testaments*, Alexander Smyth, 10th August, 1607.

new diocese, where Patrick Smyth eventually became a wealthy and influential man.¹ During the Civil War he was placed by the Estates on the Committee of War for Orkney, but he supported Montrose's expedition in 1650, and was captured and confined in Edinburgh Castle.² On 28th April, 1655, he was drowned on his way from Stronsay, one of the Orkney Isles.

His family was patriarchal: he had three wives and twenty-three children, besides a supplementary list of at least three illegitimate daughters. The first wife was a daughter of Bishop Graham, but William, the subject of this paper, was the fourth son of the second wife, Margaret, daughter of Henry Stewart of Killinan, and widow of Hew Halcro, younger of that ilk.³

William Smyth was born in Orkney on 6th November, 1646. In July, 1661, his brother-in-law, Mr. John Gibson, minister of Holm, wrote: ⁴ 'I think William sall prove a pretty schollar: if David ⁵ prove so, its more than I expect.' William was sent to the College at Edinburgh, and graduated Master of Arts in 1665.

His eldest surviving half-brother, Patrick, had left Orkney, and in 1664 bought from the Duke of Lennox the barony of Methven, in Perthshire.⁶ The purchase included the patronage of the collegiate church of Methven, and on 22nd September, 1666, he presented his young brother to a prebendal stall.⁷ The position was a sinecure; William Smyth was not yet of age, and his theological education was not completed, even if it had begun, for on 24th February, 1667, he matriculated at St. Mary's College, St. Andrews, as a student of divinity.

At the end of the year he arrived at Winfrith Rectory, Dorsetshire, on a six months' visit to Mr. James Atkins, afterwards the Bishop, probably with a view to gaining experience in parochial work. The introduction no doubt came through his first cousin, Mr. Patrick Smyth,⁸ the Rector's nephew, who had recently married

¹ Peterkin's *Rentals of Orkney*, Nos. III., IV., V., *passim*; *Orkney Sasines*, 25th April, 1639.

² Bishop Guthry's *Memoirs*, ed. 1748, p. 169.

³ *Orkney Sasines*, 25th April, 1639; *Orkney Testaments*, Hew Halcro, 21st October, 1640; *Scots Peerage*, i. 397.

⁴ Methven Castle Charter Room.

⁵ His immediately older brother, born 25th October, 1644.

⁶ *Perthshire Sasines*, vol. iii. fol. 30.

⁷ *Ibid.* vol. iii. fol. 311.

⁸ His mother was Rebecca Atkins, the Rector's sister; his father was Andrew Smyth of Rapness, William's uncle.

the eldest daughter of the house ; and as it turned out, William found favour in the sight of Marion, the second daughter. She was about twenty-two years old at the time, but they were not married until more than ten years later.

Shortly after this visit—the exact date is uncertain—he was collated by Bishop Guthry of Dunkeld to be colleague to his brother-in-law, Mr. David Drummond,¹ minister of Moneydie, a rural parish six miles north-west of Perth, and on Mr. Drummond's death before 1676—the date is again uncertain—he was left sole minister of the parish, where he remained for another twenty-two years.

His marriage to Marion Atkins took place in September, 1678, her father being by this time Bishop of Moray. They had a son and two daughters—Anna, baptized 27th October, 1679 ; James, baptized 18th January, 1681 ; and Janet, baptized 19th December, 1682.² Both daughters seem to have died unmarried.

The records of the Presbytery of Dunkeld, which begin in 1681, reveal nothing of interest with reference to Moneydie, but in the summer of 1687 Mr. Smyth was chosen by the Bishop and Synod to be Constant Moderator of the Presbytery, and very soon he had to face the situation created by the Revolution. The first hint of the coming storm is to be found in the minutes for 8th December, 1688. The Moderator happened to be absent, but he sent 'ane account of ane express he received from My Lord Bishop q'in he desires y^t the brethren may be interrogat if they prayed for the young prince : q^o after interoga^{one} ansuered affirmative : the account q^oof was sent to his Lo/.' The 'young prince' was of course James, Prince of Wales, the Old Pretender, about whose parentage there was not a little doubt.

Two months later the Revolution was an accomplished fact, and the Church was at once faced with a grave crisis. As early as January, 1689, the Presbyterian ministers forwarded to the Prince of Orange a congratulatory address, in which they took the opportunity of entreating him to restore the Presbyterian establishment. On the other hand, the Episcopalians had taken little or no active part in the overthrow of King James ; the clergy were for the most part Jacobite in sympathy, and even when it became known that William of Orange was in favour of a moderate Episcopacy, the Bishops refused to take the oath of

¹ Episcopal Chest, Theological College, Edinburgh, No. 203 : 16. Katharine Smyth, William's half-sister, married Mr. Drummond as her second husband.

² Moneydie Register.

allegiance to him. Bishop Rose went up to London as the representative of his Church in the hope of persuading William to maintain Episcopacy in Scotland, but when he was admitted to an interview he deeply offended His Majesty with the ungracious utterance: 'Sire, I will serve you so far as law, reason, or conscience shall allow me.'¹ The Estates soon brought matters to a head by coupling with the formal proclamation of William and Mary an Act requiring the clergy to pray for the new sovereigns and, contrary to their oath of allegiance, to abjure King James; and proceeding on the principle that to the victors belong the spoils, William's first Scots Parliament passed an Act abolishing Prelacy on 22nd July, 1689,² and another establishing Presbyterianism on 7th January, 1690.³

The Episcopal Presbytery of Dunkeld continued to meet till July, 1689, when some of the members 'form'd a design to have addressed the Pr. of Orange, which the moderator perceiving and not being able to prevent by their superior numbers, dissolved the Presbytery in the King's and Bishop's name and authority.'⁴

In the South and West of Scotland the congregations took the law into their own hands, and in a few months 'rabbled' about three hundred of the 'curates' out of their parishes, but in the central counties not only the nobility and gentry, but the bulk of the people, were friendly to the Episcopal clergy, who were thus able for a time to retain their livings and defy the law.⁵ In Perthshire the authorities had to adopt siege tactics and attack the parishes one by one. Each year the combined Presbytery of Perth and Dunkeld applied to the Privy Council for sentences of deprivation against two or three ministers, the complaint always being that they had failed to pray publicly for Their Majesties; and with the help of the civil arm the sentences were made effective, and Presbyterian ministers were settled, generally after a struggle.

Mr. Smyth's turn did not come till 1693, when the Presbytery made a special effort. On 10th January of that year he and five of his brethren from neighbouring parishes appeared in person

¹ Keith, *Historical Catalogue of the Scottish Bishops*, p. 71.

² Thomson's *Acts*, ix. 104.

³ *Ibid.* ix. 133.

⁴ Edinburgh Episcopal Chest, No. 203:16.

⁵ *Perth Hospital Registers, 1665-1712*, Rev. James Scott, 173-174. (Advocates' Library MSS.)

before the Privy Council and pled guilty to the usual charge, which is expressed in forcible language.¹ It alleged that they 'have publictly preached and exercised the ministeriall functione within there oune respective houses and paroches . . . and have been so far from evidencing the sense they ought to have hade of there Majesties' preservation and releiss of the grievous circumstances the nation then lay under, that when the said proclamation² of the Estates was sent to them, at least came to there hands, or of which they hade knowledge, they were so far from testifying there gratitude in giving due obedience thereto that neither the day appoynted nor at any tyme since syne did they read the said proclamation . . . but on the contrair in contempt of these proclamations hes actually preached dayly since syne without praying for there Majesties as King and Queen of this realme, convocating severall paroches, stirring up and fomenting there disaffectione to the government, encouradgeing there Majesties' enemies and discouradgeing there loyall subjects, sometymes not only prayeing for the late King James and that God would restore him and make his crown to flourish upon his head, but also at other times to pray in such ambiguous termes that there hearers could not understand that they prayed for there Majesties.'

The Council accordingly declared their livings vacant, prohibited them from preaching or exercising any ministerial function, and ordered them to leave their manses before Whitsunday. This sentence sounds conclusive enough, but Mr. Smyth treated it with indifference, returned to his living, and continued his ministrations for five years more.

During this period his private life was embittered with a family squabble over the succession to the estate of his father-in-law, Bishop Atkins. Mr. Duncan Robertson, the husband of the Bishop's youngest daughter, considered that his wife had the sole right to the property, as her sisters had received portions of 4000 merks each on their marriages, and he raised an action against them and their husbands. An attempt at arbitration failed, and the litigation dragged on till 1696, at one time reaching such an acute stage that Mr. Smyth had to find caution to avoid being imprisoned. Eventually a compromise was reached.³

¹ *Acta*, 10th January, 1693.

² The proclamation of 30th April, 1689, ordering the clergy to pray for William and Mary, and to abjure James.

³ *Decrees* (Durie), 30th November, 1689; *Register of Deeds* (Durie), 13th February, 1699.

In 1698 the Presbytery again took up the case of Mr. Smyth and five other deprived ministers, who were still holding out against the sentence of the Privy Council. At their meeting on 11th May they appointed one of their number to go to Edinburgh and get letters of horning so that they could raise processes of ejection, and on the 26th it was reported that the letters had been obtained.¹ On 16th June Mr. Smyth wrote to Thomas Graeme of Balgowan, patron of the living, that in obedience to the charge of horning he had removed from the manse, and he forwarded the keys of the church. The Presbytery directed Mr. Dinning to declare the kirk of Moneydie 'vaiking' on Sunday, 26th June, but at the next meeting he reported that though he had carried out their instructions he could not get into the church, so the clerk was ordered to write to Balgowan requiring him to give up the keys, 'otherwise they will be obliged to take another course.' Balgowan bowed to necessity, and the kirk of Moneydie was at last surrendered to the Presbyterians.

Though William Smyth had to retire after nine years' resistance, he merely withdrew to the neighbouring parish of Methven, where the laird, his nephew David Smyth, was an active Episcopalian and Jacobite, and there he continued to conduct services in his own house for the benefit of his fellow churchmen in the district. He was not molested for eleven years, but in 1709 he was guilty of two acts which the Presbytery could not overlook. Arrangements had been made by the Episcopalians to adopt the English Prayer Book, and he was one of the first clergymen in Perthshire to use it. Moreover, he attended at Perth in November, 1709, at the funeral of Mr. Patrick Strachan, late incumbent of Mains, and robed in a black gown with a service book in his hand he conducted the burial service.² The Presbytery at once took action, and summoned him and Mr. Thomas Rhynd, chaplain to Balgowan, who had assisted him on that occasion, to answer a charge of 'intrusion.'

The libel against Mr. Smyth, a very lengthy document, starts with a preamble:³ '1°. That wheras the puritie of religion and particullarly of Divine Worship and uniformity therin is a signall blissing to the Church of God, and that it hath been the great happiness of this Church ever since Her reformation from Popery to have enjoyed and maintained the same in a great measure, yet it is of verity that you, the said Mr William Smyth, have not

¹ *Perth Presbytery Records*, vol. iv. foll. 207, 208, 211, 212. ² *Ibid.* vi. 321.

³ Printed in full in Dean Farquhar's *Episcopal History of Perth*, pp. 61-63.

only in a most disorderly and irregular maner intruded upon the Parioch of Methven, where there is a fix'd Gospel Ministrie, but that also by an avowed discharging of the severall parts of the ministeriall function, you have introduced a set form of worship, and that in direct opposition and contradiction to the known principles of this Church contain'd in the Confession of Faith (which is that God should not be worshipp'd according to the imaginations and devices of men, or any other way not prescribed in the Holy Scriptures), contrary to the constant practice of this Church, yea and which was not so much as attempted dureing the late Prelacy, and likewise in contempt of the standing acts of the judicatures of this nationall Church peremptorily prohibiting these and the like innovations.'

The offence at the funeral of Mr. Strachan is then libelled as an act 'of most dangerous consequence, as manifestly tending to grieve the godly, lay a stumbling-block befor the weak, and to harden Papists in their superstition.'

A second offence is next averred, that of administering the Sacrament of Baptism to several children 'cross to the constitution and practise of this church.'

The libel against Mr. Rhynd was in similar terms.

The accused were cited for 10th January and again for 14th February, 1710, but failed to appear, so the Presbytery decided to proceed with the case at their next meeting. On 8th March they met betimes, and at seven o'clock in the morning the case was called. Once more the accused were absent, but they sent as their procurator Mr. James Smyth, chirurgeon apothecary in Perth, Mr. William Smyth's son, who was provided with a 'declinator and protestation,' in which on behalf of each defender he refused to acknowledge the jurisdiction of the court.

The authorship of this document cannot be determined, but it shows a keen appreciation of the weak points in the adversary's position. On behalf of Mr. William Smyth it states: ¹ 'It may be thought strange that one in my circumstances, who have lived so many years among you, without giveing disturbance to any person, should now be processed befor you for intrusion, baptizeing of children, and innovation in worship, as your libell ag^t me bears, since it's notarly known to you all that I am a Minister of the Gospell of the Episcopall Communion, and, as I have hitherto lived, so I hope to continow in the unity of the Catholick Church and its Government descended with Christianitie

¹ Edinburgh Episcopal Chest, No. 456.

itself from the dayes of the Apostles. And therefor I cannot, without schismatically seperating from that great and venerable body, owne any spirituall jurisdiction in you ; for (1°), albeit the present lawes have impowered you to prosecute such Episcopall Ministers as continow in their Churches, or desire to be assumed by you into the Government of the Kirk and have subjected such to your discipline and cogniseance, in so farr as they are really scandalous, erroneous, negligent and insufficient, yet since I am in neither of these cases and the lawes have not subjected such as I am to your discipline, who, without possessing any Church, Manse, Benefice, or keeping any publick Meeting-House, doe only worship God in my oune family. (2°) As to the crimes of intrusion and baptiseing, these are purely civill and only cognosable by the Judge-Ordinary, such as the Privy Councill &c., and therefor, as I am nowayes subject to your jurisdiction on this acco^t, so you are not judges competent therin. (3°) As to the English Liturgie, which you call innovation, contrary to the purity of the Gospell, and worshiping God according to the devises and imaginations of men, I think it is agreeable to the Word of God and the practise of the Primitive Church, and is no innovation, being universally practised at the begining of the Reformation. . . However, you having declared yourselves aga^t the English Service, are parties, and therefor cannot be judges in this matter, nor I any wayes obliged to acco^t to you for the same. And therefore I doe decline your authority and jurisdiction in the premisses for the reasons foresaid, and protest that you proceed no further therin.'

The Presbytery considered the protest in private and then delivered their 'minde in the affaire,' 'declaring the said Mr. Wm. Smyth contumacious for severall reasons, one of which was that they could not be declined by any person, they being a judicature of Christ Jesus.' The obvious fallacy of begging the question seems to have escaped their notice, but another criticism on his position was better founded—that there was 'not so much as a shaddow of excuse for his not personal compearing, the same¹ being subscribed at the place where and the day when the Presbyterie did meet.'²

Having repelled the preliminary plea to jurisdiction, they ordered the case to proceed, 'and accordingly witnesses then present for each article thereof were sworn, purged and examined in all legal and due form in the hearing of his proxie and several

¹ The declinator.

² *Perth Presbytery Records*, vol. vii. fol. 22.

gentlemen espousing his cause, who desired to be present during the said tryal, for what end they know best themselves.'

The libel was found proved on all counts in the case of both the accused, and a full report of the proceedings was sent to the Synod, who ordered the Presbytery to lay the whole matter before the Committee of the General Assembly for Overtures.¹ The Committee gave it as their advice that the Presbytery 'should proceed to declare them Intruders and Innovators in the Worship of God, and require the Magistrat to make their sentence effectual, and, if he shall refuse to do it, that they instrument him, and send over their instrument extended to the Church Agent, that criminal letters may be raised against the saids Innovators.'

Accordingly at their meeting on 31st May, 1710, the Presbytery appointed a Committee 'to draw up a draught of a sentence declarative of their guilt and discharging relative thereto.'² On 14th June the Committee reported 'that they had not gotten that appointment obeyed, they being thronged with business since the last Presbyterie,' and the excuse was repeated at every meeting till 13th September, when their report was produced and adopted.³ The delay had given time for moderate counsels to prevail, and the sentence cannot be called vindictive in tone. It set forth⁴ that 'the Presbyterie of Perth, having given him time to reflect upon his former way, and to deliberat upon the dangerous and dismal tendency of the course he is engaged in . . . but now, after all, finding that any longer delay is not like to be profitable, but rather prejudicial to such whom by their restless endeavours they [the Innovators] are labouring to seduce, and that by our silence we may not be found guilty in not doing what at present we judge incumbent to us, in giving our joynt testimony against the shameful deflection which he hath made from the purity and simplicity of Gospel ordinances, and the divisive courses that he is still cleaving to, therefore we . . . discharge the said Mr. William Smyth from intruding any longer upon the Paroch of Methven, or any other Paroch within the bounds of this Presbyterie, as also from introducing innovations and ceremonies not warranted by the Word of God and contrary to the purity of doctrine professed and uniformity of worship at present practised in this Church, least he meet with that challenge, 'Who hath

¹ *Perth Presbytery Records*, vol. vii. fol. 1.

² *Ibid.* vol. vii. fol. 11.

³ *Ibid.* vol. vii. foll. 13, 22.

⁴ *Ibid.* vol. vii. foll. 22 *seq.*

required these things at your hand? In vain do you worship Me, teaching for doctrines the commandments of men'; and providing he would suffer the word of exhortation, then, if either he tender the Glory of God, the success of the preached Gospel, and the quiet of this Church and Kingdom; or if he have any regard to his own peace, either now or at a dying hour, we would in the fear of the Lord obtest him seriously to consider what such innovating and divisive courses, if not timously prevented, will terminat in to him and those seduced by him. But, if to his former contumacy he shall superadd this, to despise our faithfull warning and authoritative prohibition, then, as he may tremble to be found among those by whom offences come and cause divisions contrary to the doctrine that we have received, and of the dreadfull doom of evil men and seducers, their waxing worse and worse, deceiving and being deceived, so we must proceed according to our duty and his merit.'

This sentence was appointed to be read from all the pulpits in the Presbytery on 24th May, but it does not appear that any more drastic action had to be taken in Mr Smyth's case. He gave way, but he executed his retreat in good order, and in 1712 removed to his son's house at Perth, 'where he always read prayers to as many as pleased to hear them, when the Minister of the Meeting House was obstructed by the Magistrats.'¹

The Presbytery took similar action for innovation against three other ministers in 1711, and Mr. James Smyth, who seems to have had a taste for ecclesiastical controversy, again appeared with his declinator, but with no greater success than before.²

The Presbytery, however, had overreached themselves, and Scott says³ that their severity was one of the arguments used in Parliament and at Court in favour of the Toleration Bill which became law in 1711.⁴

Mr. William Smyth's career was not likely to bring him riches, and the one extant letter from him, dated 18th December, 1713, is an appeal to his niece, 'the lady Methven,' to pay him the balance of some money which she owed him. He wrote:⁵ 'I am ashamed of giveing you this trouble, yet I hope you'll excuse

¹ Edinburgh Episcopal Chest, No. 203 : 16.

² Farquhar, *Episcopal History of Perth*, pp. 72 seq.

³ Perth Hospital Registers, 1665-1712, p. 403.

⁴ 10 Anne, cap. 7.

⁵ Methven Castle Charter Room.

me since my necessities will allow me to have neither law nor good manners.'

The last mention of him comes in connexion with a curious incident which happened in May, 1716, after the Jacobites had been driven from Perth and the town and district were in the occupation of the King's troops. Sir David Threipland of Fingask, who was married to a niece of Mr. Smyth's, was a prominent Jacobite, and had fled to avoid capture, leaving his wife, who was in delicate health. The arrival of the Hanoverian dragoons at Fingask upset her so much that she was prematurely delivered of a son. The rest of the story may be told in the words of one of her grandchildren.¹

'It was thought that, under the distressing circumstances of her situation, she could not survive, and a clergyman of the Episcopal Church in Perth was sent for privately—the clergy of that persuasion being marked men at that period as known adherents of the Jacobite cause. He, having administered the Holy Communion, proposed, as so favourable an opportunity might not occur again, to baptize the child. This suggestion, communicated in a whisper to the nurse and others, was at once assented to by them. But the difficulty consisted in knowing by what name the infant should be called, his father having left no directions, and the poor mother being thought to be much too weak to be consulted on the subject. The good lady, however, heard a little of what was passing near her bed, and drawing back the curtain she called in a faint voice, 'Stuart, Stuart!' This was enough, and by that name was my father christened before the clergyman left the house.'

The identity of the clergyman is settled by an entry written in a later hand on a fly-leaf in the Perth Register of Baptisms: '1716. Stuart Threipland, 2nd son of [Sir] David Threipland of Fingask and Dame Katharine Smyth, daughter of David Smyth of Barnhill, was baptized by Mr. Wm. Smyth 19th day of May.'

It only remains to be said that Lady Threipland recovered and lived till 1762, and the puny baby was Sir Stuart Threipland, third baronet, who became President of the Royal College of Physicians, Edinburgh. He went through the '45, and died at the age of eighty-nine.

Mr. William Smyth died at Perth on 28th July, 1718,² aged seventy-one, his last thirty years having been spent in

¹ Fittis, *Perthshire Sketches*, p. 213.

² *St. Andrews Testaments*, 5th August, 1719.

strife. His wife was alive in September, 1715,¹ but it is not known when she died.

The career of his son James has an interest of its own. He was a convinced Jacobite, and took an active part in the rebellions of 1715 and 1745, particularly in the earlier rising, when Perth was the headquarters of the Pretender's army. Colonel John Hay occupied the city on 16th September, 1715, on behalf of the Earl of Mar, and James Smyth was one of the leading citizens who, 'cloth'd with weapons and instruments bellical,' welcomed the invaders. Five days later Colonel Hay nominated him and five others to act as commissioners² in place of the regular magistrates, who had either deserted or been driven from the town. Next day the commissioners met and divided the various civic offices among themselves, James Smyth being appointed a bailie,³ and on 3rd October they filled up a complete Town Council, which continued to act until the end of the following January. They raised two companies of foot, and on 9th January, when the Chevalier entered the town, they presented him with an address of welcome. James Smyth attended the Council meetings regularly, and sat as a Magistrate in the Burgh Court. He followed the Jacobite army to Sheriffmuir as surgeon with horses 'loadned with drogs.'

The former magistrates resumed their functions on 10th April, 1716, and a month later ordered the prosecution in the Burgh Court of about ninety of the rebellious citizens. By this time Mr. Smyth and most of his associates had fled into hiding, and in September the case was tried in their absence. The Court found 'that the burgesses have forefaulted their burgesship, discharge them (who have already fled out of the town) ever again to return thereto to reside therein under penalty of £200 Scots, and ordains extracts of their Burgess Tickets to be torn at the Mercat Cross.'

Some of the accused were rash enough to return, and the fines were promptly exacted from them, but James Smyth kept away until the passing of the Act of Indemnity.⁴ Thereupon he and his friends attempted reprisals by bringing a suspension of the sentence in the Court of Session.⁵ His name stands first in a list

¹ *Register of Deeds* (Mackenzie), 11th April, 1716.

² Municipal Archives, Perth.

³ *Perth Town Council Records*.

⁴ 3 Geo. I. cap. 19.

⁵ *Decrees* (Mackenzie), 25th February, 1718; *Arniston Session Papers* (Advocates' Library), vol. v. No. 31.

of eighty-five suspenders, so presumably he was the *dominus litis*. The grounds of suspension were (1) that as the Magistrates were the complainers in the original action they ought not to have acted as judges in their own cause; (2) that as the action was really a criminal process it ought not to have been tried in the absence of the accused. The first plea, which seems the more formidable, was abandoned, and the Lords of Session repelled the second, leaving the conviction to stand, though its practical effect had been nullified by the Act of Indemnity.

In the interval between the two rebellions Mr. Smyth conducted a large practice as a surgeon. He was twice married. His first wife was Anne, daughter of Alexander Watson of Aithernie, in the parish of Scoonie, Fife, and by her he had three daughters—(1) Margaret, who married in 1740 Dr. Thomas Carmichael of Perth; (2) Jean, who married in April, 1749, Martin Lindsay,¹ eldest son of James Lindsay of Dowhill, in Kinrossshire. Martin Lindsay was tried at Carlisle for joining in the rebellion of 1745 as secretary to Laurence Oliphant of Gask and Lord Strathallan, the governors of Perth, but was acquitted; (3) Anne, who married Dr. Robert Wood of Perth.

His father-in-law, who was Provost of St. Andrews, 1710-1716, and also represented the burgh in Parliament from 1703 till the Union, fell into financial straits, and in December, 1735, Aithernie was exposed to a judicial sale. Mr. Smyth bought it for £24,000 Scots,² and afterwards settled it on his daughter, Mrs. Carmichael, and on her only son James, afterwards Dr. James Carmichael-Smyth, who became a leading physician in London.³

Mr. Smyth married as his second wife (contract dated 26th October, 1742),⁴ Margaret, daughter of James Lindsay of Dowhill, a sister of his son-in-law, Martin Lindsay. He had no family by her.

For many years Mr. Smyth was a manager of the Episcopal Meeting House in Perth. Down to the death in 1735 of their senior incumbent, Mr. Henry Murray, the congregation lived harmoniously, although there were controversies in the church regarding the use of the Scottish Liturgy in place of the English Prayer Book, and also regarding the position of the Bishops, who had ceased to be associated each with a particular diocese. Mr.

¹ *Edinburgh Marriage Register.*

² *Decrets (Durie)*, 3rd January, 1736.

³ *Dictionary of National Biography.*

⁴ *Particular Register of Sasines, Fife*, 20th August, 1743.

Murray's death left Mr. Laurence Drummond in sole charge, but he was 'but a valetudinary man,' and it became necessary to find an assistant for him. In 1739 a young clergyman, Mr. Robert Lyon, was selected after much opposition, but he was 'advanced' in his views, and apparently not conciliatory to his opponents. Within a year matters came to a head on the question of his stipend, and a definite schism in the congregation took place.¹ The malcontent faction managed by an underhand trick to get the minute-book out of the possession of Mr. Drummond. Mr. Smyth, Mr. George Stirling, surgeon, Dr. Carmichael, Mr. James Lindsay of Dowhill and others supported their clergy, and Mr. Smyth induced Mr. Drummond to circularize the congregation in such forcible terms of protest that the other side raised an action of damages for slander against them in the Burgh Court. The result of the action is not recorded, but Mr. Smyth's party found themselves excluded from the meeting-house in Bunshes Vennel, and had to set up a meeting-house of their own elsewhere. In 1745 they raised an action in the Court of Session to compel their opponents to hand over the building and the minute-book,² but before the action could be decided the tide of rebellion swept over the city, and most of the Episcopalians came out on the Jacobite side.

Mr. Lyon himself accompanied the Jacobite army as chaplain to Lord Ogilvie's regiment. He was taken prisoner, tried, and executed at Penrith on 28th October, 1746. In his last letter to his mother he prayed that God would reward the families of Mr. Smyth, Dr. Carmichael, Mr. Graeme, and his other benefactors and well-wishers.³

At the outbreak of the rebellion Mr. Smyth was a man of sixty-four, but he acted as surgeon to the Highlanders,⁴ and in other ways threw himself into the struggle. In February, 1746, when General Hawley drew up a list of rebels in Perth against whom precognitions were to be obtained, he summarized the case against Mr. Smyth and his friend Mr. George Stirling :⁵ 'both often with the Young Pretender 1745 : almost at all times with Strathallan and Gask ; and it's said they both joined and assisted the Rebel

¹ Farquhar, *Episcopal History of Perth*, chapters xiv. and xvi.

² *Perth Town Council Records*.

³ *The Lyon in Mourning* (Scottish History Society), i. 9.

⁴ *Jacobite Lairds of Gask* (Grampian Club), p. 150.

⁵ Fittis, *Historical Gleanings Concerning Perthshire*, p. 197.

Guard, who assaulted the loyall inhabitants and killed one and wounded others of them for ringing the Town bells the 30th October 1745, being the King's birthday, and they both introduced many Ladies to the Pretender publicly in the Town's House.'

Evidence against him was obtained, but no action followed, and the reason may be inferred from the narrative of a Mr. Cant, who says :¹ 'The late Mr. James Smyth, a celebrated physician and surgeon of Perth, whose character and memory will be long remembered with pleasure in this town and country, was active in doing many good offices to the inhabitants, saving them from prison and fines by his influence and interest with the governors and commanding officers of the rebels.'

He died at Perth on 8th March, 1765,² aged eighty-four.

His arms—the Methven coat with a difference—were recorded in the Lyon Register on 24th March, 1760 : 'azure, a burning cup between two chess rooks in fess or, within a bordure of the last ; crest, a dexter hand holding a lancet ready for action all proper ; motto, *arte et labore*.'

JOHN A INGLIS.

¹ Fittis, *Historical Gleanings Concerning Perthshire*, p. 217.

² *Scots Magazine*.

Nithsdale at the Union of the Crowns

THE object of this article is to show the state of one district in the south of Scotland about the time when James VI. came to the throne of England.

To write a complete account of old times is often impossible ; the facts which have reached us are too disjointed ; they are chiefly to be found in the *Register of the Privy Council*. The difficulty about these entries is, that while we get the complaint, probably a very one-sided and exaggerated statement of the trouble, we often do not learn what the reply to it was or how the matter terminated. Probably the parties frequently settled the dispute between them ; clearly much was determined by the Court of Session or the Justiciary Court, and in one case at least those involved were ordered to appear before the Warden of the Marches. We only hear of the dispute when actually before the Council. The origin of the quarrels or the provocation is not mentioned as a rule ; we merely have the general prefix to the complainer's statement that his opponent 'had conceived ane deidly enmity agains him.' At the same time, a great mass of fragments have come down to us relating to these old quarrels. Taken together they throw an immense light on the condition of things at the end of the sixteenth and the beginning of the seventeenth centuries. They make us realise how very unruly the Border counties, especially on the West Marches, were before and for some time after the Union of the Crowns.¹ After this the old turbulence gradually died out.

The following incidents occurred chiefly in Upper Nithsdale round about Keir and the adjoining parishes. It was under the Warden of the West Marches, but a good way off the Border. Our 'auld inimies' from the other side seldom pushed their raids so far, cattle driving was less common than on the March, yet the turbulence of the Borders indirectly affected it.

¹ Scott's *Minstrelsy*, 1802 Edn., Introd. xlviiii.

The Maxwells, Douglas of Drumlanrig, Kirkpatrick of Closeburn, and Grierson of Lag were the most influential families in the district. The Maxwells were the greatest of these, and their estates extended far beyond it. Nearly all the Dumfriesshire lairds were much connected by blood and marriage, yet this did not prevent their quarrelling.¹

In 1579 there was trouble between the Laird of Applegirth (Jardine) and Thomas Kirkpatrick, younger, of Closeburn; they fought out their quarrel in the streets of Dumfries. Roger Grierson of Lag and his brothers Thomas and John became involved; Lag and Thomas stated they were endeavouring to make peace when a certain David Carlysle attempted to shoot Thomas with a pistol, 'whilk did discharge and he narrowlie did eschape at the plesoure of God'; another man attacked Lag with a sword. Two Carlysles were put to the horn over it. The matter came up more than once; from the subsequent entries it would appear that Lag and his brothers were not mere onlookers, but were attempting to help young Closeburn; the two brothers were summoned for the hurting and blood drawing of Edward Maxwell of Portrak and of John M'Briar, servant of the laird of Amagill. M'Briar, the Provost of the Burgh, had tried to intervene, but Habbie Jardine attacked and wounded him and a brother of Maxwell of Cowhill; Habbie was denounced. The principal parties were ordered to sign a Bond of Assurance to keep the peace in the meantime; Jardine refused and was ordered to obey; they were all to appear again before the Council, and there our information ends.² Later on the parties would probably not have got off so cheaply, but the Crown was only feeling its way in the meantime.

About twelve years later the Kirkpatrick's were involved in another dispute. Closeburn was principal sheriff of Dumfriesshire; in those days it was common for the great landowners to have a Charter of Barony which gave them wide powers of jurisdiction over those within their own lands; naturally this led to disputes regarding the rights of these men and those of the Crown representatives. Kirkpatrick's office involved him in questions with Drumlanrig. Douglas and a certain Grier of Marginalloch came before the Council with the following story. They said Drumlanrig had obtained a decree before the Lords of Council

¹ *Border Papers*, i. pp. 72 and 416-17; *Hist. MSS. Com.* 15th Rept. viii. p. 26 (43).

² *Reg. P.C.* iii. pp. 263, 268, 767.

and Session against Closeburn as sheriff, exempting him, his friends, tenants, and servants, from the jurisdiction of Kirkpatrick in both civil and criminal cases during the dependence of the 'feid and inmitie' between Douglas and Closeburn, yet the latter had apprehended Grier and intended to try him by an assize 'for certain allegeit crymes of thift,' and so, under pretext and colour of justice, to bereave him of life, although Grier 'is an honest and trew man altogidder innocent of these crymes quair with maist maliciouslie and unjustlie he is burdynnit be' Closeburn. In fact, they said this pursuit of Grier is occasioned by 'ane particular evill will and malice' borne by Kirkpatrick against Drumlanrig; Grier being 'ane proper dependair upoun him, and partaker with him in all his actions; especially the quarrell and controversie betwixt Drumlanrig and Closeburn.' Moreover, Grier's 'wyffe standis within the third degree of consanguinitie with Drumlanrig, swa he is his speciallie freind &c and tharby comprehendit under his exemption.' Closeburn did not appear, and was ordered to liberate Grier within six hours after a charge, under pain of being considered a rebel.¹ Closeburn brought the matter up again; he lodged a complaint against Sir James Douglas, whom he accused of interfering with him in the execution of his office as sheriff 'be the forceable taking from the place of judgment of thevis and malefactoris,' and at other times by 'acclameing' them as his dependents; in particular, he alleged Drumlanrig had done this in the case of Thomas Grier, 'ane common and notorious theiff,' who had stolen from John Grier in Cormiligan 'threttane Scheip'; all which and other matters he had confessed; yet Douglas had claimed that he was his man and withdrawn him from the sheriff's jurisdiction.² Kirkpatrick said that he had appeared on the day assigned, but the case had been continued several times, and for his alleged disobedience he had been denounced; that Grier was not Drumlanrig's man at all, but the man of the Earl of Glencairn, and Grier's wife was not of kin to Douglas. However, as Drumlanrig eventually appeared and Closeburn did not, the letters against Douglas were suspended.³

There was again trouble between these two lairds regarding their respective jurisdictions. Kirkpatrick complained that, when he was holding a court at Penpont, Douglas had violently taken away a man, John Wilson, whom as sheriff he was going to try for theft; the reply of Douglas was, that he had come peaceably

¹ *Reg. P.C.* iv. pp. 696, 735.

² *Ibid.*

³ *Ibid.* pp. 624 and 642.

and reclaimed the man as being under his jurisdiction as bailie of Mortoun; the Council upheld him.

The Douglas regality came up again in 1623; this time it was Kirkpatricks who were in trouble. The Earl of Nithsdale, Lag and Amisfield were accused of arresting without just cause two Kirkpatricks who were servants of Douglas and within his regality. They were set at liberty on finding caution to appear and underlie the law for their crimes.

Not long after the original trouble we find the Kirkpatricks at feud with the powerful Maxwells. Closeburn brought the matter before the Council as follows. The King had forbidden his subjects to make leagues or bands without his permission; yet a large number of people, who are enumerated, including some eighteen Maxwells (one of whom was Homer Maxwell the Commissary of Dumfries; his office sounds peaceful, but Homer was the reverse; he found much caution); there was also John Haining of Barngaver, 'callit the Fowlair,' Gilbert Grierson of Doune (Drum?), a son of Johnston of Carnsalloch, and Thomas Grierson, younger, of Barjarg. These men, Closeburn stated, 'has lately maid and subscrevit ane unlauchfull band and league' binding them all by oath to defend each other in their actions 'in the law or by (*i.e.* beyond) the law,' and to account the action of one to be common to them all; under colour of which they oppressed the peaceable subjects in the Sheriffdom of Dumfries, 'committing maist hevie and oppin oppressionis and injuris againis thame';—in particular, they had come on 3rd April last to the number of some two hundred persons to his land of Rouchill (Roughisle) intending to intrude the said Robert (Thomas?) Grier into same; 'quhilk they had not fallit to have done, wer it nocht the said compleiner being foirseine of their enterpryse assemblit certane of his freindis for the defens and maintenance of his awn possessioun.' Closeburn asked that the bond should be discharged and the authors punished. Most of them were charged to appear, and not doing so, were put to the horn.¹ Apparently the accused disregarded the sentence against them, as in the same year² the King issued a commission to Gordon of Lochinvar, Campbell the sheriff of Ayr, Roger Grierson of Lag, and Closeburn, to apprehend Barjarg, his son, and several others who had been put to the horn for not finding caution, but who had 'proudly and contemptuously' remained unrelaxed. The subject of such bonds is too wide a matter to go

¹ *Reg. P.C.* v. p. 74.

² *Ramage*, pp. 206-9.

into here. The common form was a bond of man rent. The Closeburn of 1572 had granted one to Lord Maxwell, so had the celebrated Johnie Armstrong, and most of the considerable lairds of Dumfriesshire and the Stewartry.¹

Lord Maxwell is not mentioned in connection with the beginning of the dispute; it is evident he was involved in it: during the same year Closeburn comes again before the Council with a complaint against this lord as follows: Lord Maxwell, as Warden of the Marches, had proclaimed 'ane day of trew to be haldin in May.' The whole inhabitants of the wardenry were charged to accompany him under the usual penalties, for which Lord Maxwell now intended to pursue Closeburn and his friends on account of their absence—'Albeit neither he nor yit they durst repair thither nor yit dar thay repair to ony utheris dayis of trew to be holden heireaftir for feir of thair lyveis,' because Lord Maxwell and he were at feud, 'and kindness and friendship is given up betuix thame, in sa fer as not onlie hes the said Lord tane upoun him the patrocinie and defens of all the said compleinaris unfriends, bot alswa huntit for his lyffe and dailie awatis the occasioun to bereve the said compleinair of his lyffe.' For instance, upon the 3rd of April last Lord Maxwell assembled his kin and friendship to the number of 200 persons and sent them to the complainer's land of Roughisle to have dispossessed him 'thairfra, upoun intioun always gif the said compleinair had cum to resist thame, to have bereft him of his lyffe,' and since then Thomas Grierson of Barjarg and Gilbert Grierson of Drum, the said lord's men, with armed convocation of his tenants and servants to the number of four score persons, came 'to Bardonoch, being within the schoit of ane hacquebute,' to the lands of Rouchisle, and 'dischargeit ane grite noumer of hacquebutis and pistollettis at him and his servandis, and had not faillit to have slane him wer (it) nocht he wir bettir accompanied for the tyme.' Further, on 30th April last Closeburn had sent certain of his friends to Dumfries; 'the said Lord, upon advertisement thair of directit xxiii of his men and servandis,' who sought for Kirkpatrick's friends in all parts of the burgh where they were accustomed to haunt, 'stoggit beddis' in the search, and would have slain the servants if they had found them, on which occasion they cruelly hurt John M'Mudie, servant to the good man of Kerse, the cousin of Closeburn. In short, he dare not meet Lord Maxwell unless with his 'haill kin and friendship to protect him; quair-

¹ Scott's *Minstrelsy of Scottish Border*, 1802 Edn., vol. i. pp. 57-8 and 204, etc.

upon sum grite inconvenientis will not fail to fall out.' Kirkpatrick appearing by a representative, but Lord Maxwell not appearing, the Lords exempted Closeburn from that Lord's warding and justiciary; apparently they did not punish the Warden for the outrages.¹

To 'stog the beds' seems to have been not unusual in those times; we find it mentioned again in 1636.² It meant they drove their daggers through the beds on the chance of some one being concealed in them. Probably more took place regarding the quarrel of Closeburn than has come down to us; it was not till 1595 that Thomas Grierson, younger, of Barjarg, came before the Council about it, and said his not appearing on the previous occasion did not proceed from contumacy, but from 'mis-knowledge.' Ferguson of Craigdarroch was his cautioner for £200 that he would appear on 14th March, and Kirkpatrick not appearing then, the letters against young Barjarg were suspended.³

That Closeburn should have had a quarrel with Lord Maxwell in 1593 is strange, for he fought on that lord's side in the battle of Dryffe Sands in this very year; it was the last great feudal engagement, the culmination of a really great feud between the Johnstons in Annandale and the Maxwells in Nithsdale. The Maxwells had become practically hereditary holders of the office of Warden of the West Marches; in 1577 they fell into disfavour, and the wardenry was conferred on the head of the Johnstons. This gave rise to a quarrel that lasted many years, in the course of which the head of the Johnstons was murdered, while two Lord Maxwells died in consequence of it, one at Dryffe Sands and one on the scaffold for the murder of Johnston. The matter belongs rather to the lower part of Dumfriesshire than to Upper Nithsdale.⁴ The instructive part of the story for us is the manner in which it illustrates the bitterness of these feudal rivalries. The Johnstons refused Lord Maxwell quarter when he asked for it; to revenge this his son risked death on the scaffold, and was guilty of a treacherous murder. During the course of the quarrel the wardenry shifted about between the two families.

Even after the Union, in 1606, Carmichael, when Warden of the West Marches, was murdered by the Armstrongs.⁵

¹ *Reg. P.C.* v. pp. 88-9.

² *Reg. P.C.* 2nd series, vi. pp. 291-2.

³ *Reg. P.C.* v. pp. 215 and 645.

⁴ Sir Herbert Maxwell's *Hist. of Dumfriesshire*, pp. 204-20.

⁵ Pitcairn, vol. ii. p. 504.

In 1600 Closeburn was security for five Kirkpatrick's, that they would answer upon fifteen days' warning for coming to the prison house of Dumfries and releasing John Kirkpatrick of Knowheid, a common thief, warded there by Grierson of Lag by direction of His Majesty's lieutenant for certain 'points of theft' committed upon Lag. There were others involved in the trouble, including Homer Maxwell the Commissary. They were ordered to appear before the Warden of the West Marches.¹

In 1600 Drumlanrig, Closeburn, Lag, Amisfield, and Lochinvar, with several Maxwells, Johnstons, and others, were summoned before the Council at Falkland to give their advice for the quieting of the Borders.² The advice was most necessary, only the parties to the troubles raise a question whether they were the most suitable persons to give it. This was only one of several occasions when the principal people in the district were sent for by the Council regarding similar matters.³ In 1585 they had been summoned to receive directions for 'the weill and quietnes' of the country, when among others Lord Herreis and a round dozen Maxwell lairds were sent for,⁴ but Lord Maxwell is not mentioned.

Whether their advice was valuable or not it did not prevent two of these lairds quarrelling in the year following, when the Master of Elphinstone complained on Closeburn's behalf that Lag, with John Grierson in Lonikfurd (Longford), Grierson of Bargatton, and Gilbert Grierson, called the 'Tailyeour,' had attacked him and his friends with pistols, in spite of the Acts of Parliament against using 'hagbutts and pistolets.' They did not appear, and were denounced as rebels,⁵ but brought up the matter again shortly after. They stated that they were innocent 'altogidder of that cryme.' The matter was referred to their oath of verity; Grierson of Bargatton deponed he was present with the Laird of Lag, and heard pistolets shot, but neither had nor shot pistolets himself. Gilbert, 'callit the Tailyeour,' deponed he was not with Lag at the time. They got off, but the letters against Lag and Grierson in Longford were put into execution, as the latter had not appeared, and the Lords held it had not been verified that Lag was out of the country, as he contended at the time stated.⁶ Charteris of Amisfield had become cautioner for them for 500

¹ *Reg. P.C.* vi. pp. 88-9 and 636.

² *Reg. P.C.* vi. p. 136.

³ *Reg. P.C.* iii. p. 735.

⁴ *Reg. P.C.* iii. p. 735, see vi. p. 136. See longer list of Maxwell lairds and vassals in *Book of Covenanters' War Committee of Kirkcudbright*, pp. 226-7.

⁵ *Reg. P.C.* vi. pp. 207, 224, and 678.

⁶ *Reg. P.C.* vi. pp. 224-5 and 678.

merks and £1000 respectively ; he was held to be liable for these sums.¹ This referring the matter to the oath of the accused was a frequent proceeding ; sometimes it was to his 'great oath' ; this may often have been done on account of the want of evidence or the difficulty of bringing it from a distance at that date.

Obviously it was not a very satisfactory course. In 1636 James Grierson in Besiwallie was charged by Thomas M'Murdie and his wife with a most violent assault. It was said that 'he stoggit the beds and cut off four of the wife's fingers, and the thumb of their daughter with his whinger, struk her dog though the craig,' got Thomas on the ground and with his knees 'so birsed and bruised him he has made him rimburst,' so as he would never be able to labour for his living, etc., etc. He threatened to take the wife's life unless she would swear never to tell that he had hurt her. This accused got off because on probation the matter was referred to his oath, and he 'being deeplie sworne upon his knees denied the same to be of veritie.'²

About 1604 Closeburn had much trouble with his eldest son ; this or the consequences of it dragged on for about a generation. The matter came before the Council in 1605. The father complained that during his absence furth of this realm on the king's business this eldest son had behaved himself 'maist unkyndlie and unnaturallie to his mother intending to possess himself of Closeburn's whole living.' In the first half of this year he had several times ejected Thomas Grierson of Barjarg, his father's tenant furth of the lands of Roughisle, and let them himself, also he had cruelly assaulted Barjarg because he would not renounce his obedience to Closeburn. He pursued one of his father's servants 'for his slaughter,' and in April, when Jean Cunyng-hame, this son's mother, was drying some corn at the kiln of Closeburn, he came there and 'maist barbarousslie kaist his modir undir his fiet and hurt and birsit hir.' Various other iniquities of the son are enumerated, including his cutting Closeburn's woods and intimidating his tenants. Both father and son appeared before the Council, and afterwards there was procedure in Court of Session, the result of which was decrees were obtained against the son for violent profits and other matters.³ The year before it first came before the Council, Kirkpatrick of Kirkmichael had been security for young Closeburn, that he would not harm Barjarg.⁴ The trouble was brought before the Council again in

¹ *Reg. P.C.* vi. pp. 224-5 and 678.

² *Reg. P.C.* 2nd ser. vi. pp. 291-2.

³ *Reg. P.C.* vii. pp. 147 and 272.

⁴ *Reg. P.C.* vi. p. 818.

1610, when the son was sent to the Tolbooth. An arbitration followed between the father and son, the result of which came to be, Closeburn was to sell part of his barony of Robertmuir (where Wanlockhead mines are), to pay certain debts, and the son was to get certain lands. As late as 1620 Barjarg was pursuing this man before the Council for the violent profits found due some fifteen years before. By 1630 the son seems to have succeeded to his father; we find him put to the horn for a debt of 5,530 marks. Lag as sheriff principal was charged to apprehend him; he found the Castle of Closeburn all locked up, but could not find the laird of it.¹ In 1632 the same man was still struggling with his debts to Barjarg and others; he had paid 13,000 marks to them and was out of prison on protection, which was continued.² Here our information stops. We have been told that in quieter times long after, the Barjarg family acquired Roughisle from the Kirkpatrick through a marriage.

In the same year that Kirkpatrick brought his son first before the Council there was trouble between Lag and Kirkpatrick of Frierscarse. According to the story told, Kirkpatrick had had a seat in the kirk of Dunscore for eight or nine score years; this must have been in the original kirk where the old graveyard is now. He complained that Lag had 'with convocation of the legies casten down the same, and built another in place thair of for his own use.' Then the son of Kirkpatrick of Aliesland and others had 'cuttit down and kawkit this seat to pieces.' Both parties were ordered to enter themselves prisoners in Edinburgh Castle. Lag was certainly in the castle that year; his father had suffered in the same place before him in 1587.³

The Griersons of Barjarg were a turbulent family; they were Lord Maxwell's vassals, which may have been partly the reason they were involved in the troubles with the Kirkpatrick. The most serious difficulty this family got into was through the murder of a person of their own name in 1597.⁴ The complaint in the matter was brought forward in the name of Cuthbert, the son of Gilbert Grierson, and his three uncles, etc. It stated that Gilbert and his predecessors had been past the memory of man kindly tenants of the 10s. land of Nether Barjarg in Holywood (Keir), and his right and kindness thereof had never been disputed till

¹ *Reg. P.C.* vii. pp. 147, 272; x. pp. 679-80; 2nd ser. iii. p. 564.

² *Reg. P.C.* 2nd ser. iv. p. 443.

³ *Reg. P.C.* vii. pp. 70, 75, and 607.

⁴ *Reg. P.C.* v. pp. 424 and 768.

Thomas Grierson of Barjarg, with two of his sons—'Having ane greddie desire unlauchfullie to attane possessioun of the said 10s. land, because the same lay ewest to his boundis and duelling,' not only 'maisterfullie and violentlie intrusit himself and his sons in the landis above written in the month of June last bipast and extrudit the said umquhile Gilbert furth thair of, but also upon . . . last with unlawful weapons, upon forethought felony and malice awaited the said Gilbert at his awne rowme of Bardannoch,' where he was for the time carrying 'certain wand flailis hame to his awne house of Bardannoch and thair shamefullie, cruellie, and unhoneestlie set upoun him and slew him, to the utter wrack and undoing of the said Gilbert (Cuthbert?) his son, being a barne not past the age if aucht yeiris, and his twa puir susteris being baith faderles and moderles.' The defenders did not appear and were denounced rebels. The next year Barjarg and his sons compounded for their escheats, presumably in connection with this matter. What other punishment they incurred is not mentioned.

This is not the only murder connected with Keir parish about this time. In 1606 order was given to denounce Lord Maxwell for not exhibiting Robert Grier of Kirkbride (in Keir) his man, servant, and tenant, who had wounded Thomas Smith in Kellieston and Bessie, his daughter, so that he died shortly after.¹ They were a tough lot of people, those Griersons of Kirkbride, to recover damages from. Evidently the trouble arose out of something of the sort, for we find that in 1596 Thomas Smith, the father of this John Smith, obtained a decree against the same man for coming to the lands of Kellieston, breaking open his house, lockfast places, etc., and spuilzieing certain goods. Smith had had Robert put to the horn in 1602, the son complained to the Council, yet he could not get compensation or goods, though Grier had been six years at the horn. Lord Maxwell was held responsible for this man and denounced for not appearing. The Laird of Lag, 'the defender's chief,' was assoilzied because he declared by his 'grit aith' that the accused was not household man or tenant of his.² In 1605, that is, nine years after the violent theft was committed, the captain of the guard was ordered to seize both the culprit's person and goods for his proud and contemptuous rebellion.³

In 1610 Geillis Rorysone in Penfillane accused James Grierson, the brother of Barjarg, Gilbert Grierson of Auchingibbert, and others of hamesucken, and of coming to his 'peit stak woune by him in that summer and avoudlie upoun fair daylicht keist fyre to

¹ *Reg. P.C.* vii. p. 182.

² *Reg. P.C.* vi. p. 334.

³ *Reg. P.C.* vii. p. 140.

his said peit stak and treasonable byrnt the same peites in asses, and thairwith violentlie kaist down to the ground his keale yaird dykis, and with their cattell eittit, trampit, and destroyit his haill herbis growand within the same.' In August of the same year they came to his dwelling house in Penfillane, attacked him with swords, tried to take his life, giving him 'several body woundis in divers partis of his body to the effusioun of his blood, left him for dead and violentlie reft from him a lyming web worth xx pounds.'¹ A summons was granted, and there our information stops.

Barjarg was not always opposed to the law ; when he was on its side he had his own troubles. In 1615 Sir William Grierson of Lag was appointed sheriff of Dumfriesshire. What knowledge either he or Closeburn, whom we saw previously acting in the same office, had of law does not appear : a strong hand and local influence seem to have been the primary qualifications for a sheriff then. The somewhat dubious antecedents of the Barjarg family did not prevent Lag appointing the laird of Barjarg one of his deputes, which involved him in the following matter the next year. Dame Elizabeth Carlile of Torthorwald owed a certain Mark Gledstanes, a burges of Edinburgh, some money ; he obtained decree against her and she was put to the horn. Mark raised letters of caption, evidently with the object of imprisoning the lady, and charged this sheriff depute to apprehend her. Accordingly, on 13th November, Mark and the Depute 'forgad-dering with the said rebel betwixt Thorthorwald and Lochmaben, the Sheriff Depute laid hold of her and took and apprehendit hir willing hir to ryde with him to Dumfries,' but Dame Elizabeth, 'not onlie refusit to go with him, laying hirself flatlie down upoun the ground, and maisterfullie withstanding the said schiref depute, bot also scho causit raise ane schoute in the country, geving wairning to all hir freindis and servandis who were instructit to attend to that warning and come to hir.' A list follows of Carlyles and others who were said to have come to the lady's assistance to the number of 200 in all 'on fute and horse,' including William Sinclair of Blaus, her spouse, and George Douglas, her son, armed with 'swerdis, gantillatis, plaitslevis, jakis, lanceis, steilbonnetis, with hagbutis and pistolletis,' they not only took her violently out of his hand, but committed a most fierce assault upon poor Mark and wounded him on the head ; two men 'presentit bend pistoletis to the said Markis breist, avowing to

¹ *Reg. P.G.* viii. p. 823.

schoote two billotis through him, quhilk they had not fallit to haif done, wer it not be the providence of God the pistolletis misgaif.' They apprehended Mark and detained him as their prisoner, till persuaded 'by his violent blooding he wes lyklike to die in thair handis, thay put him from thame, and resolveing to mak an end of him, they of new agane invadit and persewit him of his lyff; left ane broken lance sticking fast in him; ane grite nowmer of bones are taiken oute of his head; at the verie tyme of the invading of him thay maist disdainfullie cryit and said that thair sould not be ane penny auchtand to the said Mark before they left him; they reft his purs frome him with (the) letteris of horning and avowit with many horrible aithis to gar him eate thame.' William Sinclair, the husband, appeared and was admitted not to have been present; two others were assoilzied, because they denied the charge on oath; the rest were denounced rebels.¹ What the Sheriff Depute was doing all the time this was going on does not appear.

The following year there was trouble at the mill of Glenesland; Adam Kirko in Chapel and Maisie his sister were taking up the multures of some corn that were being ground at Masie's mill there. Caldwell, the miller from Glenesland, and Grier of Drumloff came armed and attacked them, and with their 'feit and handis strak and dang Masie and maid her blood at neis and mouth and left her lyand upoun the ground for deid and with thair horses over raid Adam, trampit him underfeit, gaif him mony bauch and bla strykis, and left him also lyand for deid.' The charge was held proved, and the accused were sent to the Tolbooth of Edinburgh to remain there at their own expense during the Council's pleasure.²

It was not merely that these old feuds were accompanied with much blood shedding; much wanton destruction of property, apparently even common theft, took place in connection with them also. For instance, in 1602 Cuthbert Grierson of Dal-skairth brought the following matter before the Council. Several Maxwells, Herries of Mabie, Kirko of Bogrie, etc., came armed and searched a house at the Brigend of Dumfries for him and others for their slaughter, avowing to have their lives. When they could not get them there, they afterwards went to the house of Matho Grierson, his uncle, at Marthrewin, one of the complainers—'spuilzied his whole moveables, broke open his chests and took away his whole writs, especially his evidents of his lands

¹ *Reg. P.C. x. p. 443.*

² *Reg. P.C. x. p. 478.*

of Marthrewin. The matter was remitted to the proper judge, but the Council was evidently suspicious about it. The King had been in Dumfries recently, yet nothing had been said regarding the matter, though the complaint had been raised before this; the Lords considered the complainer had executed the summons in this way on purpose to cause the other side unnecessary trouble by bringing them to Peebles, where the Council then was sitting, and the defenders got £20 for their expenses,¹ while both parties had to find law surety. Contrary to the usual course, the surety required from the complainers was greater than what the respondents had to find. Before the century was half over the representatives of both Dalskairth and Bogrie were prominent Covenanters.

In another case in 1597 the complainer said Watt Irving of Robgill and others 'brak the syde of his stane hous enterit thairin and thifteouslie staw and away tuke furth theirof aucht oxen, ten ky, and twenty sheep, with his hail insicht pleinnessing and moveables with ii^c [200] markis,' which they had divided among them to the complainer's heavy wrak and heirship. The defenders did not appear and were denounced.²

In 1613 there was a complaint in connection with Longford on the Laird of Lag's estate, near what is now Carsphairn. Some M'Adams and others masterfully broke open the locked doors of a house and carried them away; with saws, axes, etc., 'they cutt seive the hail geistis and ruiff' of the house, threw the same to the ground, and carried off all the timber work. They got off, the matter being referred to their oath, and they swearing it was not true.³

In those times to compound for a murder was not unknown. The Earl of Galloway had brought a case against Lochinvar and others for resetting a criminal in connection with the death of a man described as a poor gardener; the earl said he was his man; the other side contended he had nothing to do with the earl. The matter had been in treaty for a settlement, and offers of satisfaction had been made. In order that the latter might be adjusted, the earl gave several assurances to the accused to travel freely and do business in the country, so that if there was any reset it was done during the time of this assurance. It was contended that the object of the prosecution was to annoy Lochinvar, who was residing in England, and could not possibly appear,⁴ so the matter was continued.

¹ *Reg. P.C.* vi. p. 475.

² *Reg. P.C.* v. p. 380.

³ *Reg. P.C.* ix. p. 532.

⁴ *Reg. P.C.* 2nd series, iii. p. 557.

Charges of hamesucken—that is, coming to a man's house with the intention of assaulting him and doing so—are now rare; in the sixteenth and seventeenth centuries they were common. Fire-raising was more frequent; among the common offences were thefts of farm animals, particularly on the actual marches. This appears not so much from the *Register of the Privy Council* as from the Justiciary trials. A Circuit Court was held at Dumfries in 1622. Most of the indictments at it were for such crimes as 'the steiling of twa fat schein,' 'twa yawis,' 'ane stott,' 'four rouch unclippit schein,' 'fifteine wedderis,' 'a carcasse of salt beiff,' 'ane meir of four yeir auld,' 'ane greit swyne,' 'a three yeir auld quay,' 'thrie nolt,' 'ane bull,' etc. Among the accused were Johne Armstrong, 'callit Bauld Jok,' and Archibald Irvine, 'callit Gawin's Ritchie.' The convictions show Bauld Jok's fate was to be 'drounit in the Watir of Nith ay quhilk he be deid.' Five others were condemned to be hanged.¹

Formerly most of the important landowners had charters giving them within their own lands jurisdiction, both civil and criminal, with powers of pit and gallows—that is, capital powers²—equivalent to the French 'high and low justice.' The number of 'Gallow Hills' through Scotland shows that these powers were not allowed to rust. As a man could be hanged for stealing, and this was common, the number of executions must have been appalling. This was not peculiar to Scotland. Though our land may have been more turbulent than England, the executioner was equally busy there in those days. During the reign of Henry VIII. 72,000 persons were executed.³

There is a specious glamour over these Border rovers, with their reckless life of danger and their quaint sobriquets. They have been immortalised in ballads that are hardly historical and show only the attractive side of the story. The account given of one by Sir Walter Scott shows us that the reality was a very sordid life of lust, blood, and rapine;⁴ yet in the very instance he gives, though the ruffian had been most justly condemned for his many and repulsive misdeeds, and the villainy of his life was known by his own confession, we find a powerful laird endeavouring afterwards to take revenge for his execution.

¹ Wilson's *Annals of Hawick*, pp. 194-214.

² Cosmo Innis, *Legal Antiq.* p. 59.

³ Macaulay's *Essay on Southey's Colloquies*.

⁴ Scott's *Minstrelsy*, 1802 Edn., Introd. p. cxv.

The ruling powers were sometimes not very consistent in their enactments, which cannot have aided the enforcement of the law. For the defence of the realm they compelled the lairds to supply themselves with arms; for the peace of the realm they prosecuted the same men for using these weapons. One of the common headings in Pitcairn is 'Shooting of Pistolets.'

In such a state of society, with its many private feuds and quarrels, these numerous jurisdictions must often have led to unsatisfactory results. The government kept some check on their actions, and if the baron's actions in his judicial capacity were called in question he might get into trouble. We find an illustration of this in connection with the Drumlanrig family. Margaret Newlands, relict of Thomas Johnstoun of Carsborne, complained to the Council that Sir James Douglas of Drumlanrig had resolved to possess himself of her 'kindly rowm' of Carsborne, which she and her husband held of him. She stated that Douglas came one night with his servitors, all armed, to their house, where, 'he being their maister was lovingly ressavit,' and remained almost till break of day. Then craftelie and cullordlie, under the pretext of friendship, he willet her husband 'to go with him to Drumlanrig.' Her husband put on his 'butis' and did so, but on his arrival there he was cast into 'a strait prison.' Then Sir James 'causit certane personis deale with him anent quhat sowmes of money he would gif for a new rentell and farder richt of the said rowme.' He agreed to pay 500 marks, and paid 400 of this, on which he hoped he would have been freed from prison, and that 'he and his spouse sould have bene sufferit to have brookit the said rowme, but undir cullour of law and schaw of justice,' Sir James, by a led assize of his own servants, 'caussit unjustlie convict her umquhill husband of certane capitall crymes (quhair of he wes most innocent) and thairwith executed him to the deid.' He thereafter 'craftelie and subtilie concluding to eject hir and hir fatherles bairnis out of the said rowme, did urge hir ather to pay a yeirlie tewtie abone the double of the avail of the said rowme or to leive the same,' with the result that he 'hes violentlie ejectit thame thairfra.' Both parties appeared. The answer of Douglas was that Johnston was a fugitive for theft and reset of theft; that he as lord of the regality of Drumlanrig had apprehended him, imprisoned him in Drumlanrig, and tried him by a jury, by whose verdict he was 'most worthelie execute and hangit to the deid.' He produced the proceedings in the Court of Regality. Johnston had been declared a fugitive on 17th May,

1603, and again on 24th December, 1606. He was accused before that court of 'common theft, infang and outfang.' The names of the jury are given. They were chiefly from Keir, which was not under Drumlanrig at the time, and most of them lairds, two being Kirkpatrick's and six Griersons, including Barjarg and his brother. They found him guilty, and he was adjudged to be taken to the place of execution beside the barns of Drumlanrig.¹

The Lords of the Council acquitted Douglas. It certainly sounds as if he had not proceeded without good grounds; still, one would have liked to hear the cross-examination in the case. Had Drumlanrig had any negotiations with Johnston about his rent while in prison? Why was there an interval of three and a half years between the two proceedings?

In 1612 the heir of Drumlanrig was accused on a charge of having 'invaded William Kirkpatrick of Kirkmichael, taking him prisoner at Dressetland, carrying him to Drumlanrig and keeping him there for six or seven days.' Kirkpatrick gave Douglas a letter stating that the prosecution was raised without his knowledge, and was untrue, so the accused was acquitted. The Drumlanrig family seems to have been very successful litigants.

We have seen what complaints were made regarding Drumlanrig's exercise of his private jurisdiction, but even being a sheriff and representing the King did not free officials from criticism to the authorities. In 1621 Lag was sheriff of Dumfriesshire. A Robert Philip wrote the Commissioners of the Middle Shires a long letter as follows: 'Pleis your lordships thift in excessis nichtlie in Annandale, Eskdaill, Ewisdail, and the nethir pairtis of Nithisdaill, sa that in all pairtis of the cuntreyis thair is nichtlie mony stoutis committit, and quhen men that wantis thair geir dois bot speik of ony brokin man, thay sueir till burne all that the trew man hes, sa nather the ministeris in the cuntrey in Annanderdaill nor uther trew men dar, for feir of greittar inconvenientis and skaithis tak upoun thame to speir stolin geir, bot lymmeris ar sa insolent and unreullie because thair is not ane gaird nor na uther havand commissioun till apprehend lymmeris, that thair cair nocht quhat thair do, and sa in this caise the cuntrie is wraikit in all pairtis. And now laittle this last oulk, thair wes amang mekill mair, sum geir stollin fra servandis of the Laird of Laggis in ane pairt of Annanderdaill that is callit Rökkell; and albeit honest simpill men durst nocht

¹ *Reg. P.C.* viii. pp. 445-6.

speir thair geir nor promeis saw silver, yett he has gevin geir and gottin his mennis geir speirit ; and he being this yeir Shireff he hes tane ane of the theiffs that duellis in Torthorwall callit Roddane, and ane uther that duellis upon his awin land in Rokkell, and hes committit tham in the pledge chalmer in Drumfreis, and thair haif confest the thift, and hes gevin up sundrie marrowis ; and *gif thair be richtlie handillit yt apperis thair can giff up mekill mair, for thair ar puir bodyis and hes nocht quhairupoun to sustane tham selffis in prisone.* Thair is sundrie honest men in Annanderdaill, sik as the Laird of Brydkirk and sum utheris that hes money freyndis hes tryit thair guidis stollin fra tham, and the steiellaris ar fled for the present. Bot except thair be sum that hes commissioun and power till tak tham as the gaird had, thair will nocht by lang idill, bot (y)it steill mair, for thair will agre with silk men as ar of power and freyndschip ; bot for uther trew men that hes not power, they respect them nocht,' etc. Possibly this letter gives a highly coloured account of the state of the county ; one would expect an improvement instead of a retrograde movement as the writer indicates. The suggestion that a thief should be starved in prison on the chance that he might disclose more stolen goods, is as much at variance with modern views as the unsafe condition of Dumfriesshire in 1621 differs from its modern security.¹

Sometimes when the accused had been put to all the trouble and expense of going to Edinburgh, their accuser did not appear. Complainers were also liable to be intercepted. In 1618 a certain Geillis Roryson complained that she had an action before the Council against Lag, Barjarg, etc. She stated that while on her way to Edinburgh about this, she was met on the highway beside Keir Mill by Grier of Beuchane and others who were armed and sent out by the opposite side ; they seized her, imprisoned her for six days at Keir Mill till the diet fixed for her case was past and the other parties acquitted. After this, on a Sunday, several other people, chiefly Griers, came to her house in Penfillan, 'tirrit' the same, broke open her 'kistis,' cut down her lint and kail, assaulted her seriously till she waded into the river, and threw stones at her there. She failed to prove her charge.²

As time went on we find the nature of many of the complaints changing ; family feuds are rarer, the church and trouble arising out of theological differences come more into them. As early as 1590 several persons, one of whom was from Keirside, were

¹ Reg. P.C. xii. p. 775.

² Reg. P.C. xi. p. 411.

charged as troublers of ministers.¹ In 1628 an order was given to apprehend a certain Gilbert Brown of Baglee and others for refusing to submit to the discipline of the kirk. Elsewhere this man and another are described as 'twa excommunicat papists.'² Various other similar cases are given, of which one that happened in Dunscore may be taken as an example. It occurred in 1631. John Moffat in Craigenputtoch and Robert Hannay his tenant 'took the lawer aff its proper place in the pulpit, and to the contempt of that holie actioun despitefullie slang the lawer with the water being in the same in the mids of the Kirk.' Also he broke down the churchyard walls and fed his cattle there. What became of Moffat we do not hear, but Hannay complained that though he had given satisfaction to the kirk session of the parish, and had a certificate from the minister, who was present, yet he had been detained in the Tolbooth for eight days; in spite of this the case was remitted to the Lords of the High Commission for trial.³

In 1676 the heritors of Dunscore were fined 5000 marks for a violent assault and robbery some people committed on the minister and his wife in the manse; there were other similar cases in Dumfriesshire and Galloway.⁴

Only a few of the numerous feuds, quarrels, and outrages in Upper Nithsdale alone recorded in the minutes of the Privy Council can be referred to here; it is not easy to grasp the meaning of these disjointed and incomplete stories of an utterly different state of society. The fact of being mixed up in such affairs did not in the least indicate that you were regarded as disreputable. We find the nobles and leading lairds accused at one time of bloody assaults or worse; at another period we may meet the same person arresting criminals under a special warrant from the King, or attending generally to the county business and its peace; we find them elected by the freeholders as members for the shire serving on juries, exercising responsible offices, or summoned to advise the Government how the general lawlessness might be put down. Evidently this part of Scotland was looked upon as particularly unruly, and its condition gave anxiety to the ruling powers at the time. The lawlessness was not, however, confined to parts such as the Highlands or the Borders; even in the

¹ *Reg. P.C.* iv. p. 522.

² *Reg. P.C.* 2nd ser. i. p. 413.

³ *Reg. P.C.* 2nd ser. iv. pp. 223, 311, 654.

⁴ *Reg. P.C.* 3rd ser. iv. 509; v. p. 155; iii. pp. 100 and 324.

High Street of Edinburgh there was an affray between the Lairds of Edzell and Pittaroo in 1605 which lasted from nine at night till two in the morning.¹ The people involved in these feuds were the very men by whom a large part of the jurisdiction of the land was exercised in virtue of their baronial courts, in which they used their capital powers. How far the wrongdoers suffered it is difficult to say. Sometimes they got off practically scathless; we have seen the wrongdoers in one instance sent to prison where they had to support themselves. Often they were punished, at least to the extent that the culprit or his cautioner had to pay a fine or indemnify the injured person; for instance, we meet one man fined £100 for wounding two men.² In 1623 Gilbert Grier of Castlemaddy had to find security to pay Gilbert Geddes £100 if found due by the Council for wounding him;³ or the culprit had to meet the amount in his bond of caution, which came to the same thing. Punishment was more often inflicted as time went on and the Government began to tighten its hold on the country, matters which might have been passed over at an earlier date on the parties merely finding security to behave, received exemplary punishment at a later date. For instance, about 1614 Drumlanrig was fined 3000 marks for sending six 'cartellis in scar and terror' to others in connection with a dispute between Lords Sanquhar and Kilmaurs and himself.⁴ It is likely that much of the debt in which we find many families involved owed its origin to such troubles arising either through fines paid to the Crown or compensation paid to the injured.

While the incidents mentioned indicate a general state of lawlessness, it by no means follows that we can accept all of the complaints without criticism. Evidently the stories lost nothing in the telling; the agony is long drawn out, and 'the greit effusion of the Compleineris blude' bulks largely in the plaintiff's tale: it is surprising how often he recovers after being left 'lyand on the ground for deid.' Probably most of the incidents were not the one-sided, unprovoked assaults which the complaint would indicate. Very often both sides were made to find security; this indicates a common culpability. Sometimes parties, who at first hold themselves out as mere onlookers or even as peacemakers, are found to have been participating in the fight. The amount

¹ *Memoir of Chan. Seton*, by Geo. Seton p. 69.

² *Reg. P.C.* ix. p. 648.

³ *Reg. P.C.* xiii. p. 373.

⁴ *Memoir of Chan. Seton*, by Geo. Seton, p. 109.

of harm done by all the shooting of 'pistolets and hagbuttis,' accompanied by the direst threats, was slight : when the borderer took to cold steel he accomplished more, for the pistols were liable not to go off ; yet there was much brandishing of swords and shaking of daggers that came to little. It is suggestive how Closeburn knew when his opponents were coming to trouble him about Roughisle and managed to be on the spot in time with a larger force than theirs. From the fact that the differences between him and his son went to arbitration, we should gather the son had something to say for himself. Had the death of Cuthbert Grierson been merely a brutal murder, such as those by the Muirs of Auchendrane about the same time, the Barjarg family could hardly have held up their heads again, while in point of fact we find them holding a responsible office within twenty years of it, and they sat on juries and took their full share of the troubles in between.

The amount of caution or security found in those times in matters general and particular, civil and criminal, was enormous ; it might be under a general bond that they would keep the peace, as in 1597 ;¹ or against thieves, as in 1602 ;² or that they would each be liable for their servants, tenants, and followers.³ It might be for a debt, though more commonly it was found in connection with some act of crime or turbulence, as the instances given show ; or that a person already at the horn would not be resetted or assisted ; sometimes it was merely that they would obey some Act of Parliament, such as that compelling them to buy armour.⁴ Some instances of this have been given, but even in connection with the troubles of which specific mention has been made, most of the references to the finding of security have been omitted. This process, or some analogous one, was the great engine by means of which the peace of many European countries was preserved and improved. In our country it might be in connection with some special application, such as lawburrows, or the ordinary Bonds of Caution, with catalogues of which many pages of the Privy Council register are taken up. The English expression, 'being bound over to keep the peace,' is still familiar to us, and France and the Netherlands had similar forms of procedure.⁵

Before the first quarter of the seventeenth century had expired a distinct improvement had taken place in the condition of matters ; we find the lairds, particularly the more powerful,

¹ *Reg. P.C.* v. p. 745, etc.

² *Reg. P.C.* vi. p. 825.

³ *Reg. P.C.* iii. p. 736.

⁴ *Reg. P.C.* vii. p. 40.

⁵ *Scot. Hist. Rev.* v. p. 515.

appearing less and less before the Council as culprits. If lawlessness had not disappeared, it was at least chiefly confined to a lower grade of society and not done so openly. Yet as late as 1626 Stapleton in Annandale was fortified and held by 'unanswerable persones' against the authorities, Edward Irving, sometime of Stapleton, being the leader, accompanied by a number of fugitive 'lymnaris of the late Bordowris.' In 1635 Commissioners of the Borders were appointed to put down malefactors; the remarks in connection with these commissioners indicate that the Borders were still in a bad state.¹

We believe the improvement to have been due to two causes. James VI. clearly had his defects; it is to his credit that he steadfastly set his face against this lawlessness, even before the Union he had reduced it; after his succession to a richer and more peaceable kingdom he was strong enough to put it down. In 1508 the Crown was too weak to prosecute Lord Maxwell for the fight at Dumfries when he defeated the Crichtons,² though Drumlanrig and others went through the form of a trial for the matter. In 1584 this lord was able to defeat the combined forces of both the Crown and the Johnstons, and in the next year the Estates voted £20,000—a large sum in those days—for an expedition against him, which came to nothing. By 1613 the Crown was strong enough to have the son of this lord executed for the murder of his rival Johnston.³ Down to the Union the Border outlaw had his uses, at least he was a thorn in the side of the rival kingdom; once the Union had been accomplished it was every one's interest to suppress him. The position of matters changed completely: the marches disappeared, and the wardenry ceased to exist; the Border counties became known as the Middle Shires; the Border laws were repealed. Peace came slowly, but the executioner had much work to accomplish first.⁴

It requires an effort to realise what life was in those days. For a person to find his way so far now would be a serious matter for him. What must a journey from Keir to Edinburgh have meant long ago before railways were thought of, when the only roads were unsafe bridle-paths. Possibly your opponent might arrange that you should be intercepted on the journey. And yet this journey

¹ *Reg. of Gr. Seal*, 1635, p. 159; see also *Book of Carlevarock*, ii. pp. 50-1.

² M'Dowall's *Dumfries*, 3rd edn. p. 177.

³ Sir H. Maxwell's *Hist. of Dumfriesshire, etc.* pp. 204-220.

⁴ *Hist. of Roxburg, etc.* by Sir Geo. Douglas, chap. xiii. p. 334.

had to be undertaken by poor people who previously might not have left the parish where they were born. At the end of the journey the person whom the injured man had to confront might be the most powerful laird or noble in his district, a friend of the individual members of the Court, and possessed of many means of making matters uncomfortable for his poor neighbour afterwards. It required a tough race to face all this, yet the peasantry did so.

One of the greatest puzzles about such times is the amount of law which existed alongside of great disregard of the law. We read of culprits, and particularly thieves, being regularly tried and executed; we know that in the worst periods the succession of the same families to estates was likely to continue longer than in our own time: the Kirkpatrick's had been in Closeburn for three hundred years, and were to remain there for two hundred more. One would imagine a laird could hardly have been safe to stir outside the immediate neighbourhood of his castle, yet we know that most of them held more or less widely scattered estates. All of these lands required to be visited and protected; they were generally in the owner's charter of barony and all under the one jurisdiction.

Within a few years the whole condition of matters changed; feudal strife diminished, troubles arising out of conflicting religious tenets took its place: the people, whose violent lawlessness the Crown had with so much difficulty curbed only shortly before, banded themselves together to resist what they held to be the tyranny of the King. In other words, one generation saw them moss-troopers; the next saw them Covenanters.

ROBERT GRIERSON.

Municipal Elections in the Royal Burghs of Scotland

II. FROM THE UNION TO THE PASSING OF THE SCOTTISH BURGH REFORM BILL IN 1833.¹

AFTER the union the corruption of Scottish burgh management became even more marked. Another inducement appeared, the control of parliamentary elections, and another competitor stepped forward, the government. James VII., of course, had tried to secure the services of the commissioners of the burghs, but he had relied principally upon direct methods, removing his opponents from office. The Hanoverian government had an easier task, as the number of representatives was much smaller, only fifteen members being sent to Westminster by the Scottish burghs. They were elected by delegates chosen by the town councils, and it was generally necessary to bribe the delegates, not, says Lord Cockburn, 'that the councils were left unrefreshed, but that the hooks with the best baits were set for the most effective fishes.'² In many of the burghs the neighbouring landowners had great influence which was generally at the disposal of the government. The prospect of some gain from a share in parliamentary elections and the hope of assisting in the disposal of the common property of the burghs induced people to seek office, and also caused many quarrels in the towns. Disputed elections and double elections were common. In 1734 an act was passed to prevent these double elections, declaring that at the annual elections no magistrates or councillors were to separate themselves from the majority in order to elect another set of magistrates.³ The prevalence of these abuses was ascribed to the vicious system by which each council elected its own successor, thus enabling the

¹ See *Scottish Historical Review*, xiii. p. 111.

² Henry Cockburn, *Memorials of His Time*, p. 88.

³ E. and A. Porritt, *The Unreformed House of Commons*, ii. 122-3.

government to be kept in the same circle. When the sets of the burghs were written down by order of the convention in 1708 it was found that this system, with some minor differences, was practically universal. Alterations were made in the constitutions of a few of the towns in the eighteenth century, sometimes by the intervention of the convention, before which, in accordance with the act of 1706, disputes were brought, if both parties agreed to refer their differences to this tribunal. A few changes were made in sets by decreits arbitral of private persons. The disputes seem to have been due more often to jealousy on the part of those excluded from office than to any ardent desire for reform in general, and any changes that were made were in detail, not in principle. Wodrow wrote in 1727 that 'this horrible corruption in the choice of Members of Parliament will, some time or other, throw us to convulsions, if some speedy remedy be not applied. . . .'¹ The convulsions were, however, long in coming, though individual burghs were often distracted by lengthy feuds.

In Queensferry there was a litigious person called George Hill, who both in 1710 and in 1725 complained about the elections in the burgh. In 1710 he declared that the last election had been 'by partialty and mastership,' as four of the old council were not allowed to vote nor were the burgesses who were not of the principal faction. By the ancient custom of the burgh all burgesses should have been allowed to vote, so the election was unlawful and the excluded burgesses thereupon elected a council of their own and raised a reduction before the lords to suspend those whom they called the 'usurping' magistrates. But this reduction was only raised until the convention should meet, 'the proper court in which to find remedy.'² Both parties submitted to the convention, which issued a new set for the burgh in which the election of the magistrates was vested in eighteen councillors and fourteen burgesses. Hill complained again in 1725 about the Queensferry election, and then the magistrates complained of his dealings with the revenue when he was in office; but in the end both parties submitted to the convention, which issued a decret arbitral to settle the disputes.³ Some of the burgesses of Dunfermline appealed to the convention about various customs that

¹ R. Wodrow, *Analecta*, iii. 435.

² *Convention Papers*, B. 226. *Representation . . . by George Hill . . . Answers for the present Magistrates.* (City Chambers, Edinburgh.)

³ *Convention Records*, iv. 508-9.

had been lately introduced in the elections tending to restrict the magistracy to the same people. A committee was appointed to look into the matter, and the burgesses and the town council submitted to its decision. A new set was drawn up intended to secure that the same people should not remain on the council for more than two or three years, and that 'concerts and engagements' by merchants or craftsmen for influencing the elections in favour of their own class 'known as chapeling, whereby members are not at liberty to proceed according to their consciences but according to the opinion of a majority were it never so wrong' should be prevented.¹

The cases of Inverness and of Edinburgh were the most important with which the convention had to deal, as they led to the decisions in the court of session which affected its position. According to a set given to Inverness in 1676 the trades were excluded from the town council, so in 1722 they made application to the magistrates and council for redress, and it was arranged that they should have three members on the town council, subject to the approval of the convention. When the matter was brought up before the meeting of the commissioners in July, 1722, this alteration in the set was approved, but the commissioner from Dundee protested and was supported by Aberdeen and Cupar, on the grounds that the convention could not alter a set which it had given forty years earlier; that the precedent was bad, as burghs might alter their constitutions at pleasure, and so magistrates might scheme to keep themselves in office; and that the changes were an encroachment on the rights of the guildry. It was answered that the convention could alter sets which were not given by charter or by act of parliament; that the inhabitants of Inverness were agreed upon the desirability of the change; and that the concession to the trades was too small to hurt the interests of the guildry. Nevertheless some members of the guildry objected, and declared that the convention had no right to alter the constitution.² As the set had originally been given by the convention the guildry were not on very strong ground when they objected to a change being made by the same authority, and it was found that the convention had power to make alterations in sets which it had given.³

That this power did not extend to making alterations in sets generally was found some years later, when a case concerned with

¹ *Miscellany of the Scottish Burghs Records Society*, pp. 240-60 (1723-4).

² *Convention Records*, v. 312-3, 319-20.

³ *Morison, op. cit.* iii. 1839-40.

changes in the constitution of Edinburgh was brought before the court of session. The fourteen incorporations of the city had each to send in a leet of six persons to the town council, which shortened it to three, from whom their deacon had to be chosen. Six of these deacons were members of the council, the other eight had votes in certain questions. As they were anxious for complete freedom of election it was proposed that the authority of the convention should be invoked to make such a change. The lord provost and others objected, however, and the question was brought before the court of session. One party asserted that the convention had no parliamentary power of altering a set, and that in the cases where it had made changes both parties in the burgh had submitted. The other declared that the sets of the burghs very probably originated in the chamberlain's court; that the convention came in place of the chamberlain, that it had power to alter sets, and that such a power had been recognised by the court of session. The judges this time, however, found that the convention had no power to alter the set of a burgh.¹

Two acts were passed in George II.'s reign to guard against illegal elections, but by the first only a magistrate or councillor was given the right to complain of illegal elections, and by the other only 'any constituent member at any meeting for election previous to that for the election of magistrates' could complain of wrong done at such a meeting.² Nevertheless, in spite of this act, it was decided by the court of session in 1818 in an Edinburgh case that constituent members of various corporations for elections of deacons held before the election of 1817 had no title to bring complaints against these elections, *i.e.* that none but actual members of the town council had the right of complaint.³ Two Wigton burgesses complained about an election in 1781 on the grounds that the appointed day had been changed by the bailies and clerk erasing an entry in the council book, but the court of session found that the inhabitants were not legal complainers.⁴ In the cases where the elections were found to have been illegal poll elections were generally granted, because,

¹ Morison, *op. cit.* iii. 1861-3.

² 7 Geo. II. c. 16. sec. 7; 16 Geo. II. c. 11. sec. 24.

³ *Report from the Select Committee to whom the Several Petitions from the Royal Burghs of Scotland were referred* (1819), vol. vi. p. 9.

⁴ *Substance of the Reports of the Grievances Transmitted by the Committees of Burgesses of different Boroughs, in Answer to the General Instructions Transmitted by the Committee of Convention at Edinburgh* (1789), pp. 27-30.

said the reformers, the inhabitants had elected the magistrates before the act of 1469 was passed, and therefore, if there was no old council to elect a new, the poll was the only constitutional way of renewing the government.¹

Towards the end of the eighteenth century in Scotland as elsewhere there was an awakening of the spirit of reform, and the scandalous mismanagement of municipal affairs focussed the attention of the would-be reformers on the burghs. Inspired by the *Social Contract*, the writings of Paine and others, they were convinced that the remedy for all the rampant evils which they saw lay in popular election, which, they said, was established in Scotland, before the act of 1469 'erected the standard of Despotism, where Liberty had so long resided, and . . . covered the country with the darkness and torpitude of slavery, in place of the light and spirit of freedom.' Certainly the vices of the self-elective system were very evident. Some towns were held firmly in the clutches of a certain family of the burgesses, as Brechin, where John Mollison was elected provost in 1747, and his son John, a minor, was made a councillor. Mollison senior continued in his office until 1766 and was succeeded by his son, who was still provost in 1789, while the family connections had filled most of the other offices. In Cupar each councillor nominated a successor, who elected him again the next year, and so thirteen councillors went out of office one year and returned to it the next. In other burghs the neighbouring nobles or lairds were at the head of affairs. The Galloway family managed both Whithorn and Wigton, though most of them did not live in the neighbourhood, and Lord Garlies, who was on the council of both, was in the navy. The yearly elections in Dumbarton were directed by the agent of the Duke of Argyll. Such power made corruption easy, both in parliamentary elections and in the financial affairs of the towns. In Dunfermline, where two councillors retired every year and were generally brought back to office in the next, John Wilson, who died in 1778, had been on the council for nearly fifty years, and during the greater part of the time he had 'the address to manage the whole council in every political contest.' Great efforts were also made to influence single municipal elections when a parliamentary contest was to follow, and the fewness of the electors favoured such interference. Inverkeithing was the scene of a heated dispute in 1781 between Captain Haldane and Admiral Holburn 'with a view to the

¹ *Edinburgh Review*, 1818, vol. ix., article on 'Burgh Reform,' pp. 528-1.

approaching Parliament.' The admiral 'got possession of the magistracy' by bringing pressgangs into the town who kept some of the electors away from the election and overawed others. The rest were bribed, but as the other party was also guilty of bribery the election was disallowed altogether and a poll election took place.¹

If the burgesses found it difficult to prevent the government of their town from coming into and remaining in the hands of an individual or a clique they had still greater difficulty in protecting their interests from the office holders. The sources of income had greatly diminished in many places, owing to the alienation of property and to the grant of long leases at low rates to the members of the council and to their friends. In Rothesay, where the Earl of Bute's factor had been provost since 1746, most of the good land had been given away at very low rates, and much had come into the hands of the earl, for which he paid £4 7s. 7d. yearly feu-duty. One provost there took a field and kept it without paying rent of any kind, and the same provost gave a corner of ground to a gentleman to 'make him convenient,' and when a complaint was made he swore that 'it was in his power to give all the lands away without asking a question of any person.' From Dumbarton it was reported that all the lands granted in 1609 were alienated for a feu rent of £15, whereas the real rent was more like £1000.²

Occasionally appeal was made to the convention, which had formerly tried to insist that the accounts should be submitted to it. The affairs of Burntisland engaged the convention for a long time. The town applied in 1718 for someone to be appointed to look after their common good, as there were no magistrates in the town. Apparently the former magistrates had collected the revenue from 1715 to 1720 and had never made any account of their proceedings, so the convention appointed a committee to examine into all the financial concerns of the town for these years. They found that the accounts were most unsatisfactory and that considerable sums of money were not accounted for at all, and ordered that the town clerk should be suspended from office and that in future the accounts should be stated yearly.³ The magistrates of some burghs applied to the

¹ Morison, *op. cit.* iii. 1882-3.

² Most of these instances are taken from the *Substance of the Reports of the Grievances*. . . .

³ *Convention Records*, v. 196, 309-10.

convention for authority to alienate or to grant long leases, a permission which was almost always readily given. The commissioners of 1835 said that the assumption of such a power was unwarrantable,¹ but one of the writers on reform in 1787 declared that the convention only meant to give advice, but the magistrates wanted to 'procure a cover for a shameful profusion and dilapidation of the public property.'² No reference was made to the convention in two cases about the power of magistrates to deal with the common property of burghs which were brought before the court of session. One of these was brought before the court because the 'low people' of Irvine objected to the magistrates feuing and granting nineteen years' leases of parts of the common muir where they were used to pasture their cattle for a small sum. The lords decided that the magistrates could feu and set tacks for longer than three years, but remitted to the Ordinary to enquire whether such proceedings were advantageous to the burgh.³ In the other case it was decided that the magistrates of Glasgow could alienate the lands of Provan. In this case the money was to be used for the payment of the town's debts.⁴

But it was also over the expenditure of revenue that supervision was necessary, and there was no machinery ready to supply this need. No jurisdiction over accounts existed in the burghs, and the various attempts of the burgesses during this century to find some central board of control had no success. There was also some doubt whether private burgesses could bring an action against magistrates for maladministration. In a case where some Selkirk burgesses accused their magistrates of embezzlement, the court seemed so unfavourable to their case that it was abandoned.⁵ A few years later there was a quarrel in Renfrew, where an action was brought against the magistrates by John Anderson, complaining that they let forty-two acres of a muir of two hundred acres which had been used by the burgesses for pasturage. The convention tried to mediate, but Anderson persisted in his charges, and so the agent of the convention was ordered to concur with the magistrates in defence of the action.⁶ The defenders

¹ *Report of the Commissioners on Municipal Corporations in Scotland, 1835*, Introduction, p. 25.

² *An Illustration of the Principles of the Bill... For Correcting the Abuses... in the Internal Government of the Royal Boroughs... (1787)*, Appendix.

³ Morison, *op. cit.* iii. 2522-4 (1752).

⁴ *Ibid.* iii. 2525-7 (1768).

⁵ *Ibid.* iii. 2515-21 (1748).

⁶ *Convention Records (MS.)*, 1749, July 22. (City Chambers, Edinburgh.)

questioned the right of private burgesses to call magistrates to account for their administration, but the judges declared that the pursuers had a right to carry on the process.¹ Nevertheless in a later decision the judges said that the burgesses could not call the magistrates to account as they had no such 'patrimonial right in these funds and property' which would give them a right to do so.² But whether the burgesses could or could not call the magistrates to account, the power was of little value unless there was some court before which such an action was competent, and in 1771 it was declared in an action against the magistrates of Kinghorn that the court of session had no jurisdiction in 'an action of accounting at the instance of private Burgesses against Magistrates.'³

The result of these actions therefore was to show that the power of burgesses to call magistrates to account was doubtful, and that in the court of session no such action was competent. There remained, however, the court of exchequer, which had been the nominally responsible authority for burghal financial administration since the decay of the chamberlain's jurisdiction, and to this the burgesses turned. The appeal to the exchequer was part of the burgh reform movement. This was the most marked way in which the unrest and ferment of the late eighteenth century influenced Scotland. The reform of the manner of election of the burgh representatives to parliament was advocated in Zeno's Letters, which appeared in the Edinburgh newspapers in 1782 and 1783. A convention of delegates from the burghs was first held in 1784, and in the following year a bill was drafted dealing with the election of parliamentary representatives, and another with the abuses in the government of the burghs.⁴ All these abuses, said Fletcher, one of the most active of the reformers, arose from the 'inherent vices of a system of self-election of Magistrates and Councils.' The bill provided for annual elections of magistrates, the electors to be resident burgesses, and for the appointment of auditors of accounts in each burgh by the guildry and the trades, with rights of appeal to the court of exchequer.⁵ But before the bill came

¹ Morison, *op. cit.* iii. 2539 (1752).

² Report, 1835, Introduction, p. 29.

³ *Decisions of the Court of Session, 1769-1772*, pp. 251-8.

⁴ See H. Meikle, *Scotland and the French Revolution*, for an account of the whole reform movement in Scotland.

⁵ *Heads of a Bill... For Correcting the Abuses... in the Internal Government of the Royal Boroughs...* (1787).

before parliament a test case was brought in the exchequer court, where the burgesses of Dumbarton summoned the magistrates to produce their books and accounts for twenty-five years past, 'seeming to point at an Obligation on the Boroughs to produce their Accompts and Vouchers annually to the Court of Exchequer agreeable to some ancient Acts of Parliament which had gone into Desuetude far beyond the Years of Prescription.' The convention of royal burghs, or the 'convention of town councils,' as the reformers scornfully termed it, declared that the magistrates were answerable to that court for their conduct of affairs, and took upon itself the defence of the Dumbarton magistrates. The lord advocate gave his opinion that the acts on which the pursuers founded their case, those of 1535 and 1693, did not apply, and that the convention had heard complaints in such cases.¹

Therefore the defence declined the exchequer's right of jurisdiction, and asserted that of the convention.² The barons, after a long trial, found that they could not oblige magistrates to account before them for the revenues of the burghs, but the convention's claim was 'reprobated in the strongest manner.' The Lord Chief Baron said that he found no statute giving such a jurisdiction to the convention, and further, that he could not conceive any judicature which would be more improper, and with this opinion the other barons agreed.³

The reformers had meanwhile drawn up a statement of their grievances, and now endeavoured to bring the matter before parliament, strenuously opposed by the 'convention of town councils,' which spent considerable sums on its resistance. Sheridan was persuaded to bring forward the question in parliament, but no success followed his effort. Copies of charters and sets of the burghs and statements of their methods of accounting were called for by the House of Commons, and in 1793 a report was drawn up. This disclosed many of the abuses in the burghs, but Dundas had had no difficulty in getting the bill for reform thrown out when it was brought forward again in 1792.⁴ He declared that annual elections would 'completely check the honest industry and rising enterprise of the people; it would completely destroy every thing that was great and respectable, every

¹ *Convention Records* (MS.), 1786, July 11, 12; Nov. 24.

² *Ibid.* 1787, March 1.

³ *Illustration of the Principles of the Bill. . . .*, App. 4-20.

⁴ H. Meikle, *op. cit.* pp. 23-4, 76-7.

excitement to the love of trade and manufactures through the whole of Scotland.'¹ After this failure some of the enthusiasm for burgh reform was absorbed into the general reform movement, and, later, the successes of the revolutionaries in France caused the more moderate reformers to draw back, and brought discredit upon the more zealous, and for a time the whole movement fell into abeyance.

While the war lasted there was no agitation for reform, but soon after the peace the question of municipal government was again brought forward. The guildry of Montrose in 1816 petitioned the magistrates and council for leave to elect their own dean, and for provision to be made for an annual exhibition of the town's accounts. This was granted by an act of council and ratified by the convention, with the addition that the seven trades might elect their two trades councillors. But objection was made to the election under the new set, and this was sustained by the court of session, and the magistracy was declared vacant. The crown thereupon granted a poll election, and also a new constitution which was more liberal than the old.² The popular election put into office a more independent magistracy and council. Other burghs determined to try to secure similar advantages, and some attempted to get new constitutions or to find flaws in the elections in order to force the crown to grant warrants for poll elections.

In Dundee, where for several generations some individual or family had been supreme in the council, there was a universal desire for some change. The magistrates feared that they would not succeed in getting such considerable concessions as had been made to Montrose, and so they got from the convention authority to have three out of the twenty-one members of the council elected by the guildry and the trades.³ The convention also authorised the guildry and trades of Brechin to elect their dean and trades councillor,⁴ but a petition from Annan for much more sweeping changes, including yearly election of seven councillors by all the burgesses, was rejected.⁵ The affairs of Aberdeen were in great confusion, and the inhabitants hoped that

¹ A. Fletcher, *op. cit.* p. 93.

² *Documents connected with the Question of Reform in the Royal Burghs of Scotland* (1819).

³ *Report*, 1819, p. 31.

⁴ *Convention Records* (Mitchell Library, Glasgow), 1820, July 12 (22).

⁵ *Ibid.* 1818, July 14 (25).

they might get some control over the administration if they could obtain a warrant for a poll election. An election was declared void, but the government had already regretted its liberality in the case of Montrose, and was determined to go no further on the path of change and progress.¹ Therefore, although forty-five signed a petition demanding that the magistrates should elect their successors, and fourteen hundred asked for a poll election, the demand of the latter was set aside, and the old magistrates elected nineteen councillors and office-bearers, of whom only six would accept office. Inverness and Edinburgh also succeeded in getting their elections reduced, but again the crown refused to grant poll elections.² Then these cases were brought before the court of session, the burgesses challenging the right of the crown to grant any other than poll warrants, and the officers of state challenging its right to grant these.³ The burgesses claimed that according to the original constitution of the burghs the right of election rested ultimately with them. The opposition declared that it was not a question of legal right, but that if the election was not void because of any delinquency on the part of the old magistrates, then they should elect their successors. If, on the other hand, they had been guilty of bribery and corruption, the burgesses should elect.⁴

While these legal proceedings were going on in Scotland, Lord Archibald Hamilton had succeeded, by the narrow majority of five, in getting a committee appointed to examine the Scottish burgh system.⁵ The opposition to this proposal was chiefly based on the fear that the agitation for burgh reform was a way of approaching the subject of parliamentary reform. Cockburn says that the news of Lord Archibald Hamilton's victory caused great rejoicing in Scotland, and that Edinburgh 'seemed to have wakened into a new existence, when its civic functionaries were obliged to repair to London, and to open the windows of the council chamber, and let in the light.'⁶ The affairs of Aberdeen, Dundee, and Dunfermline were investigated in detail as well as those of Edinburgh. All were in a state of great confusion, and all four burghs were found to be bankrupt. Aberdeen's liabilities were £230,000, and a large part of this had been contracted by forged minutes. In Dundee, Provost Riddoch had so much

¹ Meikle, *op. cit.* pp. 225-6.

² *Hansard*, 3rd Series, xxxix. 1276-85.

³ Cockburn, *op. cit.* pp. 321-2.

⁴ *Hansard*, xxxix, 1329-30.

⁵ *Ibid.* xl. 178-97.

⁶ Cockburn, *op. cit.* p. 323.

power that the town clerk declared that no one could have been elected to the council had it not been understood that he would support that faction, and there were many complaints of neglect of public works and of the want of a public-spirited magistracy. Dunfermline, too, was in the hands of one party, which had contracted debts, over assessed the community, and done very little for the town with all the funds thus raised.

The petitions to the committee came under two heads: complaints of the system of internal government and of the evils which resulted from such a system. There was no lack of evidence to establish the existence of grievances—want of representation of the inhabitants, want of control over expenditure, of power to call magistrates to account, and to dispute illegal elections, etc.¹ The first report was the most sweeping in its condemnation; the committee as reappointed in 1820 had some members who were not of the progressive party, and the third committee (1821) contained more placemen, and the opinion of the chairman, Lord Archibald Hamilton, was disregarded, and a report produced which he considered insufficient.² Nevertheless it was evident that radical changes were required. Signs of grace were not wanting in some of the offenders themselves. The magistrates of Aberdeen declared that the system of election and the management of affairs were ‘radically defective and improvident.’³ Provost Riddoch of Dundee said that an enactment to enable the burghesses of Dundee to choose their own magistrates, would be ‘a very, very great benefit both to the town and country,’ and in other burghs, too, office-bearers were becoming conscious, like Provost Pawkie, that they were ‘raised into public life for a better purpose than to prey upon the leaves and flourish of the commonwealth.’ In some towns, happily, such as Glasgow and Kinghorn, the evils of the system were counteracted by the ‘virtues of individuals.’

The convention was not yet converted, however, for a motion that improvement in the sets of the burghs was desirable, and that the convention should petition parliament in favour of a change, was lost.⁴ Still less was the government influenced; the evidence of existing abuses failed to inspire it to attempt to remove them, and the people were thus ‘forced to return to their old bondage.’ Lord Archibald Hamilton’s motion in 1822, that the reports of his committee should be considered with a view to

¹ *Report*, 1819, vi. 3-35.

² *Hansard*, 1822, vol. vi. 519-25.

³ *Edinburgh Review*, vol. lx. 515.

⁴ *Convention Records*, 1819, July 14 (39).

reforming the Scottish system of municipal government, was fruitless. The opposition was based on the assertion that any change would violate the treaty of union and infringe chartered rights, but the real reason for obstruction was the fear that municipal reform would entail parliamentary reform.¹ The only change that was made was by an act brought in by the lord advocate enabling burgesses to make complaints about the management of the funds of the towns to the court of exchequer, and providing facilities for inspection of accounts.² The reformers objected to the bill as being very inadequate and leaving untouched the real root of evil, the self-elective principle, and most of the burghs petitioned against it, but it was agreed to.³ Six suits were brought against magistrates in accordance with the provisions of this act, but only one was successful. In the case brought by the burgesses of Nairn in 1823, the exchequer court obstructed the complainers by insisting that the English rules of procedure and means of proving burghship should be followed, and then gave judgment against them.⁴

But the people were thoroughly awakened to the need for reform, as they showed a few years later during the agitation for parliamentary reform. The Reform Bill, of course, took from the town councils the privilege of electing members of parliament, and they were deprived of their power of choosing their successors in 1833, when the Scottish Burgh Reform Bill was passed, before the report of the Commission on Municipal Corporations was published. Lord Brougham said that the bill had to be passed, because of the impatience of the Scots for reform of their 'frightfully vicious corporations,' compared with which 'the very worst of the English boroughs might be held up as a political prodigy of purity.'⁵ This act provided for annual elections of councillors by men with the same qualifications as parliamentary electors, for the annual election of one-third of the councillors, and for the exhibition of accounts for two weeks before the election,⁶ and, together with the Reform Bill, it brought to an end a long chapter in the history of Scottish municipal economy.

THEODORA KEITH.

¹ *Hansard*, 1822, vol. vi. 542-5.

³ *Hansard*, 1822, vol. vii. 1126-8.

⁵ *Hansard*, 1833, vol. xx. 563-9.

² 3 Geo. IV. c. 91.

⁴ *Report*, 1835, p. 30.

⁶ 3 and 4 W. IV. c. 76.

Ancient Munitions Acts

THE Munitions Acts of 1915 and 1916 prohibit the employment of workmen, who within six weeks or other periods specified by the Minister of Munitions have been employed on munitions work, unless such workmen have been certified by their last employer to be free to accept other employment. And the Acts provide elaborate machinery for carrying out this leading provision and for protecting workmen against its abuse. Any person giving employment in contravention of the Act of 1915 is declared by it to be guilty of an offence and to be liable to a fine not exceeding £50.

The freedom of the British Working Man is thus very drastically affected by the Munitions Acts, and the justification of such interference is to be found in the right of the Commonwealth to necessary services on the part of the subject. To many—probably to most of us—this principle and its enforcement by Statute may appear novel and without precedent, and it may be of interest to shew that, in one part of the United Kingdom at all events, the principle and its evolution into Statute made their appearance three centuries ago. In the Aughtenth Parliament of King James the Sext upon the IXth. of Julie 1606, an Act anent Coalyiers and Salters was passed, in terms which bear favourable comparison with modern Statutes, so brief and simple are the terms of this old Scots Act. It is so short that it may be quoted:—

‘OUR Sovereigne Lord, and Estaites of this present Parliament, Statutes and Ordeins that na person within this Realme hereafter shall hyre or conduce any Salters, Coalyiers or Coalbearers, without ane sufficient testimonial of their Maister whom they last served, subscryved with his hand, or at least sufficient attestation of ane reasonable cause of their removing, made in presence of ane Baillie or ane Magistrat of the part where they came fra, And in case any receave, fee, hyre, supplie or entertaine any of the saids Coalyiers, Salters or Coalbearers without ane sufficient testimonie as said is. The maisters whom fra they came, challenging their servants within yeare and day, that the partie whom

fra they are challenged shall delyver them back againe within twenty foure houres, under the paine of one hundreth pounds to be paid to the persons whom fra they passed, and that for ilk person; and ilk tyme that they or any of them shall happen to be challenged, and not delyvered as said is And the said Coalyers, Coalbearers and Salters, to be esteemed, reput and halden as theives, and punished in their bodies viz: Sa many of them as shall receive forewages and fees And the said Estaites of this present Parliament, gives power and commission to all maisters and awners of Coalheughs and Pannes to apprehend all vagabounds and sturdie beggars to be put to labour.'

This Act was extended and amplified by the Scots Act of 1641 anent Coalheuares which is interesting, as it shews the anxiety of the legislature to prevent the seducing of workmen to leave their employment for better pay elsewhere, a practice which has given a good deal of trouble since the present War began. The Act of 1641, which was re-enacted in 1661, runs as follows:—

ACT ANENT COALLHEUARES

'OUR Soverane Lord and estates of this present Parliament Ratifies the elevinth Act of the eighteene parliament of King James 6 of woorthie memorie made anent Coallheuares and salteres with this addition that becaus Watermene who leads and draves water in the coallheuge head in this kingdome and gaitesmen who worke the wayes and passages in the saidis heughes are als necessar to the owneres and maisteres of the said coaleheuches as the coallheuares and beireres. It is therefore statute and ordeaned That no persone shall hyre or seduce any watermen and windsmen and gaitesmen without a testimoniell of the maister whom they serve under the paines conteyned in the former actes in all poyntes and becaus it is fund by experience that the giveing of great fees heathe beene a meane and way to seduce and bring coallheuares from their maisteres. It is therefor statute and ordeaned that it shall not be lafull to any coallemaisteres in this Kingdom to give any greater fee nor the soume of twentie merkes in fee or bounteth under any cullour or pretext and because the saidis coallheueres and salteres and otheres workemene in coallheuches within this Kingdom doe ly from ther worke at Pasch Yule Whitsunday and certane other tymes in the yeer which tymes they employ in drinking and deboishrie to the great offence of God and prejudice of ther maister. It is therefor statute and ordeaned that the saidis coallheueres and salteres and otheres workemene of coallheuches in this Kingdom worke all the sex dayes of the week under the paines followeing That is to say that every coallheuer or salter who lyes ydle shall pay twentie shillings for everie day by and attour the prejudice susteened by ther maister and other punishment of ther bodies'

Salus Reipublicae Suprema Lex was, it will be seen, a maxim approved of in the seventeenth century, and we are merely

re-opening old wells when we recognize it in the twentieth and write it at length in our Statute Book.

The Scots Acts quoted remained in force till 1775, when they were modified and they were finally abrogated in 1779, but, before this, colliers and salters were by the Common Law of Scotland *adscripti* to the collieries and saltpans at which they worked, being in the eye of the law 'necessar' servants 'whom the law obliges to work.' Their status was analogous to that of the *adscriptitii* of Rome and the agricultural serfs of England, and it attached to any children of either sex who began work in the colliery at which the father was employed. Though colliers were only bound to the colliery at which they worked and could not be transferred at the end of a lease, nor when the coal failed transferred to another coalmaster, their condition was servile, and colliers were expressly excluded from the benefits of an Act of 1701 for preventing wrongous imprisonment. But the Burgesses of Rutherglen failed in 1747 to convince the Supreme Court of Scotland that colliers were *ipso facto* disfranchised, on the ground that they were too much under the power of the coal master, who could make them work six days a week and so prevent their voting—the other parties to the case triumphantly pointed out that soldiers were under the same disability.

It is a far cry from the Act of 1606 to the Eight Hours Act and the Munitions Acts, but human nature and the blundering body politic remain much the same. 'Plus ça change plus c'est la même chose.'

ALLAN F. BAIRD.