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## The Suitors of the Sheriff Court <sup>1</sup>

AS early as the time of King David I. each of the great law officers—the Justiciar, the Chamberlain, the Chancellor and the Constable—had his own jurisdiction; and when, about the same period, Scotland was divided into sheriffdoms, the sheriff acted as the King's minister in the execution of the Royal writs,

<sup>1</sup>The material facts with which this paper is concerned, so far as they have been ascertained by me, are to be found in early legal tracts, in the Scots Statutes, in the charters contained in the Register of the Great Seal, in the Records of the Sheriff Courts, in a few decided cases, and in Craig's *Jus Feudale* (Edinburgh, 3rd ed. 1732, I. x. 32; II. iii. 33, xi. 18), Balfour's *Practicks* (Edinburgh, 1754, pp. 272 ff.), and Skene's *De Verborum Significatione* (s.v. 'Sheriff' and 'Sok'). The lists of absentees and jurors in the MS. Sheriff Court Books of Fife (1514-20) and Linlithgow (vol. i. 1541-61; vol. ii. 1551-54, 1556-59; there are numerous later volumes) are of the first importance in dealing with the matter in hand. I am much indebted to Mr. R. K. Hannay, Curator of the Historical Department of H.M. General Register House, for directing my attention to them, and for his invaluable help, counsel and suggestions. The early sheriff court books of Lanark, Inverness, and Dumfries have not been kept with the same attention to detail as the Fife and Linlithgow books, and are consequently of less service. In the *Records of the Sheriff Court of Aberdeenshire*, ed. by D. Littlejohn, Aberdeen, 1904 (New Spalding Club), the lists of absentees in the earliest sheriff court book have not been printed. The following books have also been consulted: *A Compilation of the Forms of Process of the Court of Session, etc.*, Edinburgh, 1809 (containing two tracts as to the procedure in the baron court); James Glassford, *Remarks on the Constitution and Procedure of the Scottish Courts of Law*, Edinburgh, 1812 (App. II.); *Miscellany of the Spalding Club*, Aberdeen, 1842, ii. (containing extracts from the Register of the Regality of Spynie (1592-1601)); *The Court Book of the Barony of Urie in Kincardineshire* (1604-1747), ed. by R. Gordon Barron, Edinburgh, 1892 (Scott. Hist. Soc.); *The Practice of the Sheriff Courts of Scotland in Civil Cases*, by

and in the conduct of cases both civil and criminal.<sup>2</sup> The sheriff's was thus a delegated jurisdiction, and the sheriff's court was the King's baron court.<sup>3</sup>

By a statute of King William<sup>4</sup> it was enacted that 'at the hed of ilke xl dayis ilke schiref sal hald his mutis, and baronis, knychtis and free haldaris and the stewardis of bishopis, abbotis and erlis at thir schiref mutis thai sal be, and gif ony of thaim cumis not thairto thai sal be in the kingis amercyment.' In a passage of the *Quoniam Attachiamenta*,<sup>5</sup> which deals with the attendance of vassals at the courts of their superiors, it is laid down that 'nullus sectator tenetur venire ad curiam domini sui sine legali summonicione . . . Quilibet tamen sectator ad tria placita capitalia sine summonicione venire tenetur,' and we find a statute of 1430<sup>6</sup> prescribing that 'apone the service of Inquestis and of Retouris agayn to the kingis chapell [that] all frehaldaris dwelland within ony schirefdomis comper at the hede courtis in thar propir personis with thar selis, bot gif it happyn thaim to be absent apone resonable causs. And gif ony be absent, in that case that he send for hym a suffiциende gentillman his attorney with the sele of his

J. Dove Wilson, 3rd ed. Edinburgh, 1883 (Introduction); *The Constitutional History of England*, by William Stubbs, 2nd ed. Oxford, 1877, ii. pp. 205 f.; 'The Suitors of the County Court,' by F. W. Maitland, *The English Historical Review*, iii. (1888), pp. 417 ff.; *Select Pleas in Manorial and Seigneurial Courts*, ed. F. W. Maitland (Selden Society), London, 1889, i. pp. xlvi ff.; *The History of English Law before the time of Edward I.* by F. Pollock and F. W. Maitland, 2nd ed. Cambridge, 1898, i. 529 f., 543, 547 f.

<sup>2</sup> C. Innes, *Lectures on Scotch Legal Antiquities*, Edinburgh, 1872, p. 222.

<sup>3</sup> The courts held by the sheriffs 'were truly the King's baron courts' (Ersk. *Inst.* i. 4. 2). See Kames, 'History of Brieves,' *Historical Law Tracts*, No. viii. Edinburgh, 1758, ii. p. 14. The fact that the sheriff's court was so regarded explains how it was that an appeal lay to it from the decision of a baron court (St. 1503 cc. 41, 46, *Fol. Acts*, ii. 246, 254. See also *Reg. Maj.* i. c. 4; *Quon. Attach.* c. 9, *Fol. Acts*, i. 598, 649).

<sup>4</sup> c. 19, *Fol. Acts*, i. 377. An identical provision occurs in the *Reg. Maj.* iv. 13, *Fol. Acts*, i. 634. The term 'freeholders' is commented upon in the case of *Duke of Argyle v. Murray*, 1740, Brown's *Suppl.* v. 680. As to the attendance of ecclesiastical persons see note 83 below, and relative text.

<sup>5</sup> c. 19, *Fol. Acts*, i. 651. The sheriff's head courts are mentioned in c. 5 (*Fol. Acts*, i. 648) of the same treatise.

<sup>6</sup> *Fol. Acts*, ii. 19. It is to be observed that the fact that the sheriff had, without necessity, put persons beyond his jurisdiction upon an inquest was sufficient to invalidate the subsequent proceedings (*John Fleming v. John of Lawmondston, Sheriff-depute of Argyle*, 23rd Oct., 1479; *Act. Dom. Cons.* p. 34; *Lord Avandale, Chancellor of Scotland, v. Patrik of Cleland, Sheriff of Lanark*, 12th Mar., 1478-9, *Act. Dom. Aud.* p. 74).

armys. And swa in the schiref courtis sett apone xv dais warning. And gif it happynis at the court be wayke and not sufficiande in the Rialte within the schirefdome the gentillis of the Regaliteis sal compeir at the warning of the schiref with outyn prejudice of the Regalite till enfors the courte. And thai that aucht comperance and compeiris not salbe in an unlaw of the courte.'

Both the earlier<sup>7</sup> and the later<sup>8</sup> law recognised the principle that no man owed suit and presence unless he was made liable thereto by the terms of his infeftment. Where the tenure was that of ward, the vassal was bound to give suit and presence, unless he was expressly relieved of the obligation, for that service was of the essence of the tenure.<sup>9</sup> What was the effect of tacking on to a blench holding an obligation to give three suits seems to be somewhat uncertain;<sup>10</sup> and a still more difficult problem is presented

<sup>7</sup> *Fragm. Coll.* c. 19, *Fol. Acts*, i. 732; 'The Second Statutes of King Robert the First,' cap. 2, in Skene's collection of treatises and statutes, hereinafter cited as *Skene*. See 'Provisions of Westminster,' W. Stubbs, *Select Charters*, 9th ed. Oxford, 1913, p. 390.

<sup>8</sup> e.g. St. 1540, c. 6 *s.f.*, *Fol. Acts*, ii. 358.

<sup>9</sup> *Bishop of Aberdeen v. His Vassals*, 1630, *Mor. Dict.* 15005. See the cases of *The King v. Johnstone of that Ilk*, 20th Feb. 1502-3; *Act. Dom. Cons.* xiii. fol. 38; and *Alex. Achesoun v. Sheriff of Lanark*, 27th Nov. 1555; Balfour, *Practicks*, p. 279. Generally the service was not expressed in the charter, the common style of ward-holding being 'reddendo servicia solita et consueta' (Kames, 'Constitution of Parliament,' *Essays*, Edinburgh, 1747, p. 35). Before ward-holding was abolished by the Act 20 Geo. II. c. 50, it was presumed to be the tenure of the holding unless another manner of holding was expressed (Craig, *op. cit.* i. x. 27; Stair, *Inst.* ii. 3. 31; iii. 5. 37; Ersk. *Inst.* ii. 4. 2).

<sup>10</sup> Dr. George Neilson kindly called my attention to the complaint of *John Lord Sempill against John Lord Drummond, Steward of Stratherne*, 18th Nov. 1500; *Act. Dom. Cons.* Edinburgh, 1916, ii. 438, which proceeds on the narrative that the former had certain lands called Cragrossy, lying in the said stewardry 'pertenying til him in heretage and haldin of the kingis hienes as steward of Scotland in blanchferme for thre soitis and a paire of quhite spurris, and his soitair comparand at the Skait of Creif in to the thre hede courtis of the yeire, nevertheles the sade steward has distrenzeit the sade Jhone landis of ane unlaw of xls. because he comperit nocht personalye in his courtis.' Parties compearing, the Lords decern 'that the sade steward aucht nocht to call na persone nor personis duelland utouth the stewardry naithir for ward landis nor blenchferme landis nor unlaw thame for thair presens nor yit that thair present attornais for the sammyn, bot that thare soyteris enter til the sade steward courtis as effeiris, and gif the sadis soitouris beis absent nor compeiris nocht, the sade steward proceide and unlaw thame for thair absense as accordis til the law.' It is easy to understand that where the lands were held in blench farm, the addition of an obligation to give suit would not necessarily be equivalent to an obligation to give suit and presence; but the reference to lands held in ward makes it uncertain what were the grounds of the decision.

where the vassal is bound to give common suit. This term seems to vary in meaning according to the subject matter in relation to which it is used. In many cases it appears to purport suit at all the courts of a sheriffdom, barony, etc. It is in this sense that it is used in the directions for keeping the record of an English baron court:<sup>11</sup> 'Then, in the first place, except in the county court, are entered the essoigns of the court thus: A of the common by S of T . . . and so on with the rest; and this means, A essoigns himself of the common suit by S.' Similarly, in c. 54 of the treatise in Skene's collection, entitled 'The forme and maner of Baron Courts,' we find it stated that 'ilke soyter that aught common soyt in court may be essonzied thrice for soyt of court altogether'; and the corresponding passage of the *Quoniam Attachiamenta*<sup>12</sup> provides: 'quilibet sectator curie potest se ter essoinare a curia,' but excepts from the privilege the case of the 'liber tenens,' who owes three suits only at his lord's head courts. The inference that the obligation to give common suit required a greater number of attendances than three is supported by the terms of a concession in favour of William of Carnys and Duncan his son, which runs as follows: 'Conceditur . . . quod ubi ipsi tenebantur in communi secta ad curiam constabularii de L pro terris suis de E et W, de cetero teneantur tantum in tribus sectis per annum ad tria placita constabularii predicti capitalia apud L tenenda.'<sup>13</sup> The language of a proclamation dated 14th and proclaimed 18th April, 1502,<sup>14</sup> points in the same direction. It proceeds on the narrative that the lieges 'are now gretlye injurit hurt and skaithit be shirefs balzeis and utheris ministeris . . . throw the calling of small portionaris and landit men to commoune soyt to shiref courtis, bailze and utheris courtis, quhilks may nocht be sustenit nor haldin up bot gret skaitht and inconvenientis.' In view of these circumstances the King ordains for all time coming that 'na portionare tennent na uthir tennent immediat to him within the availe of ten pund of new extent present entir nor gif ony soyt or soytouris before ony shiref bailze or uthir officaris in ony courtis bot alanerlye thre soytis at thre hede courtis at the principale court place of the schyre and soyt in Justice aire, and that tennentis within xl. schillingis of new extent entir bot a soytour to ye shiref and bailze courtis and ane soytour

<sup>11</sup> *The Court Baron*, ed. F. W. Maitland and W. E. Baildon, London, 1891 (Selden Society), p. 80.

<sup>12</sup> c. 19, *Fol. Acts*, i. 651.

<sup>13</sup> *R.M.S.* i. 180.

<sup>14</sup> *Act. Dom. Cons.* xi. fol. 138; Balfour, *Practicks*, p. 276.

ye time of ye Justice aire . . .’ In one case the reddendo takes the form of ‘sectam generalem ad omnes curias capitales dicti episcopatus,’<sup>15</sup> and seems to be susceptible of the explanation given above. There are, however, cases to which it does not apply. It does not apply, for example, to a reddendo such as ‘communem sectam ad curias baronie de R ad tria placita capitalia per annum,’<sup>16</sup> or ‘annuatim unam comunem sectam ad curias vicecomitatus de F cum wardis &c., cum contingerent.’<sup>17</sup> It will be seen<sup>18</sup> that if a man had different lands ‘lyand discontigue’ but united in and annexed to a barony, in respect of which sasine taken at a specified place therein was sufficient for the whole of them, he was, nevertheless, bound to enter as many suitors, as if the lands had not been so united and annexed, unless there was special provision in his infeftment that one suitor should be sufficient. It appears that the reddendo in either of the instances quoted above was intended to supply such a provision. Further, when lands in respect of which only one suit was due were split up into parts, and separate parts were conveyed to different persons, provision was frequently made that each of these persons should contribute suit in proportion to the part conveyed to him.<sup>19</sup> Thus we find a reddendo such as ‘dimedietatem communis secte,’<sup>20</sup> or ‘cum tertia parte quarte partis unius sectatoris ad curias.’<sup>21</sup> The reddendo ‘unam sectam ad tria placita capitalia’<sup>22</sup>—a very rare form—seems to be equivalent to ‘unam comunem sectam.’

When the obligation to give suit is expressed the form of the obligation differs in different cases. Sometimes it is couched in the most general terms, such as ‘sal pay . . . the soyte’<sup>23</sup> or ‘reddendo annuatim sectam curie.’<sup>24</sup> Sometimes the court at which attendance was to be given is specified. Thus we find ‘sectam curie baronie de K.’<sup>25</sup> Most frequently not only the court but the number of suits are indicated, thus—‘faciendo quatuor sectas curie vicecomitatibus nostris de A ad quatuor placita nostra capitalia infra dictum vicecomitatum annuatim tenenda,’<sup>26</sup> or ‘tres sectas tantum annuatim ad curiam nostram de E ad tria capitalia placita vicecomitatus tenenda ibidem’;<sup>27</sup> or ‘duas sectas ad duo placita capitalia vicecomitatus de A proximo post festa Pasche et S. Michaelis tenenda’;<sup>28</sup> or ‘unam sectam curie

<sup>15</sup> *R.M.S.* v. 2346.

<sup>16</sup> *R.M.S.* ii. 3680.

<sup>17</sup> *R.M.S.* ii. 3587.

<sup>18</sup> See note 45 and relative text.

<sup>19</sup> See note 44 and relative text.

<sup>20</sup> *R.M.S.* ii. 2776.

<sup>21</sup> *R.M.S.* v. 1829.

<sup>22</sup> *R.M.S.* iv. 2303; vi. 221.

<sup>23</sup> *R.M.S.* ii. 473.

<sup>24</sup> *R.M.S.* ii. 3682.

<sup>25</sup> *R.M.S.* ii. 1729.

<sup>26</sup> *R.M.S.* i. 253.

<sup>27</sup> *R.M.S.* i. 67.

<sup>28</sup> *R.M.S.* ii. 3070.

ad capitale placitum senescallatus de K proximo post natale ibidem tenendum.’<sup>29</sup> The question may be asked, what is the difference, if any, in attendance required by an obligation to give ‘tres sectas ad tria capitalia placita,’ and an obligation to give ‘unam sectam apud A ad tres curias capitales ibidem’?<sup>30</sup> Is the latter equivalent to ‘unam sectam ad quodlibet trium placitorum capitalium’?<sup>31</sup>

In some cases the obligation to give presence is expressed. Thus we find ‘cum presentia ad duas curias capitales apud C in festis Penthecostes et S. Martini in hieme’<sup>32</sup> and ‘faciendo dominis de Ruthven servitium warde et relevii et homagii, venientes cum presentia et facientes tres sectas ad tres capitales curias baronie de R.’<sup>33</sup> The requirement of presence occurs with great frequency in grants by religious persons or communities.<sup>34</sup> In some cases, while suit was required at three head courts, personal presence was required at the other courts;<sup>35</sup> while, in others, the obligation to give suit was transformed into an obligation to enter a suitor. Thus, we find the expressions: ‘regi annum sectatorem pro secta habenda in curiis vicecomitatus de E,’<sup>36</sup> ‘sectam . . . per unum sectatorem’;<sup>37</sup> ‘cum uno communi sectatore . . . ad omnes curias vicecomitatus de R’;<sup>38</sup> ‘cum comparantia ad tria placita capitalia in curia de T per unum tenentem de I. . .’<sup>39</sup> Sometimes the alternative of attending in person or by proxy is given thus: ‘respondendo cum presentibus seu sectatoribus,’<sup>40</sup> or ‘comparendo . . . per ipsos aut procuratores,’<sup>41</sup> or ‘per ipsos vel per essonios seu procuratores,’<sup>42</sup> or ‘sectam et presentiam per ipsos aut inhabitantes dictarum terrarum ad tria placita capitalia.’<sup>43</sup>

In early documents, and in some of the decisions cited by Balfour, we find recorded certain settled points relating to the giving of suit. Thus, it is laid down, in the case of an inheritance (‘hereditas’) owing one suit only, that where it falls to several heirs, he who has the chief part shall make one suit for himself and for his co-heirs; and that where several persons are infeft in it, the superior shall have but one suit only, to which

<sup>29</sup> *R.M.S.* ii. 907.

<sup>30</sup> *R.M.S.* ii. 314, 3406, 3610, 3282, 3296, 3668; iv. 2303; vi. 221; cp. ii. 3035.

<sup>31</sup> *R.M.S.* ii. 3039.

<sup>32</sup> *R.M.S.* iv. 1292; cp. 1708, 1778; v. 1336, 2021; iii. 2157, 2174.

<sup>33</sup> *R.M.S.* ii. 3113, 3125, 3227. <sup>34</sup> *l.g. R.M.S.* iv. 1708; v. 129, 260, 681.

<sup>35</sup> *R.M.S.* vi. 363, 564.

<sup>36</sup> *R.M.S.* ii. 600.

<sup>37</sup> *R.M.S.* i. app. i. 88.

<sup>38</sup> *R.M.S.* ii. 3060.

<sup>39</sup> *R.M.S.* iv. 2120.

<sup>40</sup> *R.M.S.* iii. 2545; iv. 2417.

<sup>41</sup> *R.M.S.* iv. 136.

<sup>42</sup> *R.M.S.* iii. 2636.

<sup>43</sup> *R.M.S.* vi. 567.

each shall contribute for his own part, if they have not a warrant bound to relieve them in giving the said suit.<sup>44</sup> Again, if a man had different lands 'lyand discontigue,' but united in and annexed to a barony, in respect of which lands sasine taken at a specified place wherein was sufficient for the whole of them, he was, nevertheless, bound to enter in the sheriff court as many suitors for the said lands as if the same had not been so united and annexed, unless it was specially provided in his infeftment that one suitor should be sufficient.<sup>45</sup> Again, if a man, holding lands of the King for which he owed suit and presence, put his son in fee of the lands to be held of himself, he was himself bound to enter suit and give presence as the King's immediate tenant.<sup>46</sup> Furthermore, a vassal holding lands by service of ward and relief was bound to give as many several suits therefor in every court as he had several infeftments, 'because multitude of infeftmentis inducis and importis multitude of suits.'<sup>47</sup> It is to be observed that while he who held in blench farm could not be compelled, unless there was express provision to the contrary in his infeftment, to enter suit or give presence in his superior's court, or in that of the sheriff, or in the justice ayre,<sup>48</sup> yet if he entered suit or gave presence, he was barred from alleging that his lands were held in blench farm as before.<sup>49</sup> The suitor, except in the case where he owed three suits only, had the right of excusing himself thrice for non-compearance, and escaped fine if he appeared at the fourth court and warranted his excuses.<sup>50</sup> But if he subtracted suit or refused to give it, he was liable to make good to his superior any

<sup>44</sup> *Fragm. Coll.* c. 20, *Fol. Acts*, i. 732; *Skene*, 'The Second Statutes of King Robert the First,' c. 3, we find identically the same terms used in the 'Provisions of Westminster' (A.D. 1259), *Stubbs, Select Charters, loc. cit. sup.* As to contributions to suit, see notes 20, 21.

<sup>45</sup> *The Lord Fleming v. Lord Zester*, 17th June, 1556, *Balfour, Practicks*, p. 277; cp. *St. 1503 c. 45, Fol. Acts*, 11, 246.

<sup>46</sup> *Balfour, loc. cit.* <sup>47</sup> *Balfour, loc. cit.*

<sup>48</sup> *Alex. Achesoun v. Sheriff of Lanark*, 27th Nov., 1555, *Balfour, op. cit.* p. 279. See 'Provisions of Westminster,' § i. *Stubbs, Select Charters, loc. supr. cit.*

<sup>49</sup> *The King v. the Sheriff of Lanark*, 7th Jan., 1510-11, *Balfour, loc. cit.* This rule is illustrated by the numerous protestations which we find in the early sheriff court books: e.g. David Barclay Touch protested that he held his lands in blench farm and that he was not bound 'invenire sectam curie pro eis,' and that whatever was done to the contrary should in no wise prejudice his successors (*Fife Sh. Ct. Bk. fol. i.*); cp. cases of *Earl of Drumlanrig*, 1503, and *Crichton of Newhall*, 1503 (*Act. Dom. Cons. xiv. foll. 175, 178*).

<sup>50</sup> *Quon. Attach. c. 19; Fol. Acts*, i. 651; cp. *Balfour, op. cit.* pp. 349 ff.

damage which the latter might have suffered.<sup>51</sup> Where lands which owed suit passed to co-heiresses, suit was given by the eldest or her husband.<sup>52</sup> Lastly, we may note the rule that annexed lands owed suit in the jurisdiction within which they lay by annexation.<sup>53</sup>

It is plain from what has been said above that there were two classes of suitors in the sheriff's court. First of all, there were those persons who were bound to give suit or suit and presence; and, secondly, there were those who were entered by the suitors of the first class to appear in court on their behalf. Every suitor of the second class represented the person of a baron,<sup>53a</sup> and could by reason of his office repledge his lord's men to the baron court as if possessed of a royal letter of authority.<sup>54</sup> He was required, before being admitted by the judge, to present himself for examination in three courts; and, when approved by his co-suitors, he could not thereafter be fined for his ignorance.<sup>55</sup> Further, he was bound to produce a letter under the seal of the person who entered him authorising him to compear on his behalf.<sup>56</sup> A single suitor could act for more persons than one;<sup>57</sup> and it seems that a single person might enter more than one suitor as representing the same lands.<sup>58</sup> Sometimes a suitor was entered for one court only.<sup>59</sup> On being entered, he took the oath de fideli administratione;<sup>60</sup>

<sup>51</sup> *Fragm. Coll.* c. 21; *Fol. Acts*, i. 733; *Skene*, 'The Second Statutes of King Robert the First,' c. 5; *Balfour, op. cit.* 278. See 'Provisions of Westminster,' § 3, *Stubbs, Select Charters, loc. supr. cit.*

<sup>52</sup> *Regiam Maj.* ii. 26; *Fol. Acts*, i. 614; *Balfour, op. cit.* p. 241. *Balfour* observes 'And, attour, thay and ilk ane of tham aw fealtie and suit of court to the superior.'

<sup>53</sup> *Balfour, op. cit.* p. 275; *Lord Semple, Sheriff of Renfrew, v. James Hamilton, Sheriff of Linlithgow*, 31st Aug., 1529, *Act. Dom. Cons.* xl. fol. 113; cp. *St. 1503*, c. 45; *Fol. Acts*, ii. 246.

<sup>53a</sup> 'Quilibet sectator representat personam baronis pro quo fecit sectam' (*Quon. Attach.* c. 9; *Fol. Acts*, i. 649).

<sup>54</sup> *Quon. Attach.* c. 11; *Fol. Acts*, i. 650; *Balfour, op. cit.* p. 275.

<sup>55</sup> *Quon. Attach.* c. 22; *Fol. Acts*, i. 651.

<sup>56</sup> *Balfour, loc. cit.* See *Skene*, 'The form and maner of Baron Courts,' c. 67.

<sup>57</sup> John Baptie was entered for the lairds of Barnbougall and Hilhouse (*Linlithgow Sh. Ct. Bk.* 15th Jan., 1553-54, fol. 69), and John Malgask was entered for the lairds of Cranbeth, Doverly, and Rosseyth (*Fife Sh. Ct. Bk.* foll. 21, 40, 41).

<sup>58</sup> Monypeny of Pitmilly (*ib.* foll. 25, 35) and Ramsay of Clatty (*ib.* foll. 21, 40, 51).

<sup>59</sup> Patrik Patone for Lady Hilhouse, see note A.

<sup>60</sup> e.g. *Fife Sh. Ct. Bk.* fol. 1. As to the terms of the suitors' oath, see note 100 below.

and, in some cases at all events, he received a fee for his services.<sup>61</sup> He could not be fined for making a bad record of a plea or claim presented by litigants in court; for his co-suitors could have corrected him, 'such records lying in the mouth and consent of all and not in the mouth of one unless all consent.'<sup>62</sup> Lastly, it is to be noted that, when the cause came to judgment, the judge left the court; in his absence 'the fre tenandis soytoris of the court' settled the terms of their judgment; and, on his return, the judgment was given forth.<sup>63</sup>

The St. 1540, c. 6,<sup>64</sup> provided that 'all baronis and fre haldaris that aw sute and presens in the saidis courtis<sup>65</sup> be thare personalie and the absentis to be amerciate with all rigor. And quha that aw bot sute that thai send thare sutouris honest and qualifeit menne hable to decide upounn ony causs conformand to the auld law . . .' The terms of this enactment suggest that the privilege of employing a suitor was enjoyed by those only who owed suit—that they alone could send 'an able man to attend and serve upon inquests,'<sup>66</sup> while those who owed suit and presence were required to attend in person, and had, accordingly, no concern with the entering of suitors for the courts at which they themselves were bound to attend.<sup>67</sup> When, however, we turn to the early sheriff court books of Fife and Linlithgow<sup>68</sup>—and it is on these that we chiefly rely<sup>69</sup>—we find that either the statute must be susceptible of another construction, or that the statutory practice differed from the previous practice. In the Fife sheriff court book the record of the proceedings in a head court<sup>70</sup> almost invariably commences with a list of the lands in respect of which no appearance to give suit or suit and presence, as the case might be, had been made

<sup>61</sup> *Rentale Sancti Andree*, ed. R. K. Hannay, Edinburgh, 1913 (Scott. Hist. Soc.), pp. 92, 168, 176; *Rentale Dunkeldense*, ed. R. K. Hannay, Edinburgh, 1915 (Scott. Hist. Soc.), pp. 50, 57.

<sup>62</sup> *Quon. Attach.* c. 22; *Fol. Acts*, i. 651.

<sup>63</sup> *Assize of King David*, c. 4; *Fol. Acts*, i. 317. <sup>64</sup> *Fol. Acts*, ii. 358.

<sup>65</sup> *i.e.* the head courts of stewards, bailies, and sheriffs.

<sup>66</sup> Mackenzie, 'Observations on the Sixth Parliament of King James V.,' *Works*, Edinburgh, 1716, i. 249.

<sup>67</sup> See notes 79, 80, 82 and relative text. <sup>68</sup> See Note A.

<sup>69</sup> Because they are kept with greater care than other such books, and with greater attention to detail.

<sup>70</sup> Such lists are sometimes found in the records of the proceedings of intermediate courts in Fife.

when the suits were called.<sup>71</sup> Prefixed to each entry is the letter 's' or 'p,' or the letters 'sp' (sometimes 'ps'), indicating the nature of the default, and representing respectively the words 'in defectu secte,' 'in defectu presentie,' and 'in defectu secte et presentie.' The record also contains a list of the jurors who served on the inquests; and we find instances in which an entry in the list of jurors seems to be absolutely irreconcilable with an entry in the list of lands. Thus, for example, in the record of a head court held at Cupar-Fife on 12th January, 1517-18,<sup>72</sup> George Ramsay of Clatty and John Spens of Lathalland are entered in the list of jurors, while in the list of lands we see the entries 's. Clatty' and 's. Lathalland.'<sup>73</sup> And the question presents itself why are the lands of Clatty and Lathalland entered as if default of suit had been made on a day on which it is certain that Ramsay and Spens were present? Ramsay and Spens were both bound to give suit and presence;<sup>74</sup> and the only explanation appears to be the explanation suggested by Mr. Storer Clouston, viz. that, while Ramsay and Spens gave presence at the court, the suitors whom they had entered for their lands failed to attend. If this explanation be sound, it follows that the attendance both of the person bound to give suit and presence and of the suitor whom he had entered was required; and this conclusion finds support not only in the analogous procedure in the justice ayre but in the records of the Linlithgow sheriff court.

In the chapter of the *Ordo Justiciarie*,<sup>75</sup> entitled 'The maner of the Justice ayr,' the procedure as to the calling and fining suitors and their lords is laid down in the following terms: 'Fyrst call the soytoure. Syne rede the Justice powere. Syne fens the courtis; than tak the dempstare ande gare him be suorne. Syne call the soytis agane; and jlka man twys; and jlka lard and his soyt, gif ony be absent amercy the absent. Ande gif baith be absent amercy jlk ane be thame self.' The Latin version, which is not so clear as the Scots version in regard to the fining of both

<sup>71</sup> The Aberdeen sheriff court books seem to have been kept in accordance with same method. The Linlithgow sheriff court books were kept in accordance with a method slightly different, but identical in effect (see Note A).

<sup>72</sup> *Fife Sh. Ct. Bk.* fol. 33.

<sup>73</sup> We find several instances of the entry 's. Lathalland' (*Fife Sh. Ct. Bk.* foll. 10, 51, 53).

<sup>74</sup> There are instances in which we find the letters 'sp' prefixed to both Clatty (*Fife Sh. Ct. Bk.* foll. 35, 64) and Lathalland (*ib.* fol. 64).

<sup>75</sup> c. 12, *Fol. Acts*, i. 707. See Skene, *De Verb. Signif.* pp. 73 ff.

lord and suitor, opens with the words: 'In primis vocentur secte cum dominis earundem quia, licet secte appareant, domini tamen earundem comparere tenentur in presentia Justiciarij in suo itinere.' This passage explains two consecutive entries in the record<sup>76</sup> of a justice ayre under date 30th October, 1502: 'Willelmus Douglas de Drumlanrick sepe vocatus pro terris suis de Hawik et non comparens in amerciamento defectu presentie,' and 'Idem Willelmus sepe vocatus pro secta terrarum suarum de Hawik et non comparens in amerciamento defectu secte.' Douglas, it would appear, was fined not only for his own failure to give presence, but for his suitor's failure to give suit.<sup>77</sup> No doubt the passage of the *Ordo Justiciarie*<sup>78</sup> and the entries cited above lend support to the explanation suggested. Still, the procedure in the justice ayre is only helpful by way of analogy, and we find ourselves on firmer ground when we turn to the sheriff court book of Linlithgow. We learn from the record of the head court held there on 19th January, 1541-42,<sup>79</sup> that Alexander Hamilton of Baithcat and Andrew Shaw of Polkemmat served as jurors, while their respective suitors, David Smycht and John Mane were entered on the list of absentees, and found liable to fine. It follows that the presence of the person who entered a suitor did not excuse the suitor from giving suit, or free him from penalty if absent.

It is, of course, to be kept in view that, in many instances, the requirement of the obligation to give suit and presence was limited by the terms of the infestment to a fixed number of appearances, e.g. to three suits at three head-courts.<sup>80</sup> In such cases, a special summons seems to have been necessary in order to secure the attendance of both 'lord' and suitor at courts to which the obligation as limited did not apply.<sup>81</sup>

<sup>76</sup> *Cur. Itin. Justiciarie*, i. 159. Transcript in Register House, Edinburgh.

<sup>77</sup> The obligation to appear ('comparere') is frequently expressed, and, in some cases, it is so worded that it admits of appearance by attorneys or essoigners as sufficient. Thus, we find instances in which persons bound to appear 'ad curias justiciarie et camerarii dicti monasterii' could satisfy the obligation 'per ipsos aut essonios aut procuratores dum requisiti forent' (*R.M.S.* iv. 1631, cp. 1771, 1832).

<sup>78</sup> The terms of the doom of the deemster (judiciarius) of Parliament in the case of *Douglas v. Dundas of that ilk*, 7th October, 1476; cp. *Dischingtoun v. Biset*, 12th June, 1478 (*Act. Dom. Aud.* pp. 57, 66; *Fol. Acts*, ii. 114, 117), in its reference to the practice of the justice ayre seems to point in the same direction.

<sup>79</sup> See Note A below.

<sup>80</sup> See note 27 above.

<sup>81</sup> See note 5 above and relative text. The laird of Lag was bound to give one suit only at the head court of Dumfries (*R.M.S.* iii. 395), yet we find him serving on inquests at other courts (*Dumfries Sh. Ct. Bk. passim*). Whether he did so in obedience to a summons or because it was his pleasure we cannot say.

It is also to be remembered that in some instances the special terms of his charter provided that the vassal might give presence by proxy<sup>82</sup>—a privilege which, in the time of Craig, prelates seem frequently to have enjoyed.<sup>83</sup>

What, then, was the object served by the entering of suitors, and what was the function which they performed? There is abundant evidence to show that attendance in court was regarded in Scotland, as in England,<sup>84</sup> not as a privilege but as a burden. It seems not unlikely that it was a general disinclination to perform this public duty that compelled the Legislature to make special provision for a sufficient supply of jurors.<sup>85</sup> Exemptions from attendance were granted always as benefits<sup>86</sup> and sometimes as rewards;<sup>87</sup> and the numerous protestations to which we have referred above<sup>88</sup> indicate a desire to be freed from the obligation to attend. It is quite true that attendance by proxy was permissible only in certain cases: the privilege was not, except in the cases mentioned above, extended to those who owed suit and presence. Still, it was none the less welcome to those who enjoyed it.<sup>89</sup>

Besides acting as an attorney, the suitor served upon inquests.<sup>90</sup> An interesting example has been pointed out to me by Mr. R. K.

<sup>82</sup> See notes 40, 41, 42, 43, 77 above and relative text. It was perhaps in virtue of some such provision that the sheriff admitted William Bell for Alexander Livingstone 'to keep his presens at the said court for the ladye of Grugfruit' (*Linlithgow Sh. Ct. Bk.* 1551-54, fol. 27). Such a case must have been exceptional, for we find many instances in which women were fined in default of suit and presence, e.g. Elizabeth Keith in respect of the lands of Strabrok (*ib.* fol. 20). Suitors were frequently entered for women (see *ib.* fol. 42).

<sup>83</sup> I. x. 32.

<sup>84</sup> Pollock and Maitland, *op. cit.* i. 537 f., 543, 547. Freeholders who were bound to give suit at the county, etc., or at their lords' courts, were privileged by the Statute of Merton, A.D. 1236, to give suit by attorney. This general concession was new, although for a long time past the greater men had been permitted to send their stewards or a deputation of villagers.

<sup>85</sup> See note 6 above. Not infrequently proceedings were adjourned because of 'debilite of courte' (e.g. *Fife Sh. Ct. Bk.* foll. 14, 15, 27).

<sup>86</sup> See the proclamation quoted above (see note 14 and relative text), and *R.M.S.* ii. 320, 733, cp. 495; iii. 2213.

<sup>87</sup> *R.M.S.* ii. 1809; iii. 2174, 2638.

<sup>88</sup> See note 49 above. It is but fair to say that one instance has been noted in which the protestor asserts that he is the only person entitled to give suit and presence (*Linlithgow Sh. Ct. Bk.* 1556-59, fol. 53).

<sup>89</sup> See note 82 above and relative text.

<sup>90</sup> See note 66 and relative text.

Hannay in the 'Inquisitio regis Alexandri de contencione inter magistrum et fratres de Soltre et Walterum de Moravia super traua bladi de carucis suis,'<sup>91</sup> of which the terms are as follows: 'Inquisitio facta per preceptum domini regis in pleno comitatu comitatus de Roxburgh . . . per antiquiores patrie qui melius veritatem super hoc noverint, scilicet per Ricardum Iambes sectatorem baronie de Ecfurde et per quatuor de fidelioribus hominibus tocius baronie predictae, et per Hugonem sectatorem de superiori Cralyng et per quatuor de fidelioribus hominibus tocius dicte baronie, et per Ricardum sectatorem baronie de Hetoun et per quatuor [de] fidelioribus ejusdem baronie.' It is true that in some sheriffdoms the assize was generally composed of landed proprietors in the case both of inquests held at head courts and inquests held at intermediate courts. This statement holds especially true of Fife; but even there we find exceptions to the rule; and, in other sheriffdoms—Dumfries, for example—the lists of jurors, while they commence with the names of landed men, include the names of many persons without territorial designations. Unfortunately, the documents do not supply us with the means of determining whether the latter were or were not suitors.

The selection of the jurors lay with the sheriff, except in those cases where they were named in the brieve, and it was his duty to choose 'certain lauchfull menne maist worthie and qua beste knawis the verite.'<sup>92</sup> These men described as 'probi et fideles homines patrie,' 'probi et fideles homines antiquiores patrie,' or 'probi, fideles, liberi et legales homines patrie,' were the class of persons from which, according to the directions in the King's brieves,<sup>93</sup> the jurors were to be chosen. It may be observed that these directions were contained not only in retourable but in non-retourable brieves, e.g. in brieves of perambulation;<sup>94</sup> and, if the sheriff put upon the inquest persons not belonging to this class, the whole proceedings were liable to be quashed.<sup>95</sup> A

<sup>91</sup> *Registrum domus de Soltre, etc.*, Edinburgh, 1861 (Bannatyne Club), pp. 38 ff.

<sup>92</sup> Skene, *De Verb. Signif.* p. 24; cp. *Regiam Maj.* i. c. 11, and *Quoniam Attach.* c. 52 (*Fol. Acts*, i. 602, 657).

<sup>93</sup> *Fol. Acts*, i. 99-100, 657.

<sup>94</sup> e.g. the case of *William of Knollis*, 19th January, 1484-85, *Act. Dom. Conc.* p. \*95; cp. St. 1579, c. 17 (*Fol. Acts*, iii. 144).

<sup>95</sup> Cp. the case of the *Abbot of Dunfermline* with that of *William of Sidsersfe*, 19th and 22nd March, 1478-79, respectively, *Act. Dom. Conc.* p. 24. See also *John Flemyng v. John Lawmonstoun, Sheriff-Depute of Argyle*, 25th October, 1479, *ib.* 34.

litigant seems to have been entitled to take exception to the sheriff's choice; but, if not taken timeously, the exception was disregarded.<sup>96</sup>

But the suitors discharged, it is thought, functions more important than those of attornies or jurors. We find instances recorded in the early sheriff court books in which the judge 'avisit' with assessors. Thus, in a complaint by a tenant for wrongous ejection, the sheriff-depute, 'being avisit with his assessoris,' disposed of the case; and, in a question regarding rights of occupation, he 'avisit with ye baronis, frehaldaris and assessoris to thame,' and thereafter gave judgment as to the future possession of the lands.<sup>97</sup> It seems to be little, if at all, short of certain that these assessors were the suitors of court. Suitors were, as we have seen,<sup>98</sup> admitted to office only after they had satisfied those who had already been entered of their knowledge of law and legal practice. The sheriff summoned the court and presided over it, but he did not make the judgment.<sup>99</sup> The judgment was made by the suitors;<sup>100</sup> and, accordingly, if the doom was 'evil gevin

<sup>96</sup> James Hoppringall, 19th June, 1480, *Act. Dom. Conc.* p. 55.

<sup>97</sup> *Fife Sh. Ct. Bk.* foll. 37, 52; cp. fol. 48. See also the fragment of the *Ayr Sh. Ct. Bk.* (1556) and the *Linlithgow Sh. Ct. Bk.* (1541-61), fol. 21.

<sup>98</sup> See note 55 above and relative text.

<sup>99</sup> Cp. Pollock and Maitland, *op. cit.* i. 548, cp. 551; P. Vinogradoff, *Villainage in England*, Oxford, 1892, p. 370. The terms of the St. 1496, c. 3 (*Fol. Acts*, ii. 238), suggest that the sheriffs were wanting in legal acquirements. It provided that the eldest sons of barons and freeholders of substance should attend the grammar schools 'quhill thai be competentlie foundit and have perfite latyne,' and should remain for the next three years at the schools of art and law, 'sua that thai that ar shireffis or jugeis ordinaris under the Kingis hienes may have knowlege to do Justice, that the pure pepill sulde haue na neid to seik ower souerane lordis principale auditoris for ilk smal iniure.'

<sup>100</sup> Balfour (*Practicks*, p. 275) speaks of 'the suitar or dempstar of court' (cp. the case of *James Lord Hamilton*, 10th Oct., 1478, *Act. Dom. Conc.* p. 7). The deemster was one of the suitors specially appointed, and seems in some cases, at all events, to have been the recipient of fees (*Rentale Sancti Andree, ut. supr. cit.* pp. 92, 168, 176). His doom expressed the joint determination of the suitors (see notes 62, 63 and relative text). The terms of the suitor's oath were as follows: 'quod ipse veram et fidelem recordacionem in illa curia faciet; et quod legale et fidele iudicium dabit secundum scientiam sibi a Deo datam; et quod in omnibus aliis articulis ad officium sectatoris pertinentibus secundum intellectum suum legaliter et fideliter deseruiet durante tempore' (*Fol. Acts*, i. 683). The observations of Professor Vinogradoff (*loc. cit.*) as to the import and essential character of the judgments given in the manorial court may, it is thought, be applied, *mutatis mutandis*, to the judgments of the suitors in the sheriff's court in Scotland. 'It is,' he says of the litigation in the court of the manor,

and wele again said,' it was, not the judge, but the suitors and those who had entered them who were subjected to penalties.<sup>101</sup>

On a consideration of the evidence adduced, it seems to us that it supports the following propositions :

1. It was obligatory to give suit and presence only when an obligation to that effect was imposed by the terms of the infestment. Where, however, the tenure was that of ward, the obligation was implied if not expressed or explicitly discharged.

2. The obligation to give suit or suit and presence was satisfied only by appearance at all courts held by the sheriff, unless its extent was limited by the terms of the infestment to a fixed number of appearances, e.g. to three suits at three head courts.

'interesting from two points of view ; it involves statements of law and decisions as to the relative value of claims. In both respects the parties have to refer to the body of the court, to its assessors or suitors . . . Inquisitions are made and juries formed quite as much to establish the jurisprudence of the court as to decide who has the better claim under the said jurisprudence. Theoretically it is the full court which is appealed to, but in ordinary cases the discussion rests with a jury of twelve or even of six. The authority of such a verdict goes back, however, to the supposed juridical sense or juridical knowledge of the court as a body. Now it cannot be contested that such an organisation of justice places all the weight of the decision with the body of the suitors as assessors.' The last sentence of the quotation seems to us to apply in terms to the dooms of the Scots sheriff court, although the suitors mentioned in it correspond to those whom we have called suitors of the first class rather than to those who were 'entered' suitors (see note 53a above and relative text). We may note in this connection the opening words of c. 9 of *Quoniam Attachiamenta* (*Fol. Acts*, i. 649) : 'In quolibet comitatu de regno potest quelibet libera persona reddere iudicium pro qua parte litigantium dum tamen non sit suspecta,' etc.

<sup>101</sup> If any one thought himself aggrieved by the 'parcial malice' or ignorance of an assize, he could by means of a summons of error bring the matter directly before the Lords Auditors or the Lords of Council ; and, if he made good his case, the jurors were punishable according to the provisions of the *Regiam Majestatem* 'de pena temere jurantium' (St. 1471, c. 9, *Fol. Acts*, ii. 100 ; *Regiam Maj.* i. c. 13), except those of them who could prove that they had expressed their dissent from the finding (*Morice M'Nesche*, 5th July, 1476, *Act. Dom. Aud.* p. 43 ; *Forbes*, 19th May, 1491, *ib.* p. 159 ; *Lawsonne*, 4th February, 1491-2, *ib.* p. 162 ; cf. *The King v. Persons of Inquest*, 27th December, 1478, *Act. Dom. Conc.* p. 19). Presumably, a baron or freeholder who had served on an inquest and had concurred in its doom, which was afterwards 'falsed,' was also liable to fine. We have not found any express statement on the point ; and it is impossible to construe the word 'sectator' as used in c. 9 of the *Quoniam Attachiamenta* (*Fol. Acts*, i. 649) as including the baron or freeholder who was himself a juror and had not entered a suitor, owing to the terms of the last paragraph of the chapter : 'quod quilibet sectator representat personam baronis pro quo fecit sectam.'

In the case of three head courts requisition by summons to appear was unnecessary; in the case of other courts it seems to have been essential.

3. He who owed suit only could relieve himself of the burden of attendance at court by entering a suitor to give suit on his behalf. But he who owed suit and presence was bound to appear in person. He could enter a suitor and, if he did so, that suitor was bound to appear; but his appearance did not, except in the cases mentioned above, free the man who had entered him from the obligation to give presence.

4. The most important function of the 'entered' suitors was not merely to determine claims of right, but to supply the law upon which the determination was to be rested. It seems probable that the barons and freeholders who were put upon inquests were selected more because of their acquaintance with the facts of the case than because of their legal knowledge; and that it was the suitors' part to keep them right as to the law involved and as to the procedure to be followed;—an advisory function which was gradually displaced as the judges acquired the knowledge requisite to the unassisted administration of the law.

P. J. HAMILTON-GRIERSON.

NOTE A.

EXCERPTS FROM THE LINLITHGOW SHERIFF COURT BOOK  
(1541-1561), foll. 9, 10, 12.

Curia capitalis vicecomitatis de Linlithgw tenta et inchoata in pretorio burgi de Linlithgw coram nobili et potenti domino Henrico domino Methwen et Willelmo Denniston suo deputato xix die mensis Januarii anno domini I<sup>m</sup> v<sup>c</sup> xli. Sectis vocatis. Curia legitime affirmata. Absentes inferius patebunt.

David Archbishop of Sanctandres pro terris de Kirkliston sepe voc. et non comp. am<sup>ct</sup>.

Georgius epis. Dunkelden. pro terris suis de Abircorne sepe vocat. et non comper. am<sup>ct</sup>.

Walterus dns. sanct. Johannis de Torphechyn sepe vocat. et non comper. am<sup>ct</sup>.

Elizabetha priorissa de manwell pro terris quitbalkis sepe vocat. et non comper. am<sup>ct</sup>.

Jacobus comes de arrane pro terris de Kynneill sepe vocat. et non comper. am<sup>ct</sup>.

# The Suitors of the Sheriff Court 17

James Cogburn de langton pro terris de Carridin sepe vocat. et non comper. am<sup>ct</sup>.

The Airis of Thomsone for ye holmis of Strabrok sepe vocat. et non comper. am<sup>ct</sup>.

Maxwell of Calderwod for meikle blakburn sepe vocatus for presens and soit et non comp. am<sup>ct</sup>.

Alex. Hamilton for ye landis of Baythcat quhilk pertenit to umquihile John erle of Levenax sepe voc. for presens and soit and non comp. am<sup>ct</sup>.

James Lawsone for ye landis of Loychtullo, presens and soit sepe voc. et non comper. am<sup>ct</sup>.

Thomas Hamilton for ye landis of Baworny and Burnside sepe voc. et non comper. for presens am<sup>ct</sup>. (for ye landis of Baworny, Thomas Gib Sotar)

The lard of Castelcary for his landis there sepe vocat. et non comper. am<sup>ct</sup> for presens.

The lord Montgomery for ye landis of Poldrait sepe vocat. et non comper. am<sup>ct</sup> for presens and soit.

James Gibson Sotar for Barne-  
bogvall

No<sup>n</sup> Lord Seyton for ye landis of  
Wynsheburgt

The erle of Menteth for Kyn-  
pount

Thomas Law Sotar for ye  
Erle Marischell

Ed. Cunnyngname sotar for  
Thomas Arthur

George Barton sotar for ye  
lady Seton

John Burn sotar for Andrew  
Murray

James Burn sotar for ye landis  
of Strachurd

No<sup>n</sup> The lard of Houston

Alex. Wallace sotar for William  
Fishear

John Mane sotar for Polkem-  
mett

David Smyth sotar for Baith-  
cat

John Baxter for Carriber

Patrik Patone for ye lady Hil-  
hous for this court

Baxter for ye ladye Hilhous

Baxter for John Kincaid of  
Hytlie

John Gibson for ye landis of  
Baworny and all parts thereof  
sotar

Baxter for the lard of Colston

William Quhit for Porterside

No<sup>n</sup> Item for Litill Kettilstoun  
John Baxter

No<sup>n</sup> Patrik Glen

William Thomsone sotar for  
Gleghorne

The shiref decernit the fore writin absentis and ilkane of thame to be in amerciament and unlaw of the court for non compeirance and entering of their soytars for ye saidis landis respective and that is gevin for dome be John Baxter, dempster of ye said court.

\* \* \* \* \*

## NAMES OF ASSISE.

James Young	Robert Thomson	Robert Young
John Paterson	Andrew Schaw of Pol- kemmett	John Gray
John Ewing	Alex. Hamilton of Baithcat	Robert Speddye
Charles Barton	Robert Bruss of Byn- ning	Archd. Bartilmo
James Hamilton	Thomas Arthur Patrik Glen Robert Livingstone of Braidlaw John Kincaid of Hylt- lie Charles Danyelston	Thomas Mowbray

Alexander Hamilton who was fined in default of suit and presence for the lands of Bathgate, which had belonged to John Earl of Lennox, was the son and heir apparent of James Hamilton of Innerwick (*Linlithgow Sh. Ct. Bk.* fol. 3; *R.M.S.* iii. 1815). By two instruments dated 2nd and 28th Aug. 1538 (*R.M.S.* iii. 1819, 1825) the latter had excambed certain lands in Perthshire belonging to him for part of the lands of Bathgate belonging to Thomas Hamilton, which included the lands of Ester and Wester Inche. It seems that half of 'le Bathkat Inche' had been dispond on 19th Febr. 1467-68 by John Lord Darnley, afterwards Earl of Lennox, to his shield-bearer, Michael of Hamilton, from whom presumably the lands passed to Thomas Hamilton, either directly or indirectly. Half of the Inch of Bathgate is described in 1647 as the 'eister Inche of Bathgaitt, in vicecomitatu de Bathgaitt, dominio de Ballincreiff, et infra vicecomitatum de Renfrew per annexationem' (*Inquis. Spec.* Linlithgow, No. 164). As to the annexation of these lands to the barony and sheriffdom of Renfrew, see the case of *Lord Semple, Sheriff of Renfrew v. James Hamilton, Sheriff of Linlithgow*, 31st Aug. 1529 (*Act. Dom. Cons.* xl. fol. 113).

That 'no<sup>n</sup>' prefixed to a name in the list of absentees indicates a cancellation of the entry appears from the entry 'no<sup>n</sup> Patrik Glen.' Patrik Glen was present, being one of the jurors on the inquest, and consequently the entry of his name in the list of absentees was cancelled. As to the methods employed to correct such an entry, see the lists of absentees in the Register of the Regality of Spynie (1592-1601), *Miscellany of the Spalding Club*, Aberdeen, 1842, ii.; and *The Court Book of the Barony of Urie in Kincardineshire* (1604-1747), ed. by R. Gordon Barron, Edinburgh, 1892 (*Scott. Hist. Society*), p. 39 note.

The Struggle of George Dundas  
And his rivals Patrick Panter, James Cortesius, and  
Alexander Stewart  
For the Preceptory of Torphichen

I

THE reigns of James IV. and his son were marked by numerous vindictive contests between the ecclesiastics of the kingdom for power and preferment, but few of these contests have been to moderns so obscure in their origin and so baffling in their various phases as the prolonged and embittered struggle for the wealthy Priory or Preceptory of Torphichen, belonging to the Knights of St. John of Jerusalem in Scotland. The participants in this struggle were George Dundas, the ultimate victor, the nominee of the Knights of St. John as an Order; James Cortesius, the candidate put forward by the Pope; Patrick Panter, the Royal Secretary of James IV., whose support he secured; and Alexander Stewart, the half-brother of the Duke of Albany, Regent of Scotland after the débâcle of Flodden.

That the Preceptory of Torphichen should be regarded as a highly desirable prize, well worth the expenditure of unlimited effort and intrigue, need occasion little wonder when regard is paid to its remarkable position as a dependency of the Order of St. John. As an international organisation the Knights of St. John had been granted privileges of such an extraordinary nature that they enjoyed a large measure of untrammelled freedom in Church and State in the various countries—or 'Languages,' in the technical phrase—in which they had received recognition.

The Order of St. John in Scotland,<sup>1</sup> commonly supposed to have been introduced by David I., was firmly established by his

<sup>1</sup> Many writers on ecclesiastic and kindred topics have alluded to Torphichen. *Ancient Church Dedications in Scotland*, by J. M. Mackinlay, 1910, pp. 327-330. *The Ancient Church of Scotland*, by M. E. C. Walcott, 1874, p. 352. *Scottish Monuments and Tombstones*, by Charles Rogers, vol. i. p. 184. Chalmers'

grandson and successor, Malcolm IV., who granted the Brethren of St. John a 'toft' of land in whatever burghs of the kingdom they chose. Its position was further consolidated by a series of charters granted by successive Scottish kings, by Alexander II. in 1231 and 1236, by Alexander III. in 1284, who granted exemption from various national dues, by James II. in 1448, by James III. in 1482, and on the 19th October, 1488, by James IV., who ratified the charters given by his predecessors, and granted in addition remission of the ordinary customs dues when the Preceptor of Torphichen was paying in goods and merchandise his annual contribution of 200 ducats to the Treasury of St. John at Rhodes.<sup>1</sup> This concession was made by James IV., in the first instance, to Sir William Knowles, who is spoken of in contemporary history as Preceptor of Torphichen in his character as an ecclesiastic, and as Lord St. John in his capacity as a layman controlling an important temporality.<sup>2</sup>

Knowles had received the appointment to Torphichen in 1466 in succession to the previous occupant, but owing to the emergence of difficulties in connection with his claims he was unable to assume the direction of the Preceptory until 1473.<sup>3</sup> During his tenure of office he proved energetic and influential, occupying for a time the post of Treasurer of the Kingdom, besides being on various occasions a member of embassies charged with the duty of negotiating with the King of England.<sup>4</sup> If we could accept the authority of Keith and Chalmers, and of others repeating the statements of these two writers in obvious paraphrases, we should have to conclude that Knowles governed the Preceptory for the long period of forty years before being succeeded by George Dundas in 1513.

Their statements admit of no dubiety. Keith affirms that 'Sir

*Caledonia*, 1889, vol. iv. pp. 581-582. *Sacred Archaeology*, by M. E. C. Walcott, 1868, p. 337. Keith's *Historical Catalogue of Scottish Bishops*, 1824, pp. 436-440. *The Parish of Mid Calder*, by H. B. M'Call, 1894. *Catholic Church of Scotland*, by A. Bellesheim, vol. i. p. 303. *The Scottish Antiquary*, vol. viii. pp. 102-109. 'The Hospitallers in Scotland,' by J. Edwards, *Scottish Hist. Review*, ix. 52-68.

<sup>1</sup> *Reg. Mag. Sig. Reg. Scot.* 1424-1513, No. 1791, pp. 378-380.

<sup>2</sup> For the semi-clerical, semi-laic position of Lord St. John see Riddell's *Inquiry into the Law and Practice in Scottish Peerages*, Edinburgh, 1842, vol. i. p. 88.

<sup>3</sup> *Transactions of Glasgow Archaeological Society*, by J. Edwards, 1899, vol. iii. p. 330.

<sup>4</sup> *Calendar of Documents Relating to Scotland*, vol. iv. Nos. 1567, 1579, 1585, 1586, 1593, 1594, 1612. See also Rymer's *Foedera*, vol. ii. 1377-1654, pp. 716, 718, 724.

William Knows died at the battle of Flodden 1513, and was succeeded by Sir George Dundas, who . . . was chosen preceptor at the appointment of the Duke of Albany, then regent.<sup>1</sup> Chalmers repeats this view in kindred words : 'After being much employed by James IV., Knolls fell fighting by his side on Floddon-field. He was succeeded by Sir George Dundas in 1513.' . . .<sup>2</sup>

As the sequel will show, we cannot endorse the authenticity of these views, which have enjoyed a wide acceptance, due, doubtless, to the lack of information sufficient to shed light on a difficult topic.

Towards the beginning of the sixteenth century, Knowles seems to have felt the burden of increasing years, and secured the appointment of a coadjutor in the person of Patrick Knowles, his nephew—probably in the well-known euphemistic sense of this period. According to Whitworth Porter, Patrick Knowles died before 1500, and Robert Stuart D'Aubigny, nephew of the famous Bernard D'Aubigny, was selected as the successor of Patrick as the coadjutor of Sir William.<sup>3</sup> The aim in view in appointing a coadjutor may have been to prepare the way for the ultimate nomination and succession of such an assistant to the full control of the Preceptory ; but, whatever D'Aubigny's career may have been, he was not destined to be Knowles' successor, for on the 24th May, 1504, George Dundas received nomination by 'Friar Louis Deschalinghe admiral of the Hospital of St. John of Jerusalem and Lieutenant General of Friar Emeric Damboise Grand Master of the said hospital and Guardian of the poor of Jesus Christ in the East, of George Dundas of Scotland knight to the Ancienitas or right of expectation of the preceptory of Torphichen whenever the same should become vacant by the death or otherwise of Friar William Knolis the then occupant of the office and that on the presentation of the Turcupularius,<sup>4</sup> Prior, Preceptors, and Brethren of the English language of Rhodes.'<sup>5</sup>

<sup>1</sup> *Historical Catalogue of the Scottish Bishops*, by R. Keith, 1824, p. 439.

<sup>2</sup> Chalmers' *Caledonia*, 1889, vol. iv. p. 875.

<sup>3</sup> *Knights of Malta*, by Whitworth Porter, 1883, p. 735.

<sup>4</sup> The Turcopolius was commander of the light cavalry. This post fell to the head of the English Language.

<sup>5</sup> *Inventory (MS.) of the Torphichen Writs*, Gen. Reg. House, p. 5, note 6.

Whitworth Porter gives 1st July, 1504, as the date of Dundas' nomination by Bull of the Grand Master d'Amboise at Rhodes. *Knights of Malta*, Appendix xi. p. 736.

## The Struggle for

Illuminating details of the life of George Dundas are unfortunately few. He was a near kinsman—perhaps a younger son or grandson—of John Dundas of Dundas, who was on terms of intimate friendship with James III.<sup>1</sup> We may assign 1470 as the approximate year of his birth, in view of the fact that his name occurs in the Roll of St. Andrews University among the matriculants of 1484 and among the determinants of the year 1486.<sup>2</sup> He afterwards proceeded to Paris, and was a student at Montacute College along with Hector Boece, whose stay there began not later than 1492, and lasted till 1498.<sup>3</sup>

We are indebted to the much-maligned and much-misjudged Boece for the brief biography of Dundas that has had so many changes rung on it by the writers who have made incidental reference to Dundas. In his *Lives of the Bishops of Aberdeen*, Boece, writing in 1521, more than twenty years after his departure from Montacute College, speaks with all the loyalty of an old student for his alma mater, and recalls the names of several fellow-students well known to his Scottish contemporaries for their varied claims to eminence.<sup>4</sup>

He speaks of Erasmus of Rotterdam as the 'glory and ornament' of literature of his time.<sup>5</sup> He extols John Major, the erudite supporter of the intellectual system of the Schoolmen, and declares that his writings have shed great light on the Christian religion.<sup>6</sup> He mentions in addition three other fellow-Scots, Patrick Panter, Walter Ogilvie, and George Dundas. Boece notes Panter's conspicuous official position at the Court, and affirms that he was praised not so much for his learning as for his sagacity.<sup>7</sup> Walter Ogilvie is commended by Boece for his brilliant Latin, and he must obviously have occupied a prominent place in the estimation of contemporaries to justify his inclusion in a list of notable students of Montacute College. He was

<sup>1</sup> See *Dundas of Dundas*, by Walter Macleod, Edinburgh, 1897. John Dundas succeeded in 1480, got charter of Inchgarvie in 1491, and was succeeded by his son, Sir William, in 1495. Sir William fell at Flodden. George Dundas is not mentioned by Macleod. See also *Histories of Noble British Families*, by William Pickering, part vi. London, 1844. In the Venetian State Papers, 1509-1519, No. 341, in a list of the Scottish knights and nobles, etc., killed at Flodden, there are mentioned two uncles of Lord St. John. Sir Wm. Dundas may have been one.

<sup>2</sup> See St. Andrews University MS.

<sup>3</sup> *History of Humanism in Scotland* (MS.), also *Regist. Episc. Aber.* vol. i. p. 342.

<sup>4</sup> *Lives of Bishops* (New Spalding Club), pp. 88-89.

<sup>5</sup> *Ibid.* p. 88.

<sup>6</sup> *Ibid.* p. 89.

<sup>7</sup> *Ibid.* p. 88.

attached to the entourage of James IV., and was the author of a panegyric on Henry VII., written in support of the projected marriage alliance between the Scottish King and Henry's daughter Margaret.<sup>1</sup>

George Dundas, Boece tells us, was 'deeply learned in Greek and Latin literature,' and became head of the Knights of St. John of Jerusalem in Scotland, 'overcoming his rivals by great efforts.'<sup>2</sup> As Boece was himself not merely an enthusiastic admirer of brilliant scholarship, such as that of Erasmus, but was the real founder of classical humanism in Scotland, his tribute to the culture of Dundas may be taken as proof of undoubted ability on the part of the latter, and as an indication that he felt in some measure the magnetic charm of the ideas of the Humanists, who were gradually ousting the Schoolmen from their supremacy in Paris.

Dundas is the first Scotsman indubitably credited with a knowledge of Greek, which he probably commenced to study in Paris, perhaps under some native-born Greek teacher, who would be sure to follow the pronunciation of the contemporary Greek spoken in the Eastern Mediterranean, where Dundas went when he became a member of the Order of St. John.

Although Dundas received, as we saw, the reversion to Torphichen in 1504, Sir William Knowles continued to administer the Preceptory for several years after that date. On the 1st February, 1506, a commission was appointed by the Pope to hear an appeal by 'William Knollis, Preceptor of Torphichen,' and tenants regarding the teinds of 'Arnaldstoun.'<sup>3</sup> A notarial instrument of the date 4th June, 1507, gives us a glimpse of Knowles as overlord of Templar lands. '... Archibald Weddale, procurator of an honourable man Thomas Fawside ... in presence of a noble and potent lord, William, Lord of St. John, Preceptor of the House of St. John of Jerusalem of Torphichen ... on bended knee ... resigned all and singular the lands of Stobbis Danesnape, with the templar lands and pertinents lying in Arnaldstoun in the barony of Baltredo, within the sheriffdom of Edinburgh, ... into the hands of the said Lord of St. John as superior, with all the right he has or can have in the lands; and immediately the said

<sup>1</sup> In my *History of Humanism in Scotland* (MS.) I have dwelt on his career and work at considerable length.

<sup>2</sup> *Lives of Bishops*, pp. 88-89.

<sup>3</sup> *Vatican Transcripts* (MS.), Gen. Register House, 1435-1535, vol. iii. pp. 123-129.

lord, lord superior of the lands, by gift and delivery of the staff and baton, as the manner is, gave and delivered the whole lands named to an honourable man George Fawside, son and heir of the said Thomas. These things were done within the burgh of Edinburgh, in the lodging of the said St. John, . . . at 4 P.M. on the 4th June 1507.<sup>1</sup>

On 6th November, 1507, King James sent to the Lord St. John the present of a heron.<sup>2</sup> During the period from 23rd August, 1507, till 17th July, 1508, payment was made of the customs duty on eight 'lasts' of salmon to 'William Lord St. John.'<sup>3</sup>

The earliest indication of the arrival of George Dundas in Scotland after his nomination to the Preceptory is in 1508, on the 26th January, when his presence at the Court of James IV. is indicated by the entry of the Lord High Treasurer in his accounts of the advance to the king of a sum of seven shillings to 'play at the tables with Sir George Dundas.'<sup>4</sup>

Later in this year on 15th March, we find an important letter addressed by James IV. to the Grand Master of Rhodes, Emeri d'Amboise, who held office from 1503 to 1512. In this communication the Scottish king acknowledges receipt of the Grand Master's letters, brought to Scotland by George Dundas, a knight of the Order. From these letters James has learnt of the unceasing aggressive and defensive warfare waged with the Turks, and has noted that Dundas, whom the Grand Master praises for 'his learning and virtue,' has taken his share in the struggle of the Christian world against the infidels. It is with pleasure that the king has heard that Dundas has been a member of the Council of the Knights of Rhodes, and has won his way to the Grand Master's favour by his good qualities. Dundas, James says, was long ago an intimate friend and will be all the more welcome now on account of his sufferings for Christianity, although he is a welcome visitor everywhere, seeing that he is 'learned in all kinds of learning.'<sup>5</sup>

We can well believe that Dundas would meet with a hearty reception at the Scottish Court, for he was in a position to give

<sup>1</sup> *The Laing Charters*, No. 264.

<sup>2</sup> *Lord High Treasurer's Accounts*, vol. iv. p. 82.

<sup>3</sup> *Exchequer Rolls, Scotland*, vol. xii. p. 93.

<sup>4</sup> *Lord High Treasurer's Accounts*, vol. iv. p. 97.

<sup>5</sup> *Letters of Richard III. and Henry VII.* vol. ii. No. lii. p. 262.

first-hand information on the Eastern situation to James, who avowed his intention on more than one occasion of going to the Holy Sepulchre, and his preparations to do so in 1509<sup>1</sup> may have received their initiating impulse from the story of the East brought to Scotland by George Dundas.

We noted that Keith and Chalmers assigned the year of Flodden as the date of the death of Knowles. Whitworth Porter—basing his statement probably on documentary evidence open to him—declared that he died before 24th June, 1510.<sup>2</sup> The year of Knowles' decease was unquestionably 1508, and the precise date of his death was prior to July 24th, because he is spoken of as the 'late' William Knowles on that date.<sup>3</sup>

On 30th November, 1508, the precept of admission to the temporality of Torphichen was issued to Dundas. He was granted in the most explicit terms control of 'all and singular lands, rents, and possessions' of the Order, after taking the oath of fealty to King James. He was said to have been 'provided' to the Preceptory by the Grand Master of Rhodes, as was 'contained at greater length in the provision and letters given to him.'<sup>4</sup> The tenants and occupiers of lands belonging to the Preceptory were enjoined to answer, obey, and give heed to Dundas and his bailiffs, officers, and servants in the due exercise of their rights, and instructions were issued to the sheriffs of the various counties in which the possessions of the Preceptory were situated to extend the support of Royal authority to Dundas and his representatives in the legitimate prosecution of their rights.<sup>5</sup>

From the foregoing it will appear that Dundas had vindicated his claim to Torphichen and was entitled to the fullest recognition of his position as Head of the Order in Scotland and as Lord St. John. That such recognition was readily given him is apparent from a variety of sources. In the financial years extending from 17th July, 1508, to 10th July, 1509,<sup>6</sup> and from the latter date until 29th August, 1510,<sup>7</sup> he received payment

<sup>1</sup> *Ibid.* vol. ii. No. lxxvi. p. 278.

In 1506 the Scottish envoy to Venice said James meant to go to Jerusalem, and asked for galleys or workmen to build them. The Venetians agreed to give James what he wanted. *Calendar State Papers, Venetian (1202-1509)*, No. 891.

<sup>2</sup> *Knights of Malta*, by Whitworth Porter, 1883, p. 735.

<sup>3</sup> *Exchequer Rolls, Scotland*, vol. xiii. 1508, p. 8.

<sup>4</sup> *Reg. Sec. Sig. Reg. Scot.* vol. i. Nos. 1771 and 1772.

<sup>5</sup> See Nos. 1771 and 1772.

<sup>6</sup> *Excheq. Rolls, Scot.* vol. xii. p. 237.

<sup>7</sup> *Ibid.* vol. xii. p. 372.

from the Royal Treasury of the dues assigned to the Lords of St. John, comprising the revenue derived from the tax on eight 'lasts' of salmon.

In a document bearing the date of 20th June, 1509, provision was made for the upkeep of two chaplains in the Church of Torphichen, who were to pray 'for the salvation of the souls of the King's deceased father and mother as well as for the prosperity and safety of the King himself and his dearest wife Margaret Queen of Scotland.'<sup>1</sup> Towards the maintenance of the chaplains 'George Lord of St. John promised firmly in the presence of the King to give the sum of six merks annually,' derived from certain lands lying in the burgh of Linlithgow.

In the minutes of the Lords of Council, dated 23rd October, 1509, Dundas was expressly designated Lord St. John when he was upholding the right of his Order to grant sanctuary in Temple lands in opposition to the action of the magistrates of Stirling.<sup>2</sup> On the 24th July, 1510, he received the necessary permission from James to leave Scotland with twenty-four of his men 'to pass to the Court of Rome, Rhodes, and other parts';<sup>3</sup> and later in this year application was made to the King of England for a safe-conduct for the Lord St. John and sixteen followers, who were to accompany him to 'the parts beyond the sea' for the transaction of his business.<sup>4</sup>

## II

There are few, if any, of his contemporaries in official positions whose names occur in the public records with the frequency with which we find that of Patrick Panter, the Latin Secretary of James IV. and of his successor. Panter was born at Montrose<sup>5</sup> about 1470, and was a member of the old family of that name whose seat was at Newmanswalls in close proximity to the town.<sup>6</sup> His university education was acquired in Paris, where he studied at Montacute College in the closing decade of the fifteenth century, when Hector Boece and other Scotsmen, as we saw,

<sup>1</sup> *Reg. Sec. Sig. Reg. Scot.* vol. i. 1488-1529, No. 1899.

<sup>2</sup> *Nugae Derelictae*, by Maidment and Pitcairn, part iii. p. 6.

<sup>3</sup> *Reg. Sec. Sig. Reg. Scot.* vol. i. No. 2105.

<sup>4</sup> *Ibid.* vol. i. No. 2128.

<sup>5</sup> *Letters Henry VIII.* vol. ii. part ii. No. 3254.

<sup>6</sup> *Memorials of Mearns and Angus*, by Andrew Jervise, vol. i. pp. 95, 221; *Land of the Lindsays*, by A. Jervise, p. 239; *Angus or Forfarshire*, by A. J. Warden, vol. iv. p. 438; R. Keith's *Historical Catalogue of Scottish Bishops*, 1824, p. 192.

were also engaged in pursuing their studies there.<sup>1</sup> He took his degree probably before 1497, for we find, in the earliest dated reference to him, mention made of a payment of £6 to him by Andrew Halyburton on behalf of the Archdean of St. Andrews, and in the entry of this payment he is designated 'Master' Patrick Panter.<sup>2</sup>

On his return to Scotland he was entrusted with the superintendence of the education of Alexander Stewart, the boy-Archbishop of St. Andrews, and a pension of £50 a year, of which he was in receipt by the 15th May, 1505,<sup>3</sup> may have been part of his remuneration for his instruction. The manner in which he performed his duties as tutor evidently met with the king's cordial appreciation, with the result that he was invited to become Chief Latin Secretary at some date prior to 22nd November, 1506, when he is spoken of as having been 'lately summoned from the study of good literature to the Palace.'<sup>4</sup>

During his public career he held various offices in Church and State, and, besides those positions which he succeeded in securing, he was on more than one occasion a candidate for appointments which ultimately fell to others. As early as 12th May, 1507, he was anxious to gain the vicarage of Eastwood, in the patronage of the Abbey of Paisley, but the vacant benefice was assigned by the Archbishop Blacader of Glasgow to Archibald Laing.<sup>5</sup> Panter was Chancellor of Dunkeld before 18th May, 1509, 'custumar' of Edinburgh in 1509-1510, and one of the 'custumars-general' for the whole kingdom in 1510.<sup>6</sup> He was Rector of Fetteresso before 2nd August, 1510, and may have been engaged on business abroad in this year, as we find an application made to Henry VIII. on 15th July for a safe-conduct through England.<sup>7</sup> He acquired the Rectory of Tannadice at some date before 10th March, 1511,<sup>8</sup> and was promised, on

<sup>1</sup> Boece's *Lives of Bishops*, p. 88.

<sup>2</sup> *Ledger of Andrew Haliburton*, 1492-1503, p. 159; cf. pp. 163, 249, 251, 254, 267 for other references to Panter.

<sup>3</sup> *Accounts of the Lord High Treasurer*, vol. iii. 1506-1507, p. 117; cf. pp. 120, 125.

<sup>4</sup> *Reg. Sec. Sig. Reg. Scot.* vol. i. 1488-1529, No. 1365; *Letters and Papers Richard III. and Henry VII.* vol. ii. p. 222, No. xxiv.

<sup>5</sup> *Diocesan Registers of Glasgow*, Bain and Rogers, vol. i. p. 15.

<sup>6</sup> *Exchequer Rolls, Scotland*, vol. xiii. pp. 366, 371.

<sup>7</sup> *Letters Henry VIII.* vol. i. No. 1176.

<sup>8</sup> *Antiquities of Aberdeen and Banff*, vol. ii. p. 347; cf. vol. iii. p. 79.

28th September, 1512, the Mastership of the Church of Torrance when it fell vacant.<sup>1</sup> In 1513 he succeeded to his principal post in the Church, the Abbey of Cambuskenneth, for which he paid a tax of 400 florins of gold on 29th June.<sup>2</sup> About this same period there were allotted to him the Archdeanery of Moray and the Mastership of the House of St. Mary's, Montrose.<sup>3</sup>

With the death of his royal master at Flodden he lost his most powerful friend, and his subsequent career was marked by less success in the achievement of his ambitious aims. He managed to maintain his position as Secretary during the turbulent period of Queen Margaret's short-lived assumption of power,<sup>4</sup> prior to the arrival of the Duke of Albany in 1515 in response to the specific request of the most important members of the Scottish patriotic party.<sup>5</sup> For a time Panter retained his office as Secretary, until Albany took strong measures against the open and secret disturbers of the internal peace of Scotland, and in August, 1515, Panter was deprived of his post and committed to prison.<sup>6</sup> The period of his disgrace was by no means prolonged, and he was recalled to his former duties after the reconciliation between the Regent and his chief opponents.

In June, 1517, he set out for France along with Albany and other Scottish representatives,<sup>7</sup> and was busily engaged with the diplomatic correspondence of the Regent for nearly two years. As early as 1516 his health was failing, so he resigned his abbacy in favour of Alexander Milne, retaining the right, however, of assuming control of it again, should he so desire.<sup>8</sup> But no improvement in his health took place, and his death occurred in Paris in 1519.

Our résumé of Panter's career will have afforded some indication of his activity and success in the pursuit of his ambitions,

<sup>1</sup> *Reg. Sec. Sig. Reg. Scot.* vol. i. No. 2435.

<sup>2</sup> *Brady's Episcopal Succession*, vol. i. p. 169.

<sup>3</sup> *Reg. Mag. Sig. Reg. Scot.* (1424-1513), p. 850.

<sup>4</sup> In April, 1514, Queen Margaret tried to discharge Panter from his office as Secretary, but he was supported by the Earls of Arran and Glencairn and Gavin Douglas, who insisted on his retention of office until the Three Estates should dismiss him. *Acta Dominorum Concilii* (MS.), 5th April, 1514.

<sup>5</sup> *Acta Dominorum Concilii* (MS.), 26th August, 1514.

<sup>6</sup> *Letters Henry VIII.* vol. ii. pt. i. No. 788.

<sup>7</sup> *Ibid.* vol. ii. pt. ii. No. 3583. Cf. *Epist. Jacob. Quint.* No. li. p. 281; Michel's *Les Ecosais en France*, vol. i. p. 249.

<sup>8</sup> *Letters Henry VIII.* vol. ii. pt. i. No. 2485.

but his resolute and prolonged efforts to obtain the Preceptory of Torphichen have failed to receive the attention their importance warrants. In his official capacity he must have been aware of Dundas' claim to the Preceptory and of his admission to the temporality, but, presumably, he had doubts as to the validity of the recognition granted to Dundas, and he put in a claim himself to the Preceptory, receiving the provision to it from Pope Julius II. on 5th January, 1509,<sup>1</sup> a date which shows he can have lost little or no time in challenging the position of Dundas. The letter of Julius is addressed to his beloved son, 'Patrick Panter, cleric of the diocese of Brechin,' and alludes in its opening phrases to the watchful care of the Holy See in being accustomed both to grant its Apostolic support to those who desire to lead a Regular life—in order that they may fulfil their pious purpose to the glory of God—and to extend the right-hand of liberality to those whose personal merits are a manifold recommendation for this favour. The letter proceeds to declare that the Pope has learnt that the Preceptory of Torphichen of the Hospital of St. John of Jerusalem in the diocese of St. Andrews—which the late William Knowles, Preceptor of the said Preceptory, held during his lifetime—has become vacant by the death of the same William, who ended his days beyond the Roman Court, and is vacant at the present time, and that Panter wishes, on account of the advantage of a better life, to serve the Lord, in a Regular habit, along with the Master of the said Hospital and the Council of Rhodes. His Holiness desires to favour such a praiseworthy plan in the case of Panter—who is, he understands, the Principal Secretary of his dearest son in Christ, James, the illustrious King of Scotland, and is recommended in many ways by reason of his zeal for religion, by his honesty of life and character, and by his uprightness and virtue—in order that he may be able to support himself more conveniently with the aid of some subvention. Reference is then made to a number of important details, to the annual revenue of the Preceptory, which Panter assured the Pope did not exceed £600 sterling 'according to the common estimate,' to the situation arising from the vacancy in the Preceptory (no matter whether the vacancy was due to the free and voluntary resignation of the said William Knowles outwith the Court of Rome in the presence of a notary public and witness, or otherwise), to the claim of the Holy See to the disposal of the Preceptory in virtue of the

<sup>1</sup> *Vatican Transcripts* (MS), Gen. Reg. House, vol. iii. 1435-1535, pp. 175-186.

regulations of the Lateran Council, and to the litigation which has arisen in connection with the Preceptory and is to remain undecided, provided that no one has a special right in the Preceptory.

Panter is then granted the rule and control of the Preceptory after being in 'peaceful possession' of it for six months, and is vested with authority to handle and deal with its revenues, but is forbidden to alienate any of its property. Then, after Panter has assumed the Regular habit accustomed to be worn by the Brethren of the Hospital, and has made the declaration accustomed to be made by the same Brethren, the Pope declares that he confers the Preceptory itself on him, with all its annexes, rights, and pertinents.

Instructions are next given to the venerable Archbishop of Siponto, the Archdean of St. Andrews and the Dean of Glasgow by Apostolic letters, that all three of them (or two of them or one of them)—after the lapse of the specified six months or even earlier, should Panter so desire, if Panter is suitable and no canonical regulation debars him—are to receive him by the Papal authority into the Brotherhood of St. John of Jerusalem, whether there is a fixed number of Brethren in it or not, and to bestow on him the Regular habit, according to the practice of the Hospital itself, to receive from him, if he wishes to do so voluntarily, the profession accustomed to be made by the Brethren, to admit and induct him into the 'corporal' possession of the Preceptory, its possessions and rights, by the Papal authority, and defend him after his admission, removing from the Preceptory any illegal 'detainer' and causing Panter or his procurator to be admitted to the Preceptory in the customary manner, giving him complete control of all the fruits, rents, revenues, rights, and incomes accruing to the Preceptory.<sup>1</sup>

### III

It was the misfortune of Dundas to find a formidable competitor not merely in Panter but also in James Cortesius, an Italian cleric of the diocese of Mutina, attached to the personal staff of the Pope as 'Solicitor of the Papal Letters.'<sup>2</sup>

The name of Cortesius occurs several times in official documents relating to Scotland,<sup>3</sup> and it was in all likelihood his

<sup>1</sup> *Vatican Transcripts*, vol. iii. pp. 175-186.

<sup>2</sup> *Ibid.* (MS.), vol. iii. p. 216.

<sup>3</sup> *Letters Henry VIII.* vol. i. No. 288. David Arnot, of the Chapel Royal at Stirling, thanks him for his efforts to secure the Pope's recognition of the rights of the Chapel, 10th July, 1509. *Reg. Mag. Sig. Reg. Scot.* 1513-1546, No. 113. Cortesius acts as procurator for Patrick Panter in his arrangements regarding St. Mary's House at Montrose, 14th Nov. 1516.

epistolary connection with Scotland that brought to his notice facts which induced him to endeavour to secure admission to the Preceptory of Torphichen. Like Panter he was provided to the alleged vacancy by Pope Julius II. The Papal missive was issued on 29th July, 1510, and was directed to his beloved sons the Archdean of St. Andrews, the Dean of Glasgow, and James Lyn, Canon of Dunkeld. In its general setting and sentiments it is similar to that given to Panter, although it has distinctive features of its own. It opens with the usual reference to the watchful care of the Holy See in lending the Apostolic support to meritorious sons who wish to lead a Regular life and in extending to them the right-hand of liberality. His Holiness declares he has been informed that the Preceptory of Torphichen has fallen vacant on the death of the previous holder, William Knowles, and is vacant at the present time, although George Dundas, who proclaims himself a Brother of the Order of St. John of Jerusalem, has detained the Preceptory for a year or more, but for less than two years, without any title or right, but simply on his own initiative, and is still holding and occupying it illegally.

Attention is then drawn to the Papal enactment, that whoever held an ecclesiastical benefice in peaceful possession for the year immediately preceding, and professed that it was undoubtedly vacant and then obtained it, ought to declare the rank and nobility of the possessor in the document of 'impetration,' otherwise the impetration and what followed it were of no effect. Specific orders are then given that Cortesius is to be received into the Brotherhood of St. John if he is suitable, and if no canonical regulation is an obstacle. Then if it is found that—when George Dundas and others who must be summoned have been duly cited to appear—the Preceptory is vacant, Cortesius is to be admitted to the Mastership of Torphichen, and put into corporal possession, either personally or through his representative, of all the property of the said Preceptory, after the said George Dundas or any other illegal detainer has been removed from the Preceptory.<sup>1</sup>

## IV

From these two provisions by Julius II. to Panter and Cortesius it will be seen that Dundas' right to Torphichen was openly questioned and stoutly contested.

<sup>1</sup> *Vatican Transcripts* (MS.), vol. iii. pp. 215-224.

## The Struggle for

There were three interested parties in the Preceptory, the Pope as the Head of the Church and final arbiter in all ecclesiastical disputes, the Knights of St. John as an association with comprehensive privileges, and the King of Scotland, alert in guarding the interests of his country, and quick to resent anything that savoured of invasion of his Royal authority.

To us the position of Dundas seems to have been a very strong one. He was the only one of the claimants who was a genuine Brother of the Order of St. John. The others promised to become members if their claims to the Preceptory were recognised. Dundas had fulfilled the stipulation contained in his nomination which conferred on him the right of succession when the vacancy occurred through the death of Knowles or otherwise. He had not supplanted Knowles during his lifetime, but had acquired the Preceptory after the aged Preceptor's death. He had taken part in the actual fighting against the infidels in the East, risking his life, in obedience to his oath as a Brother of the Order, in the effort to stem the ominous progress of the Turks, whereas his rivals were not warriors, but clerics eager to enjoy the emoluments of a wealthy Preceptory. Dundas, as we saw, had done homage to James of Scotland as a temporal lord, and had been granted admission to the Preceptory, over which he had exercised control for a period longer than the 'six months' mentioned in the provisions to Panter and Cortesius, although he can hardly be said to have had peaceful possession.

It is difficult to see why James IV. should come to lend his active support to Panter in view of his earlier attitude of friendliness towards Dundas. He may have been influenced by personal reasons; he may have been anxious to draw the revenues of the Preceptory during the alleged vacancy; perhaps his new point of view was determined by the gradual change in the policies of Scotland and England towards the close of Henry VII.'s reign and at the beginning of Henry VIII.'s energetic rule. Dundas, we must remember, although a Scotsman, was the nominee of the English Knights of St. John, because there was no Scottish 'Language' as a unit of the Order, and the Scottish Preceptor of Torphichen acted in concert with his Brethren of the English 'Language.' Such a procedure would cause little difficulty in times when the relations of the two kingdoms were harmonious, but in times of estrangement and bitterness the position of the Scottish Preceptor was anomalous, because his personal interests and his obligations to his English friends con-

flicted with his duty to his native land. Dundas was in an extremely trying situation. The only policy apparently open to him was one of neutrality, which a Scottish King could not allow him to adopt, seeing he was a freeborn subject of Scotland. If he sided with England he would become an outlaw from Scotland; if he supported Scotland to the detriment of England he was bound to give offence to his English colleagues in the Order of St. John, whose help was indispensable to him in his struggle to maintain the validity of his succession. Dundas thoroughly realised the acute nature of the dilemma in which he was placed, and the impossibility of walking so warily as to avoid all cause for resentment either by the Scots or the English. Accordingly, he left Scotland, as we noted, towards the end of 1510, and as his business demanded his attention abroad for several years, he was able to evade the necessity of choosing sides in the Anglo-Scottish quarrel which culminated in Flodden.

## V

In due course the question of the succession to Torphichen was bound to come up for decision at the Papal Court, and in the interval Dundas, Panter, and Cortesius were, no doubt, actively engaged in promoting their personal interests.

Panter's position in 1512 was not unpromising. He had been provided to Torphichen, subject to certain conditions, by Julius II. He was assured of the strenuous assistance of the Scottish King, and if he could gain the favour of the Knights of St. John he might not unreasonably hope for the consummation of his desires. There is still extant an interesting letter in which he addressed the Grand Master of Rhodes in furtherance of his candidature.<sup>1</sup> He acknowledges receipt of the Grand Master's letters from Blois, bearing the date 20th April, 1512, stating that the arrival of the Prior of England was being awaited. The English Prior, Panter says, is reported to have entered French territory on 6th June. As regards Torphichen, he protests that he has not sought the Preceptory through greed, because he is well provided for through the King's favour, but he has been compelled by his 'jeering adversary' to have recourse to litigation. If he is made one of the Knights he hopes to meet the requirements of the Order; he will give the necessary bonds on the merchants of Florence, and will revive the decayed endowments of the Order in Scotland.

<sup>1</sup> *Letters Henry VIII.* vol. i. No. 3277.

The Papal verdict on the Torphichen case was conveyed to James IV. in a letter from Rome dated the 7th June, 1512, from a cardinal of the Church.<sup>1</sup> His Eminence extends his congratulations to the King on his letter dealing with the deadlock in connection with Torphichen, but intimates that James Cortesius has been successful in vindicating his right against Dundas and Panter, and advises that the victor should have peaceable admission to the Preceptory. The verdict in favour of the Italian was certainly a surprising one, and was hardly likely to be sustained on appeal. The Pope could indeed claim the ultimate decision in all matters that concerned faithful sons of the Church, but far-reaching concessions had been made in the past by different Popes to the Knights of St. John, including the important right of bestowing vacant Preceptories on members of their Order according to seniority. The Knights were tenacious of their privileges and jealous of any encroachments on them, and were not at all disposed to desert their comrade-in-arms, Dundas, and give way to a claimant whose candidature would seem to them highly suggestive of effrontery. From the point of view of Scottish national interests, the case of Cortesius was hopeless, and his appointment stood no chance of meeting with acceptance in Scotland. Cortesius probably had no intention of residing in Scotland, but hoped to carry out the duties attaching to the Preceptory through the agency of a procurator, while receiving, of course, the revenues of the Preceptory and retaining his post at Rome as Solicitor of the Papal Letters.

Such a plan was bound to meet with failure, for the Scots were not at this time on such good terms with Julius II. as to be disposed to hand over Scottish money to an Italian merely bent on increasing his income; and it is possible that Scottish opposition, combined with the hostility of the Knights of St. John, brought home the futility of further effort to Cortesius, who seems to have dropped out of the contest, leaving the field to his Scottish rivals. In this year, after the publication of the decision in favour of Cortesius, Panter wrote to the Papal Protonotary, mentioning his suit with regard to the Preceptory, to which he reminded his correspondent he had been duly collated. Although the first decision had proved adverse, he holds it is contrary to the laws of the Church, and begs his friend to write to the Catholic King on his behalf soliciting his support.<sup>2</sup>

Another important letter must be assigned to this year 1512,

<sup>1</sup> *Letters Henry VIII.* vol. i. No. 3240.

<sup>2</sup> *Ibid.* vol. i. No. 3626.

one addressed by James IV. to a reverend prelate at the Court of Rome.<sup>1</sup> The Scottish King complains that he has received no information about the proposed Lateran Council, although he has not failed in his duty to the Apostolic See. He has made frequent requests to Henry of England for safe-conducts for his envoys, but has met with refusals from the English King, whose agents are attacking the Scots everywhere with an armed fleet, are plundering and making prisoners, and asserting they are the soldiers of the Pope Julius. James goes on to protest against the treatment meted out to Panter. He declares he has learned from his Chief Secretary, who is a candidate for the Preceptory of Torphichen of the Rhodians in Scotland, that the Cardinal of York has offered the greatest opposition in this suit, contrary to the laws of the Church, and has informed his Holiness of James attitude to the controversy, as if he had credence from the Scottish King on this matter. James asserts that the cardinal had no right to act in such a fashion. He asks his reverend friend to beg his Holiness to give instructions that the dispute about Torphichen should be settled according to the dictates of right and law, in order that there may be no opportunity of appealing anywhere else; or if he thinks it proper let his Holiness settle the question according to his own judgment, and graciously compose the affair.

## VI

The preliminary decision in the Torphichen case only marked a stage in the controversy, and the difficulties of the contest were further complicated by the appearance in the lists of a new candidate in the person of the Duke of Albany's brother, Alexander Stewart, who received the gift of the Preceptory from Leo X. on the 19th March, 1513.<sup>2</sup> Stewart was the natural son of Alexander Stewart, Duke of Albany, his mother being Catharine Sinclair, daughter of the Earl of Caithness.<sup>3</sup> Like

<sup>1</sup> *Epist. Reg. Scot.* vol. i. No. xcvi. p. 152. Cf. *Letters Henry VIII.* vol. i. No. 3651. Spinely in a letter to Henry VIII. (dated Malines, 12th January, 1513) says Panter has lost his case through the influence of Bainbridge, Cardinal of York, and is very angry.

<sup>2</sup> *Leo X. Regesta*, No. 1439, p. 80.

<sup>3</sup> *Reg. Mag. Sig. Reg. Scot.* 1513-1546, No. 111, 13th Nov. 1516. From this document, No. 111, it would appear that the parents of Stewart were married, but were divorced owing to being within the forbidden degree of consanguinity. Their son was declared illegitimate to ensure the legitimacy of John, Duke of Albany, who was declared at this time second person in the realm. Alexander,

many others hampered by a similar 'defect of birth,' he was destined for the Church, and was certain to secure promotion through the influence of friends in exalted positions. On 3rd December, 1510, when he was Dean of Dunbar, he was granted an annual pension of 100 merks at the express wish of his kinsman, James IV.<sup>1</sup> He was present at the battle of Flodden in 1513, with many others of the Scottish clergy, and received several years later the Papal absolution for this infringement of his obligations as a Churchman.<sup>2</sup>

On 13th November, 1514, he was granted the 'commend' of the Abbey of Inchaffray by Leo X., who issued instructions on the same day to the Bishops of Dunkeld and Brechin to receive the oath of fidelity on his assumption of the abbey,<sup>3</sup> for which he paid to the Papal Treasury on 22nd December the sum of 100 florins of gold.<sup>4</sup> When his brother Albany took up the reins of government, Stewart's status in the kingdom became more and more important, and it was chiefly due to Albany's advocacy of his claims that he was a dangerous rival to Dundas for the Preceptory of Torphichen. On 5th November, 1518, he was successful in obtaining the 'commend' of the Abbey of Scone,<sup>5</sup> which he held along with Inchaffray, and eleven years later, on 13th September, 1529, he was provided to the Bishopric of Moray, for which he offered, through the agency of his procurator, John Thornton, Canon of Moray, the amount of 1200 florins of gold.<sup>6</sup> In the provision he was spoken of as Dean of Brechin, and kinsman of the King of Scots, James V., whose influence was utilised on his behalf.<sup>7</sup>

In spite of his election to the See of Moray, he was not disposed to give up the emoluments of his other benefices; he

Duke of Albany, was divorced from Catharine Sinclair on 2nd March, 1478. *The Scots Peerage*, i. 152. They seem to have had three sons, of whom the youngest was born about 1477. *The Scots Peerage*, i. 153. The date of Alexander Stewart's birth would be approximately 1473. In his memorial against the Duke of Albany (*Letters Henry VIII.* vol. iii. No. 1808), Gavin Douglas speaks of Stewart as the son of Duke Alexander's first wife, as being 'within no holy orders,' and as 'a man able to marry.'

<sup>1</sup> *Reg. Sec. Sig. Reg. Scot.* vol. i. No. 2146, p. 327. He was Dean of Dunbar as early as 13th November, 1504. *Lord High Treasurer's Accounts*, vol. ii. p. 333.

<sup>2</sup> Brady's *Episcopal Succession*, vol. i. p. 208; *Vatican Transcripts*, vol. iii. (MS.), pp. 241-245.

<sup>3</sup> *Leo X. Regesta*, p. 773.

<sup>4</sup> Brady's *Episcopal Succession*, vol. i. p. 186.

<sup>5</sup> *Ibid.* vol. i. p. 208; *Vatican Transcripts* (MS.), vol. iii. pp. 241-245.

<sup>6</sup> Brady's *Episcopal Succession*, vol. i. p. 209.

<sup>7</sup> *Ibid.* vol. i. p. 136.

contrived to retain both the Abbeyes of Scone and Inchaffray, and paid for this valuable concession 210 florins of gold for Scone and 100 florins for Inchaffray by the hand of John Thornton, his agent in Rome, on 29th September, 1529.<sup>1</sup> He had now reached the final stage of his remarkable advancement in the Church, and spent the remainder of his days absorbed in the many duties that devolved on him as a notable prelate of high birth and a territorial magnate of wide influence. On 16th October, 1532, he resigned his hereditary lands of Pitcairn to his natural son, Alexander Stewart the Younger,<sup>2</sup> and this action was doubtless dictated by his eagerness to see his son's succession assured before his own demise.

In 1533, to meet the pressing financial needs of the Exchequer, a general levy was imposed on the kingdom, and no Churchman, with the possible exception of the Abbot of Arbroath, made a larger contribution than Stewart, whose assessment reached a sum of nearly £530.<sup>3</sup> He remained in active administration of his various benefices for several years longer, exercising his rights at one time as bishop, at another time as abbot. We find him as Abbot of Inchaffray granting a lease of Church lands on 24th April, 1536,<sup>4</sup> and on 19th June of the same year giving instructions, as Bishop of Moray, regarding the completion of a certain notarial instrument.<sup>5</sup> He died on 21st December, 1537,<sup>6</sup> and was succeeded in the See of Moray by Patrick Hepburn, who was acknowledged as bishop on 14th June, 1538.<sup>7</sup>

## VII

Incredible turmoil in civil affairs and conscienceless self-aggrandisement in the Church followed the demoralising defeat of Scotland at Flodden in 1513. Panter, in common with other

<sup>1</sup> *Ibid.* vol. i. p. 209.

<sup>2</sup> *Reg. Mag. Sig. Reg. Scot.* 1513-1546, No. 1230.

<sup>3</sup> *Lord High Treasurer's Accounts*, vol. vi. 1531-1538, pp. 144, 146. For Scone he paid £220 16s. 8d.; for Moray, £176 12s. 3d.; for Inchaffray, £132 10s. Cf. pp. 228, 229, 245, 362.

<sup>4</sup> *Laing Charters*, No. 407.

<sup>5</sup> *Ibid.* No. 410.

<sup>6</sup> *Chronicle of Fortingall. Black Book of Taymouth*, p. 121. Here he is termed Andrew by mistake. 'Obitus Andree Stewart presulis de Murray.' The *Chronicle* is probably correct about the year of his death. That there was dubiety is certain. Lachlan Shaw gave 1535—obviously wrong, as the *Laing Charters* quoted above show. *Province of Moray*, 1827, p. 310. Brady (*Episcopal Succession*, p. 186) gives year as 1538. He has probably not allowed for the delay between Stewart's death and Hepburn's appointment.

<sup>7</sup> Brady's *Episcopal Succession*, vol. i. p. 137.

unscrupulous prelates, continued his ambitious aims, and did not hesitate to ignore his duty to his country when his private interests clashed with the demands of patriotism; and so we find the man who had been present with his King at Flodden appealing for the support of Henry VIII. of England in his efforts to secure Torphichen.

The relations of Scotland and England after James IV.'s death induced Henry, for purposes of his own, to consider Panter's petition favourably, and he addressed a letter to Leo X., probably in 1515, on the Scotsman's behalf.<sup>1</sup> He says Panter is on terms of friendship with him, because he has paid assiduous attention to their common interests and is anxious to be of service to the Pope in these troublous times. Henry reminds his Holiness that Torphichen had been granted to Panter by Papal provision, and refers to the litigation that ensued to settle the question of right. He contends—doubtless repeating Panter's arguments—that the disposal of the Preceptory without the assent of the former possessor and without consulting him is a hateful proceeding, while the donation of the Preceptory to a candidate by men whose authority is inferior to that of the Pope is invalid. He expresses the hope that not merely the fact of his request but the justice of Panter's case will lead the Pope to reverse the present decision, and desires that his protégé, who is also commended by the favour of Queen Margaret of Scotland, may feel that the letters from England have been of service to him in the eyes of his Holiness.

The decision to which Henry refers was the victory which Dundas had gained in Rome over his rivals in 1514,<sup>2</sup> thanks to the sustained support accorded him by his Order, which received on many occasions frank acknowledgment of its privileged position from the reigning Pope Leo X.<sup>3</sup>

On 16th May, 1514, Dundas seemed near to the realisation of his long-deferred hopes when the Archbishop of Glasgow and the Bishop of Whithorn were commanded to ask for the production of the 'executorial' letters (which George Dundas had obtained at the Court of Rome on the question of the Preceptory of Torphichen against Patrick Panter and others who had intruded

<sup>1</sup> *Epist. Reg. Scot. (Jac. V.)*, vol. i. No. x. pp. 194-196.

<sup>2</sup> *Regesta Leo X.* vol. i. p. 553, No. 8817.

<sup>3</sup> *Ibid.* vol. i. p. 424, No. 6685; p. 478, No. 7531; p. 480, No. 7560; p. 490, No. 7721.

into Torphichen), and to induct the said George into the possession of the same Preceptory.

Dundas, however, had not yet seen the end of his troubles, and a further period of bitter uncertainty lay before him. Panter, on his part, was unwilling to admit defeat and give place to his adversary, as may be observed in a series of letters, written in 1515, which voice his reluctance to withdraw his opposition to Dundas. In one of the letters to a friend who was acting as his agent, probably at Rome, he expresses the wish that he had brighter prospects of gaining the Preceptory of St. John. William Knowles, the last to hold it, died, Panter alleges, without nominating an assistant or successor. An old knight named George has succeeded by right of seniority, on the ground that he was granted the reversion by the Lieutenant of Rhodes five years ago.<sup>1</sup> In a second letter to some anonymous correspondent he reverts to the question of Torphichen, and argues that the title claimed by Dundas 'by the pretended resignation' is invalid and that the Preceptory really became vacant on Knowles' death. He has dispatched a messenger from London with the documentary evidence disproving the resignation, and showing that Dundas admitted in a communication to Fabricio de Caretto (the Grand Master of St. John) that he had not possession of the Preceptory.<sup>2</sup>

In the third letter, written after 1st February, he replies to another friend, a cardinal of the Church, who was, it would appear, intimately associated with Panter in his suit for Torphichen. Panter, in meeting some objection advanced by the cardinal, admits that he is aware that the privileges of the Order of St. John are very great. He knows the Preceptories had received Papal sanction, but this sanction was granted with the widest limitations of their privileges. He asks why the question of provision to a Preceptory should not be judged in the same way as a limiting clause is, and cannot understand why a Papal provision should be justified at Rhodes which would not be listened to at Rome. He insists he is seeking nothing but justice for himself, and begs his friend to speed on his cause.<sup>3</sup>

The year 1515 was an important one in Scottish history, for it marked the arrival from France of John Duke of Albany to

<sup>1</sup> *Letters Henry VIII.* vol. ii. No. 87.

<sup>2</sup> *Ibid.* vol. ii. No. 88.

<sup>3</sup> *Ibid.* vol. ii. No. 89.

administer the regency of the kingdom. As his sympathies and tastes were French he became the rallying-point of the national pro-French party in Scotland against those who were disposed to favour the aspirations of Henry VIII. in his persistent endeavours to control Scottish policy. The Regent landed at Ayr on 17th May and was at once immersed in the intricate problems of Church and State.

George Dundas had returned to Scotland by this time, bent on securing the enforcement of the letters he had received at Rome, and resolved to show scant consideration to the opponents whose rivalry must have been so vexatious to him. The only remaining barrier to his resumption of his tenure of Torphichen was the attitude likely to be adopted by Albany and the Lords of Council, before whom the case of Torphichen came up for discussion soon after Albany had reached Scotland. The contemporary minutes of the Lords of Council unfold in detail the resolute insistence by Dundas on his hard-won rights. On 1st June, 1515, according to the minutes, Patrick, Abbot of Cambuskenneth, asked an instrument that he required Sir George Dundas, there present, to produce the Bulls and processes, if he had any, against him touching the Preceptory of Torphichen, in presence of my Lord Governor and Lords of Council, and that he was ready to answer thereto, protesting that he was and is ready to obey the same and to pay the expenses taxed upon him in the executorial letters . . . in presence of the said Lord Governor and Lords on condition that the said Sir George would show the principal executorial letters and the sum contained in them, and after the receipt of the said expenses give him sufficient acquittance of the same.<sup>1</sup>

Alexander, Postulate of Inchaffray, asked an instrument that Sir George Dundas admitted in presence of my Lord Governor and Lords of Council that they never knew of the resignation of the Preceptory of Torphichen in the Master of Rhodes' hands, nor the time nor by whom nor why it was resigned.<sup>1</sup>

My Lord Secretary asked an instrument that the Lords should not proceed further in that matter than the sentence bore, and according to the tenor thereof and not according to the tenor of the breviat or other process.<sup>2</sup>

On 9th June the Lords of Council selected the Bishop of Argyll, the Postulate of Arbroath, the Provost of Crichton, the

<sup>1</sup> *Acta Dominorum Concilii* (MS.), Gen. Reg. House, 1st June, 1515.

<sup>2</sup> *Ibid.* 1st June, 1515.

Official of Lothian, the Provincial of the Preaching Friars, the Provincial of the Minorite Friars, and Master David Seton to advise the Duke of Albany on the question of the process dealing with the Preceptory of Torphichen.<sup>1</sup>

On the same day Sir George Dundas asked an instrument that my Lord Secretary on his own authority spoke against him with the Postulate of Inchaffray, notwithstanding his Bulls and executorial letters.

My Lord Secretary asked an instrument that he spoke nothing against the said Sir George except to interpret the allegation of my Lord Postulate of Inchaffray to my Lord Governor in order that he might understand the same.

Sir George Dundas asked an instrument that my Lord Secretary stood against him and acted as a procurator in the said case of Torphichen.

My Lord Secretary asked an instrument that he answered to the complaints made against him by the said Sir George in presence of my Lord Governor and Lords of Council.

Alexander, Postulate of Inchaffray, asked an instrument that Sir George Dundas admitted in presence of the Lords that the said Alexander was 'intruded' in the said Preceptory and that he desired profession. The said Sir George denied that.

Sir George Dundas admitted in presence of the said Lord Governor and Lords of Council that he desired that the Pope's Bulls and executorial letters should be enforced against the Secretary in all points both as regards cursing him and on other matters as far as was permissible to him according to law. His intention was to curse the Secretary and he protested that he did not accept the Lords as judges in his affairs.

My Lord Secretary asked an instrument that the said Sir George admitted in presence of my Lord Governor and Lords that his intention was to curse him; but, as my Lord Chancellor admitted, no brief had been directed to him on this matter hitherto.

On 11th June, Patrick, Abbot of Cambuskenneth, asked an instrument that he was instructed by my Lord Governor to speak on behalf of Alexander, Postulate of Inchaffray, in the case of Torphichen.<sup>2</sup>

The said Patrick, Abbot of Cambuskenneth, asked an instrument that on 9th June Sir George Dundas admitted in presence of the Lords that he had put no Bulls into execution against him

<sup>1</sup> *Ibid.* 9th June.

<sup>2</sup> *Ibid.* 11th June.

(Panter) except as far as was permissible to him according to law. Notwithstanding, he has produced the said execution against him alleging him under curse, and has expressed the desire that he be expelled from the Lords.

Dundas and Panter were both asked to retire from the Council Chamber until the Regent and his advisers should deliberate on their course of action. The Lords ultimately decided that Panter was not under process of cursing and was not to be expelled from the Council for that reason.

On 12th June, Patrick, Abbot of Cumbuskenneth, asked an instrument that my Lord Governor commanded him to speak on behalf of Alexander, Postulate of Inchaffray, in the matter of Torphichen.<sup>1</sup>

Sir George Dundas asked an instrument that he had been promoted lawfully to the Preceptory of Torphichen, and that Alexander, Postulate of Inchaffray, had intruded himself in the same.

On 16th June, Sir George Dundas asked an instrument that Alexander, Abbot of Inchaffray, had admitted that he had had possession of the Preceptory of Torphichen temporarily.<sup>2</sup>

Patrick, Abbot of Cambuskenneth, asked an instrument that he had spoken in the matter of Torphichen by command of my Lord Governor, and that Sir George Dundas desired letters against him conforming to the executorial letters.

At the sederunt of the Lords of Council on 19th June, the ambassadors of the Pope and of the King of France were present, when it was decided that letters were to be given by the Duke of Albany to Sir George Dundas against Patrick, Abbot of Cambuskenneth, in accordance with the Papal executorial letters which Dundas had obtained.<sup>3</sup>

On 20th June the representatives of the Vatican and of the French were again present at the deliberations of the Lords of Council, who had the Torphichen case once more under review, and succeeded in reaching a decision in part as the minutes of that date show.<sup>4</sup>

Anent the supplication given in by Sir George Dundas to my Lord Governor desiring him to direct his letters conforming to our Holy Father's executorial letters . . . on the Preceptory of Torphichen, . . . in presence of my Lord Governor, the Lords of

<sup>1</sup> *Acta Dominorum Concilii* (MS.), Gen. Reg. House, 12th June.

<sup>2</sup> *Ibid.* 16th June.

<sup>3</sup> *Ibid.* 19th June.

<sup>4</sup> *Ibid.* 20th June.

Council decree and decern that my said Lord Governor shall give his letters to the said Sir George conforming to the said executorial letters in all points; and, whereas it was 'doubted' by the said Lords whether the letters given on behalf of the said Sir George were prejudicial to Alexander Stewart—pretending to have entry to the said Preceptory—or not, and because that point depends on the clause contained in the said executorial letters, viz. 'contra intrusos et intrudendos,' a clause which cannot be 'declared' nor 'decerned' except by our Holy Father the Pope and his Auditors, they therefore refer the 'declaration' of the same to his Holiness, and wish that the said letters be not prejudicial to the said Alexander in the meantime until the said 'declaration' be made.

On 28th June, 1515, Sir George Dundas asked an instrument that Master Alexander Stewart called him Preceptor of St. John.<sup>1</sup>

Sir George Dundas asked an instrument that Alexander Stewart gave in a bill of complaint saying that he was in possession of the Preceptory of St. John.

Sir George Dundas protested that what the Lords did touching the Preceptory of St. John should not prejudice him regarding his right to it.

We have seen that Dundas had definitely vanquished Panter, his most persistent rival, but he was still faced with the hostility of the Duke of Albany, who favoured, as was to be expected, the suit of his brother, and entertained suspicions of the loyalty of Dundas, whose personal interests at this time committed him to an attitude of benevolent neutrality towards England, or at least of lukewarmness to the Regent's vigorous national policy.

Albany's championship of Scotland against the domineering pretensions of Henry VIII. was most earnest and energetic, and the official correspondence of these stormy years remains a permanent memorial to his strenuous defence of Scottish nationalism.<sup>2</sup> He was dissatisfied with the Papal solution of the Torphichen difficulty by conceding frank recognition to Dundas, and he would have much preferred the succession as Preceptor of some one whose fidelity to Scotland could in no way be open to doubt. He wrote to Pope Leo X. on 20th January, 1517, expressing his views on the situation, and his letter gives a

<sup>1</sup> *Ibid.* 28th June.

<sup>2</sup> *Epist. Reg. Scot.* (Jac. V.), vol. i. No. xii. pp. 197-200; No. xiv. p. 201; Nos. xvii., xviii., xx., xxii., xxiii., xxiv., xxvi.

## The Struggle for

concise summary of the controversy as it appeared to him. He explains that George Dundas, who professes to be a Brother of the Order of St. John of Jerusalem, has obtained a decision against Patrick Panter, cleric of the diocese of Brechin, in the case of the Preceptory of Torphichen, which has been a source of dispute for a long time, on the ground that he was provided to Torphichen in accordance with the resignation of the late Preceptor, made at Rhodes by the agency of procurators, and has brought home executorial letters for the expenses of the litigation. On behalf of himself and his adherents, Panter, who has been condemned by the censures and penalties of these letters, has entered an appeal against the enforcement of these invalid and unfair letters, in view of their excessive severity and for other reasons as well. Dundas has also obtained, Albany continues, executory processes of a similar kind against his brother, Alexander Stewart, and has demanded that the provision regarding Torphichen by the late Pope Julius should have effect on the ground that the Preceptory was vacant by the death of the late Preceptor.

Alexander Stewart, on the other hand, argues on his own behalf that transactions carried out by others should not prejudice him, and that the vacancy by resignation was always invalid, and has set himself at once to contest, on legal grounds, the Bulls of the Rhodians which mention, but falsely, the resignation of Knowles. He contends that judgment ought not to be given against one who had never been summoned to the litigation, and had not been heard regarding his own right.

The Regent then informs Leo that a decision was reached in the Common Council of the kingdom that this controversy should be remitted to his Holiness, but owing to the troubled situation at home and abroad, and the apparent imminence of war with England, nothing was done. No one could leave the kingdom, nor could letters be carried abroad. An appellant could not follow up his appeal, and it was impossible for Alexander Stewart to go in person to Rome or send a messenger or letter or a statement of the legal rights of the case.

George Dundas, however, who was formerly received at Rhodes by the votes of the English, and obtained there the Bulls of resignation by the assent of the English (so the letters state), recognising the English Prior of St. John as his superior, has endeavoured, by the commands and instructions of the English Prior, to secure his admission as possessor of Torphichen, and

has lately made his way in safety to Scotland through the midst of the English. He has, moreover, vented his wrath on Scotsmen with fire and sword. He has sent whatever messengers he pleased through England at this time of prevailing suspicion, and has enforced his executory letters against the appellant Patrick Panter and against Alexander Stewart. The Preceptory of Torphichen, compared with the other benefices of the kingdom, Albany says, is valuable to the King, and demands, by reason of its geographical situation, a faithful man, and one who clearly ought not to be the least in the King's Council. As Dundas is not esteemed by the Regent, and as many considerations denounce him as a man to be feared in the councils of the nation, Albany therefore begs with all his heart that whatever harm the unsettled times have done to his brother Alexander and the appellant Patrick Panter should be ignored, and that these two should be granted absolution and restored to their former position. He requests that their pleas should be considered on their merits and heard afresh, especially that of his brother Alexander. Let his Holiness give instructions that Dundas submit evidence of Knowles' resignation (which he has mentioned in the Bulls of the Rhodians) and exhibit the mandate for resignation and the documents showing that the resignation took place.<sup>1</sup>

The preceding letter plainly depicts Albany's hostility to Dundas, and his unwillingness to see him installed in Torphichen. His suggestion that the whole case should be reconsidered was hardly likely to find favour with the Pope's advisers, who must have been growing weary of the interminable controversy; and so no action detrimental to the interests of George Dundas was taken. The legality of his claim necessitated his admission to the Preceptory, but this legality conflicted for the moment with political expediency, and the Regent was not yet inclined to obliterate his cognisance of the alleged anti-national conduct of Dundas. It is indisputable that the weakest feature of the latter's case, from a Scottish standpoint, was his dependence on the English and his acceptance of their support; but it is scarcely probable that he would have jeopardised his chances of ultimate success by proceeding to such an extreme as to wage war on his fellow-Scots. The Regent, too, was a man who did not shrink from strong action when the need became

<sup>1</sup> *Letters Henry VIII.*, vol. ii. No. 2800; *Epist. Reg. Scot.* (Jac. V.), No. xxx. pp. 228-230.

apparent, and his resolute measures against factious Scots much more powerful than Dundas was, go to suggest that he would not have tolerated the latter's presence in Scotland had he been guilty of open warfare against his country.

In administering the affairs of Scotland, Albany naturally desired to have behind him the united will of an undivided people, and so he must have welcomed the opportunity which arose in 1517 of ending, even if only for a time, the bitter partisan struggles he had been forced to face ever since he set foot in Scotland.

The pressure of circumstances made him glad to come to terms with the pro-English party, and in the reconciliation which ensued George Dundas was included, and his right to Torphichen was finally acknowledged, as we know from the minutes of the Lords of Council, in which his presence as Lord St. John is recorded on numerous occasions.<sup>1</sup> The accession of Dundas to the Preceptory was doubtless furthered by the waning opposition offered by his former rivals; for Panter, as we saw, was now in a state of indifferent health, while Stewart was finding consolation for his disappointment by receiving preferential treatment in his candidature for the Abbey of Scone,<sup>2</sup> and in his hopes of adding Whithorn Priory to the number of his benefices.<sup>3</sup>

With the formal recognition of the validity of his succession, Dundas was once more put in control of the considerable revenues of the Preceptory, and was granted, as a matter of right, the usual remittance from the Royal Treasury of the customs duty on eight lasts of salmon<sup>4</sup> which had not been paid to him since the financial year ending August, 1510. Being now assured of a substantial income, he was able to discharge the debts that had accumulated during the years of his exclusion from Torphichen. On 1st October, 1521, John Babington, the Receiver in England for the Common Treasury of Rhodes, acknowledged the payment by Dundas of £100, due by the latter to the Treasury of Rhodes for the years 1519, 1520, and 1521. Babington,

<sup>1</sup> *A.D.* c. 30th March, 1517; 24th May, 7th August, 24th, 25th, 28th, 30th September; 3rd, 4th, 6th October; 20th, 21st November.

<sup>2</sup> *Vatican Transcripts*, vol. iii. pp. 241-245.

<sup>3</sup> *Letters Henry VIII.* vol. ii. No. 1839; Nos. 4641 to 4644; vol. iii. Nos. 615, 616; *Ep. Reg. Scot.* (Jac. V.), Nos. xxx., xlvi.

<sup>4</sup> *Exchequer Rolls, Scot.* vol. xiv. 1513-1522, p. 438; vol. xv. 1523-1529, p. 183.

however, reserved the right to claim for the unpaid arrears from 1510 to 1517, when no payment was made by Scotland to the Rhodians.<sup>1</sup> On 21st October, 1521, Thomas Docra, the English Prior of St. John, gave Dundas receipts for £22 10s. which the Scotsman had received 'at Rome for the defence of his right to his Preceptory,' and for £5 6s. 8d., a sum advanced to pay the expenses of his journey from Rome to Scotland.<sup>2</sup> During the remainder of his life Dundas ranked as one of the notables of Scotland, and sat in the national Parliaments, sometimes as a representative of the barons, at other times of the clergy.<sup>3</sup>

In 1522 he was one of the leaders of a force of 2000 men engaged in patrolling the Borders,<sup>4</sup> at a time when a fresh war with England seemed inevitable, partly owing to Scotland's commitments with France, then bitterly hostile to England, partly owing to the English King's overbearing attitude, which was such as to offend even those members of the Scottish nobility who were usually disposed to favour England. In May, 1524, Albany left Scotland never to return, and on 5th August of the same year, Dundas, along with other members of the pro-English group, definitely repudiated the authority of Albany as Regent, and made at least an outward parade of their patriotism by declaring their devotion to the young King, James V., whose interests they pledged themselves to maintain.<sup>5</sup>

When not occupied with the intermittent calls of public affairs, Dundas was engaged in the performance of his duties as an ecclesiastical dignitary as well as in the exercise of his functions as trustee of the wide possessions of his Order, and we find him, as overlord of the lands of St. John, granting, at different times, charters and concessions to tenants and friends.<sup>6</sup>

His bitter experiences in fighting his rivals seem to have made a deep impression on him, and led him to take steps to safeguard his successor from the possibility of a conflict such as he had himself been compelled to undergo. Accordingly, Walter Lindsay, the son of a sister of Dundas,<sup>7</sup> was nominated as Preceptor-

<sup>1</sup> *Torphichen Writs*, p. 6, No. 9.

<sup>2</sup> *Ibid.* p. 6, No. 8.

<sup>3</sup> *Acts of Parliament of Scotland*, vol. ii. 1424-1567 (1814), pp. 263, 300, 321, 332; *Accounts Lord High Treasurer*, vol. v. 1515-1531, pp. 212, 265, 317.

<sup>4</sup> *Letters Henry VIII.* vol. iii. 1519-1523, No. 2186.

<sup>5</sup> *Letters and Papers Henry VIII.* vol. iv. No. 561.

<sup>6</sup> *Laing Charters*, Nos. 335, 352; *Reg. Mag. Sig. Scot.* 1513-1546, Nos. 234, 984; *Protocol Book of Gavin Ros* (Scottish Record Society), vol. ii. No. 913, p. 612.

<sup>7</sup> *The Scots Peerage*, vol. v. p. 393, footnote 5.

designate by Lisle Adam, the Grand Master of St. John, on 20th February, 1527,<sup>1</sup> and succeeded to the Preceptory five years later, on the death of Dundas in 1532.<sup>2</sup>

With the decease of Dundas there passed away the central figure in an ecclesiastical conflict that was unique even in days when place often received more devotion than principle.

The protracted struggle for Torphichen revealed not merely the inherent difficulties in the position of a semi-autonomous Preceptory, over which neither the Pope, nor the Brethren of St. John, nor the Scottish King exercised an unconditional control, but also the inevitable deadlock that must follow should any of the interested parties be resolutely opposed to compromise. It was not, indeed, until the Protestant Reformation, with its disruptive influences, was accomplished, that the anomalies due to the constitution of the Preceptory were finally got rid of by the repudiation of the claims both of the Church and of the Knights of St. John, when the last of the Preceptors, James Sandilands, seceded from the Church of Rome and was granted, for himself and his heirs, the lands of Torphichen as personal property.

COLIN M. MACDONALD.

<sup>1</sup> *Torphichen Writs*, p. 7, No. 10.

<sup>2</sup> *Laing Charters*, No. 385.

## The Lawrikmen of Orkney

[This paper and another to follow on the Chapels of Orkney are a continuation of that study of the ancient Orkney society and constitution which was attempted in the Introduction to the Records of the Earldom of Orkney. Apart from more hypothetical views, the points established definitely, and which form the 'jumping-off place' for these present essays, are briefly these. We find a multiplicity of odal landowners or 'uthellers' represented on the Lawthing and other head courts by a certain selection from their number styled the 'gudmen,' 'the worthiest,' or the 'gentles of the country.' In their official capacity these representatives were called 'roithmen' or 'lawrikmen' (old Norse logrettu-menn, the members of the legislature in Iceland and of the public courts in Norway). Just as in Iceland and Man, the islands were divided for purposes of representation into large units of area and then subdivided into smaller units, the smallest units discoverable when the Introduction was written being the parishes; though by the end of the Norse period (when evidence is first available) there were certainly several representatives from each parish.]

### THE LAWRIKMEN

THE vast bulk of the documentary evidence concerning any corner of historical inquiry is inevitably confined to corroborative or corrective details, which serve to fill in an outline already sketched, and only occasionally does one have the luck to find something that opens up a fresh vista and takes the whole inquiry a stage further. A certain entry in the Bishopric Court Book of Orkney under the date 22nd April, 1618, is such a key, opening, as it does, the door into quite a new corridor.

On that date a sheriff court was held in the bishopric parish of Sandwick. (It may be recalled that in 1614 Orkney was divided into so many bishopric and so many earldom parishes; bishopric and earldom each having its own separate sheriff.) In connection with this court there is the following entry: 'The quhilk day it is statut & ordanit with consent of the haill parrochine that the persones underwritten sal be oversears, rancellaris, and dittaymen under the bailie in tyme cuming,' and then follows the list of names. On the following day the court moved on to Stromness, and there exactly the same entry occurs.

Though not on this occasion styled 'lawrikmen,' the rancellers actually were identical with the lawrikmen throughout Orkney in the seventeenth century, as is proved by numerous entries in bailie court records and by the contemporary evidence of Wallace. Very possibly the duty of rancelling was put upon the lawrikmen in consequence of the Country Act of 1615 'anent rancelling for thift.'<sup>1</sup> Anyhow the fact is beyond dispute that in the seventeenth century, they were synonymous terms.

The duty of overseeing is illustrated in various of these bailie court records, and consisted at that time in exercising a general control over the behaviour of the parishioners; for instance, in the matter of going on to the hills after sheep, reporting riots, etc.

As to the actual word 'overseer,' it is such an apt translation of the Norse *raðmaðr* in its more common sense of one who rules or is in authority, that we need scarcely look further for the significance of the term 'roithman' found in the early Orkney decrees of court. It might of course bear the sense of councilman—one who sat in the courts (as the roithmen did)—but as both meanings are equally possible and we have here a distinct piece of evidence in favour of one of them, personally I should be inclined to accept that one.

But it is the term 'dittay-men' which really takes one forward. A dittay was a criminal indictment; and not an indictment in the somewhat loose general sense in which the word is sometimes used, but the specific formal charge as drawn up by the procurator-fiscal. Every criminal case entered in the court books at that period has the marginal docket 'Dittay (or dittays), Smith' (or whoever the criminal was). The dittay was read to the prisoner and its points are enumerated in the record, and finally it is always stated that the dittay was put to the knowledge of an assize, whose names follow.

The dittay-men can then only be the assizemen; but to make quite sure of this I went through all the assize lists for several years following, extracting the names of Sandwick and Stromness men on them, and then compared these with the list of the known lawrikmen in 1618, when the fact was at once made certain. And it may be added that even before discovering this entry, a study of the seventeenth century assizemen in the Earldom Court

<sup>1</sup>The actual process of rancelling, or house to house search, was undoubtedly much older, but the mere fact of the passing of the Act shows that a new step was taken in 1615 to regularise it and make it more stringent.

Book had made it plain that the duty of sitting on assizes fell upon certain particular men in each parish, for a limited number of names kept recurring again and again. Further, the record of a Stromness case in the latter part of the century, containing a list of the parish lawrikmen and showing that they formed the bulk of the assize, had already suggested the lawrikman solution. In fact, I was actually looking for this entry (or something similar) when I had the good luck to find it.

We thus find the logretta-men of Orkney actually exercising their old functions in the seventeenth century (even though it was only in the limited field of crime), and it is quite incredible that if they had been replaced on the head court assizes in 1541 by the 'suitors of court' of feudal tribunals,<sup>1</sup> they would have been reintroduced in 1618, seven years after the complete abolition of the old Orkney laws. In fact it seems obvious that the office must have existed continuously.

The seventeenth century assizes throw light on the whole question, for they demonstrably consisted partly of lawrikmen, many of whom were also suitors, partly of suitors who were not lawrikmen, and partly of Kirkwall citizens; together with an element of countrymen who had no qualification but presumably were sent as substitutes for absent lawrikmen.

The last element does not seem to have been present at all at the *head* courts in the sixteenth century, so far as one can judge. And, in fact, at that period when the intricate odal law of property still exercised the wits and tested the legal knowledge of the assizemen, it is most improbable that any but the best qualified would be admitted, save perhaps where Earl Robert Stewart had his own fish to fry. We know, indeed, from the complaint of 1575 that packing the assizes with his unqualified dependents was not the least despicable of his habits.

One or two burgesses of Kirkwall are found on the assize lists even before his time, but he clearly increased their number very largely (as can be seen from his assize of 1584), for the reason that many of his tools were citizens.

<sup>1</sup>This opinion was expressed in the Introduction to the *Records of the Earldom of Orkney*. What misled was the fact that in the great majority of cases the descendants and representatives of the sixteenth century assizemen appear on the suit-rolls in 1617. This is even true of the one lawrikman mentioned in the sixteenth century, Robert Isbister of that Ilk, whose descendant Rorie Isbister of that Ilk was on the 1617 rolls. And further, a number of the assizemen about 1570-80 were feuars or tacksmen, and not odallers at all; but, as will be seen presently, these last were added to, and not substituted for, the lawrikmen.

As for tacksmen of the earldom lands, numerous on sixteenth century assizes, they were no doubt an addition made when the sheriff and his courts first appeared in Orkney (in 1541), and were joined by the feuars as soon as feus began to be granted (in 1560). These two classes were the true suitors, giving suit and presence at the sheriff courts as part of the conditions of their tenure. The addition to the suit-rolls of a large number of the chief odallers (most of them lawrikmen) presumably occurred about 1587 when two charters are recorded giving back to 'gentlemen uthellers' estates previously seized by the earl, on condition of their doing service as vassals. There must have been many more such charters about that time, and these no doubt account for the presence of most of the odallers on the 1617 rolls.

#### PARISH DIVISIONS

Since the office of lawrikman was an office continually in existence down to the seventeenth—indeed, down to the eighteenth century, it is very well worth while to examine most carefully any peculiar features presented by the lawrikmen of those centuries, especially of course as early in the seventeenth century as possible. And if any such features are found, then comes the question of whether they were of long standing or recent origin (the natural supposition being always that their origin is to be sought far back, for nothing is more insisted on by all writers who described the Orkneys in the seventeenth and eighteenth centuries—and even in the early part of the nineteenth—than the intense conservatism of the people and the persistence of ancient ways).

The very first noteworthy feature which presents itself, and the feature which has proved most suggestive, is the distribution of the lawrikmen in districts or divisions of the parishes. In Sandwick, in 1618, there were four lawrikmen for the 'north quarter,' four for the 'next quarter,' four for the 'south side,' and three for the 'fourth quarter'; fifteen in all. In Stromness there were six for the urisland<sup>1</sup> of Kirbister, Redland, and

<sup>1</sup>The urisland, eyrisland, or ounceland (consisting of eighteen pennylands) was the Orkney unit of land valuation, and it may be briefly mentioned here that an urisland occasionally consisted of one single large township, and generally of a group of closely adjacent townships. The only exceptions were when the townships were so scattered as necessarily to reduce the urisland to a mere geographically amorphous area of taxation. The urislands are not usually given—as urislands—in the old rentals, except where they coincided with a single town-

Quhome, four for the twenty-six penny quoyland of Cairston ; and five for the four urislands forming Inner and Outer Stromness. Again there were fifteen in all, apparently based on the principle of five for each division, modified owing to the abundance of odallers, still of some traditional standing, in the first third, and the lack of suitable persons in the second third.

These are the two earliest recorded instances of parish divisions, but there are three more examples in the latter part of the seventeenth century. In St. Andrews in 1665 the parish was divided into five parts, with two lawrikmen for each.<sup>1</sup> In Deerness in 1673 each urisland gave its consent to the appointment of two lawrikmen, except that in one case there were three names and in another one was left blank ; there being thus twelve in all.<sup>2</sup> Finally in 1696 the inhabitants of South Ronaldsay were enumerated according to districts and a list of lawrikmen follow,<sup>3</sup> sometimes set out under the same districts, and sometimes under fractions of them, but evidently appointed according to the same districts, for by adding the fractions together the number of lawrikmen per district comes to about the same in each case. The total is twenty for the north parish and eighteen for the south.

As this division into districts is found in all the five parishes where full lists of lawrikmen are given, the same arrangement may safely be taken as existing throughout the islands. But to test this thoroughly, and also to throw as much light as possible on the whole subject, it seemed well worth endeavouring to discover the districts in other parishes from certain obtainable data. These data are as follows: (1) the number of lawrikmen in each district of any given parish was evidently equal, or nearly so; (2) from an analysis of all the Sandwick and Stromness names on assizes for several years beginning with 1618, this fact becomes plain:—that the men whose names appear frequently were the lawrikmen, while the casual assizemen (probably substitutes) very seldom appear more than once.

Thus by analysing the names of assizemen from other parishes, one could tell with considerable accuracy which were the lawrikmen,

ship, but they can easily be traced by adding up the pennylands in the consecutive townships.

<sup>1</sup> St. Andrews Bailie Court Book.

<sup>2</sup> *Ibid.* A page or two at the end contains Deerness Bailie Court Records.

<sup>3</sup> *Church Life in South Ronaldsay and Burray*, Craven.

a name that appeared more than twice being a practical certainty, and a name that appeared even twice being a strong probability. Then by experimental groupings of these lawrikmen into districts, one could know, again with very fair certainty, when the right districts had been discovered by the fact of arriving at an approximate equality of men per district. The vast number of assizes available, the circumstance that the name of the man's township, or even of his farm, is always given, and the very limited choice of divisions in any parish geographically possible, made this method much more reliable than it may perhaps sound. Indeed, in a number of cases it left no reasonable doubt at all as to the divisions.<sup>1</sup>

In Harray, consisting of four and a half urislands, they seem clearly to have been the four urislands, with the half urisland thrown into one of them.

In Rendall, a five urisland, the data are very good, and clearly show three divisions, two along the coast and one inland, consisting of from twenty-three to thirty pennylands each (excluding the island of Gairsay, from which no names are recorded).

In the large thirteen to fourteen urisland of Birsay, the only arrangement that would in the least fit the data is to suppose it merely divided into two, north and south.

In Rousay, a six and a half urisland, there is a little uncertainty, but it seems pretty clear that there were three divisions, the two urislands on the south-west coast forming one, the three urislands on the east coast a second, and the one and a half urisland on the north coast the third.

We have here, and in the five parishes already described, a variety of types of divisions, and the question is suggested: Had they any common basis, or were they merely arbitrary? After studying all the different cases in the light of a map and of some local knowledge of the country, the answer seems to be that the common basis of these seventeenth century divisions was apparently convenience.

Starting with South Ronaldsay, there can be no doubt as to the reason for its divisions. They are actually marked on Mackenzie's Charts published in 1750, where they appear as large patches surrounded by a hill dyke, and marked 'g' (green), and divided from one another by spaces marked 'h' (heather); the colour of the soil and the hill dykes being thus shown to serve as

<sup>1</sup> The Assize Lists are all contained in the Earldom and Bishopric Sheriff Court Books.

landmarks for mariners. In short, they are simply the cultivated areas into which the island was inevitably divided by the exigencies of soil, slope, etc. Hence they do not conform to any urisland standard.

In St. Andrews, which, like South Ronaldsay, is practically all coastline, the divisions are again prescribed largely by nature, and though they happen to correspond rather more nearly to urislands, they do not do so entirely.

In Rendall we have a long coast line almost continuously cultivated (it is marked as continuously cultivated in Mackenzie's charts), and then three or four inland townships. Here the coast seems to have been arbitrarily divided into two portions as nearly equal in pennylands as possible, and three divisions of the parish were the result.

Passing to the inland parish of Harray, with no headlands to break up the cultivated ground or bays to concentrate it, we find the urislands the units, because here they happen to form very distinct geographical districts, and, in fact, are the natural divisions to-day as much as ten centuries ago.

In Deerness the same considerations would apply.

Coming to Rousay, we get again natural areas round a coast.

But in Sandwick and Birsay there was a complication. In each of these parishes lay large areas of early settlements where the urislands were small and crowded together.<sup>1</sup> And we find an apparently arbitrary division of the whole parish into quarters or halves.

Finally, Stromness is a case of three areas naturally divided from one another by uncultivated hills.

These are all the parishes and islands where there is sufficient documentary evidence to judge of the old divisions as they existed in the seventeenth century, but since writing this paper some very interesting local evidence has come to light indicating that the urislands generally were the original divisions, and that for convenience' sake they came to be gradually modified. This evidence will be given in the next paper.

#### NUMBER OF THE LAWRIKMEN

A second feature to be noted in the seventeenth century records is the number of lawrikmen per parish at that date. We have seen that in 1618 there were fifteen in both Sandwick and Stromness, and from the analyses of the contemporary assize

<sup>1</sup> *Records of Earldom of Orkney*, p. xxxv.

lists, that would seem to have been the standard number in each parish. And this is supported by an *a priori* reason which at once suggests itself, namely that fifteen was the regular number of the assizes who tried the dittays in the seventeenth century. As sheriff courts were often held locally in one parish or another, the fifteen parish lawrikmen would provide a complete assize on such an occasion. (For some reason, South Ronaldsay, however, seems always to have been an exception, judging from the large number of assizemen from that island who appear on record.)

But in 1678 there were only ten in Sandwick,<sup>1</sup> and eleven in Stromness in 1679;<sup>2</sup> while we have seen that in 1665 there were ten in St. Andrews, and in 1673 twelve in Deerness, so that it would appear that regularity ceased everywhere after a time, and there came to be no standard at all.

The interesting question is: What was the number in previous centuries? Was fifteen a standard fixed after the abolition of the old laws in 1611 and the descent of the lawrikmen from legal experts to sheepstealing and witchcraft jurymen, and their conversion also into an unpleasant inquisition of rancellors? Or does it represent a surviving fragment of the old constitution?

This question, I think, can be answered by one single but decisive case. A decree of the Harray and Stenness bailie court in 1576 was 'written at the desire of the lawrikman, Robert Isbister.'<sup>3</sup> Robert Isbister is the first name on the list of the assize, and the only name to appear on any of the contemporary Head Court decrees (where he appears in every one of four consecutive surviving decrees scattered between 1558 and 1580). It is obvious that no other member of this bailie court assize was a lawrikman, and yet we find on it almost all the Stenness landowners at that date who are likely to have held the office.

Even in the seventeenth century when their position had so dwindled in importance, the lawrikmen were still the largest odallers of the parish, with an admixture then of the largest tenants, and without going into the *minutiae* of Stenness family history here (though the precaution has naturally been taken) it can be stated with certainty that there is no reasonable probability of more than two or three lawrikmen in the parish in 1576, and that such a number as fifteen is absolutely out of the question. As a matter of fact, two only are found on contemporary sheriff

<sup>1</sup> Deed in Kirkwall Record Room.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Records of Earldom of Orkney*, No. LXIV. All the other sixteenth century decrees referred to are from the same volume.

court records, one appearing twice and the other thrice,<sup>1</sup> and neither being on the above bailie court assize.

But apart from this test case, there is a great deal of evidence pointing the same way. Thus in five Head Court decrees and one precept for summoning an assize between 1558 and 1580, there are only four Harray names; one appearing four times, another thrice, and the two others who appear at an interval of twenty-two years being uncle and nephew of the same family. A decree of 1584 repeats one name and adds two more, but the assize on that occasion is distinctly suspect as being a packed jury.

Again, from Firth there are only three names in that period, one appearing four times and the other two twice each.

Turning to early extant decrees (1500 to 1522), there are fewer specimens to work upon, and there is some doubt as to whether in every case all the names were actually lawrikmen, but we certainly find that three Stennes names appear six times between them—in addition to another who was probably not a lawrikman—and three Harray names also appear six times.

All these instances seem to indicate decidedly that there were very few lawrikmen in the sixteenth century compared with the large number in the seventeenth. A very careful estimate of the probable total number of Lawthing representatives about the year 1500 gives ninety to one hundred as an outside figure, and from seventy to eighty as a more likely number; and either total would make anything even distantly approaching fifteen per parish quite impossible. On the other hand, one lawrikman for each district in each parish, and perhaps two in exceptional cases, like Sandwick or Birsay, would accord excellently with all the facts available.

It would be satisfactory if this could be definitely checked by fitting the known roithmen or lawrikmen of the earlier decrees (when there were no suitors or citizens to complicate the question) into the known divisions. Unfortunately the members of court in these early decrees have, with rare exceptions, no hint of residence attached. In most instances one knows it with fair certainty, but the placing of the doubtful cases gives the theorist a little too much latitude. All he can say therefore is that taking Orkney all over, it is perfectly possible to make the men fit the divisions, and that in a few parishes there is really no doubt about the coincidence. One instance may be given where the data are quite reliable.

In the island of South Ronaldsay the districts of the north

<sup>1</sup> This statement is based upon quite recent information.

parish indicated by the lawrikmen of 1696 were (1) Herston and Widewall, (2) Hoxay and Ronaldsvoe, (3) Cara and Grimness, (4) East Side. The three roithmen on record would obviously be placed, (1) Magnus Cromarty (elder or younger) in Hoxay, the chief property of those Cromartys before Cara came to them by marriage, (2) Magnus Cara in Cara and Grimness, (3) John Berstane in East Side, where lay Berstane and Cletts, the chief properties of the family.

In the south parish the two known roithmen may be equally definitely placed, Andrew Halcro of that ilk in the district containing Halcro, and Magnus Cromarty (younger or elder) either in Sandwick, the chief property of the southern Cromartys, or in the district containing Burwick, where he held a tack. Thus all five fit into different divisions, and all the divisions but three are filled.

In almost all the other parishes similar results can be obtained, though with less certitude; but there is one striking and interesting exception—the parish of South Sandwick. There the known lawrikmen do not at all fit the two halves, *i.e.* two of the four quarters into which the combined parish of North and South Sandwick was divided. That is to say, they do not fit the divisions of 1618, but it will be seen in the next paper that there is curious evidence of quite other divisions about 1500. In fact, the seventeenth century parish divisions represented a very ancient system, which in a few instances had evidently been modified.

#### HEREDITARY CHARACTER OF THE LAWRIKMEN

On a third point these lists of 1618 lawrikmen throw some fresh light. It has been pointed out that the roithman or lawrikman families, as they are found in the earliest available records, were not only the leading land-owning families of the time, but that the office was hereditary in these families.<sup>1</sup> Whether it had merely become so by custom, as not only offices but even occupations inevitably tend to become hereditary in an isolated, agricultural, intensely conservative society, or whether it had express legal sanction, there was nothing in the records to show. But the fact seemed plain, not only from the specific phrase ‘roithmen and roithmen’s sons’ used of the members of one court, but from actual observation of the representative names at different dates.

Striking confirmation of this has been forthcoming in these lists

<sup>1</sup> Introduction to *Records of Earldom of Orkney*.

of early seventeenth century lawrikmen. Though the numbers had swelled to fifteen and tenants were included, yet in parishes like Sandwick and Stromness, where a considerable body of odallers still survived, exactly the same old names are found, with but rare exceptions.

Out of the fifteen lawrikmen in Sandwick in 1618 there were only three surnames new to Head Court assizes, and in Stromness only two; and this is particularly remarkable in the case of Sandwick, a large parish, in which at least forty different surnames can be counted among the odallers entered in the 'Uthell Buik' of 1601, apart from doubtful cases of apparently different surnames which, there seems reason to think, were probably only aliases.

Two of the three new Sandwick names were those of large tacksmen, and even as late as 1678 there was only one more surname added to the list of parish lawrikmen. In Stromness the two new names were those of the eldest son of Gordon of Cairston, a large feuar and the principal proprietor in the parish, and of one of his tenants.<sup>1</sup>

Several instances, both in the seventeenth and in the sixteenth century, of lawrikmen belonging to old representative families in other parishes being appointed evidently in preference to local men with no traditional claim, are interesting as showing still further the association between family and office. But it must be understood that in the seventeenth century all that has been said of the hereditary element and its persistence applies to the comparatively few parishes where a substantial class of odallers still existed. Elsewhere the seventeenth century lawrikmen were nothing more or less than the largest and most respectable farmers. And this was especially the case as the century went on, the old prestige and position of the lawrikmen all over Orkney fading more and more completely away.

J. STORER CLOUSTON.

<sup>1</sup> In North Sandwick the lawrikmen were:—And. Linklater of that Ilk, Henry Linklater, his brother, John Linklater of Scabra, John Kirkness of that Ilk, Hew Hourston of that Ilk, Wm. Cragy of Vetquoy, Magnus Garson, and And. Rolland; and in South Sandwick:—Magnus Sinclair of Gorne, Edward Sinclair younger of Clumlie, Robert Sinclair, James Louttit, Hew Spens, Jerome Beaton, and And. Halkland. In Stromness they were:—John Redland of that Ilk, John and Jerome Redland in Kirkbister, Jerome Tulloch of Quhome, John Irving of Lie, John Cursetter, Harry and James Beaton, James, Magnus, Alexander, and Magnus Brown, Magnus Sinclair, Patrick Gordon younger of Cairston, and Magnus Leask.

## Scotstarvet's 'Trew Relation'<sup>1</sup>

*The act of parl<sup>t</sup> in favors of the vassals of kirklands 8. march. 1649.*<sup>2</sup>

THE estates of parl<sup>t</sup> now presently convened in the 2<sup>d</sup> session in the 2<sup>d</sup> trienniall parl<sup>t</sup> be vertue of an act of the committee of estates qho had power & aucturity from the last parl<sup>t</sup> for convening doe herby ratifie & approve all & qhatsumever acts of parl<sup>t</sup> formerly made anent the superiorities of kirklands declaring the same to pertain to his majestie and his successors and annexing the same to his hienes crowne declaring the hail casualities of the sd superiorities not disponed befor the 17. jan. 1627. with the hail few maills & rents of the sd superiorities since to belong to his majesty reserving always to the lords & titulars of erection mentioned in the 14 act of his majesties first parl<sup>t</sup> the few maills untill they be satisfied in maner therin contened without prejudice to them of qhatsumever ther lands belonging to them in property in maner mentioned in the sd act And farder the sds estats declares the forsd superiorities of all & qhatsumever kirklands etc pertening of befor to qhatsumever bishops pryors etc erected or not erected into temporall llo[rdships] to pertain to his majestie and his highnesse crowne and to remane therwith in all tyme coming and be thir presents casses annulles the reservation of the sd act of the superioritie of the Lands & uthers pertening to the bishops and chapters for the tyme and als declares all & qhatsumever grants ryghts infestments of any of the sds superiorities with all tacks commissions bailzieries granted by his majestie since the surrender anno 1627 or to be made in tyme coming with all other gifts & donations except to the proper vassals null be way of exception or reply reserving to these persons qho have right to the fewduties their ryghts qhill they be redemed be his majestie or the vassals, discharging the treasurer and lords of

<sup>1</sup> Continued from *Scottish Historical Review*, vol. xiii. p. 392.

<sup>2</sup> This is a slightly shortened version of the Act, chapter 199, of 1649, printed in *Acts Parl. Scot.* vol. vi. part ii. pp. 244-46.

exchecker from passing any such ryghts or infestments excepting always herefrom the duke of lennox ryght of the superiority of the barony of Glasgow, all mortifications to universities, schooles hospitals burrowis royall, the ryghts of the Lands of Lurg & Kincardin and 17 aikers of Land lying about the burgh of Culrose pertening to m<sup>r</sup> alex<sup>r</sup> colvill professor of divinity [P. 26] at St Andrews, excepting also the signator granted to the E[rl]e of Eglintoun and the lo[r]d mongomery of the abbacie of Kilwinning, the infestment and ryght of the fewdewties of the abbacie of aberbrothock granted to patrik E[rl]e of panmure in respect he hath not ryght to the few dewties of the sd lo[r]dship] by vertue of his majestie of worthie memorie his decreet arbitrall and reservation contened in the same, but his right to the few dewties was acqyred by him at a very dear rate from w<sup>m</sup> murray his ma[jesties] servaunt qho had right from the kings majestie And farder the estats of parl<sup>t</sup> decernes and ordaines the lords of erections in whose hands the few dewties remanis untill they be redemed be his majestie to accept the soumes from the vassals themselfs whilk they are lyable and bound to accept from his majestie for redemption therof and to dispone all right & titill they have to the sds few fermes of the sds superiorities and to denude themselfs of the samyn within 40 dayis after they sall be requyred therto and in cace of refusall the soumes of money qherupon the sds few maills are redemable sall be consigned in the deane of guilds hands in Ed<sup>r</sup> upon the perrell of the consigner for redemption therof reserving always the ryght to his majestie to redeeme the same upon the sds soumes and it is hereby declared that the vassals sall have the benefit of this act they paying yeirly to his majestie ane 5<sup>t</sup> part more of his few dewtie nor his present fewis and also after retension of the sd few dewtie be the space of 15 yeirs that the few dewtye forsd sall be declared to be Laufullie redemed by his majestie without payment of any soumes of money and his majestie in all tyme thereafter to have full right to the few dewtie and 5 part above written. It is lykwise declared that the vassals of bishops, pryors etc whose few dewties have been disponed be his majestie sall have the lyke benefite of redeming their few dewties and it is herby ordained that the heritors qho gets the buying of their few dewties from the llo[r]ds of erections sall releve him of the blench dewtie payed by him to the king and of the contribution payable to the college of justice proportionally, and ordaines the lords of counsell & session or lords of exchecker at the persewers option to be judges to all

actions to be intended at the instance of the sds vassals after consignation against the lords of erections for denuding them of the sds few dewties And ordaines the lords of erections & titulars of kirklands to accept such pryces as sall be modified by the commissioners of exchecker and ordaines the infestments of all tennents whose yeirlye rents exceeds not 300 marks to be expedie by the exchecker & great seale *per saltum*<sup>1</sup> without any necessity of other seales and ordaines the precept of saisin to be contened in the infestment and declares the same so passed to be als valid as if they had passed the same throw the hail seales, and declares that he in whose hands the same infestment is passed sall only be lyable in payment of the soume of 4 lib. for parchment to wryte the same on & waxe for the seale & 4 marks for wryting the infestment qhilk ten marks is declared sufficient for the pryce of the breiff retour & precept granted in favours of any of the sd vassals at the tyme of entring of airis to their predecessors, and there sall be only one breif retour & precept of airis portioners qhilk is to be given out and expedie for the lyke soume and the compositions of the infestments of the sds meane vassals to be past gratis be the lords of exchecker and to be written out and past the great seal within sex dayis after the giving therof to the director of the chancellarie under the payne of ane yeirs rent of the Lands contened in the infestment to be payed by the wryter therof. And sicklyke ordaines vassals of kirklands qhose tenements being house yards ruidis aickers of Land not exceeding 12 aickers the same being within regalitie or burgh of barrounie sall have licence to expedie the infestments by the baillies of the sd regalities & burghis *respective* qho sall be obliged to make compt and payment to the exchecker for the few dewties & casualities belonging to his majestie furth of the sds tenements and sall receive the sds vassals gratis.

#### Chap 4

Ja. duke Hammiltoun being sent to Scotland with the kings covenant to procure the peoples consent therto begouth firt to crave the hands of the lords of session that they might give example to the rest of the subjects producing to them the kings letter for that effect: they all subscribed it except 4 Sir Jo<sup>n</sup> Scot of Scotstarvet Sir Al. Gibsone of Dury elder, Sir George Erskene

<sup>1</sup> MS. *saltun*.

of Innerteil & Sir Jo<sup>n</sup> Hope of Craighall who made and subscribed ane protestation against subscribing of the same and the nixt morning went down to the abbay and there in his majesties bedchamber tooke instruments upon the protestation against the marquis in the hands of Jo<sup>n</sup> Scot notar publick as followes

Apud Halyrudhouse 3<sup>o</sup> die mensis Novembris anno domini 1638 The qhilk day in presence of me notar publick & witnesses underwritten compered the ry<sup>t</sup> honorabill Sir Geo. Areskin etc 4 of the ordinar senatours of the college of justice and past to the personal presence of ane noble lord the marquis of Hammiltoun his majesties commissioner and presented to his grace there humble remonstrance qhy they abstained in putting there hands to the covenant enjoyned by his sacred majesties proclamation being requyred by his grace to doe the same qherof the tenor followis We four of the ordinar senatours of the college of justice under subscrivand being this day requyred by ane noble lord—the marquis of Hammiltoun his sacred majesties commissioner to subscribe the covenant enjoy[n]ed by his majesties proclamation and having taken the same to our consideration we find that we cannot put our hands therto for many causes qherof the maine is his majesties declared meaning now intimat to us that the novations introduced into this kirk since the year 1580 (qchik we conceive to repugne to the true sense of that covenant as it was first made) may subsist with the forsaid covenant as it was then subscribed in anno 1580 and because the sound interpretation of the forsaid covenant properly belongs to the generall assembly qhilk is indicted by his majestie to the 21 of this instant for clearing of all such doubts and other grounds of distractions qchik hath lately fallen out in this kingdome Therefore we protest (till these doubts be cleared by the determination of that nationall synod so neere approaching) that this our abstaining to subscribe may not be construed to proceede from any disloyalty or disobedience to auct<sup>ty</sup> but meerly from the sollicitude we have to walk warrantably upon a matter of such importance upon qhilk premisses we in all humilitie ask instruments and in witness therof (written be Jo<sup>n</sup> Scot one of the wryters in the chancellerie) we have subscribed thir presents with our hands the first Nov<sup>r</sup> anno 1638.—After delyvery qherof they declared that this was the same remonstrance qhilk they had made in session the day qhen his grace desyred there subscription and in respect that the same was not put then in paper they tooke therefore

this occasion to delyver the same upon the deliverie qherof they asked instruments qhilk the marquis accepting asked also instruments that he accepted the samyn only as a common paper and supplication and not as any judiciall act [P. 27] and declared that his receiving of the same sould not give any approbation therto. The remnant lords taking to consideration after they had subscribed the kings covenant what daungerous consequences were lyke to fall out upon there subscription therof were moved to concurre with the other 4 in sending a message to his majesty with one of there number Sir Jo<sup>n</sup> Hammiltoun of Orbestoun the tenor qherof followes  
Most Sacred soveraigne

The danger of the tymes qherin we live threatning fearfull desolation to this your auntient and native kingdome and the conscience of our humble dewty qhich we ought to your majesty our deare and dread soveraigne and to this realme qherof we are feeling members honoured by your majesty to be counsellors and judges therin hath constrained us in this case so important & pressing to bemoane to your sacred selfe the present calamity & apparant eschewing [?] of more. God qho hath established in your sacred persone the just and lawfull right of the royall inheritance hath also fitted your majestie with all endewments necessar to the royall calling: your majestie under God may solely allay the terrours of the menacing stormes and without the sunshine of your gracious & calme countenance the Land & inhabitants therof will quickly become miserable The causes are better knowne to your majestie then that they need relatione qhen your majestie was pleased to indict a generall assemblie at Glasgow we and the most part of all your good subjects in this kingdome were overjoyed in expectation that the doubts in religious worship & kirk government qhilk hath bein tossed to & fro this tyme bygane sould have bein there clearlie settled and althoight the greater part of your people are well pleased with the constitutions there concluded yet your majesties hight displeasure against that assembly and the proceedings therof and the expresse dislyke of these qho adheres to the samyn and the fearefull consequences therfra lyke to ensue hes turned all the hopes of confort qhilk we expected in sorrowis & terrours When princes stand in doubt of there subjects and the subjects in feare of the prince if not tymely remeaded may prove difficilly remeidable and in such a cace determination is necessar to goe even with deliberation your

majestie may be pleased to pardon us to averre that in this they are but bad counsellors and no better patriots qho will advyse your majestie to adde oyle & fewell to the fyre. Violence & armes are placed among bitter and desperate remedies proving oftner worse then the desease. To speake truth ingenuously becomes all men and us more then others speaking to our king and in a matter importing no lesse then the universal fall or standing of the nation and apprehended by most of your leiges to reflect in religion & conscience qhilk seldome are forced with successe who does insinuate to your majestie that the opposers to the proceedings at Glasgow does surpasse the number and in other considerable respects such as adheres to the samyn we veritable avow upon our alledgeance that they want<sup>1</sup> unwarrantable suggestions qhilk may provoke the wrath of the prince against his people and does foment means for the overthrow of the peace kirk and kingdome It is overbrite foundation qherupon to ingadge the honour and safty of your sacred persone as to build conclusions of warre and we sould not hold ourselfs for loyall subjects if we sould not say that these misinformations are contrare to the truth Your majestie is knowne to the wordle to be a pious prudent & moderate prince qho will not be drawne from your laudable forme of reading qhilk was ever familiar to your majesties selffe and your royall father of blissed memorie qho worthily gloried in the title of a pacifick king for the throne of kings (sayis that wise king) is established by justice & ryteousnesse and therfore we most upon the knees of our hearts supplicat your sacred majestie in the bowels of mercie of our blissed saviour to be pleased to forbear all purpose of armes and so prevent the evils of dispayre & necessity and for that your majestie may be pleased to close your eares against all contrary inducements Your majesty is vicegerent to the almighty God qhose mercies & compassions altho inimitable are proponed as characters of imitation to princes so farre forth as mortall men may resemble therin the immortal god These our groanes and submissive supplications we beg in all humility that your majestie may be pleased gratusly to take to your pious and wise consideration qhilk we have sent to your majestie by this bearer the justice clerke qho is one of our ordinar number to qhom we have committed our instructions with trust and we sall never cease to offer up our fervent prayers to him by qhom kings raigne for preservation of your sacred persone and the continuall felicity of your long & happy raigne over us and

<sup>1</sup> want (?). Perhaps for *vent*.

therafter of your royall posterity swa long as the wordle sall endure.

March 1639

The particulars contened in Mr Saundersons introduction qhilk he makes the ground of the troubles of Scotland are to be considered as false and first is the faction of the erle of Nithisdale with the erle of Menteeth qhilk he affirmes had rying & strenght from his allyance with the duke of Buckingham qherin he is altogether mistaken for Nithisdale had no acquaintance at all with Menteeth nor were they ever in place of state together for at the kings first entry to the croune of England and after the change of the session qherin Nithisdale was a prime agent his majestie finding opposition be the statesmen to the generality of the revocation he took another course with Nithisdale & made him generall of the armies qhilk he sent to asist his uncle the king of Danmark and made him collector of the taxation granted to his majestie and out of the same gave him such share that he medled not therafter with the Scots affairs, all qhich were done before Menteeth came in pley or had anything to doe in the estate. Nether was Nithisdale ever a counsellor being popishly affected or Menteeth had occasion to converse with him either in Scotland or England and what freindship Menteeth had with the duke of Buckingham the same proceeded from Master Maxwell one of the bedchamber at the desyre of Sir Jo<sup>n</sup> Scot who expected great kyndnesse at the erles hands for the same.

As for Sir W<sup>m</sup> Alexander qho at the changing of the session was made secretar in place of Haddingtoun he gott from his majestie the gift of coyning base money that of creating 100 barronnets the lieutenantancy of New Scotland all qhich gifts 7 yeirs preceded the subscribing of the covenant & so would have no contingencie therewith but rather obliged him in thankfullnesse to his master for the great benefits bestowed on him/ but all these were spent in his great undertakings in sending ships to America, and if any actor he was in the bussines after the subscription of the covenant by the people of Scotland it was only as freind to the bishops qhom he saw the king affected whose insolent carriage in aspiring to possesse all the places of estate drew upon them the hatred of the nobility before qhom they were not ashamed to take place and even in publick counsells to revyle them by speaches and therby gave fewell to the fyre that was kindled by that service booke urged by his majestie upon Scotland.

[P. 28] Sir W<sup>m</sup> Alexander associate to himselfe Sir Archb[ald] Achesone and gave him the half of the fees of the signet and procured him to be made a lord of the session and privy counsellor qho died in Ireland. The gift of base money was called in and discharged anno 1640. Sir W<sup>m</sup> the tyme of forming the revocation & some yeirs thereafter lived privatlie at Lithgow and fra the death of Prince Henry had not meddling with any bussnes at court, the revocation was penned by Mr James Scot one of the under clerks of the session and presented by him to his majestie immediatlie after his fathers death for qhilk service he gott a pension of 40 lib. stirlin yeirlie for his lyfe but died within 2 yeirs after.

Another ground he sayis proceeded from the church men & ministers qho he sayis ressave not tithes but a poore pension for their maintainance qhilk is untruth for in the parl<sup>t</sup> 1633 the king gave<sup>1</sup> them allowance of 8 chalder of victuall or 1000 marks of money for there maintainance.

The last concerning the impropriations or erections of kirklands in temporall llo/ [lordships] qhilk he sayis was a cause of these commotions he is mistaken for it obliged the gentry in getting there tithes out of the noblemens hands qho in the same parl<sup>t</sup> act 15<sup>2</sup> thereupon condescended to give his majesty an annuity out of the samyn tithes and for redemption of the samyn voluntarily payed great soumes to Traquair treasurer without any discontent at all. The displacing of the grandees out of the session gave no occasion of discontent to the subjects at all as is shewin in the first chapter, being many yeirs befor the subscription of the covenant, nether can the petition of the gentry concerning superiorities be thocht any, being 9 yeirs after.

FINIS.<sup>3</sup>

<sup>1</sup> ‘The king gave’ apparently altered from ‘they gat.’

<sup>2</sup> Words ‘act 15’ are added in the margin.

<sup>3</sup> This concludes the text of the Scotstarvet MS. A short comment on Chapter 4, which contains matter and document of considerable historical note, may be given in a final article in a future number.

[NOTE. The following very piquant letter of Scotstarvet's to the Earl of Lauderdale in 1665 will remind us of the vicissitudes of the time, from which Lauderdale himself was not free. It is from the British Museum MS. 23122 fo. 253.]

Edr Januar 1665

My Lord

I hope point of honoure will obleidge you to (*sic*) to owne your owne Letter and see the favoure ye begune to me in it brought to a full perfection, My Caise is singulare and my Desyre most Just, And albeit I cannot *ϕ*tend for much favoure at your hands, Yet I hope ye will protect my innocence, and stand for your owne act. I was put from my Charge, and had no requitall besyds this Letter from his Ma<sup>tie</sup> under your Lo<sup>ps</sup> hand, and as I have alwayes bein a freind & servant to men of Learning & pairts so I hope in my necessitie (wherin I am no fit object of revenge) I will find your Lo<sup>p</sup> who is both a man of pairts & Learning willing to assist me and suffer me to acknowledge my self

Your Lo<sup>ps</sup> most humble servant

SCOTTISTARVETT

Addressed on back

For the Right honob<sup>ll</sup>  
The Earle of Lawderdail  
Lord Secretarie for the Kingdom of  
Scotland At Court

These

## Murehede or Durisdere

IN 1908 the late Bishop Dowden, Edinburgh, drew attention to the fact that, in contemporary documents, Andrew, bishop of Glasgow 1455-1473, was called De Durisdere; and stated that he thought the name of Muirhead, given to the bishop in the *Glasgow Martyrology*, 'must be an error.'<sup>1</sup>

In 1910 a Glasgow antiquary followed Dr. Dowden's lead; and stated further 'that Andreas Episcopus and Andreas Murehed were different people seems evident.'<sup>2</sup> It is admitted by both writers that there was a connection between 'the family of the bishop and the family of Muirhead.' He had a nephew and a cousin of that name, and he used the Muirhead arms in his seal.<sup>3</sup>

<sup>1</sup>'The Bishops of Glasgow,' by J. Dowden, *S.H.R.*, vol. v. pp. 320-3, also 'The Bishops of Scotland,' pp. 324-8. The *Martyrology* referred to by him as having been written after 1553 was copied from the original in October, 1556. The entry reads: 'Obitus Andree Mureheid episcopi Glasguensis vigesimo die Novembris anno Domini millesimo quadringentesimo septuagesimo tertio qui fuit fundator collegij Vicariorum Chori Glasguensis' (*Reg. Episc. Glasg.*, i. Preface, p. xv, and ii. p. 616). The writer of the article, 'Muirhead of Lauchop,' in Nisbet's *Heraldry* gives the same date, quoting MSS. in the Scots College, Paris (Nisbet's *Heraldry*, ii. Appendix, p. 260). Further corroboration of the accuracy of the entry is afforded by the fact that Bishop Andrew's last recorded appearance is on the 23rd October, 1473, and that the statement that he founded the Vicars' College is correct (*Reg. Mag. Sigill.*, ii. No. 1149; *Reg. Episc. Glasg.*, ii. No. 391). Dr. Dowden accepted the obituary as correct for other entries.

<sup>2</sup>Dr. William Gemmell in *The Oldest House in Glasgow*, pp. 28-34 and 116-118.

<sup>3</sup>Thomas de Murehede, nephew of Andrew, bishop of Glasgow, appeared on record in October, 1460 (Theiner's *Vetera Monumenta*, No. 836); and John Murhed, cousin of my lord (bishop) of Glasgow in 1467 (*Mun. Alme Univ. Glasg.*, ii. p. 205). The bishop's round seal appended to a charter of 1465 bears the Muirhead arms, on a bend three acorns (Laing's *Seals*, i. No. 953 and pl. xvi. f. 5). The same arms appeared on his chapel of S. Nicholas, and are still to be seen on 'Provand's Lordship,' which was the manse of the Hospital of S. Nicholas founded by the bishop (Nisbet's *Heraldry*, ii. App. p. 259; M'Ure's *History of Glasgow*, pp. 57-8 of 1830 ed.; and Stuart's *Views and Notices of Glasgow*, pl. opp. p. 17; Lugton's *Old Ludgings of Glasgow*, pp. 35-6, and Nisbet, ii. App. p. 260).

These two facts should have placed the question of the bishop's name beyond any doubt. It is obvious that, if he had a nephew called Muirhead, he must have been either the brother german or brother uterine of that nephew's father, or the brother of his mother. When there is added to that the fact that the bishop used the Muirhead arms and is known to later generations under that name, it appears certain that his name *was* Muirhead,<sup>4</sup> and



SEAL OF ANDREW MUIRHEAD, A.D. 1455-73.

that De Durisdere was merely an *alias*. Fortunately more evidence than is cited by the two writers, mentioned above, can be produced.

In 1582 Sir Mark Jamieson, vicar of Kilspindy (who appeared on record on the 5th Nov., 1539,<sup>5</sup> fifty-six years after Bishop Andrew's death), referred to his own endowment of £3 to 'the tuelf pwir men in the foir almousous of Glasgow foundit be umquhile bischop Andro Mwirheid bischop of Glasgow.'<sup>6</sup> In 1490 Sir David Stewart of Rossyth, son and heir of umq<sup>le</sup> Sir David, the heir of umq<sup>le</sup> Henry Stewart of Rossyth, summoned Robert Muirhead of Wyndehillis, 'assignay to umquhile a Reverend faider Andro bischop of Glasgow,' to resign the lands of Half-pennyland.<sup>7</sup> Wyndehillis is in Closeburn parish, Dumfriesshire.<sup>8</sup> The Stewarts of Rossyth were barons of Durrisdere; and it is certain that this lawsuit was the result of some bygone transaction

<sup>4</sup> After the decadence of the Science of Heraldry people no longer observed its rules, but in the fifteenth century such was not the case. In 1456 Hay wrote in his *Buke of the Law of Armys* that those who bear others' arms wrangwisly 'suld be wele and cruelly punyst be justice. And gif the contrary war tholit it war grete damage to the realme' (pp. 281-2).

<sup>5</sup> *Charters, etc., of Glasgow*, ii. App. No. 21.

<sup>6</sup> *Ibid.* No. 44.

<sup>7</sup> *Acta Dominorum Concilii*, p. 144, 9th October, 1490.

<sup>8</sup> *Reg. Mag. Sigill.*, ii. No. 3034.

between the bishop and the baron of Durriseir.<sup>9</sup> When it is added that a search through Scottish records reveals the fact that Andrew de Durisdere seems to be the only person bearing this surname, and that there was no family of this designation,<sup>10</sup> it appears evident that the bishop derived his appellation of De Durisdere from having been connected with, or born at Durriseir.<sup>11</sup>

<sup>9</sup>*R.M.S.*, ii. No. 3840; Nisbet's *Heraldry*, ii. App. p. 151; and *Scots Peerage*, v. p. 1. David Broune in *Halpenneland*, and Petyr Broun in *Durisdere*, witnessed a deed relating to lands in Snaid, Dumfriesshire, dated 1st May, 1541 (*MS. Cal. of Marquess of Tweeddale's Writs penes me*). The son and heir of Robert Muirhead of Wyndehills was George, a member of the King's Household (*R.M.S.* ii. 1977), who accompanied the Secretary of State, Mr. Richard Muirhead, Dean of Glasgow, on an embassy to Spain (*Treasurer's Accounts*, i. p. 266; *Cal. of Spanish State Papers*, i. p. 91; and *R.M.S.*, ii. No. 2170). In the article on Muirhead of Lauchop in Nisbet's *Heraldry*, this Master Richard is said to be the bishop's nephew.

<sup>10</sup>Indices of printed records, bearing on the subject, have been examined to ascertain if there was a family called Durriseir, viz. the Record, Bannatyne, Maitland, and Grampian Clubs' publications, all Fraser's Family Histories, Calendar of Laing Charters, several of the Hist. MSS. Commission Reports, and many others; and all have yielded a blank. In the thirteenth century the barony of Durisdere belonged to the Lindsays (*Scots Peerage*, iii. p. 5; and *Cal. Doc. Scot.*, ii. No. 1452, and iii. No. 1159). By 1320 it belonged to the Meyners, from whom it passed to the Stewarts in 1374 (*R.M.S.*, i. No. 32 and 457; Nisbet's *Heraldry*, ii. App. p. 151; and *Scots Peerage*, v. p. 1).

<sup>11</sup>The family of Edward III. of England were distinguished by the names of their birthplaces being added after their Christian names even in records. Thus I find John of Ghent, Edmund of Langly, Thomas of Woodstock, and Joan of Woodstock, the children of this king so termed in Rymer's *Foedera* (*Syllabus*, pp. 301, 330, 347, 420, 425, and 477); and in the accounts for his burial Henry VI. is called Henry of Windsor in 1471 (*ibid.* p. 702). The well-known William of Wykeham (1324-1404), bishop of Winchester and chancellor of England, took his name from Wickham, where he was born, but his father's name was John Long (*Dict. Nat. Biog.*, vol. 63 of 1900 ed.; *Syllabus of Rymer's Foedera*, p. 521). John VI., abbot of S. Albans, 1420-1440 and 1451-1462, was the son of Hugh Bostock, but he appears on record as John of Wheathampsted, from the name of his birthplace (Page and Nicholson's *S. Albans Cathedral and Abbey*, p. 75, and *Annales Monast. S. Albani*, ii. p. 178). In Renfrew Kirk there is the grave-stone of Sir John Moderwel, vicar of Eastwood, who died 3rd October, 1478. Sir John Fenyson was vicar in 1469, Sir John Moderwell in 1470, Fenyson again in 1470, and Moderwel in 1478. The apparent discrepancy is cleared up by a charter belonging to Hall-Maxwell of Darngavel, dated 29th April, 1465, by which Sir John Fynlai, *alias* Modervele, vicar of Estwod, founded a chaplaincy in Renfrew Kirk, proving that it was one man of two names (Hamilton's *Descrip. of Lanark and Renfrew*, 2nd pl. after p. 126; *Reg. Mon. de Passelet*, pp. 323 and 347; *Mun. Alme Univ. Glasg.*, ii. p. 77). John Rede, *alias* Stobo, rector of Kirkcriste, 1488 and 1491 (*R.M.S.*, ii. 1810 and 2033), is claimed by Dr. Gunn as a famous churchman of Stobo (*The Book of Stobo Kirk*, p. 3). A glance at the indices of Cupar Abbey Rental, Rental Books of the Archbishop of Glasgow, and Cuthbert

Further, it is obvious that he was a member of the family of Windyhills, Dumfriesshire, not Lauchop, Lanarkshire, as is asserted by the writer in Nisbet's *Heraldry*, without producing any evidence to support his statement.<sup>12</sup>

There is still another disputed point, the colours of the bishop's arms. The arms of Muirhead of Lauchop are *argent, on a bend azure, three acorns or*;<sup>13</sup> and it has been assumed that these were the colours of the bishop's arms; but the tinctures of his shield, which is carved on the vaulting of the North Aisle of the Nave of S. Kentigern's Cathedral, are gold and red, not silver and blue. His arms depicted there are *or, on a bend gules, three acorns slipped and leaved or*.<sup>14</sup>

There is really no reason to believe that this shield has been repainted with wrong colours,<sup>15</sup> for, as has been shown, the bishop

Simson's Protocol Book, all sixteenth century, shows that it was quite customary to use a man's nickname even in legal documents.

<sup>12</sup> Nisbet's *Heraldry*, vol. ii. App. pp. 258-260; M'Ure, p. 22 of 1830 edition, also says that Bishop Muirhead was of the 'same stock of Muirheads with the house of Lauchop.'

<sup>13</sup> Sir David Lyndsay's *Heraldic MS.*, A.D. 1542, fol. 119. The Muirheads of Lauchop never recorded their arms in the Lyon Register, but Bredisholm registered these arms in 1672-7, with the addition of a crescent in chief for difference, as a 'second son' of Lauchop (Paul's *Ordinary of Scottish Arms*, No. 316; Nisbet, i. p. 438).

<sup>14</sup> The carving is on the second bay of vaulting, west of the crossing. The shield is surmounted by a mitre, and below it there is a salmon. It has been objected that gold and gules are the tinctures of the arms of Ralston of that ilk, who also bore three acorns on a bend, and therefore the arms are those of a Bishop Ralston. John Ralston was bishop of Dunkeld, 1448-1452; but no bishop of this name appears amongst those of Glasgow (Dowden's *Bishops of Scotland*, pp. 74-5). A seventeenth century roll seems to be the only authority for the gold and gules tinctures of the Ralston arms (Stodart's *Scottish Arms*, vol. i. pl. 104, vol. ii. p. 368). Other, better, authorities give the arms of Ralston of that ilk and Muirhead of Lauchop as exactly the same, which should be a heraldic impossibility.

Mackenzie, in 1680, gives the arms of Ralston of that ilk as *argent, on a bend azure, three acorns in the seed or* (*Science of Heraldry*, p. 63); and Wm. Ralston of that ilk registered these arms in 1672-7; but the record seems to indicate that the acorns should be disposed 2 and 1, and not in a line (Paul's *Ordinary*, No. 317, and Nisbet, i. p. 365).

Nevertheless the shield of this Ralston carved on a shield, of date about 1625-1674 (Pont's *Cunningham*, p. 381 of 1853 edition, and Stodart, ii. p. 368), and the drawing in Mackenzie's *Science of Heraldry* (plate opp. p. 63, f. 6) distinctly show the acorns in line; and Nisbet gives the arms of Ralston of that ilk and Muirhead of Lauchop as exactly the same (i. pp. 365 and 438).

<sup>15</sup> On its being shown that the idea that the shield was that of a Bishop Ralston could not be maintained, the next objection advanced was that the shield had been

was connected with Windyhills, Dumfriesshire, not Lauchop, Lanarkshire; and examples can be quoted of families differencing their arms by change of tinctures.<sup>16</sup>

repainted; but there is no proof of this; and it would have involved much trouble and expense, scaffolding being necessary to carry out such work. Again, if the shield has been repainted and altered from silver and blue to gold and red, it may well be asked why this supposititious repainter should have put himself to the trouble and expense of altering this particular shield from the colours blue and silver which he must have been applying to other shields around (which bear these tinctures), and using the more costly gold and red. The shield in question was examined closely from a scaffold by a well-known architect and archaeologist who was making a survey of the carvings on the vaulting, and he expressed his opinion that the shield had *not* been repainted, as I asked him about this point particularly, anticipating such an argument.

<sup>16</sup> Mackenzie says in his *Science of Heraldry*, p. 74, that 'It is irregular to alter the Chiefs Colours, as Campbel of Lundy does . . . : yet this was allow'd of old by Custome, which may defend what was done, though it should be no precedent for the future'; and many mediaeval examples of differencing by alteration of tinctures are to be found. For instance Bruce of Carrick bore on a saltire gules, on a chief of the second a lion passant guardant of the first. Three other Bruces bore azure a saltire and chief or, and another gules a saltire and chief or (Foster's *Some Feudal Coats of Arms*, pp. 34-6). Alexander Balliol bore argent an orle gules, Ingram de Balliol gules an orle ermine, and King John gules an orle or (Foster, p. 8, and Lyndsay's *MS.*, f. 19). The *Armorial de Gelre*, A.D. 1382-1388, gives the arms of Moray and Sutherland (descended from the same ancestors) as azure three mullets argent, and or three mullets gules respectively, Sutherland's arms being given in later rolls as gules three mullets or (*Proc. Soc. Antiq. Soc.*, vol. xxv. plates 3 and 2; Lyndsay's *MS.*, ff. 48 and 42; Paul's *Ordinary*, No. 4453). In the Lyon Register, Campbell of Argyle recorded his tinctures as or and sable; Campbell of Loudon ermine and gules; and Campbell of Otter as ermine and sable (Paul's *Ordinary*, Nos. 3049, 3114, and 3130).

It might still be objected that Bishop Andrew, although the son of a cadet, as an ecclesiastic, would bear the arms of the head of the family, Lauchop; and to this it may be answered that there is not sufficient evidence to prove that the clerk sons of cadets used the chief's arms. The theory is not entirely supported by the arms in the heraldic ceiling of S. Machar's Cathedral. And again there is no evidence that Lauchop was then head of the family. Unless the writer of the article in Nisbet's *Heraldry* is entirely wrong, there were Muirheads of that ilk at the end of the fourteenth century (ii. App. p. 256). The name was De Muirhead, but Lauchop did not hold that estate in the fifteenth century, as is shown by a charter of confirmation dated 1472 to James Lord Hamilton of the lands of Murehede and others in the barony of Bothwell exchanged for Kirkanders by Wm. Lord Monypenny (*Reg. Mag. Sigill.*, ii. Nos. 1054-5).

The writer says that he saw a pedigree which mentions a charter dated 1393 of the lands of Muirhead in the barony of Bothwell to Wm. de Muirhead by Archibald Earl of Douglas. From 1400 to 1409 a Wm. de Murhede, first as an esquire and then as a knight, appears in several transactions of the Earl of Douglas (*Douglas Book*, iii. Nos. 342 and 356; *R.M.S.*, ii. No. 1645; *Book of Caerlaverock*, No. 21; *Cal. Doc. Scot.*, iv. Nos. 654 and 660). On the 13th Oct., 1425, Sir Wm. de Murhede, lord of Lauchope, witnessed a charter by the Earl (*Douglas*

There seems to be no cause to doubt that our bishop was a Dumfriesshire man, Andrew Muirhead from or of Durisdere, and his arms *or, on a bend gules, three acorns slipped and leaved or*.

C. CLELAND HARVEY.

*Book*, iii. No. 383). This is the earliest mention I know of Muirhead of Lauchop, and is, I think, a clear indication that either Muirhead of that ilk and Muirhead of Lauchop were two distinct families, or that the original property had already passed from the family, leaving it only Lauchop, which they cannot have obtained until some time after 1350, as William Batystoun had a charter of confirmation by David II. of a charter to him by Sir Thomas Moray (Baron of Bothwell 1351-1361) of the lands of Over and Nether Lauchop in the barony of Bothwell (*R.M.S.*, i. App. ii. No. 1406; *Scots Peerage*, ii. pp. 129-130). But even supposing, for the sake of argument, that by Bishop Andrew's time Lauchop had become head of the family on the apparent extinction of the main line, and that the bishop did use the chief's arms, there was nothing to prevent the Muirheads from doing what others have done, namely, changing the colours of their arms. For instance the field of the arms of Moray has been changed from argent to or (*Armorial de Gelre, Proc. Soc. Antiq. Scot.*, vol. xxv. pl. 1, and Froissart, Johnes ed., i. p. 27, both give it as argent. Lyndsay's *MS.* gives it as argent for Stewart Earl of Moray, but or for Randulf Earl of Moray, f. 43. The Earl of Moray and eleven Dunbars have registered it as or. Paul's *Ordinary*, Nos. 1753 to 1764). The arms of Broun of Colstoun have been completely changed three times, and Stirling of Cadder, Jardine of Applegarth, Kirkpatrick of Closeburn, Hume of Dunglas, and Abercrombie have all altered their arms (*Stodart's Scottish Arms*, ii. pp. 80, 46, 47, 55, and 297).

## Free Quarters in Linlithgow, 1642-1647

THE following interesting document illustrates the military history of the army of the Solemn League and Covenant. Linlithgow in the period was called on to provide 'free quarters' for several of the regiments passing into or from England. The allowance for every rank is specified in £ Scots, and conforms fairly closely to that in force with Leven's army in England. When 'free quarters' were taken a deduction naturally was made from the pay of all ranks. The raising, composition, equipment, organization, and finance of the army of the Solemn League and Covenant will be dealt with by the present writer in an imminent volume of the Scottish History Society's Publications.

C. SANFORD TERRY.

We the Magistratis of the brucht of Linlithgow wnder subscriyveand doe heirby testifie and declair wpoun our fidelitie and credit that thair was quartered wpoun the brucht of Linlithgow in frie quarteris the number of souldioris and officeris efermentionat at the severall dyettis efter specifeit fra March 1642 to Februar 1646 as followis viz :—

Thair was quartered wpoun the said brucht 1400 souldioris of Generall Major Monro his regiment<sup>1</sup> quhen thay went to Irland ilkane of thame haueing per diem 4<sup>s</sup>.<sup>2</sup> twentiaucht serjandis ilkane of thame haueing per diem 6<sup>s</sup>. 8<sup>d</sup>, 42 corporallis 28 drumeris ilkane of thame haueing per diem 5<sup>s</sup>. 4<sup>d</sup>. with 14 capitane at armes ilkane of thame haueing per diem 6<sup>s</sup>. 8<sup>d</sup> for the space of 48 houris in the moneth of March 1642, all thair pay in that space extending to 618<sup>lib</sup>. 17<sup>s</sup>. 8<sup>d</sup>.

Item thair was quartered within the said brucht the Lord Levingstoun his regiment quhen thay went to England for the space of 24 houris in Januar 1644 consisting of 1000 souldiors haueing ilkane of thame 4<sup>s</sup> per diem, extendis to 200<sup>lib</sup>. : 00 : 00

With 16 serjandis ilkane of thame haueing 6<sup>s</sup>. 8<sup>d</sup> per diem, 24 corporallis, 16 drumeris ilkane of thame haueing per diem 5<sup>s</sup>. 4<sup>d</sup>, 8 capitane at armes haueing per diem 6<sup>s</sup>. 8<sup>d</sup> for the said space of 24 houris extendis to 22 : 18 : 8

<sup>1</sup> The regiment had been kept on foot upon the return of the army from England in 1641. It was called to Ireland by O'Neil's rebellion.

<sup>2</sup> The rates are in £ Scots = £ $\frac{1}{12}$  sterling.

And that thair was quartered in frie quarteris wpoun the said brucht ane troupe of the Marques of Argillis<sup>1</sup> wnder the comand of Ruitmaster Archbald Campbell, 24 hours in Junij 1644 consisting of ane Leiutennet at 1<sup>lb</sup>. 10<sup>s</sup>. per diem, ane quartermaster at 20<sup>s</sup>. per diem, 3 corporallis ilkane of tham haveing 16<sup>s</sup>. per diem, ane trumpiter at 13<sup>s</sup>. 4<sup>d</sup>. per diem and 50 troupper ilkane of tham haveing 14<sup>s</sup>. per diem. In hail extendis to

40 : 11 : 4

And that thair was quartered in frie quarteris in Junij 1644 the Earle of Callendar his regiment<sup>2</sup> consisting of 6 companies 6 leiutennentis ilk ane of tham haveing per diem 20<sup>s</sup>. 6 ensignes ilk ane of tham haveing per diem 16<sup>s</sup>. tuelff serjandis ilkane of tham haveing per diem 6<sup>s</sup>. 8<sup>d</sup>. 18 corporallis, 8 drumeris, ilkane of tham haveing per diem 5<sup>s</sup>. 4<sup>d</sup>. 6 capitane at armes ilkane of thame haveing per diem 6<sup>s</sup>. 8<sup>d</sup>. and 700 souldioris ilkane of tham haveing per diem 4<sup>s</sup>. All thair pay in that space extendis to 167 : 14 : 8

And that thair was quartered wpoun frie quarteris within the said brucht wpoun the 2<sup>nd</sup> September 1644 the Earle of Murray<sup>3</sup> his regiment, consisting of 6 companies, 4 capitanes ilkane of tham haveing per diem 2<sup>lb</sup>. 4<sup>s</sup>. 5<sup>d</sup>.  $\frac{1}{3}$  fyve leiutennentis ilkane of tham haveing per diem 20<sup>s</sup>. 6 ensignes ilkane of tham haveing per diem 16<sup>s</sup>. 12 serjandis ilkane of tham haveing per diem 6<sup>s</sup>. 8<sup>d</sup>. 18 corporallis 6 drumeris ilkane of them haveing per diem 5<sup>s</sup>. 4<sup>d</sup>. 6 capitane at armes ilkane of tham haveing per diem 6<sup>s</sup>. 8<sup>d</sup>. and 150 souldioris 24 hours, extending all thair pay in that space to

121 : 09 : 8

And of the Lord Gordone regiment of horse<sup>4</sup> 1 troupe wnder comand of Major Ogilbie consisting of the Major his pay being per diem 4<sup>lb</sup>. 8<sup>s</sup>. 10<sup>d</sup>.  $\frac{2}{3}$  ane leiutennet haveing per diem 2<sup>lb</sup>. 10<sup>s</sup>. ane cornit haveing per diem 1<sup>lb</sup>. 4<sup>s</sup>. ane quarter master haveing per diem 1<sup>lb</sup>. 3 corporallis ilkane of tham haveing per diem 16<sup>s</sup>. ane trumpit haveing per diem 13<sup>s</sup>. 4<sup>d</sup>. and of 50 troupperis ilkane of tham haveing per diem 14<sup>s</sup>. wpoun the 20<sup>th</sup> September 1644; extending all thair pay to

42 : 17 : 6

And of the Earle of Callendar his regiment quhen thay came from England wpoun the 25<sup>th</sup> September 1644 5 companies consisting of 4 leiutennentis ilkane of tham haveing per diem 20<sup>s</sup>. 5 ensignes ilkane of tham haveing per diem 16<sup>s</sup>. 10 serjandis ilkane of tham haveing per diem 6<sup>s</sup>. 8<sup>d</sup>. 5 capitane at armes ilkane of them haveing per diem 6<sup>s</sup>. 8<sup>d</sup>. 15 corporallis 6 drumers ilkane of tham haveing per diem 5<sup>s</sup>. 4<sup>d</sup>. and 500 souldioris ilkane of tham haveing per diem 4<sup>s</sup>. thrie dayes All thair pay in that space is

351 : 16 : 10

<sup>1</sup> Raised in January, 1644, to accompany Argyll into England. Cf. *Acts*, vi. Pt. i. 65.

<sup>2</sup> Callander marched into England to Leven's support in June, 1644. See Terry, *Alexander Leslie*, 288.

<sup>3</sup> Lord Murray of Gask, second Earl of Tullibardine. His Perthshire regiment accompanied Leven into England in January, 1644.

<sup>4</sup> A unit of Leven's cavalry. Gordon, afterwards second Marquess of Aboyne, encountered difficulties in raising a regiment. A troop appears to have been all that he could muster. See *Spalding*, ii. 293-4; *Acts*, vi. Pt. i. 79.

## Free Quarters in Linlithgow, 1642-1647 77

And tuo of the saidis companies belonging to Capitane Hamiltoun and Capitane Whytheid consisting of 2 leuinententis aither of tham haveing 20<sup>s</sup> per diem 2 ensigns aither of tham haveing 16<sup>s</sup>. per diem, 4 serjandis 2 capitane at armes ilk ane of tham haveing 6<sup>s</sup>. 8<sup>d</sup>. per diem 6 corporallis 2 drumers ilk ane of tham haveing 5<sup>s</sup>. 4<sup>d</sup>. per diem and 200 souldioris ilk ane of tham haveing 4<sup>s</sup> per diem remainit 5 dayes longer. Extending all thair pay in that space to 238 : 13 : 9

And that thair was quartered in frie quarteris wpoun the said brucht the Lord Balcarras his regiment of horsses<sup>1</sup> consisting of 8 trouppis, consisting of ane leuinentent collonell haveing per diem 6<sup>lib</sup>. 13<sup>s</sup>. 4<sup>d</sup>, ane major haveing per diem 4<sup>lib</sup>. 8<sup>s</sup>. 10<sup>d</sup>. ane regiment quarter master haveing per diem 1<sup>lib</sup>. 10<sup>s</sup>. 6 ruitmasteris ilkane of tham haveing per diem 3<sup>lib</sup>. 6<sup>s</sup>. 8<sup>d</sup>. 7 leuinententis ilkane of tham haveing per diem 1<sup>lib</sup>. 10<sup>s</sup>. 8 cornittis ilk ane of tham haveing per diem 1<sup>lib</sup>. 4<sup>s</sup>. 8 quarter masters ilkane of tham per diem 20<sup>s</sup>. 24 corporallis ilkane of tham per diem 16<sup>s</sup>. 8 trumpiteris ilk ane of tham per diem 13<sup>s</sup>. 4<sup>d</sup>. 400 troupper ilkane of tham haveing per diem 14<sup>s</sup>. In the moneth of October 1644 : 24 hours quhen thay cam from Ingland to goe to the north ; all thair pay in that space extendis to 368 : 06 : 2

And that thair was quartered within the said brucht in frie quarteris the comanders following of the commandit pairtie that came from Ingland quhair of Pittscottie<sup>2</sup> was Collonell for the space of 11 dayes in September 1645, ane leuinentent collonell haveing 4<sup>lib</sup>. 8<sup>s</sup>. 10<sup>d</sup>. per diem 6 capitans ilk ane of tham haveing 2<sup>lib</sup>. 4<sup>s</sup>. 5<sup>d</sup>. per diem, 7 leuinententis ilkane of tham haveing 20<sup>s</sup> per diem 7 ensignes ilk ane of tham haveing 16<sup>s</sup> per diem 14 serjandis ilk ane of tham haveing 6<sup>s</sup>. 8<sup>d</sup>. per diem 10 drummeris 2 corporallis ilk ane of thame haveing 5<sup>s</sup>. 4<sup>d</sup>. per diem. All thair pay duiring the said space extendis to 486 : 07 : 0

And that thair was quartered in frie quarteris of the Marques of Argyll troupe that convoyed old Killkittoch to Linlythgow fra the 20<sup>th</sup> of March 1645 to the 27<sup>th</sup> thair of 30 trouppers ilkane of tham haveing per diem 14<sup>s</sup>. Swa for the space of 6 days thair pay in that space is 126 : 00 : 0

Item of the recrwit sent for the regiment in Barwick wnder the comand of Clobberhill thair was quartered in frie quarteris 24 hours in May 1645 80 souldioris ilkane of tham haveing 4<sup>s</sup> per diem. Thair pay extendis to 016 : 00 : 0

And that thair was quartered in frie quarteris 24 hours in October 1645 Major Middiltoun<sup>3</sup> haill regiment being wnder the commandement of Ruitmaster Major Oane consisting of 3 ruitmasteris ilkane of tham haveing 3<sup>lib</sup>. 6<sup>s</sup>. 8<sup>d</sup>. per diem 5 leuinententis ilkane of tham haveing 1<sup>lib</sup>. 10<sup>s</sup>. per diem 5 cornittis ilkane of tham haveing 1<sup>lib</sup>. 4<sup>s</sup>. per diem, 15 corporallis ilkane of tham haveing 16<sup>s</sup>. per diem 3 trumpiters ilkane of tham haveing 13<sup>s</sup>. 4<sup>d</sup>.

<sup>1</sup> Part of Leven's command in January, 1644. Raised in Fifeshire, Forfarshire, and the Mearns. *Spalding*, ii. 293-4.

<sup>2</sup> Colin Pitscottie, Lt.-Colonel of the Midlothian Regiment under Leven's command in 1644. Recalled against Montrose.

<sup>3</sup> Major-General Middleton. The regiment was returning to England after taking part at Philiphaugh.

per diem with 243 trouppers ilk ane of tham haveing 14<sup>s</sup>. per diem. Thair pay extends in the hail to 207 : 12 : 0

And that thair was quartered in frie quarteris within the said brucht the Lord Balcarras his regiment 24 hours in November 1645 consisting of ane Major haveing 4<sup>lib</sup>. 8<sup>s</sup>. 10<sup>d</sup>. per diem 3 ruitmaster's ilk ane of tham haveing 3<sup>lib</sup>. 6<sup>s</sup>. 8<sup>d</sup>. per diem 5 cornittis ilkane of tham haveing 1<sup>lib</sup>. 4<sup>s</sup>. per diem, 4 leiuennentis ilkane of tham haveing 1<sup>lib</sup>. 10<sup>s</sup>. pier diem 15 corporallis ilkane of thame haveing 16<sup>s</sup>. per diem 3 trumpiteris ilkane of tham haveing 13<sup>s</sup>. 4<sup>d</sup>. per diem with 353 trouppers ilk ane of tham haveing 14<sup>s</sup>. per diem. Thair pay in all is 287 : 10 : 10

And that thair was quartered Leiuennent Walter Dennystoun of the Marques of Argyll regiment<sup>1</sup> his pay being per diem 20<sup>s</sup> with his ensigne haveing 16<sup>s</sup> per diem 2 serjandis aither of tham haveing 6<sup>s</sup>. 8<sup>d</sup>. per diem, 3 corporallis ilkane of tham haveing 5<sup>s</sup>. 8<sup>d</sup>. per diem 47 souldioris ilk ane of tham haveing 4<sup>s</sup>. per diem in frie quarteris tuentie four houris in Januar 1645 all thair pay in that space extendis to 012 : 13 : 4

Item thair was depursit for intertenment of prissionaris efter the battell of Phillip Hauch<sup>2</sup> conforme to the particular compt produced, the sowme of 660 : 13 : 4

Item for the keiping of Killkittoch and his tuo sonns thrie nights in our Tolbuth, and for quartering of the Marques of Argyllis troupe wha came along with tham wnder the command of Capitane Campbell that space the sowme of 044 : 14 : 0

We the saidis Magistratis of the brucht of Linlythgow wnderscryveand doe heirby testifie and declair wpoun our said fidelitie and credit that the saidis officeris and souldioris respective abouenamit all rescrivit frie quarteris fra the inhabitants of the brucht for the quhilk thair was no payment givin to the saidis inhabitantis naither was thair any tickit left be the saidis officeris as the saidis inhabitantis have testified and declared to ws wpoun thair oithes. In witnes quhairof we have subscrivit thir presentis with our hands at Linlythgow the twentie fyft day of Januar 1648.

(Signed) GEORGE BELL, prowest.  
JAMES GIBBISONE, baillie.  
THOMAS EDUARDIS, baillie.  
ANDRO GLEN, baillie.

The compt of the quarteringis of the officers souldioris and horse within the brucht of Linlythgow since the moneth of Julij 1644 according to the testificatiouns thair of following subscrivit be the officeris of the regimentis.

In the first thair was quartered in frie quarters wpoun the said brucht the Earle of Lothians<sup>3</sup> regiment 24 hours in August 1644 consisting of

<sup>1</sup> Argyll's Highland infantry regiment. See *Acts*, vi. Pt. i. 494.

<sup>2</sup> Sept. 13, 1645.

<sup>3</sup> Lothian's Teviotdale regiment formed part of Leven's command in 1644.

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700 soldiouris ilkane of tham haveing 4<sup>s</sup>. per diem with 20 serjandis ilkane of tham haveing 6<sup>s</sup>. 8<sup>d</sup>. per diem 30 corporallis ilkane of tham haveing 5<sup>s</sup>. 4<sup>d</sup>. per diem with 10 drumeris ilkane of tham haveing 5<sup>s</sup>. 4<sup>d</sup>. per diem conform to Quarter Master Andro Ker subscrivit tickit thairof daitt last August 1644. Their pay in that space is 168<sup>lib</sup>. 16<sup>s</sup>. 8<sup>d</sup>.

Item thair was quartered wpon frie quarteris within the said brucht conforme to the Estaittis ordouris the Lord Kenmuir's regiment<sup>1</sup> officeris and souldioris fra the 29<sup>th</sup> Maij 1645 to the 29<sup>th</sup> Junij being 31 dayes, and thair pay in that space conforme to the Leiuennent Collonell and his Quarter Masteris testificat of ressuitt thairof extendis to 1300 : 00 : 0

And of the regiment and comandit pairtie that came from Newcastle conforme to Major Hamiltoun thair major thairof his testificat thair was quartered within the brucht of Linlithgow for the space of 11 dayes in September 1645, 550 foot souldiors ilkane of tham haveing 4<sup>s</sup>. per diem extending thair pay duiring that space to 1210 : 00 : 0

Item of dragouns that space 150 dragouns ilkane of thame haveing 9<sup>s</sup>. per diem, and thair pay is 0742 : 00 : 0

Item thair was quartered Collonell Stewart<sup>2</sup> his regiment being ane of the 5 regimentis that came from Inngland quhair of he was commander conforme to Robert Ker, generall quarter master of the saidis regimentis his testificatt fra 28th November to the 9th December 1645 inclusive being 12 dayes 1 major haveing 2<sup>lib</sup>. 19<sup>s</sup>. 2<sup>d</sup>. per diem, 7 capitans ilkane of tham haveing 2<sup>lib</sup>. 4<sup>s</sup>. 5<sup>d</sup>. per diem ane generall quarter master haveing per diem, ane capitan leiuennent haveing 2<sup>lib</sup>. 4<sup>s</sup>. 5<sup>d</sup>. per diem, ane regiment quarter master haveing 20<sup>s</sup>. per diem 7 leiuennentis ilkane of tham haveing 20<sup>s</sup>. per diem 7 ensignes ilkane of tham haveing 16<sup>s</sup>. per diem 14 serjandis ilkane of tham haveing 6<sup>s</sup>. 6<sup>d</sup>. per diem, 9 drummers ilkane of tham haveing 5<sup>s</sup>. 4<sup>d</sup>. per diem 7 capitan at armes ilkane of tham haveing 6<sup>s</sup>. 8<sup>d</sup>. per diem 24 corporallis ilkane of tham haveing 5<sup>s</sup>. 4<sup>d</sup>. per diem and 500 souldioris ilkane of tham haveing 4<sup>s</sup>. per diem. Extending all thair pay duiring the forsaid space to 1794 : 13 : 4

Mair 100 horses ryding and bagag paying that space 0400 : 00 : 0

Item Capitane Harie Bruce troupe<sup>3</sup> consisting of 50 troupperis and the hail officeris thairof except the capitane was quartered in the said brucht 2 nightis in December 1645 conforme to Leiuennent James Pollok his leiuennent testificat swa the leiuennent haveing per diem 1<sup>lib</sup>. 10<sup>s</sup>. cornit haveing per diem 1<sup>lib</sup>. 4<sup>s</sup>. quarter master 1<sup>lib</sup>. 3 corporallis ilkane of [tham] 16<sup>s</sup>. per diem and 50 troupperis ilkane of tham haveing per diem 14<sup>s</sup>. Thair pay duiring that space extendis to 082 : 14 : 0

Item thair was quartered in frie quarters within the said brucht of Capitane Bruce troupe 1 night in December 1645 16 trouppers ilkane of tham haveing 14<sup>s</sup>. per diem conforme to Cornit Bruce his subscrivit testificat thairof. Thair pay in that space is 011 : 04 : 0

<sup>1</sup> A unit of Callander's command, on its way to the siege of Newcastle.

<sup>2</sup> Colonel William Stewart's Galloway regiment, part of Leven's command, was recalled from England in 1645 to oppose Montrose.

<sup>3</sup> One of several cavalry troops in the army of the Solemn League and Covenant, 1644-47.

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Item Cornit Harie Montgomerie wnder Collonell Robert Montgomerie his regiment<sup>1</sup> with 20 horseit dyned in the said brucht wpoun frie quarteris 16<sup>th</sup> December 1645 conforme to the said cornit his testificat thairof. Thay ought to pay thairfoir 007:00:0

Item thair was quartered in frie quarteris wpoun the said brucht of the generall artellaries regiment<sup>2</sup> wpoun the 26<sup>th</sup> and 27<sup>th</sup> dayes of August 1646 400 commone souldioris ilkane of thame haveing 4<sup>s</sup>. per diem conforme to Leiutennent Collonell Andro Leslie and Capitan James Tweidde subscrivitt testificat thairof daitt 27<sup>th</sup> August 1646. Thair pay in that space extends to 040:00:0

Item thair was quartered in frie quarteris within the said brucht the major haveing 4<sup>lib.</sup> 8<sup>s.</sup> 10<sup>d.</sup> per diem ane ruitmaster haveing 3<sup>lib.</sup> 6<sup>s.</sup> 8<sup>d.</sup> and ane leiutennent haveing 1<sup>lib.</sup> 10<sup>s.</sup> per diem of Collonell Barklay<sup>3</sup> regiment for the moneth of Januar 1647. Thair pay conforme to thair testificattis thairof extends to in the said moneth the sowme of 217:00:0

<sup>1</sup> Originally the Earl of Eglinton's and part of Leven's command. It had been recalled from England against Montrose.

<sup>2</sup> General Sir Alexander ('Sandy') Hamilton's Clydesdale regiment. Originally under Leven's command, it had been recalled to Scotland against Montrose.

<sup>3</sup> The Earl of Buccleuch's Tweeddale regiment originally formed part of Leven's command.