

## CHAP. I.

Its Early  
History to  
A.D. 1560.

*Powers  
delegated  
to com-  
mittees.*

The increase in the functions of the executive, and the secrecy and decision deemed requisite in a council of state, led to the introduction of a mode of conducting the affairs of Parliament which ultimately and materially affected the independence of its deliberations. The frequent and protracted meetings of the National Council were felt to be extremely burdensome, especially by the class of small freeholders, among whom as yet no representation was established. Many of these attended with reluctance, and they could not remain through the session without much inconvenience. To ease that class, and also to avoid the difficulties attending the popular discussion of certain questions, for the consideration of which the National Council was expressly summoned, Parliament devised the plan of delegating its powers to various committees of its members.<sup>1</sup> For example, in the Parliament of Perth, held in March, 1368, the Three Estates, on account of the inconvenience of the season and the dearness of provisions, elected certain persons "to hold the Parliament," who were divided into two bodies, one to treat of the general affairs of the King and kingdom, and another and a smaller committee to sit on appeals from inferior courts. And in the succeeding Parliament of February, 1369, two committees were appointed, the first to deal with appeals, pleas, and complaints which of right should have come before Parliament, and the other "to treat and deliberate on certain special and secret affairs of the King and kingdom previous to their being brought before the whole Parliament." In these arrangements were the germs both of the Committee of Articles, which afterwards became an essential and a remarkable part of the constitution of Parliament, and of the Judicial Committee, which, under various forms and regulations, became also a permanent institution, and terminated in the establishment of a separate and Supreme Court of Justice. These changes were accepted as precedents by David's successor,

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<sup>1</sup> Preface to the *Scots Acts of Parliament*.

Robert II., the first Stuart king, whose reign otherwise marks little of constitutional change or improvement.

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The Lords of the Articles, who ultimately became a recognised part of the legislative machinery of Scotland, and who sprang out of the "Committee of Articles," assumed the form of a permanent body by the time of James I., or just about half a century after the original inception of the Committee. From the reign of James the legitimate method of transacting the legislative business of Parliament was that, on the meeting of the Estates, the tenor of the measures it was desirable to pass was ascertained. Then certain persons were chosen from each Estate to be the Committee on the Articles. They prepared and matured the various measures, the Estates standing adjourned while they were at work, and their functions somewhat resembled those of a committee of the whole House of Commons which deals with a bill referred to it after the second reading. The Estates being again assembled, the Committee reported the bills matured, and they were put to the vote for final adoption or rejection.

*The  
Lords  
of the  
Articles.*

The settlement of the crown made in 1371, the first year of the reign of Robert II., was upon the strict lines of male succession: Parliament enacted that the King's eldest son, John, Earl of Carrick, should succeed him. Two years later another act was passed naming successively the sons of the King by his first wife, each to succeed on the failure of his elder brother and the male children of that elder brother. If the sons of the first marriage provided no successor to the crown, then those of the second were to come in their order. This express Parliamentary "entail of the crown," as it has been termed, was rendered necessary by Robert's two marriages. He had espoused first Elizabeth, daughter of Sir Adam Mure, of Rowallan, and by her he had four sons and six daughters. But by the ecclesiastical or canon law these children were held to be illegitimate, as under that law the parents (who were within the forbidden lines of relationship) could not have been wedded without a

*Settle-  
ment of  
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dispensation. By his second wife, Euphemia Ross, Robert had two sons and four daughters, so that there was no lack of heirs to the crown. All the King's daughters made influential alliances by marriage. The offspring of Elizabeth Mure actually reigned, according to their Parliamentary title, but ecclesiastical doubts continued to disturb the minds of many. The succession difficulties of the Stuarts were not unconnected with the tragic death of James I.; and, by way of singular contrast, four hundred years later there was something of the ludicrous attaching to the last prominent representative of the ecclesiastically legitimate race of Stuart.<sup>1</sup>

*Reform-  
 ing Par-  
 liament  
 of 1398.*

By the time of the first Stuart king, the foundations had been laid of all that was peculiar in the constitution of the Scottish Parliament. But the action of the Estates during the reign of Robert III. possesses considerable interest. The Parliament which met at Perth in April, 1398, addressed itself to the work of remedying the national grievances. Although some of the most flagrant offenders had seats in the assembly, Parliament emphatically denounced the evils of the day, and endeavoured to find a remedy. In consequence of the weakness and incompetency of the King, it proceeded to appoint his eldest son and heir, the Duke of Rothesay, as his lieutenant, with full sovereign powers, but limiting his commission to three years, and appointing a council named in the act for his guidance. It was further provided that the acts of the regent and his advisers should be minuted, in order that the counsellors of the Duke might be amenable to punishment by Parliament if they transgressed. The hands of the executive were strengthened in bringing offenders to justice, including those who should set the officers of the Crown at defiance. If they failed to appear after due notice, they were to be

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<sup>1</sup> Burton reminds us that the last conspicuous representative of Euphemia Ross and the legitimate race of Stuart was Captain Barclay, of Ury, noted a generation or two ago as a pugilist, a pedestrian, and an amateur driver of stage-coaches.



proclaimed as rebels and outlaws. These acts would have appeared drastic in other States, but the Scots cared little for Divine right even at this early period. This Parliament of 1398 was signalised by the appearance of a new dignity upon its rolls: that of duke. The title was limited in the outset to the blood-royal, and the regent was created Duke of Rothesay, while the King's brother was created Duke of Albany.

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The reign of James I. (1406—1437) was marked by many important legislative and judicial changes. The King was for some time a captive in England, but on his return home in 1424 he was crowned at Scone. Immediately began a revolution in the common law and statute law, and from this period practically dates the statute law of Scotland, for the collections of Scots Acts made for the profession go no further back than this. James gave his Parliament plenty to do, and statutes were passed in almost every year of his reign. Arrangements were made for promulgating the acts themselves among the executive and judicial authorities who had to deal with them, and the laws were directed to be issued in the vulgar tongue. A committee of revision was also appointed to amend and interpret the old laws. A general survey and valuation of property was instituted for purposes of taxation, and rigid inquiries were made into the disposition of ancient Crown property. Statutes were passed to restrain begging and vagrancy, and to compel the able-bodied to work. Weights and measures were regulated, and a coinage standard established equal in weight and fineness to that of England. Those entitled to practise in the law were clearly identified, and their privileges defined.

*Origin  
of the  
Statute  
Law.*

These various reforms formed an important body of provisions, but an effort was also made to assimilate the Parliament itself to that of England. The lesser barons, who had found attendance irksome, were released provided they sent "commissioners" or elected substitutes, two for each shire, save Kinross and Clackmannan, which were to send one each. Every person holding land from

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the Crown was to have a voice in the elections. In the act containing these provisions the name of "Speaker" occurred for the first time, as also the word "Commons," the commissioners being enjoined to choose "a wise and an expert man called the common Speaker of the Parliament, the whilk shall propose all and sundry needs and causes pertaining to the Commons in the Parliament." At this period the King incited the Commons to discourage by legislation "the game of football," and to encourage a system of parochial archery schools, for he had observed the great superiority of England in the military organisation of the people.

*Policy of  
James I.*

James put to death his cousin Murdoch of Albany, the Regent, for abusing his power. Then, in 1426, when sundry Highland chieftains rose in rebellion, he obtained from Parliament an extraordinary tax "for the resistance of the King's rebellers in the north"; and the tax was to be such that "in all lands of the realm where the yield of two pennies was raised there be now ten pennies raised." This was a heavy impost, but the Commons did not spare when the suppression of sedition was in question.

*Checks  
on the  
Sovereign.*

The murder of James I., the poet, the man of letters, and a prince really desirous of instituting a system of good government, was avenged by his queen. But his successor, the second James, was also surrounded with difficulties. He at length overcame the rebel house of Douglas, whose estates were in 1454 declared by Parliament forfeited to the Crown. This great accession of Crown property was made the occasion by Parliament of the passing of an act for restraining the dispersal of the Crown estates by gifts to subjects. In the course of five years James had distributed a vast amount of Crown property in lordships. Various important lordships and castles were now declared to be inalienably annexed to the Crown.

*Useful  
and  
curious  
legis-  
lation.*

But the poor also were not forgotten in the legislation of this period. The Parliament of 1449 distinctly enacted, "for the safety and favour of the poor people that labour the ground," that when they held leases these should

remain good although the ownership or lordship of the land should change hands. And while thus encouraging peaceful industry, Parliament was very severe upon "superfluous" persons and vagrants. The preamble of one act set forth that it was "for the putting away of sorners, feigned fools, bards, and such-like others, runners about," and "masterful beggars." These "beggars," strange to say, were to be identified by their wandering over the country with horses and hounds. The quadrupeds and any other property seized were to be forfeited, and the "beggars" themselves imprisoned. Short shrift was to be made of those "that make themselves fools, but are not": they were to be kept in ward or prison so long as they had any goods to live upon; and then, if they remained contumacious, it was provided "that their ears be nayled to the Trone or any other tree, and cuttet off, and banished the country, and if thereafter they be founden again, that they be hanged." The Scots Parliament of this reign likewise devoted much time to the perfecting of the national defences, all the legislative provisions in this respect being directed against "our enemy of England."

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As the King's successor, James III., was only eight years old when he came to the throne, the government for a time fell into the hands of Kennedy, Bishop of St. Andrews, who was the first churchman to wield high political influence in Scotland. He maintained a stainless reputation, and for some years there was peace in the country. But the reign was chiefly noteworthy for the rise and fall of a great house, that of the Boyds, whose head seized the King and became guardian of the kingdom. At the time of the King's marriage, however, with Margaret of Denmark and Norway—who brought as her dowry the Orkney and Shetland Isles—Boyd's enemies prevailed against him. He and his relatives were tried for high treason, Parliament charging them with the seizure at Linlithgow of the person of the King totally against his will, and with the degradation of the Crown by employing its power for their own ends and

*Reign of  
James  
III*



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*The  
 Estates  
 and the  
 Crown*

interests. An indemnity which they held was set at nought, and they were found guilty. Boyd, Earl of Arran, fled to England, but his brother Sir Alexander was executed.

The Scottish Estates further showed their power over the Crown when in 1471 James desired to lead an army of six thousand men to the assistance of Louis XI. against the Duke of Burgundy. Parliament declined to sanction the step, reminding his Majesty that he had plenty to do at home, and commenting on the questionable dealing of Louis as to the countship of Xaintonge, which he had agreed to hand over to the Crown of Scotland on his marriage with the daughter of James I. The King did not go abroad, but the remainder of his reign was marked by domestic trouble and rebellion. There were threats of war also with England, and the Parliament, which was greatly moved, charged "the riever<sup>1</sup> Edward, calling himself King of England," with "lichtlying"<sup>2</sup> their lord. The Papal Nuncio intervened, and James was for peace, but England set at nought the papal injunction, so that the Scots Parliament complained of "incontinent great burnings, hereschip,<sup>3</sup> and destruction done upon our said sovereign lord, his realm and lieges."

*Con-  
 federacy  
 against  
 the King.*

James thereupon collected one of the largest armies ever gathered together in Scotland for the purpose of invading England. He was seized at Lauder, however, by a number of conspiring Scottish nobles, and conveyed to Edinburgh. He was soon set at liberty, but reports were shortly afterwards spread that he was in private treaty with England for the purpose of obtaining assistance in his schemes of vengeance upon his enemies. A powerful confederacy was then organised against the King by the Estates of the Realm. The chief ground of complaint set forth in a declaration of Parliament was that he had surrounded himself with false counsellors,

<sup>1</sup> Spoiler or robber.

<sup>2</sup> Despising or undervaluing.

<sup>3</sup> Rapine, devastation.

who "counsellet and assistet him in the inbringing of Englishmen, to the perpetual subjection of the realm." This was the unpardonable sin with Scotsmen. Some authorities nevertheless, believing that the confederacy lacked more substantial ground for their action, state that they only raised the charge of privately negotiating with England because it was not alone the most odious which could be discovered, but would serve them for a complete justification. One thing is clear: that the latter were resolved to dethrone James and to make his eldest son king.

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It testifies to the business habits of the Scots that during this exciting time the work of Parliament went on as usual. While the country was ringing with preparations for civil war, statutes were being passed, some of which were designed for the advancement of trade and commerce. The commissioners of burghs invoked aid against the practice of granting letters of marque, which gave sanction to the piracy then infesting every sea wherein merchant vessels sailed. Then the treasonable Commons, as James would have called them, passed an act forbidding the sovereign to grant remission or pardon to criminals, because of the trouble brought upon the land "through treason, slaughter, rief, burning, theft, and openhershship through default of sharp execution of justice, and over-common granting of grace and remission to trespassours."<sup>1</sup> There is something humorous in the situation when men, many of whom were guilty of treason up to the hilt, gravely sat in judgment upon traitors outside the Parliamentary pale.

*Legis-  
lation on  
commerce  
and  
treason.*

The struggle between the King and the confederates ended in the defeat of James at Sauchieburn and his assassination at Beaton's Mill, near Bannockburn. Only the monarch's deposition, and not his death, was aimed at, and Parliament took care to place on record that he was slain "of mischance." The Estates then proceeded to vindicate the late rising, and in the legislation which

*James's  
death.*

<sup>1</sup> *Scots Acts*, vol. ii.



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ensued they used their power with moderation. Although the high offices of state were naturally transferred to the conquering party, there was little spoliation of property. A general amnesty was passed, by which James IV. forgave those who had been in arms against his father, and the heirs of those who had died in hostility to him were assisted by legislative provisions to enter upon their estates. We do not find such magnanimity among many of the English factions.

*Legis-  
lation  
against  
his as-  
sassins.*

In 1491 the Estates, deeming that something was due to the memory of the assassinated King, passed a resolution lamenting with respect to the "eschewing and ceasing of the heavy murmur and voice of the people, of the death and slaughter of umwhile our sovereign lord's father and progenitor, whom God assoyle, King James III., that the person or persons that put violent hands on his person and slew him are not punished." An act was passed offering a reward of one hundred marks' worth of land in fee and heritage to any one who should reveal the perpetrators.

*Edu-  
cation.*

Education shortly afterwards received attention, for it was in the year 1496, during the reign of the accomplished King James IV.—Ariosto's hero—that the remarkable act was passed ordaining that all barons and freeholders should send their sons to grammar-schools at eight or nine years of age. They were to be kept there until they had "perfect Latin," and were thereafter to proceed to the schools of "art and jure" for three years.

*Ecclesi-  
astical  
laws.*

The Estates also took up ecclesiastical affairs, and, in consequence of repeated difficulties with the Papal Court, passed some very uncompromising statutes. These were chiefly aimed at the ecclesiastics who went to Rome to purchase benefices ; that is, those who acknowledged the right of the Vatican to distribute ecclesiastical patronage, and who claimed under such alleged right the rank and revenues attaching to the presentations. A fierce quarrel having ensued between the Archbishop of St. Andrews and the first Archbishop of Glasgow, Parliament interposed with a vigorous statute, enjoining silence upon

both prelates, and threatening them with the loss of their revenues if they did not yield to the adjustment of the quarrel by the King and the Estates. A further stand against papal intervention in Scottish ecclesiastical affairs was made when Parliament expressly denounced the practice of taking litigations to Rome, and ordered litigants to bring home "their rights, bulls, writs, and monuments, in order that the questions at issue might be settled in the courts of law."

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The rest of James IV.'s reign is barren of legislative interest. His foolish patronage of Perkin Warbeck, his settlement of the Highlands, his founding of the Scottish navy, and his expedition against England at the instigation of France are matters of history. Yet the King who perished at Flodden Field in 1513 was a brave soldier, and in some respects a wise administrator.

*Character of  
James IV.*

The new monarch, James V., being not quite two years old, the Estates of the Realm requested the Duke of Albany, nephew of James III., to come over from France and assume the regency. This he consented to do. The queen-mother, who had married the Earl of Angus, carried off her son to Stirling Castle, but she was obliged to give him up, and the Regent soon suppressed all attempts at rebellion in Scotland. He then left for France. Struggles for power ensued among the Scottish nobles, but the King was installed at Edinburgh, and eventually Angus was driven from Scotland.

*James V.*

The Parliament which met at Edinburgh in November, 1524, was a reforming Parliament. It first declared John, Duke of Albany, to have lost his office of tutory, and empowered the boy-king to govern his realm by the advice of the queen-mother and the Lords in Council. Then it projected its greatest reform: that "there be chosen certain famous lords and persons of the Three Estates that have best knowledge and experience, who shall sit upon the session, and begin the same incontinent, and thereafter continue and administer justice, evenly to all parties, both poor and rich, without feud, favour, or affection, keeping the order of the table,

*Reforms  
in 1524.*

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notwithstanding any request of the King or Queen." There was a similar measure for the constant administration of justice in criminal matters, and for police throughout the realm.

*The Par-  
liament  
of 1525.*

The next Parliament, which assembled at Edinburgh early in 1525, was marked by strong dissensions. No sooner had the Lords of the Articles been chosen than the Register of Parliament was crowded with protests against the elections. The Queen led the way. The Bishop of Ross protested against everything that should be done in the Parliament prejudicial to the King and country, and in that protest all the Lords of the Articles joined. The Earl of Eglinton, the Earl of Arran, and the Bishop-elect of Ross, each protested that the Lords of the Articles had not been duly elected, and that those should be Lords of the Articles whom they themselves had severally voted for. There were strange jarrings and recriminations in this national Parliament; but the Lords of the Articles went on to elect for the Secret Council—to execute and put in force the King's authority—four bishops for the spirituality, and four lords for the temporality, of the party opposed to the Queen.

*The  
Church  
of Rome.*

One of the most remarkable legislative developments of this reign was the action of Parliament with regard to the Church of Rome. In 1540 acts were passed, respectively, "for honour to the holy sacraments," "for worship to be had of the Virgin Mary," and against private conventions "to dispute in the Scripture." The word "conventicle," which afterwards passed into such common use, appeared in this last act. One brief statute, consisting of only thirty words, denounced the "pain of death," with confiscation of goods, upon any one who impugned the power of the Pope. Rewards were ordered to be given out of the confiscations to those who denounced heretics. At the same time an act was passed calling upon the Church to strengthen itself by purging itself of its abuses.

*Death of  
James V.*

The fifth James died soon after the defeat of his army, gathered to invade England, at Solway Moss in December,