



T H E
A D D I T I O N A L C A S E
O F
E L I S A B E T H,

Claiming the TITLE and DIGNITY of
Countess of SUTHERLAND,

By her GUARDIANS.

Wherein the Facts and Arguments in support of her Claims
are more fully stated, and the Errors in the Additional
Cases exhibited for the other Claimants are detected.

To be heard at the Bar of the House of Lords, upon the
day of

177.

E R R A T A.

Pag. 7. l. 2. for 1615. read 1662.

Chap. I. p. 10. l. 1. for tha r. that

Chap. V. p. 20. l. 16. for 1263; r. 1293;

Chap. VI. p. 148. l. 5. from the bottom, for fui r. fuis

*Chap. VI. p. 152. note (o) l. 5. from the bottom, for honours, resignation r. resigna-
tion of honours,*

Chap. VI. p. 153. l. 15. for ino r. into

T H E
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Claiming the TITLE and DIGNITY of
Countess of SUTHERLAND,

By her Guardians, his Grace *John Duke of Athol, Charles Earl of Elgin and Kincardin*, the Hon. *James Wemyss of Wemyss*, Sir *David Dalrymple, of Hailes*, Baronet, Sir *Adam Fergusson, of Kilkerran*, Baronet, *Alexander Boswel, of Auchinleck*, Esq; and *John Mackenzie of Delwin*, Esq;

Wherein the Facts and Arguments in support of her Claim are more fully stated, and the Errors in the Additional Cases exhibited for the other Claimants are detected.

WILLIAM late Earl of Sutherland died 16th June 1766, leaving the claimant his only child, now an infant five years old. The guardians of the claimant were advised, that her right to the title of honour and dignity of the family was equally indisputable as her right to the estate; both having been enjoyed by her ancestors in right of a female succession.

Sir Robert
Gordon's peti-
tion, claiming
the dignity of
Earl of Suther-
land.

Nevertheless Sir Robert Gordon of Gordonstoun, Baronet, presented a petition to his Majesty, setting forth, " That in 1517, " or thereabouts, Adam Gordon of Aboyne having married Elifa- " beth Sutherland, only sister to the late Earl of Sutherland, of the " name of Sutherland, and who had succeeded to the family-estate " on the death of her brother, WAS CREATED Earl of Sutherland, " and Lord Strathnaver.

" That no record, or other evidence in writing, of the manner " and limitation of the creation, have hitherto been discovered; but " the titles and dignity of Earl of Sutherland, and Lord Strathnaver, " with all the privileges following such degree of peerage, have been " constantly enjoyed and exercised by the said Adam, and his de- " scendants in the male line, from the time of his creation down- " wards.

" That Adam Earl of Sutherland had by his wife, the said Elifa- " beth, a son, Alexander, who died before his father.

" That Earl Adam was succeeded by his grandson (Alexander's " son) John Earl of Sutherland; who was succeeded by his son and " heir Alexander Earl of Sutherland; who, besides John, his eldest " son and successor, had another son, Sir Robert Gordon of Gor- " donstoun, Baronet, the petitioner's great-grandfather.

" That by the death of *William*, the late Earl of Sutherland, with- " out issue-male, the whole male line of the second John Earl of " Sutherland is extinct, and at an end; and the said titles, honours, " and dignity, have devolved on the petitioner; and therefore " praying, that the petitioner's right and title to the said honours " and dignity may be declared and established."

The claim-
ant's petition.

A petition was thereafter presented on behalf of the claimant, setting forth, " That the earldom of Sutherland is one of the most " ancient dignities in Scotland; and it appears, from the charters " and title-deeds of the family, that the grants of the lands and " earldom were uniformly in favour of *heirs*, until limited to heirs- " male in 1601; but the destination to *heirs* was restored by a sub- " sequent charter in 1681, and has not been varied since that pe- " riod.

" That

“ That in 1514, John, then Earl of Sutherland, having died without issue, his sister *Elisabeth* took the dignity and earldom, as *heir* to her brother, without challenge from any collateral heir-male; and Adam Gordon, brother to the Earl of Huntly, her husband, assumed the title by courtesy, in her right, agreeable to the ancient custom which prevailed in Scotland.

“ That, in 1527, Elisabeth Countess of Sutherland, with consent of her husband, resigned the earldom and estate in favour of her son Alexander, and *his heirs*; reserving the liferent to her husband *Adam Gordon, by reason of the courtesy of Scotland.*

1. “ From that period, this dignity and estate have been enjoyed, in a regular descent from father to son, until the year 1766, when William the last Earl of Sutherland died, leaving this infant petitioner, his only child, who apprehends that she is clearly intitled to the dignity by lineal descent.”

Afterwards a third petition was presented to his Majesty, by George Sutherland of Forse, setting forth, “ That William Earl of Sutherland died towards the end of the 13th [14th] century, leaving a son, Robert, the heir of his titles and estate, (who had issue-male), and a younger son, Kenneth, (who also had issue-male); and your petitioner is the lineal male descendent of the said Kenneth.

Petition for George Sutherland of Forse, claiming the dignity.

“ That from the said Robert Earl of Sutherland the peerage of this family descended, and was enjoyed, in a direct male line, from father to son, till it came to John Earl of Sutherland, who died without issue, in the year 1514; when the family-estate was claimed and taken by his sister Elisabeth; who intermarried with Adam Gordon, a younger son of Gordon Earl of Huntly.

“ That the said Elisabeth, some time after the decease of her brother, the said John Earl of Sutherland, assumed the title of *Countess of Sutherland*; and the said Adam Gordon, her husband, took the title of *Earl of Sutherland*, and *Lord or Baron of Strathnaver*; by or under whatever right or authority, is to the petitioner as yet unknown; but he conjectures the said Elisabeth assumed the titles and honours of the family, in prejudice of the heirs-male, upon
“ the

“ the ground, that she, though a female, being possessed of the estate, was intitled to the honours also; and the said Adam Gordon, her husband, in right of his said wife, assumed the said honours and dignities, in virtue of the courtesy of Scotland: and the said Elizabeth and her said husband being succeeded by Alexander Gordon, their eldest son and heir, the succession, both in the honours and estate, was carried on downwards, from the said Alexander, by males in this Gordon race, from father to son, till it came to the late William Earl of Sutherland, who died in the year 1766, leaving issue only one daughter, Elizabeth.

“ That at the time of the death of the above-named John Earl of Sutherland in 1514, the nearest heir-male then existing, of the ancient race of Earls of Sutherland, was by law intitled to claim the peerage, in opposition to the above-named Elizabeth, the heir-female; but the male descendents of the above-named Kenneth, the younger son of William Earl of Sutherland first above named, not being, at the time of the decease of the said John Earl of Sutherland in 1514, the nearest branch of heirs-male existing, and intitled, did not, and could not, claim. But now, after the extinction of all the nearer male descendents of the said ancient race of Earls of Sutherland, the petitioner, the nearest lawful male descendent of the above-named Kenneth, the younger son of William Earl of Sutherland first above named, being the true and sole heir-male of the said ancient race of Earls, and being advised, and humbly conceiving, that the right of succeeding to the titles, honours, and dignities, of Earl of Sutherland, and Lord or Baron of Strathnaver, and such other honours and dignities as belong to the family, are in law and justice cast upon the petitioner, as being the true and sole heir-male of the said ancient race of Earls of Sutherland: and therefore praying, that the petitioner's right and title to the said honours and dignity may be declared and established.”

Dec. 3. 20.
1767. and
Jan 25. 1768.

His Majesty was graciously pleased to refer the several petitions of the claimants to the consideration of the House of Lords.

Cases for the several claimants were prepared, and distributed. In them the chief arguments and authorities were concisely set forth.

While the cause was in this state, Sir Robert Gordon, one of the claimants, exhibited a *Supplemental Case*.

It consisted of forty folio pages, closely printed, on a small type; it appealed to records innumerable; it contained much *new matter*.

According to its title, it was a case, “ *in which all facts and arguments in support of Sir Robert’s claim are stated, and the inaccuracies in his original case and appendix, which were printed before the proofs arrived from Scotland, are corrected (a).*”

A case voluminous, and apparently learned, drawn up with the express purpose of correcting all former inaccuracies, was formidable at so late an hour.

Had the cause immediately gone on to a hearing, every new authority and new argument urged for Sir Robert Gordon must have been admitted as unexceptionable.—There was no time left, for tracing his authorities, or unravelling his arguments.

The candour and impartiality of the House of Lords, would not suffer parties to debate upon ground so unequal.

Maintaining the high character of the most respectable judicature in Europe, they indulged the guardians of the infant claimant with an opportunity of examining Sir Robert Gordon’s authorities and arguments.

At the expence of much time and labour those authorities and arguments have *now* been examined (b). The result of the examination will be seen in the following sheets.

The same candour and impartiality which permitted this Supple-

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(a) A Supplemental Case was also exhibited for Mr Sutherland of Forfe.

(b) At the expence of *how* much time, and *how* much labour, *they* alone can tell who have been engaged in making the necessary researches, and in arranging the materials. It has been the work of days to investigate some *hazarded error*; many pages have been often required to correct the mistake of a line.

mental Case, will not, *before perusal*, pronounce it immoderately long and diffuse.

After perusal, every equitable reader will determine whether less could have been said, without neglecting or injuring the cause of an orphan.

The guardians of Lady Elisabeth will be permitted to make one preliminary observation. They consider it as still of more moment to secure their own good name, than to secure a title of honour to their ward; and therefore they must express their astonishment at the insinuation repeatedly used and enforced, that material writings, and especially the supposed *instrument of creation* of Adam Gordon, had been industriously destroyed or suppressed.

In what part of the tenor of their lives Sir Robert Gordon has found out a presumption that they would destroy or suppress evidence, they are yet to learn.

They know that the insinuation is weak, ill-judged, and injurious; *weak*, because no attempt is made, or can be made, to prove it; *ill-judged*, because it may imply an acknowledgement, that the materials on which Sir Robert Gordon has wrought, are scanty and insufficient; and *highly injurious*, because the rank and character of Lady Elisabeth's guardians place them much above those little suspicions, and yet such suspicions are openly expressed or sarcastically hinted at in numberless passages of the Supplemental Case.

In particular, it is insinuated, that the *instrument of creation* of Adam Gordon has been suppressed; and yet it is certain, and the guardians of Lady Elisabeth will hereafter prove it, that there is neither evidence nor probability that such instrument ever existed at all.

Does Sir Robert Gordon, or his counsel, or any one conductor of his cause, really imagine, that the guardians of Lady Elisabeth would assert her claim to the honours of Sutherland, if they knew, or believed, or suspected, that an instrument of creation limiting those honours to *heirs-male*, existed, or did ever exist?

Sir Robert Gordon, the claimant's ancestor, wrote a voluminous
history

History of the family of Sutherland. He was for many years the guardian of his nephew John Earl of Sutherland, who died in 1615.

Most fortunately this history contains a complete and accurate inventory of the whole writings of the family, which were at that time in the custody of Sir Robert Gordon. To such of them as are extant, his great-grandson has always had access. He is now called upon to say what writing has been suppressed, or detained from his inspection. At the same time, he will be pleased to point out any passage of the history of the family of Sutherland where there is any insinuation of a new creation, or of a patent of honour.

For their own justification the guardians have resolved to do what the law requires not.

They have intimated to the manager for Sir Robert Gordon, that they will afford him a full and free inspection of every ancient instrument of the family of Sutherland which is in their possession.

If they know of any other instrument, not in their possession, they will point it out.

It cannot be expected that the guardians themselves should be in a condition to make oath upon the premises, or, according to the phrase of the law of Scotland, *depone as in an exhibition.*

But they will do what in the law and practice of Scotland is always held equivalent. They will produce the man of business whom they have employed to search into the archives of the family of Sutherland; and Sir Robert Gordon, if he shall be so advised, may demand his oath.

The guardians are aware, that they here grant an indulgence which the law requires not, and which the strain of Sir Robert Gordon's Supplemental Case ought not to have obtained.

But they make this unusual concession for their own honour in the estimation of posterity, when characters may be forgotten, or misunderstood.

The proposition which Sir Robert Gordon is obliged to maintain by his petition is, "That Adam Gordon of Aboyne was created Earl of Sutherland, and Lord Strathnaver, with a limitation to the heirs—

The general propositions maintained by the several claimants.

“ heirs-male of his body ;” for if there was no such creation and limitation, he can have no right to this honour.

The infant daughter of the late Earl of Sutherland maintains, That the dignity of the earldom of Sutherland descended to Lady Elifabeth, as sister, and heiress, of John Earl of Sutherland, in 1514; who, in *her own right*, was Countess of Sutherland, and to whom the claimant is heir-general.

The other petitioner, George Sutherland of Forse, maintains, That this honour did not descend to Lady Elifabeth; but, upon the death of John Earl of Sutherland in 1514, belonged of right to the next heir-male; and that he is now the nearest heir-male of the said John; although no claim has ever been made, by any person in that right, for upwards of 250 years.

If the claimant Lady Elifabeth shall prevail in establishing the proposition she maintains, it is a necessary consequence, that neither of the other claimants have any right: but although she should fail in establishing this proposition, it will not follow, that the title must belong to one of the other claimants; for each of them is bound to make out the affirmative proposition which he has undertaken to prove.

If any patent of the honour could be produced, the controversy would be very short; but it must be admitted on all sides, that no patent does exist. The descent, then, of the honour must be proved, from such writings and deeds of the family as have escaped the injuries of time, from similar or analogous instances, and from the general principles of law with regard to the succession of dignities.

It is necessary, in the first place, to trace the history of the family of Sutherland, in order to shew in what course of succession the estates of that family have been held.

The first of the family of Sutherland, discoverable upon record, is a person termed, according to the simplicity of ancient times, *Hugo Freskyn*.

Between 1186 and 1214 he granted, “ Magistro Gilberto Archidiacono Moraviæ, *et illis heredibus de parentela sua quibus ipse dare et concedere voluit, et heredibus eorum, totam terram meam de* “ Scelbol

“ Scelbol in Sutherlandia, &c. tenend. et habend. *sibi, et hæredibus suis prænominatis, in perpetuum, de me, et hæredibus nostris, &c. (c).*”

This grant was confirmed before 1214, by “ *Willielmus Dominus de Sutherlandia, filius et hæres quondam Hugonis Freskyn (d).*”

Both grants were confirmed by William King of Scots between 1211 and 1214 (*e*).

In the year 1275, an indenture was made between Archibald Bishop of Caithness, and William Earl of Sutherland, by which it appears, that there had been controversies, “ *inter Gilbertum, Willielmum, et Walterum, bonæ memoriæ, Episcopos Cathaniæ, et nobiles viros, Willielmum, claræ memoriæ, et Willielmum ejus filium, Comites Sutherlandiæ (f).*”

This Gilbert, formerly Archdeacon of Murray, became Bishop of Caithness in 1222, and died in 1245 (*g*).

The indenture therefore proves, that there existed a *William Earl of Sutherland*, between 1222, and 1245.

In all probability he was the same person with *Willielmus Dominus de Sutherland*, the son and heir of Hugh Freskyn, who confirmed the grant to Archdeacon Gilbert, before the year 1214.

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*c*) *Original grant*, produced by the claimant.

This grant must have been made before 1214; for it is confirmed by William King of Scots, who died in 1214. Yet it cannot, in all probability, be prior to 1186. Perhaps it is long posterior. Gilbert, Archdeacon of Moray, afterwards Bishop of Caithness, died in 1245; *Keith*, Catalogue of Scottish Bishops, p. 124. Supposing him to have become Archdeacon of Moray so early as at the age of twenty-one, and to have lived to the age of fourscore, the grant by Hugo Freskyn could not have been made before 1186.

It may be remarked in passing, that, according to Sir Robert Gordon's hypothesis, the grant by Hugo Freskyn is of this import, to the *heirs-male of provision* of Mr Gilbert, Archdeacon of Moray, being of his kindred, and to their *heirs-male for ever*, to be held of the *heirs-male* of the grantor.

(*d*) *Confirmation*, produced by the claimant.

(*e*) *Confirmation*, produced by the claimant. The date is fixed by the mention of *W. de Bosco Cancel*; as a witness. He did not become chancellor till 1211. *Crawford*, Officers of State, p. 11.

(*f*) *Indenture* 10. calend. Octobris 1275, in the claimant's possession, and printed in the Appendix of her original Case, N^o 1.

(*g*) *Keith*, Catalogue of Scottish Bishops, p. 124.

General evi-
dence of fe-
male succession

By the treaty of Northampton, 1328, it was provided, "Tha no Englishmen shoud possess estates in Scotland, unless they resided within that kingdom, and did fealty *there* (e)." To this article of the treaty, many English nobles objected: they considered it, and justly, as importing, that Englishmen should lose such lands as *they had by inheritance in Scotland* (f). There were, however, political reasons which moved Queen Isabella and Mortimer to precipitate the peace with the Scots; and therefore the exceptions taken by the English nobles were disregarded. They who, by remaining in England, lost their Scottish estates, were called the *disinheretes* (g).

In 1332, the *disinheretes* sought to recover their estates in Scotland: they joined Edward Baliol, invaded Scotland, conquered the whole kingdom, excepting one fortress and four castles, and placed Baliol on the throne (h).

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(e) *Tyrrel*, History of England, vol. 3. p. 351.

(f) "These Lordes, Percy, Wake, Beaumont, and Souche, wold not agre upon this condition, that the Englishmen should lese such landes as *they had by inheritance yn Scotland.*" *Scala Chronicon*, apud *Leland*, Collectanea, vol. 1. p. 794.

(g) "The names of the *disinheretes* in Scotland. Syr Henry Beaumont Erle of Angus [Angus], Syr Davy of Scroby, [misread for the contraction of *Strathbolgie*], "Erle of Atheles [Athole], &c. temp. Edw. III." *Chronicle in Peterhouse*, apud *Leland*, Collectanea, vol. 1. p. 478.

This "Henry de Beaumont, about 1 Edw. II. [1306], took to wife Alice, one of the "cousins and heires to John Earl of Boghan [Buchan] Constable of Scotland; and in 6 "Edw. II. [1311] doing his homage, had livery of the lands of her inheritance, clauf. "6. E. 2. m. 19." *Dugdale*, Baronage, t. 2. p. 50. It is presumed, that the lands here meant are those which the Earl of Buchan held in England. The genealogy of Henry de Beaumont is to be found in *Burton's* Antiquities of Leicestershire, p. 37.

"John Comyn of Badenoch died 19 Edw. II. leaving Joane, wife of David de Strath- "bolgie Earl of Athole, then thirty years of age, and Elifabeth, her sister, twenty-six "years of age, his sisters and next heirs; which Elifabeth afterwards became the wife of "Richard Talbot." *Dugdale*, Baronage, t. 1. p. 686.

(h) "Eodem anno 1332, convenerunt quidam Magnates Angliæ, qui clamaverant ha- "bere terras in regno Scotiæ jure hæreditario; et Rex Edwardus hoc sustinuit; non ta- "men eos aperte juvare potuit. *H. Knyghton*, apud *Twisden*, p. 2560. Tunc isti domi- "ni clamantes terras in Scotia, scilicet, Dominus Edwardus le Baliol, qui jure hæredita- "rio clamavit regnum Scotiæ, Comes de Athedell, Dominus Henricus de Beaumont, &c. "et plures alii, cum trecentis armatis, et tribus mille de omni genere peditum, applicue- "runt in Scotiam VII die Augusti," &c. *Knyghton*, *ibid.*

In 1334, Henry Beaumont, the Earl of Athole, and Richard Talbot, quarrelled with Baliol. The cause of the quarrel was, that Baliol had preferred Alexander de Moubray to the possession of certain lands, in prejudice of the daughters of his brother, who were *the right heirs by the law of succession*. This discord terminated in the ruin of Baliol's fortunes, and in the expulsion of the *disinherited* themselves (i).

General evidence of female succession

Thus, it appears, that female succession was no novelty in Scotland about the commencement of the fourteenth century; that, on the contrary, the prevalency of it, and the consequences thence arising, went near to overthrow that government which all the valour and indefatigable toils of Robert Bruce had with much difficulty established.

S E C T. III.

Particular instances of Female Succession to Land-estates in early times.

THE claimant now proceeds to offer some particular instances of female succession in early times.

Particular instances of female succession

For the sake of brevity, she will confine herself to instances which occurred before the accession of the family of Stewart.

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(i) "Eodem anno 1334, circa finem mensis Augusti, apud Perth, mota est discordia inter Edwardum de Balliolo, instantem pro Domino Alexandro de Moubray, et Dominos Henricum de Bello-monte, David Comitem Atholiæ, et Richardum Talbot, nitentes prædictum Alexandrum ab hæreditate repellere, et filias fratris sui, *veras hæredes jure successionis*, sibi anteferre. Cujus rei causâ discordes facti ab invicem, recefferunt." Fordun, lib. 13. c. 29. It will be remarked, that, in this passage, *sibi* is erroneously used for *illi*. This error is frequent in *the base Latinity*.

"Henry Beaumont Erle of Boghan [Buchan] by *the inheritance of his wife*, went to Dungarg, a castle that he had newly fortified yn Boghan.—Richard Talbot was beyond the montaynes yn the landes *of the enheritance of his wife*, daughter to John Comyn of Scotland.—Of all the English enheritors, of Englishmen in Scotland, wer non left of any great reputation." *Scala Chronicon*, apud Leland, Collectanea, vol. 1. p. 554.

In *Leland*, vol. 2. p. 9. there is an abstract of a treatise, intituled, "How England should have homage and fealty of Scotland." In it there occurs the following passage: "Then drew to him [Edward Baliol] diverse lordes and gentilmen, *the which had title to divers landes there, other by themselves, or by theyr wyves*."

Particular instances of female succession

1. Before 1165, "Hugo de Lorens, et Eda uxor ejus, *filia et hæres* Symonis Frafer," made a grant of the church of Keith, together with a considerable tract of land in East Lothian, to the abbacy of Kelso (*a*).

2. 1185, *Eschina de Londoniis* made a grant of the abbacy of Kelso. "*Cecilia de Molle, filia Eschinæ de Molle, the person last named, tanquam Domina proprii juris, et vera hujus donationis hæres,*" made another grant to the same abbacy of certain lands, "in dominio meo de Molle (*b*)."

3. Between 1195 and 1234, Elene de Morevill granted certain lands to the abbacy of Melros, in exchange for certain lands which William de Morevill her brother had devised to them by his latter-will. The grant contains this clause: "Et ipsi monachi remisērunt *mibi, et heredibus meis, omnem calumniam quam habuerunt contra nos.*"—— "Atanus, filius Rollandi, Constabularius Regis Scotorum," confirmed this grant made by his mother *Helen de Morevill* (*c*).

4. Before 1214, *Eschina Domina de Molla*, granted to the abbacy of Paisley, "unam carrucatam terræ, in territorio meo de Molla (*d*)."

5. 1238, "Muriel de Pollock, filia quondam Petri de Pollock," granted a mill and a mill-dam to the hospital of St Nicholas: she also granted to the same hospital, her lands of Innerorkill. "*Eva Domina de Rothes,*" confirmed her mother's grant (*e*).

6. 1246, Alexander II. in the 32d year of his reign, confirmed a

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*a*) *Chart. Kelso*, fol. 33. This grant is confirmed by Malcolm IV. who died in 1165.

(*b*) *Chart. Kelso*, fol. 56. & 57.

(*c*) *Chart. Melros*, fol. 56.

(*d*) *Chart. Paisley*, fol. 44.

(*e*) *Chart. Morav.* vol. 1. fol. 72.

grant made to the abbacy of Aberbrothock, by “Richenda *filia et hæres* Umfridi de Berkeley, et Agathæ sponfæ suæ.”

Particular instances of female succession

The same “Richenda, *filia Wynfridi de Berceley*,” confirmed “Rogerō Wyrfaut totam terram illam quæ fuit Hugonis, filii Wal- deni, in territorio de Cunweth; tenend. ipfis, et attornatis fuis, de me, et *hæredibus meis*, in feodo et hæreditate,” confirmed by Alexander [II.], 9th March, *anno regni 2do*, 1250 (*f*).

7. 1253, “Thomas de Rettre, Miles,” as attorney for *Christina*, his wife, surrendered her right to the lands of Kincoldrum, in favour of the abbacy of Aberbrothock, and she consented to this surrender. There is a penalty provided, if Thomas or his wife, “vel aliquis vel *aliqua hæredum*,” should call the surrender in question (*g*).

8. Between 1253 and 1298, “*Eva Domina de Rothés*” granted the lands of Innerlochy to the cathedral church of Moray. This is plainly the same lady who inherited the lands of her mother, Muriel de Pollock, who again inherited the lands of her father, Peter de Pollock (*h*).

9. About 1270, “*Alicia de Gordun, filia et hæres quondam Domini Thomæ de Gordun, Militis, junioris*,” made a grant of lands to the abbacy of Kelso. It confirms grants made by her great-grandfather, Richard, by her grandfather, Thomas, and by her father, Thomas (*i*).

10. 1275, Alan Durward [Ostiarinus] died, whose estates were divided among his three daughters (*k*).

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*f*) *Chart. Aberbroth.* vol. 1. fol. 28. *Chart. St Andrew's*, p. 425.

(*g*) *Chart. Aberbroth.* vol. 1. fol. 127. 128.

(*h*) *Chart. Morav.* vol. 1. fol. 49.

(*i*) *Chart. Kelso*, fol. 43.

(*k*) *Fordun*, lib. 10. c. 35.

Particular instances of female succession

11. 1281, There is extant a procuratory, whereby "Margareta de Ardrosse, filia Domini Marleswan, quondam Domini de Invergelly," resigned her lands of Invergelly (1).

12. 1318, Robert I. in the 12th year of his reign, granted "Duncanu Cambell, Militi, et Sufannæ sponfæ suæ, omnes terras suas de Loudoun et de Stevensoun, cum pertinentiis, in Cuningham, prædictos Duncanum, et Sufannam sponfam suam, hæreditariè contingentes, *ratione dictæ sponfæ (m).*"

13. The same King granted "Ricardo dicto *Edger* capitale manerium, cum medietate totius baroniæ de Senefchar [Sanquhar in vicecom. de Dumfries] ad ipsum capitale manerium pertinente, sicut dicta baronia, inter Willielmum de Crehton, et Isabellam sponfam suam, portionarios ipsius baroniæ, *ratione dictæ sponfæ*, ex parte una, et ipsum Ricardum ex altera, per literam ex capella nostra fuerat divisa." Here there occurs an example of heirs-parceners, and of a *breve de divisione* issued from the chancery (n).

14. 1321, "Agnes de Morthingtoun, *filia et hæres Domini Petri de Morthingtoun, Militis*," having sold her lands of Gillandrifstoun in le Garviach, [Garioch], "Johanni filio Adæ Druming," resigned them "in pleno parlamento apud Perth (o).

15. 1345, David II. in the 15th year of his reign, confirmed a charter of the lands of Brakie and others, granted by Margaret Senescalli, Comitissa de Angus, *Domina de Abernethy*, to the abbacy of Aberbrothock, "pro salute animæ Domini mei Johannis Senescalli quondam Comitis de Angus." The Countess warrants her donation thus: "*Ego vero et hæredes mei defendemus, &c. (p).*" It

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(1) *Cart. Dryburgh*, fol. 5.

(m) *Roll, Rob. I.* N^o 38.

(n) *Roll, Rob. I.* N^o 27.

(o) *Roll, Rob. I.* N^o 84.

(p) *Chart. Aberbroth.* vol. 1. fol. 137.

is well known, that this lady was the eldest of the three heirs-parceners of the Lord Abernethy, one of the most opulent barons of the fourteenth century. On account of this division of the Abernethy estate, the representatives of the heirs-parceners, the Earl of Craufurd, the Earl of Rothes, and Mr Douglas of Douglas, do at this day quarter *Abernethy*.

Particular instances of female succession

16. 1347, Catharine Bisset having borrowed L. 40 Sterling from the abbacy of Dunfermline, renounced her right to L. 3, 9 s. Sterling out of the lands of Luskry-hunyoch, which belonged to her. She is styled, “*filia et una hæredum quondam Domini David de Hynyoth, Domini de Clerkington (q).*”

17. In the same year 1347, Christina, her sister, renounced a right of annualrent in Luskryhunyoch, belonging to her *jure hæreditario*: she is styled, “*filia et una hæredum quondam Domini David de Hynyoth,*” &c.

18. 1361, It appears, that one of these *heirs-general* were succeeded by another *heir-general*; for “*Margareta de Onyoth, filia et una hæredum quondam Domini David de Onyoth,*” granted to the abbacy of Dunfermline, “*totam terram meam de Pethfuran, sibi jure hæreditario contingentem.*”

19. 1361, In a grant made by the Bishop of Moray, mention is made of “*fex acrae ex dono Sufannæ et Edæ, sororum et hæredum Veteris Castris (r).*”

20. 1387, The abbacy of Aberbrothock granted a charter of the lands of Forglen to John Frafer, “*et hæredibus suis de corpore suo legitimè procreand. Quam quidem terram Gilbertus Urry, et Johanna sponsa ejus, hæres quondam Marjoriæ, sponsæ Johannis Frafer, filia et hæredis quondam Domini Johannis de Moni-*

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(q) *Char. Dunferm.* vol. 2. fol. 44. 45. 77.

(r) *Char. Morav.* vol. 2. fol. 97.

“*muik,*

Particular instances of female succession

“ musk, Militis, nobis per fustem et baculum reddiderunt (s).” Here are successive female heirs, viz. *Joan*, the heir of *Marjory Fraser*, and *Marjory*, the daughter and heir of *John de Monimus*, Miles. *Malcolm de Monimus*, in all probability, the immediate ancestor of *John*, had a grant of those very lands from the abbacy in 1314. The grant is conceived “ eidem Malcolmo, et heredibus suis.” As mention is made in 1387 of two generations, it is probable, that the succession opened to the heir-general before the accession of the family of Stewart, 1370.

The dates of the instances of female succession already given, have been ascertained with tolerable accuracy, from the age at which the parties or witnesses are known to have lived, or from the age of the different sovereigns who confirmed them.

Some other early instances of female succession, whereof the dates are not exactly known, shall be here subjoined.

1. Grant to the abbacy of Kelfo, by “ Adam de Roule, et Johanna Wyfchard sponfa sua, filia et heres quondam Domini Henrici de Haliburton (t).”

2. Grant by “ Ada, Emma, et Helena, heredes Roberti de Kent,” proprietor of Innerwick in East Lothian (u).

3. Grant by Agnes, “ filia Johannis, filii Ranulphi de Karamund,” bearing, “ me; ex consensu et assensu Willielmi heredis mei, “ dedisse toftum meum, cum crofto ex aquilonali parte villæ de Karamound Scottorum.” This lady has been a co-parcener; for there is a similar grant by “ Alicia filia Johannis filii Ranulphi (v).”

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(s) *Char. Aber.* vol. 2. fol. 12. 24.

(t) *Char. Kelfo*, fol. 68.

(u) *Ditto*, fol. 101.

(v) *Char. Dunferm.* vol. 2. fol. 86. 90.

4. Mention is made of “Emma de Smithetun, *filia et hæres quondam Gilliberti de Smithetun (w).*”

Particular instances of female succession

5. John Keth entered a claim for the lands of Culback, “*ratione Margarete sponsæ meæ (x).*”

6. Donald Earl of Lennox granted a charter of part of the lands of Porthelaine, “*Gilberto Olifant, filio et hæredi Mariæ Olifant, et hæredibus suis (y).*”

7. In the twelfth century, Roger de Scalebroc granted to the abbacy of Melros, the lands of Drumcleismene, and other lands, with his salmon-fishing in the river of Don [Doun in Airshire]. The grant of the lands was confirmed by “*Henricus filius Turfts, filii Leving, et Maria uxor ejus, filia et hæres Rogeri de Scalebroc.*” The grant of the salmon-fishing was confirmed by Roderic Macgillecop, and his wife, “*Christiana filia Rogeri de Scalebroc (z).*”

8. Colinus Ostiarius [Dürward] granted to the church of Muni-musk, “*totam dimidiam davach terræ, in qua fita est ecclesia de Lothell; ego autem,*” says the grant, “*et hæredes mei, præfatam terram prædictis canonicis, contra omnes homines et foeminas, warrantizabimus.*”

“*Philippus de Monte Sicheter, et Anna uxor, filia et hæres Domini Colini Hostiarii defuncti,*” renewed this grant (aa).

9. “*Hugo Abbas de Dunfermline,*” and the convent, granted “*Mariotæ, filiz et hæredi Ricardi Coci quondam burgenfis de Dunferm. pro homagio et fideli servitio suo, illam medietatem de Pelkbauchly, quam prædictus Ricardus, pater suus, quondam de nobis*

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(w) *Char. Dunferm.* vol. 2. fol. 88.

(x) *Char. Aberbroth.* vol. 2. fol. 21.

(y) *Char. Lennox,* N^o 38. & 92.

(z) *Char. Melros,* fol. 46. 47. 48.

(aa) *Char. St Andrew's,* p. 518.

Particular instances of female succession

“ tenuit: Tenend. et habend. fibi, et hæredibus suis:— Reddendo
 “ — annuatim unam par calcarium alborum; — facient fequelam ad
 “ curiam nostram, et forinfecum servitium, quantum pertinet ad ter-
 “ tiam partem unius davachæ terræ.”

The particular examples of female succession here produced are taken from ancient chronicles, chartularies of abbacies, and public records.—From our ancient chronicles, short and imperfect, little information could be expected; few chartularies have been preserved, and they could only mention such heiresses as were benefactresses to particular religious houses; the records of those early ages are scanty. Some judgement, however, may be formed of the multitude of examples of female succession in early ages, from the number which have occurred in so narrow a field of investigation.

Could the claimant demand inspection of the title-deeds of the old families of Scotland, she is confident that in almost every family, some instance of female succession would be discovered. But she has no right to demand such inspection; and as she understands that where-ever it is possible, she ought to produce the vouchers of her assertions, she has confined her examples to such as are patent to every one, and may be canvassed by her competitors.

Hundreds of examples of female succession to lands in early ages are to be found in Sir James Dalrymple (*bb*), Crawford, Nisbet, Douglas, and the other writers on genealogy.

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*bb*) For example, between p. 349. and 354. there are five instances of female succession in as many pages.—*Cranston*; a fourth part of this barony came to William Watson; and from him descended by marriage to Alexander Murray of Falla or Falla-hill.—*Craigie* came from Lindfay to Wallace of Riccarton by marriage.—Lindfay married the heiress of *Ormistoun*;—and Cockburn, the heiress of *Lindfay-Ormistoun*.—*Finlathoun* belonged to the Dennistouns; it came by marriage to Cuningham of Kilmaurs.

S E C T. IV.

Opinion of the eldest writers on the law of Scotland, confirming the right of Female Succession in Land-estates.

THE evidence in proof of female succession by the law and usage of Scotland has been fully opened and illustrated.

It is so extensive, and so irrefragable, that the claimant ought to make some apology for seeking to confirm it by the opinion of any writer whatever.

Were the opinion of writers adverse to a proposition clearly established in fact, it would derogate from the public estimation of the writers, not from the credibility of the fact.

She will therefore confine herself to a few passages from Balfour, Skene, and Craig, the eldest writers on the law of Scotland.

Sir James Balfour, President of the court of Session in the reign of Queen Mary, thus speaks: *Practiques*, tit. *Heirs and Successors*, p. 221. § 1. "Immediate heirs are the sone *and the dochter*." And again, § 4: "Gif ony man deceis, leivand behind him *an dochter*, scho sould succeed to him as aire to all and haill his heritage."

Sir John Skene, in his treatise, *De verborum significatione*, voc. *Varda*, expresses himself in the following manner. "Touching the custodie
" and keeping of the person of the aire of ward-lands, or of ony landes,
" or quhatsumever, *maill or femaill*, gotten or born in lauchfull marriage, the famin perteines to the mother, after the decease of the
" father, untill the bairne be of the age of seven yeires compleit."

A little below, under the same head, he says, "The *air-femaill* is
" in the ward and keeping of hir superiour untill scho be fourteen
" yeires of age,—at the quhilk sche may lawfully marie, with consent of her superiour; and therefore, being subject to her husband, it is not reason sche sould be also subject to the warde of her
" superiour, and consequentlie under twa wards, and twa fundrie
" several powers. Mair-over, sche being married with consent of
" her

Opinion of
writers as to
female succession.

Opinion of
writers as to
female succeſ-
ſion,

“ her over-lord, *hir husband may doe ſik ſervice as ſuld be done to him-
be the poſſeſſour of the landes,* quhilk is conform to that quhilk is
written be Doct. Thomas Smith, *Of the common weil of England,*
lib. 3. c. 5. 8.”

More to the ſame purpoſe is to be found, vv. *Eneya et Marita-
gium.*

Craig, in his treatiſe *De Unione*, thus ſpeaks: “ In *foeminis idem
jus, in Anglia ſcilicet et in Scotia, ut hæreditas inter filias et ſorores,
aut alias, ſi non ſunt mares, et in æquis gradibus ſint, in capita
dividatur; reſervatâ tamen filie maximæ natu ſuâ etiam prærogativâ,
nempe, principali manſione defuncti, cui ſucceditur; nam ea in
diviſionem non venit; ut neque ſuperioritas vaſſallorum, quæ tota
primogenitæ filie debetur:—itaque in renovatione ſive continuatione
feudorum, nulla inter nos prorfus eſt differentia.”*

In another paſſage, ſpeaking of the eſtabliſhment of Engliſh fa-
milies in Scotland, he obſerves, “ *Aliud tempus erat ſub Roberto
Bruffio, cum tot ſanguinolenta prælia, tot exercituum ſtrages, in-
ter Anglos et Scotos, pro execrando illo hominio, intercederent;
in quo, cum plerique viri fortes cecidiſſent, relictis filiabus hæredi-
bus, eas omnes in matrimonium iis Anglis tradidit, quos in exi-
lium Edwardus II. ejecerat, ut adverſæ culpam pugnæ a ſe in fuos
rejiceret (f).”*

This obſervation betrays a penury of hiſtorical knowledge; it
ſerves, however, to ſhew what were the ſentiments of Craig as to
the antiquity of female ſucceſſion, and the frequent examples of it
in Scottiſh inheritances.

In his treatiſe *De feudis*, l. 2. dieg: 16. § 3. he defines a *feudum
talliatum* thus: “ *Quod, excluſis feminis, LICET VERI HÆREDES
SINT, hæreditatem ad mâſculos vi proviſionis trahat.”*

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(a) *De Unione*, fol. 47. 63. pr. 2. Theſe quotations are taken from a MS. copy of
the age of Craig, probably the original, herewith produced.

He has these words in l. 1. dieg. 10. § 6. “ An autem hic dici
 “ poffit, quod fupra de feudo proprio diximus, nempe, femper præ- Opinion of
 “ fumi mafculinum feudum, nifi concessio mentionem fecerit fœ- writers as to
 “ minarum, quæri poteft; cum feudum mafculinum fit tantum female fuccef-
 “ proprium feudum; quod quidem in jure femper præfumitur, nifi tion.
 “ contrarium exprimatür.”

Here he fpeaks of maxims laid down in the books of *Feuds*. But he adds, “ USUS TAMEN NOSTER LONGE DISSENTIT; PRÆSU-
 “ MIT ENIM FEUDUM AD FOEMINAS ÆQUE AC MARES DESCEN-
 “ DERE, NISI EXPRESSE HÆREDIBUS MASCULIS FUERIT PROVI-
 “ SUM.”

Craig appears to have been fo fully fatisfied of the antiquity of female fucceffion, by the law and ufages of Scotland, that in l. 1. dieg. 8. § 2. he points out the traces of it in the fupposed laws of Kenneth III. and of Macbeth.

There will be a more fit occafion hereafter to examine that paffage in Craig, where he treats of the fupposed efficacy of the word *quibufcunque* implied, although not expreffed.

The claimant perhaps has been too diffufe in eftablifhing the certainty of female fucceffion by the law and ancient ufages of Scotland. Whether it will *now* be difputed, fhe knows not. The only apology which fhe can offer is this, that it feemed neceffary to be guarded on every quarter againft an antagonist who is continually fhifting his ground.

S E C T. V.

Reason for the prevalency of Female Succession in early times.

THE claimant has proved, that female fucceffion actually prevailed in Scotland as far back as record and hiftory reach: fhe will now Why female
 fuggelt a reason for its thus prevailing. fucceffion pre-
vailed.

Historical facts are often adapted to reasons pre-fupposed: the claimant has chofen an humbler method of investigation; fhe has

Why female
succession pre-
vailed.

ascertained the fact before presuming to make any inquiry into the reason of it.

Although the *reason* which the claimant may suggest should be held inadequate and unsatisfactory, her argument founded on the *fact* will not be impaired.

One great reason why female succession prevailed in Scotland, may be found in the constant intercourse between Scotland and England.

The claimant would not be understood to assert, that every part of the law of Scotland, as well as letters, modes of religious worship, and all improvements in civil life, was derived from England.

The intercourse, however, between the two nations in ancient times was much greater than is generally supposed (*a*).

Before the reign of Malcolm III. all is darkness in the history of Scotland. From him then this inquiry concerning the intercourse between the two nations may properly begin.

Malcolm III. resided in England for many years. By the assistance of the English he recovered his crown. He married an English princess, whose generous labour in civilizing the dominions of her consort, is, and ever will be, affectionately remembered.

Their son David I. was educated in England, and resided there until his accession to the crown.

Malcolm IV. was the ally, and, though of tender years, the companion in arms, of Henry II. (*b*).

In 1189, Richard I. a prince of candour, renounced that claim of homage which Henry II. had extorted from William King of Scots during his captivity (*c*). This candour attached the generous spirit.

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*a*) In the course of this collateral inquiry, no proofs or authorities will be given as to facts known and acknowledged; such as, the manner of Malcolm Kanmore's restoration, the marriages of the Scottish kings, &c.

(*b*) *Fordun*, lib. 8. c. 3.

(*c*) *Rymer*, t. 1. p. 64. "Quietavimus et omnes pactiones quas bonus pater noster Henricus, Rex Angliæ, per novas cartas, *et per captivum suam extorsit.*" Money indeed may have been given; but still the benefit was much greater than the money given.

of William to the interest of Richard. From that happy æra in the Scottish annals, William was the faithful ally of England (*d*). Why female succession prevailed.

Alexander II. married a daughter of King John; Alexander III. a daughter of Henry III. Both lived in amity with the English court; both were politic and gallant princes.

For more than a century after 1189, there was no national quarrel, no national war, between the two kingdoms.

Indeed, by the acquisition of land-estates, and by intermarriages, they had become one, as much as two nations under different rulers can become.

Malcolm III. and his successors, entertained many an exiled Saxon, and many a discontented Norman Lord. The greatest part of Scotland imperceptibly became the property of those strangers. At this day, most of the nobility of Scotland are of their blood.

Many of the English barons possessed opulent estates in both kingdoms; as De Quinci, De Ferreriis, De Valloines, Baliol; Bruce.

Some of them became all-powerful in Scotland, as the Cumins, an Anglo-Norman family, during the reigns of Alexander II. and Alexander III.

From the accession of David I. to the death of Alexander III. the Chancellors of Scotland were generally of Norman or of Saxon original; as, William Cumin, *David I.*; Roger Bishop of St Andrew's, brother of the Earl of Leicester, and William Malvicine Bishop of St Andrew's, *William the Lion*; William de Boscho, the minister of *William the Lion* and *Alexander II.*; William Frazer Bishop of St Andrew's, *Alexander III. (e).*

The office of Great Chamberlain, accompanied with very ample jurisdiction, was often enjoyed by Anglo-Normans; and in particu-

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*d*) *Tyrrel*; ad an. 1194. His brother David assisted in suppressing the rebellion of John.

(*e*) *Crawford, Officers of State*, p. 7. 10. 11. 15.

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lar, from 1180 to 1234, without interruption, by Philip de Valloines, William de Valloines, and Henry de Baliol, all of Norman extraction, all possessed of estates in England (*f*).

While the Scottish kings were educated in England, or intimately allied with England, while most of their nobles and many of their ministers were English, it is not strange that the law of Scotland should have resembled that of England; it would have been strange indeed if it had not. The succession of females by the custom of England in those ages to lands, jurisdictions, and peerages, is so certain, as not to require any voucher from history or record (*g*).

Whether *Regiam Majestatem* be considered as an authentic body of law, compiled by authority of David I. or as the work of a private person about the time of Alexander II. or Alexander III. and afterwards approved by the legislature, the argument, as to the similarity of the laws of the two nations, will not be varied.

Upon the *first* supposition, there can be no doubt; upon the *second*, it must be admitted, that the private compiler would have been instantly detected, had his compilation differed much from the established laws and practice of Scotland.

The disputed succession between Bruce and Baliol estranged the two nations: From allies, united together by every tie of blood and interest, they became enemies, implacable and inveterate.

The French endeavoured, and but too successfully, to avail themselves of this unhappy breach.

It was widened, on *the one hand*, by the eagerness of the Scots, in patronising every pretender to the English crown, as the false Richard II. and Perkin Warbeck; on *the other hand*, by the heavy

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*f*) *Crawford*, Officers of State, p. 254. 261.

(*g*) No one can peruse ten pages of any provincial history of England, without discovering evidence of female succession. Thus, among all the genealogies set forth by Dugdale, *Antiquities of Warwickshire*, there will not be found above three or four, where an heir-female does not occur, either in the line of descent, or in the line of marriages.

exaction for the ransom of that weak prince David II. and by that extravagant bill of charges which Henry IV. of England reared up against James I. (b). Why female succession prevailed.

The later Scottish statutes mention *our ancient enemies the English*. Hence superficial and prejudiced writers have considered the enmity of the two nations as in a manner coeval with their existence; and have argued, consistently enough upon such erroneous principles, that Scotland could never have borrowed laws from her ancient enemy (i).

This error, occasioned by confounding different æras in the history of the island, has been strengthened by an obvious observation; That at the union of the crowns the laws of Scotland and England differed in many particulars (k).

Had it been remembered, that the English, for reasons of expediency, gradually departed from the Norman institutions, while the less-discerning Scots were fatally busied in rivetting the chains of aristocracy; a modern dissimilarity, and an ancient sameness, in the laws of the two nations, would have been found consistent and explicable.

In the course of this inquiry, the claimant has supposed, that before the age of Malcolm Kanmore, there were laws in Scotland re-

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(b) The distress of which this *finance*, as it is called, was productive, may be seen in the *Black Acts*, parl. 1. James I.

(i) *Bruce*, Principia juris Feudalis, *scopus*. 7. "Nam quid (malum) nobis cum antiquis invisisque hostibus? Quove colore dici poterit, ex illorum sinu leges aut consuetudines nostras ullo tempore fuisse depromptas, cum quibus nullam unquam morum similitudinem, nullam humani, perexiguam divini juris communionem, nullum, præter bellum, aut infidam pacem, negotium, nihil denique commune habuissent Scotos apud cunctos alios utriusque gentis, exterosque etiam, scriptores, plane in confesso est?" Any one acquainted with the history of the two nations, will smile at this burst of passion. Bruce had forgot, that the question in the great disputed succession was, *Which* of two Anglo-Norman Lords ought to succeed to the Earl of Huntingtoun?

(k) This argument is exultingly used by *Bruce*, Principia juris Feudalis, Prolegomena, p. 7.

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vailed.

gularly digested, and properly executed; and that by those laws, the mode of succession was different from what it afterwards became. This is giving much more than is probable, and is only supposed in order to illustrate the argument.

While men remain in an uncivilized state, there will be little regularity in the form of succession. The strongest will commonly prevail. If those of the family of the deceased are nearly equal in strength, the inheritance will be divided. Thus anciently in Ireland, "the inheritance of the deceased was equally divided among the sons, both lawfully and unlawfully begotten (*l*)." Some traces may be discovered in the history of Scotland of the uncle being preferred to the infant nephew. This is explicable upon the same principles; but it is unnecessary to enter into such disquisitions. Whatever may have been the case in ages of barbarism, it is certain, that female succession may be found in Scotland where-ever records and history reach.

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*l*) Sir James Ware, *Antiquities of Ireland*, in princ.

In early times Jurisdictions have descended to Females.

THE proof of this proposition is full and convincing. If any office with jurisdiction could be said to be peculiar to a male, it was that of *Constable*. The extensive powers and authority of that great officer, in war as well as in peace, are well known (*a*); and yet, to the confusion of theories, it has happened, that the office of Constable in Scotland has frequently descended to females.

1189, Richard de Moreville, Constable of Scotland, died (*b*).

He left issue, William de Moreville, and a daughter, Eva, [rather Ela, or Helena], married to Rolland Lord of Galloway (*c*).

1196, William de Moreville died, and was succeeded by his sister, Ela. Her husband Rolland officiated as Constable. They were succeeded by their son Allan (*d*).

1234, Allan Lord of Galloway, Constable of Scotland, died; leaving issue three daughters, co-parceners; 1. *Helen*, the wife of Roger de Quinci, Earl of Winchester; 2. *Dervogild*, the wife of John Baliol, Lord of Bernard-Castle; 3. *Christina*, the wife of William de Fortibus, son of the Earl of Albemarle.

The natives of Galloway, inclining to have one, instead of three several Lords, requested Alexander II. to assume the lordship to himself, in prejudice of the co-heiresses: but that just monarch [*pius Rex*] rejected their request. On this the natives, headed by

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*a*) See *Spelman*, Gloss. voc. Constabularius.

(*b*) *Chron. Melros*, apud Gale, p. 178.

(*c*) *Sir James Dalrymple*, Historical Collections, p. 348. *Chron. Melros*, p. 194.

(*d*) *Ditto*, ibid. & p. 201. *Crawford*, Officers of State, Appendix, N^o 25. where "Rollandus filius Uchtredi Constabularius" is a witness to a charter before 1214. *Char. Melros*, fol. 56. where mention is made of "Alanus, filius Rollandi, Constabularius Regis Scotorum."

a bastard son of Allan's, rose in rebellion, and wasted the neighbouring country. The King led an army against them, subdued them, and left the estate to be divided equally among the three daughters (*e*).

Roger de Quinci, the husband of the eldest daughter of Allan of Galloway, was Constable of Scotland. He died in 1264, leaving three daughters, co-parceners; 1. Margaret, the wife of William de Ferreriis, Earl of Derby; 2. Elifabeth, the wife of Alexander Cumin, Earl of Buchan; 3. Ela, or Helen, the wife of Allan la Zouche (*f*).

William

PROOFS; AUTHORITIES, and ILLUSTRATIONS.

(*e*) The narrative here given is taken from *Chron. Melros*, p. 201. "Anno 1234, obiit Alanus, filius Rolandi, Dominus Galwethiæ, et Constabularius Scotiæ; et reliquit tres filias hæredes, et filium unum bastardum; qui, dum adviveret pater ejus, duxit uxorem filiam Regis de Man. Filia autem ejus nuperunt his viris: Prima, scilicet, Rogero de Quincy, Comiti Wintoniæ; secunda, Johanni de Balliol; tertia, filio Comitis de Albermarle; inter quas divisa terra prædicti Alani. Sed indigenæ illius terræ malentes habere unum Dominum quam plures, ad Dominum Regem accefferunt, postulantes, quatenus hæredibus [ex-] hæredatis, super se dominium acciperet. Quod pius Rex minimè curavit. Quapropter Galwethiensis, supra modum intumescens, sese ad resistendum præparaverunt, necnon et quasdam terras Domini Regis viciniore ferro flammâque vastaverunt."—p. 203. "Sedatâ tandem Galweiâ, hæredes terras acceperunt, quas inter se æquâ lance diviserunt."

A. Winton, MS. Chronicle, Advocates Library at Edinburgh, thus speaks.

"The Gallowayis the nixt yeir
 "Agane the King maid thame to steir,
 "For causè thai wald that Thomas
 "That Alane of Gallowayis *fone* was,
 "Had bene thair Lord into that steid
 "Eftir his fader that than was deid.
 "Thai fayndit of this the Kingis will,
 "But he wald nocht consent thairtill;
 "Bot that he denyit with reffoun,
 "For it had bene *disberisoun*
 "Till Alane of Gallowayis *douchteris thrè*
 "That his airis of lauch suld be."

Winton calls Thomas the *son* of Alan of Galloway: the context shews, that by *son*, he meant *illegitimate son*.

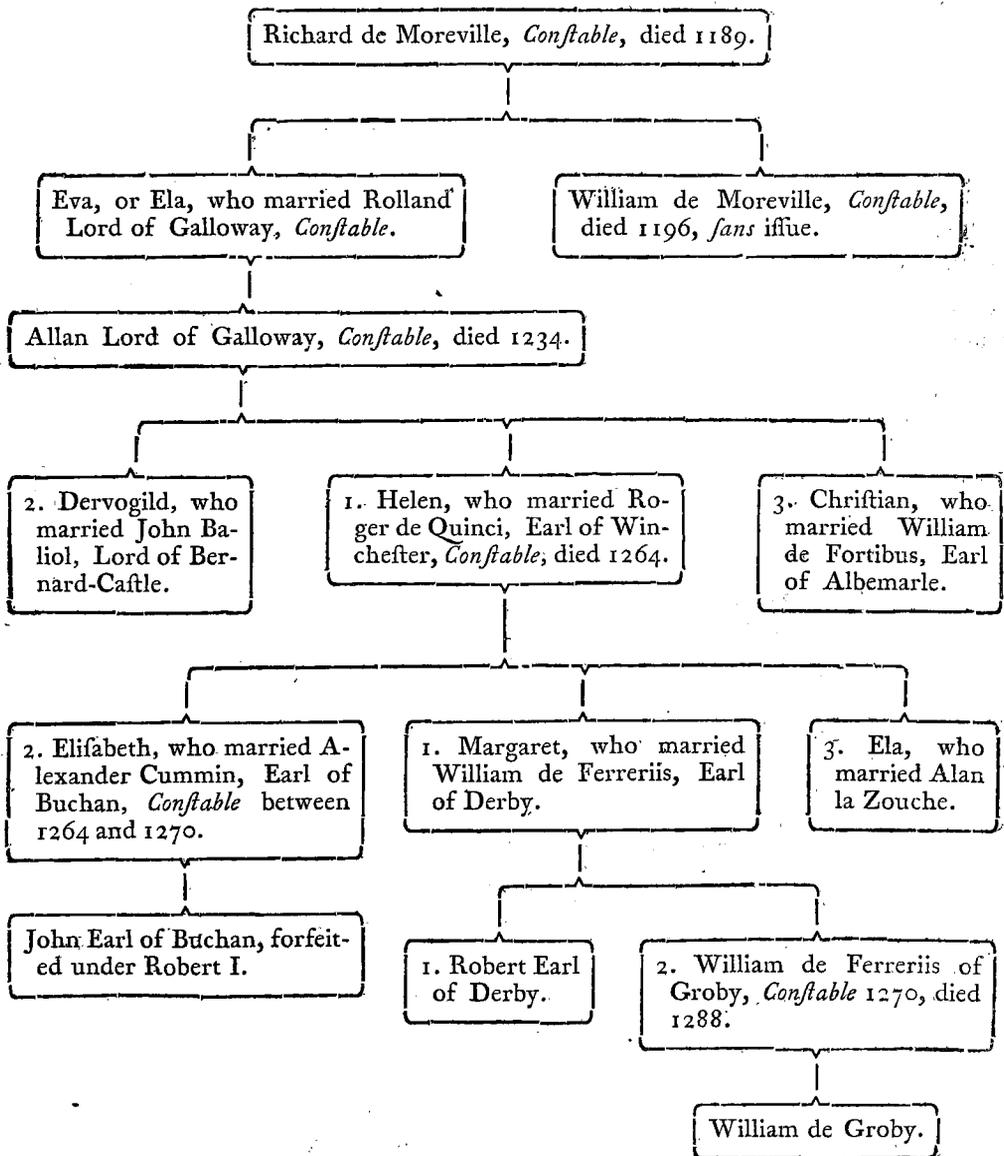
See also *Matthew Paris*, p. 294. edit. 1644; and *Dugdale*, *Baronage*, vol. 2. p. 688. *Fordun*, l. 9. c. 48. speaks much to the same purpose: he agrees with Winton, that the natives of Galloway wished to have the bastard for their Lord. "Quia a Domino Rege impetrare nequiverant, quod Thomas, filius naturalis dicti Alani, exhæredatis tribus filiabus suis, hæredibus legitimis, fieret hæres, et eorum Dominus."

(*f*) *Dugdale*, *ibid.* *Fordun*, l. 10. c. 18.—1264. "Obiit Rogerus de Quinci, Comes
 "Wincestriæ,

William de Ferreriis, Earl of Derby, the husband of the eldest daughter of Roger de Quinci, had by her two sons; 1. Robert, Earl of Derby; and, 2. William. William, by the gift of his mother,

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“ Wincestræ, Constabularius Scotiæ; cujus terræ tribus filiabus postea æquâ lance divisæ sunt.” This female descent of Constables being somewhat intricate, is explained in the pedigree annexed.



had the manor of Groby in Leicestershire, which came to her upon the partition of the English inheritance (*g*); it may be presumed, that she also bestowed her Scottish inheritance upon him; for that in 1270, he obtained possession of the dignity of Constable, which Alexander Earl of Buchan, husband of the second daughter of Roger de Quinci, unjustly held (*b*).

He died in 1288. In 1296, his son William had livery from Edward I. of all the lands which he held of the King within Scotland. He served Edward in the Scottish wars 1301, 1303, and 1306 (*i*).

By this conduct, he appears again to have lost the office of Constable; neither did it return to the family of Buchan. John Earl of Buchan, the son of Elifabeth de Quinci (*k*), forfeited for his attachment to the cause of Baliol. In 1315, Robert I. conferred the office of Constable on his faithful companion, Sir Gilbert Hay, and *his heirs* (*l*).

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(*g*) *Dugdale*, Baronage, vol. 2. p. 267.

(*b*) *Fordun*, l. 10. c. 28. “1270, Willielmus Ferreris, filius Comitissæ de Ferreris, quæ fuit filia Rogeri de Quinci Constabularii Scotiæ, accepit — dignitatem Constabulariæ, quam Alexander Comes de Buchan injustè tenuit, *prætextu uxoris suæ*, scilicet, filiæ junioris ipsius Rogeri de Quinci.”

(*i*) *Dugdale*, *ibid.*

(*k*) This Elifabeth de Quinci was the high-spirited lady who officiated at the coronation of Robert Bruce 1306. On this account she is called by an English historian “*the most impious of all traitresses*.” “Conjuratrix de Buchan, illa impiissima conjuratrix quæ secundo coronavit Robertum de Bruce.” *Gervas. Monach.* apud *Leland*, *Collectanea*, vol. 1. p. 271. “The Countess of Boughan, bycause her funne was absent, lying at his manor of Witnik [r. Whitwick] by Leicestre, toke upon her to corone Robert Bruse at Scone in Scotland.” *Scale Chron.* apud *Leland*, *Collectanea*, vol. 1. p. 542.

Our later historians ascribe this bold action to her daughter-in-law, the wife of John Earl of Buchan; but those English authorities are express and satisfactory. This is the lady whom our historians represent as “put into a wooden cage at Berwick, and, in that tormenting posture, hung out from high walls or turrets, to be gazed upon, and reproached, by the meanest of the populace.” *Abercrombie*, vol. 1. p. 579.—The original order by Edward I. for her confinement, *Rymer*, t. 2. p. 214. absolutely confutes this ridiculous calumny.

(*l*) *Anderson*, *Diplomata*, N^o 46. “Gilberto de Haya, Militi, dilecto et fideli nostro, pro homagio et servitio suo, officium Constabulariæ Scotiæ, cum pertinentiis: Tenendum cum et habendum dicto Gilberto, et hæredibus suis, in feodo et hæreditate;—faciendo nobis, et hæredibus nostris, dictus Gilbertus, et hæredes sui, servitium inde debitum et consuetum.”

As in Scotland, so also in England, the office of Constable descended to females. After the death of Milo Earl of Hereford and his sons, his daughter Marjory, the wife of Humphry de Bohun, succeeded both to the earldom, and to the office of Constable. Both remained in the Bohun family for many generations. At length, the male line failed in Humphry de Bohun. His eldest daughter and heir, Eleonora, brought the earldom and the office of Constable to her husband, Thomas of Woodstock, the sixth son of Edward III. (*m*).

This single example of the constabulary might suffice for proving the descent of jurisdictions to heirs-general by the ancient law and custom of Scotland.

It may however be added, that examples are to be found of women directly named and substituted in the grant of an office.

Thus the office of Mair of Fee of Aberdeenshire was granted to George Bisset, and Margaret Leslie, *his wife, and the longest liver of them, in conjunct fee*, and to the heirs procreated or to be procreated between them. This charter proceeds upon the resignation of Margaret and Elifabeth, *daughters and heirs* of Patrick Leslie of Petmuktoun (*n*).

Robert II. granted the offices of Sheriff and Forrester of Clackmannan to William Menteith, son and heir of Marjory Sterling, the *daughter and heir* of John de Sterling, Miles, and to *Elifabeth, his wife*, to the longest liver, and to the heirs between them; reserving to the said Marjory the franc tenement of the foresaid lands and offices for all the days of her life (*o*).

Robert

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(*m*) *Spelman*, Gloss. voc. Constabularius. “Defunctis omnibus sine prole, Herefordiæ comitatus, et Constabularia Angliæ, nuptiis Margerix fororis eorum, ad Humfredum de Bohun devoluta sunt. Numerantur ex ea familia decem *Constabularii*, Humfredi omnes dicti, præter Johannem unum, sub exitu Edwardi II. et Gulielmum, patrem Humfredi novissimi; qui sine prole mascula decedens, Elianoram filiam primogenitam hæredem reliquit tantarum dignitatum. Ipsa Thomæ de Woodstock, sexto filio Edwardi III. in matrimonio collocata, maritum salutavit Angliæ *Constabularium*.”

(*n*) *Records*, b. 20. N^o 72. 16th July 1521.

(*o*) Royal Charter, in the claimant's possession. “—— Willielmo de Menteith, filio et hæredem
“redi

Robert II. upon the resignation of William de Keith, and Margaret his wife, granted to their son John, “ omnes et singulas terras, possessiones, redditus, et officia, cum pertinen. quæ fuerunt Willielmi de Keith, Militis, Marefcalli nostri Scotiæ, et Margaretæ Fraser, sponsæ suæ, *ratione dictæ sponsæ*, ubicunque infra regnum nostrum (p).”

Neither is there any thing anomalous in this : for during the non-age of the female heir, the Sovereign held possession by right of ward; and as soon as she was marriageable, the Sovereign provided a husband for her. If, after majority, she continued unmarried, which was a rare case, or if she became a widow, she could appoint a deputy to officiate in her stead; and thus the jurisdiction might at all times, and in every event, be properly administered (q).

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“ redi Mariotæ de Stirling, filiæ et hæredis quondam Joannis de Stirling, Militis, et Elisabethæ suæ sponsæ, et eorum diutius viventi, et hæredibus inter ipsos; salvo dictæ Mariotæ libero tenemento omnium præfatarum terrarum, tenementorum, et officiorum, pro toto tempore vitæ suæ.”

(p) *Roll 2. N° 48. 7th January 1374-5.*

(q) This is no theory, and it is established by a most respectable authority, by no less than the opinion of the judges of England, 6 Henry VIII. “ Possè fœmellas, dum sint innubæ, procuratorem constituere, qui earum nomine servitium peragat : post nuptias autem, maritum primogenitæ solum hoc facturum.” *Spelman, Gloss. voc. Constabularius.*

A grant of an estate *hæredibus suis*, meant to *heirs-general*.

BY the words of limitation of an estate in an ancient charter, to the grantee, ET HÆREDIBUS DE CORPORE SUO LEGITIME PROCREATIS VEL PROGREDANDIS, or to the grantee, ET HÆREDIBUS SUIS, were understood HEIRS-GENERAL, and not HEIRS-MALE.

This is rather a corollary to the former propositions already proved, than a separate proposition still requiring proof.

When it appears, that by the common law and usage of Scotland, females were *heirs* in their order of succession, it can never be imagined, that a term descriptive of *all heirs* was meant to exclude *one species of heirs*.

The meaning of these words at present cannot be doubted, and there is as little reason to doubt, that, in former times, they were construed in the extent that their natural sense imports.

That nothing, however, may be omitted, the claimant will shew, by a series of examples, from the reign of Alexander II. to the reign of James I. that females took by a limitation *hæredibus suis*, in exclusion of the remoter heir-male; and that when the intention was to limit the succession to males, in exclusion of females, it was done by very express words.

The consequence of this is, that the difference between *hæredes sui* and *hæredes masculi* was perfectly understood in Scotland for many ages past, and was in those remote times precisely the same as at this day.

The claimant begins with an example in the reign of Alexander II. who succeeded his father, William the Lion, in 1214.

I. William the Lion made a grant of the lands of Pannomor and Banevin [Panmure and Benvine] to Philippus de Valloniis, and confirmed.
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firmed it to his son Willielmus de Valloniis. “ Tenend. fibi et hæredibus suis (a).”

Willielmus de Valloniis died in 1219 (b), without male issue; and consequently “ the lands in the grant returned to the crown in virtue of the limitation *hæredibus suis*, or to *heirs-male*; there was no “ *quibuscunque* to convey the lands to *heirs-general*.” So Sir Robert Gordon would plead.

It happened, however, that Willielmus de Valloniis left a daughter, Christian, married to Sir Peter de Maule, and *she* took the estate, which stood devised *hæredibus suis* (c), Sir Robert’s plea to the contrary notwithstanding.

Sir Robert Gordon will scarcely object, that *this* example of the meaning of *hæredibus suis* is too modern; for it is *five hundred and fifty years old*.

Robert I. II. Robert I. after his accession to the crown, bestowed his earldom of Carrick on his brother Edward Bruce.

The grant runs thus: “ Tenend. Edwardo Bruce, et hæredibus masculis de corpore suo, et hæredum suorum exeuntibus, et tantummodo per lineam rectam et masculinam continuo descendentibus: “ nisi in casu quo fuerint plures fratres germani superstites; in quo “ casu, decedente primogenito sine hæredibus masculis de corpore “ suo procreatis, secundo genitus in dictum comitatum hæreditariè “ eidem succedat; et sic de aliis hæredibus (d).”

It is remarkable how many words are employed in this charter, to describe what in a more verbose age, would have been described

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(a) Published, from the archives of the family of Panmure, by *Crawford*, Appendix to Lives of Officers of State, N^o 25.

(b) *Chron. Melros*, apud Gale, p. 197.

(c) See the evidence of this in *Crawford*, Officers of State, p. 259, and Appendix, N^o 26. 27, in which last writing she is styled, “ Christiana de Valoins, Domina de Panmor.”

(d) *Charter Record*, Roll 1. N^o 45.

by the words, *heirs-male of his body*. The reason of this anxiety is obvious: limitations to males in the male line being at that time uncommon, the conveyancers were puzzled how to express them; and as the words *heredum suorum* had been employed, the writer of the charter feared that they might be so construed, as to give an estate in fee to a male heir of the body of the first grantee, although descended from a female; and to guard against this, he has added a very special and minute description of a continued male succession.

III. The proposition, That *heredes de corpore* meant heirs-general, is clearly established from the entail of the kingdom of Scotland made in parliament at Air in 1315 (e). Robert I.

The whole clergy and laity became bound to yield their allegiance to Robert King of Scots, and the heirs-male lawfully to be procreated of his body.

In the event of his death without issue-male, the crown was settled on his brother Edward, and the heirs-male lawfully to be procreated of his body.

Then follows this clause: "Item ordinaverunt, quod, deficientibus dicto D. Eadwardo, et hæredibus suis masculis de corpore suo legitime descendentibus, prædicti regni Scotiæ successio ad prædictam Marjoriam [the King's daughter], vel, ipsâ deficiente, ad *propinquiorem heredem de corpore Domini Regis Roberti linealiter descendentem*, sine contradictione cujuscunque, revertatur."

According to Sir Robert Gordon's interpretation of *propinquior hæres de corpore*, the entail 1315 will stand limited thus: "To the King's issue-male; — to his brother Edward, and his issue-male; — to his daughter Marjory; — whom failing, to the King's issue-male." Than which a more palpable contradiction and absurdity cannot be figured.

IV. Andreas de Lescelyn, Dominus ejusdem, granted the lands of Robert I.

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(e) Fordun, l. 12. c. 24.

Monorgund, "Johanni filio meo in feodo et hæreditate, *sibi et hæredibus suis*. Volo etiam et concedo, quod si contingat dictum Johannem *absque prole* de corpore suo legitimè procreat. in fata decedere, quod abfit, quod dicta terra liberè revertatur ad me et *hæredes meos* (*f*).

It is undeniable, that *absque prole*, in the latter part of the clause, is opposed to *hæredes sui* in the former; and therefore Sir Robert Gordon must either admit, that *hæredes sui* implies *heirs-general*, or contend, THAT A MAN'S DAUGHTER IS NOT HIS PROGENY.

Edward Baliol. V. In 1335, Edward Baliol, calling himself *King of Scots*; made a grant of certain lands to John of the Isles: "Tenend. eidem Johanni, hæredibus et assignatis suis," for good services performed, and to be performed, "per se et hæredes suos (*g*)."

Whether this grant be to *heirs-general and assigns*, or to *heirs-male and assigns*, is left to the judgement of every impartial person.

David II. VI. David II. granted the earldom of Ross to William Earl of Ross, "et hæredibus suis masculis de corpore suo; quibus deficientibus, Waltero de Lesley, Militi, et Euphemix [the grantee's daughter] sponsæ suæ, et eorum diutius viventi, et hæredibus de ipsa Euphemia legitimè procreatis seu procreandis: ita, viz. ut si hæres masculus de ipsa Euphemia non exierit, et plures de se habuerit filias, senior semper filia, tam ipsius Euphemix quam *suorum hæredum* de se exeuntium, deficientibus hæredibus masculis, habeant totum jus ad integrum dictum comitatum, sine divisione aliquali (*b*).

From this instrument it is manifest, that when a grant was meant to be limited to *heirs-male*, *heirs-male* were therein specially express-

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*f*) Original charter produced;

(*g*) *Rymer*, t. 4. p. 711.

(*b*) *Record Charters*, b. 1. N^o 258.

ed: it is also manifest, that a grant *hæredibus* included *heirs-female*; for here the grant is made “*Euphemix, et hæredibus de ipfa legiti-
timè procreatis feu procreandis;*” and there is an exprefs proviso, that in case the earldom thereby devolved on *heirs-female*, the eldest should succeed to the whole, without division.

The grant “*Euphemix hæredibus*” being interpreted *hæredibus masculis*, becomes absolute nonsense. Supposing the earldom to be limited to the heirs-male of her body, how could there be any danger of the earldom being divided among the heirs-female of her body?

It is therein further provided, That the eldest daughter of Euphemia should succeed, and that the eldest daughter *suorum hæredum* should also succeed: how then can it be questioned, that in the reign of David II. *hæredes sui* meant *heirs-general*? If *filia ex filia* be not an *heir-general*, there is no such thing in the law of Scotland. It is impossible that any commentary can make the import of this grant more clear and explicit.

VII. There is a grant by David II. to his faithful adherent Sir Malcolm Fleming, limited “*hæredibus suis legitime procreatis feu
procreandis, per lineam masculinam descendantibus (i).*” David II.

If, as Sir Robert Gordon insinuates, *hæredes sui*, and *hæredes masculi*, were synonymous, the expression, “*per lineam masculinam descendantibus,*” would be absurd, and intolerable tautology.

VIII. In the reign of David II. William Earl of Sutherland granted the lands of Thorball to his brother Nicholas: “*Tenend. et habend. prædict. Nicholao, et hæredibus suis de corpore suo legitime
procreatis et procreand. de nobis, et hæredibus nostris (k).*” David II.

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(i) Printed in Crawford's Peerage, p. 464.

(k) Original Charter in the possession of the claimant, and charter by King David II. confirming it.

The claimant and Sir Robert Gordon must differ as to the interpretation of this grant. She asserts, that it is to be held "of the heirs-general of the granter, to the heirs of the body of the first grantee, female as well as male." Sir Robert must assert, that it is limited "to the heirs-male of the body of the first grantee, to be held of the heirs-male of the granter."

Which of the two interpretations is just, will best appear from the next instrument to be produced.

Nicholas resigned the lands "a fe, et hæredibus suis," in the hands of Robert Earl of Sutherland for new infeoffment to Henry Sutherland, the son of Nicholas: "Tenend. sibi, et hæredibus suis masculis de corpore suo legitimè procreandis, a prædicto Comite de Sutherland, et hæredibus suis (l)."

Alexander Sutherland, the son of this Henry, obtained a renewal of the investiture from John Earl of Sutherland: "Tenend. a nobis, et hæredibus nostris, prædicto Alexandro Sutherland, Domino de Thurball, et hæredibus masculis de suo corpore legitimè procreatis seu procreandis (m)."

Let it now be considered what is the sense of Nicholas's surrender upon the hypothesis of Sir Robert Gordon.

Holding the lands devised to him, and the heirs-male of his body, [so Sir Robert interprets, *hæredibus suis de corpore*], he resigns them for new infeoffment to him, and the heirs-male of his body; that is, he gives up his lands, to take them back again, by the circuit of a feudal conveyance, just as he held them already, without increase or diminution of right.

Between landholder and tenant this would be absurd: A tenant holds a lease, he renounces it in order to obtain another lease similar to the former in every the most minute particular.

But upon the claimant's hypothesis, the purpose of the resignation is clear. The Earl of Sutherland had made some treaty with Ni-

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(l) *Original Instrument*, in the possession of the claimant.

(m) Ditto.

chōlas for a limitation of his original right; and this could not be rendered effectual, unless by the vassal resigning the old, and the superior granting a new charter.

The glaring improbability of *hæredes sui* and *hæredes masculi* being distinguished in words, if the same in sense, is obvious in this, as well as in many other of the examples produced for the claimant.

IX. Robert II. gave his daughter Ægidia in marriage to Sir Wil- Robert II.
liam Douglas, a natural son of Archibald Lord of Galloway; with her he settled the lordship of Niddesdale, “*sibi, et hæredibus inter se procreandis.*”

Of this marriage there was issue only one child, a daughter. She married Henry St Clair, Earl of Orkney; and had issue, William Earl of Orkney (*n*).

According to Sir Robert Gordon, this Countess of Orkney and her son had no right to the lordship of Niddesdale; for that it stood limited *hæredibus inter se procreandis*; that is, to heirs-male.

Nevertheless, according to record, the right of the heiress and of her son was good, and was acknowledged to be good by James II. He granted the earldom of Caithness to William Earl of Orkney, “*et hæredibus suis;*” and declared this grant to be in compensation of a claim of right which the Earl of Orkney and his heirs had to the lordship of Niddesdale, by the marriage-contract of Ægidia, his grandmother, daughter of Robert II. (*o*).

X. Isabella Comitissa de Marr et Domina de Garrioch granted a Robert III.
charter of the lordship of Glendowachy to Alexander de Keth:
“*Tenend. et habend. prædicto Alexandro, et hæredibus suis de corpore*

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(*n*) Fordun, l. 14. c. 52. “*Dominus Rex [Robert II.] sibi tradidit in matrimonium Dominam Ægidiam, filiam suam, et cum eadem, sibi, et hæredibus inter se procreandis, dominium de Nyddesdale, perpetuè possidendum.—De qua genuit unicum filium, quæ nunc supereft, olim Domino Henrico secundo de Sancto Claro, Comiti Orchadiæ, desponsatam; de qua ipse genuit Willielmum, Comitem ejusdem, adhuc superstitem.*”

(*o*) Original charter, 28th August 1455, and precept for infeoffment thereupon.

“*suo* procreatis feu procreandis, de nobis, et *hæredibus nostris masculis*
“ de corpore nostro legitimè procreandis,” &c. (*p*).

If *hæredes sui* in the one line, and *hæredes masculi* in the next, were synonymous, it is left with Sir Robert Gordon to account for the obvious and purposed variation in the phrase.

JAMES I. XI. Robert Duke of Albany, and Earl of Buchan, granted the *comitatus* of Buchan to his son John Lord of Onell and Coull. The limitation is *hæredibus masculis* of John, and of his younger brothers. There is a clause of return to the *hæredes legitimi* of the granter (*q*).

If *hæredes masculi* and *hæredes legitimi* were synonymous, whence arose this variation in the phrase?

O B J E C T I O N.

p. 2. 3. “ By the term *hæredes sui*, or *hæredes inter ipsos*, in limitations, either of lands, or peerages, were understood only the ancient heirs, viz. *heirs-male*. It required the introduction of the words *hæredes quoscunque*, in the thirteenth or fourteenth century (*r*), to make room for the admission of females into either; but after such admission, the word *quoscunque*, which was once necessary, was dropt as no longer so, and *hæredes sui* now means *heirs* of both kinds, unless the deed is relative to some former; in which case, the meaning of those words is still governed by the investiture to which they relate.” In proof of this, the following passage of Craig, lib. 2. dieg. 14. § 2. 3. is quoted (*s*). “ Itaque ex jure Feudali, *hæredum generalium* nomine, mares tantum comprehenduntur: adeo ut si Titius *Mevio*, et ejus *hæredibus*, feudum concesserit, hæredes masculi tantum succederent, et non fœminæ, etiamsi arma tractare didicerint; ut antiquitus Amazones solebant, ut de Joanna Puella Aurelianensi, et quadam kodie

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(*p*) Charter, 3d November 1402, confirmed by Robert III.

(*q*) 20th September 1406, Roll, Duke of Albany, elsewhere quoted at large.

(*r*) By *thirteenth or fourteenth century*, the claimant understands, that Sir Robert Gordon means the period from 1200 to 1400. This is the proper sense of the words: although Sir Robert Gordon should understand them in a vulgar and unlearned sense, it will not vary the claimant's argument.

(*s*) A passage from Lord Stair, b. 3. tit. 4. § 20. is also quoted; but as it seems to be a transcript from Craig, there is no occasion for repeating it here.

“ Hibernica,

“ Hibernica, narratur. Ratio est, quia ad ea quæ raro fiunt, voluntates
 “ contrahentium non rectè accommodantur.— Quod de filiabus diximus,
 “ idem de omnibus ex filia descendantibus, five mares sint, five fœminæ;
 “ nam ne mares quidem per fœmineam lineam descendentes ad successio-
 “ nem admittuntur. § 3. Hæc nisi aliter in investitura provisum fue-
 “ rit, i. e. nisi tenor investituræ, five solennis illa feudi concessio conti-
 “ neat nominatim, ut hæredes, tam mares quam fœminæ, aut *hæredes*
 “ *quicumque*, succederent : neque tamen, ne hoc quidem casu, fœminæ
 “ succedunt, nisi nullus superfit masculus. Quamdiu enim unus masculus
 “ filius extat, fœminas excludit, et hoc propter armorum paratiorem
 “ expeditionem. *Provisum in investitura* dicimus, si ita concipiatur,
 “ [*hæredibus suis quibuscumque*]; nam vocem hanc, *hæredes quicum-*
 “ *que*, fœminas etiam comprehendere, necesse est. Itaque talis clausu-
 “ la, quoties in investitura expressa est, facit ut feudi successio, non mi-
 “ nus ad fœminas quam ad mares, fœminas, inquam, quæ gradu sint pro-
 “ piores, pertineat.—*AT NOSTRI MORES*, per generalem *hæ-*
 “ *redum* mentionem, etiam fœminas ad successionem, non extantibus
 “ maribus, admitti putant. Hoc eo evenit ex adiectione vocis [*qui-*
 “ *buscumque*], quæ determinatio etiam indubiè fœminas comprehendit.
 “ Itaque est pronomen quod differentiam inducit ; quod in omnibus in-
 “ vestituris adeo frequens est ; ut etiam, cum omissum est, pro expresso
 “ habeatur.”

A N S W E R.

In the former part of this passage, Craig speaks not of the law or usages of Scotland, but of the Longobardic feuds : in the latter, he mentions *nostri mores* ; and it would seem that his meaning is, that the limitation *hæredibus quibuscumque* was so general in investitures, that it was *understood* when not expressed ; and therefore, that a limitation *hæredibus suis* implied *hæredibus quibuscumque*, or to *heirs-general*.

It has been already proved, “ That, as far back as history and records reach,
 “ the succession of females is found established in Scotland, and that the limita-
 “ tion *hæredibus suis* was known and used ; that its consequence was to let in
 “ females ; that the distinction between *hæredes sui* and *hæredes masculi* was
 “ perfectly understood ; and that when the intention was to limit the succession
 “ to males, in exclusion of females, it was done by very express words.”

If, in the passage quoted, Craig has advanced any proposition contrary to what the claimant has proved, the certain consequence is, that Craig has erred (*t*).

Upon

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(*t*) Sir Robert Gordon terms Craig *the best of our antiquaries*. The fame of the excellent Craig, so deservedly acquired, is diminished by injudicious elogiums. They who affect to consider him in the light of an antiquary would do well to point out any one register
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Upon the supposition, that by *noſtri mores* Craig meant the practice of his own age (*u*), his proposition is far from being indefensible. By that time, the custom of terminating limitations with the clause *hæredibus quibuscunque* had become general; and it was natural for practitioners in that age, not deeply conversant in antiquity, to suppose, that *hæredibus quibuscunque* was a sort of essential in every grant or settlement, implied, although not expressed.

If Craig meant, that in ancient charters the clause, *hæredibus quibuscunque*, did generally occur, and therefore that the clause, *hæredibus suis*, afterwards introduced, was understood to refer to the ancient style, he is undoubtedly mistaken.

In the most ancient charters of Scotland now existing, the only limitation is, *hæredibus suis*, or *hæredibus de corpore*.

Sir Robert Gordon is called upon to produce any one charter with other limitations, prior to the reign of Robert I.

In that reign limitations to *heirs-male* were first introduced; and in the course of that century, the clause, *hæredibus quibuscunque*, became not unusual, as the last termination, where there occurred a substitution to heirs of provision, male or female.

The claimant does not believe that the expression, *hæredibus quibuscunque*, is ever to be found as the first limitation in any ancient charter; nor, indeed, that it is to be found at all in any charter prior to the reign of Robert II. or perhaps of David II.

Lets could not be said by the claimant, without injuring her own cause; from respect to the memory of the excellent Craig, *more* shall not be said.

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fter of religious houses, record, or even unprinted statute, which Craig ever consulted in composing his treatise *De feudis*. It seems, that without those aids, one may become *the best of our antiquaries*, and, by the courtesy of Scotland, may rank with Selden and Dugdale. If such, indeed, is the case, they who have revolved many a tasteless volume, and wasted their spirits in inquiries into the ancient state of Scotland, may well lament their ungrateful and unrewarded labour; they will hardly acquire any part of that fame, which another, without toil, and without ever consulting one MS. has acquired.

He, in particular, who believes that Scotland was originally peopled by the superfluities of Ireland and Norway, and was afterwards civilized by the accession of Anglo-Saxons and Anglo-Normans, will never obtain a vacant niche in the temple of antiquaries.

(*u*) He wrote about the beginning of the last century.

Connection between Lands and Titles of Honour.

THAT “the most ancient method of conferring honours in Scotland was by erecting certain lands into an earldom, &c. and by investing the grantee in the lands,” is a proposition which the claimant imagined to be incontrovertible. However, since *it too* is controverted, the claimant must prove it.

If, by reason of such proofs, this case should be extended beyond the ordinary limits, Sir Robert Gordon is to blame, not the claimant.

To mention all the examples of this kind, would be to transcribe the numerous grants of different *comitatus* appearing upon record, and the different instruments wherein the grantees are denominated *Earls*.

In the course of the claimant’s argument, many of those examples occur. She will therefore, under this head, satisfy herself with the mention of a few others; and, as much as is possible, will neither repeat, nor anticipate.

Patrick Earl of March resigned the earldom of March in the hands of David II. The King granted a charter of this earldom to George Dunbar, his son: “Tenend. et habend. dicto Georgio, et hæredibus suis, de nobis, &c. *in unum integrum et liberum comitatum, ac liberam baroniam, cum feodis, &c. sicut dictus Patricius dictum comitatum, cum pertinen. de nobis, ante resignationem suam nobis exinde factam, liberiùs, quietiùs, et justè, tenuit seu possedit (a).*”

George Dunbar thereafter received from David II. the appellation of “Dilectus confanguineus noster Georgius Comes *Marchiæ (b).*”

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(a) *Record Charters*, b. I. N^o 196. 25th July, an. reg. 39.

(b) *Record Charters*, b. I. N^o 244. “*Carta Georgii Comitis Marchiæ,*” 8th February, an. reg. 40mo.

Moray. Robert II. granted, " dilecto filio nostro Johanni de Dunbar, et Marjoriæ sponſæ ſuæ, filiæ noſtræ cariſſimæ, totum comitatum Moraviæ, cum pertinen. &c. Tenend. et habend. totum comitatum prædictum, &c. præfatis Johanni et Marjoriæ, et eorum diutiùs viventi, ac hæredibus inter ipſos legitimè procreatis ſeu procreandis; quibus fortè deficientibus, Georgio de Dunbar, Comiti Marchiæ, et hæredibus ſuis legitimis quibuſcunque, de nobis, &c. in unum integrum et liberum comitatum, et in pura et libera regalitate, &c. Apud Sconam, in pleno parlamento tento ibidem, 9no die menſis Martii, anno regni noſtri 2do (c)."

John Dunbar, after this grant, is always ſtyled *Earl of Moray* (d).

Caithneſs. Upon the reſignation of Walter Stewart, Earl of Caithneſs, James I. granted to Alan Stewart, the ſon of Walter, " totum et integrum comitatum de Caithneſs, cum pertinen. &c. Tenend. et habend. prædicto Alano, et hæredibus ſuis maſculis de corpore ſuo legitimè procreatis ſeu procreandis; quibus fortè deficientibus, prædicto Waltero, avunculo noſtro, et hæredibus ſuis quibuſcunque, de nobis," &c. (e).

Alan Stewart bore the title of *Earl of Caithneſs*. He was ſlain in Lochaber by Donald Balloch in 1431 (f).

By his death, the earldom of Caithneſs devolved on Walter Stewart, his father; and ſoon after, by his forfeiture, returned to the crown.

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(c) *Record Charters*, b. 1. N^o 309.

(d) *Rymer*, t. 7. p. 388. Fordun's Continuator, ſpeaking of the battle of Otterburn 1388, ſays, " Dominus Johannes de Dunbar, Comes de Moravia, propter ſubitatem bellum, oblitus eſt caſſidis ſuæ; ita ut capite quaſi nudo pugnavit in campo." Lib. 14. c. 53. Froiſſart, vol. 3. ch. 123. calls him *Meſſire Jehan Comte de Moray*.

(e) *Record Charters*, b. 3. N^o 74.

(f) *Fordun*, lib. 16. c. 17. " Dovenaldus, Balloch nomine, filius patruſi Alexandri de Infulis, terram de Galeis apud Lochaber petiit: ubi ante ſe invenit Alexandrum et Alanum Stewart, Comites de Mar et de Caithenes, cum valenti exercitu; quos inconſternatè, cum minore tamen potentia, aggrediens, dictum Dominum Alanum, filium Domini Walteri Comitis Atholia, — interfecit." Bower, the Continuator of Fordun, was at that time in an office of conſiderable truſt at the Scottiſh court. Ib. 1. 16. c. 9.

George Crichton, Admiral of Scotland, having obtained a grant of the earldom of Caithness from James II. became Earl of Caithness (*g*). Upon his death, the earldom again returned to the crown.

James II. granted a charter of this earldom to his chancellor, William Earl of Orkney, "*et heredibus suis*," in compensation, as the charter bears, of a claim of right which he and his heirs had to the lordship of Niddesdale (*h*).

After obtaining this charter of the earldom of Orkney, William was styled, *Earl of Orkney and Caithness* (*i*).

He afterwards surrendered the earldom of Orkney to James III. upon obtaining a charter of the lands of Ravenscraig and others. This was ratified in parliament (*k*).

Being thus divested of the earldom of Orkney, he laid aside the title, and for the future was styled *Earl of Caithness* alone (*l*).

Before Sir Robert Gordon can reconcile this example with his hypothesis, he must *presume* a special grant of the dignity of Earl of Orkney, and also a special surrender of that grant; and he must further *presume*, that both the one and the other have perished, while a special grant of the earldom, and a special surrender of that grant, do both exist upon record.

Only by the aid of *such presumptions*, and by introducing universal scepticism in matters of fact and record, can he devise an answer to this, and to many more of the claimant's arguments.

Alexander, the son and heir of Elisabeth Gordon, was thrice married. By his *first* wife he had no issue. By his *second*, Giles Hay, daughter and heiress of John Hay of Tullibody, he had a son, *Alexander Seton de Gordon*. By his *third*, Elisabeth Crichton, daughter of William Lord Crichton, he had a son, *George*. Huntly.

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*g*) *Record Charters*, b. 4. N^o 290. 8th July 1452.

(*h*) *Original Charter*, 28th August 1455, and precept for infeoffment thereupon.

(*i*) *Rymer*, t. 11. p. 423.

(*k*) *Ratification* by James III. an. 1471. Authenticated copy produced.

(*l*) *Rymer*, t. 11. p. 774. 775. *Record Charters*, b. 7. N^o 393. 7th December 1476.

In 1449, he obtained a royal charter of the *earldom* of Huntly: “Tenend. dicto Alexandro Comiti, et prolibus et hæredibus inter ipsum Alexandrum, et Elifabeth sponsam suam, Comitissam de Huntly, procreatis feu procreandis; quibus fortè deficientibus, veris, legitimis, et propinquioribus hæredibus dicti Alexandri quibuscunque (*m*).”

Upon the death of Alexander, 1st Earl of Huntly, George, the son of the third marriage, succeeded to the estate and dignity of Huntly (*n*); whereas Alexander, the eldest son, obtained no more than his mother's estate of Tullibothy (*o*).

The succession of the family has been continued down from George unto this day.

Rofs. Queen Mary bestowed the earldom of Rofs upon Henry Stewart, Lord Darnley, by a charter which contains a new erection of the earldom, without any mention of the title (*p*).

In ten days after, Henry Stewart, under the title of *Comes Rossie*, obtained a charter of other lands (*q*).

Under the same title of *Comes Rossie*, he obtained a charter of the dukedom of Albany (*r*).

Morton. James, 3d Earl of Morton, had no male issue; but he had three daughters; 1. Margaret, married to James Duke of Chattelherault; 2. Beatrix, to Robert Lord Maxwell; 3. Elifabeth, to James Douglas, second son of George Douglas, the brother of Archibald Earl of Angus.

Such being the circumstances of his family, he granted a charter

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*m*) *Record Charters*, b. 4. N^o 106. 29th January 1449-50.

(*n*) *Record Charters*, b. 7. N^o 280. *Georgio Comiti de Huntly*, 30th March 1473.

(*o*) *Record Charters*, b. 7. N^o 185. *Alexandro Seton de Gordon*, baroniæ de Tullibothie, 20th June 1473. *Royal charter*, confirming three charters by *George Earl of Huntly*, Lord *Gordon and Badyenach*, to *Alexander Seton* his brother, b. 7. N^o 256.

(*p*) *Record Charters*, b. 32. N^o 431. 15th May 1565.

(*q*) *Record Charters*, b. 32. N^o 500. 25th May 1565.

(*r*) *Record Charters*, b. 32. N^o 458. 20th July 1565.

of the lands, earldom, and barony of Morton, and his whole other estate, in favour of James Douglas, and Elifabeth his wife, the youngest daughter of the granter, and to the longest liver in conjunct fee, and to the heirs-male to be procreated between them; whom failing, to David Douglas, the brother of James, and the heirs-male of his body; whom failing, to George Douglas, the father of James, and the heirs-male of his body; whom failing, to Archibald Earl of Angus, and certain other heirs of entail.

Queen Mary confirmed this charter by two different charters. All were ratified in parliament 1567 (*s*).

The Duke of Chattelherault, Dame Margaret Douglas, his wife, and their eldest son, all concurred in ratifying the Earl of Morton's charter, by a deed under their hands and seals (*t*).

Upon the death of the Earl of Morton, James Douglas, who was neither his heir-male, nor his heir-general, succeeded to the estate and dignity of Morton. He is well known in history by the name of *Regent Morton*.

There is neither evidence, nor even probability, of a creation in favour of James Douglas; and therefore it may be concluded, that the charter of the earldom, the royal confirmations, and ratification in parliament, were the only instruments which authorized him to assume that dignity.

Thus the claimant has mentioned some examples for proving, in general, that the grant of the dignified fee conferred the dignity; and, in particular, that the grant of the *comitatus* conferred the title of *Comes*.

She will now produce another series of examples, wherein the same proposition appears to be implied.

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*s*) Original charter. Two royal charters, 22d April 1543, and 2d June 1554, and ratification in parliament 1567, all produced by the claimant.

(*t*) Original deed of ratification 1560, produced by the claimant.

I. In 1312, Robert I. granted the following charter to his nephew,
 Randolph Earl of Moray. Sir Thomas Randolph: “ Robertus, &c. Sciatis nos dedisse, &c.
 “ *Thomæ Randulph, Militi*, dilecto nepoti nostro, pro homagio et fer-
 “ vitio suo, *omnes terras nostras* in Moravia, &c. infra metas et di-
 “ vifas subscriptas [*here the limits are described*]: Tenendas et haben-
 “ das dicto Thomæ, et heredibus suis masculis de corpore suo le-
 “ gitimè procreatis feu procreandis, de nobis, et hæredibus no-
 “ stris, in feodo et hæreditate, in libero *comitatu*, ac in libera re-
 “ galitate, &c. Quare vicecomiti nostro de Inverness, &c. firmiter
 “ præcipimus et mandamus, quatenus præfato *Comiti*, et hæredibus
 “ suis prædictis, ac suis ministris, sint auxiliantes, &c. In cujus rei
 “ testimonium,” &c. (a).

This charter is the basis of the essay on *Honour, Dignity*, by Lord Kames: it will remain immoveable, notwithstanding all efforts to shake it.

From the charter it appears, 1. That Thomas Randolph was not formerly an Earl; for in the beginning of the charter he is styled *Miles*, without any addition.

2. That the lands were not formerly an earldom; for in the beginning of the charter they are called, *The King's lands* in Moray.

3. That, immediately after the clause of erection, the lands are called *comitatus*, and Thomas Randolph is called *Comes*.

O B J E C T I O N I.

- p. 24. Sir Robert Gordon says, “ That the reasoning is *childish*. Thomas Randolph being styled *Miles* in the beginning of the charter, is no proof that he was not an Earl. *Miles* was then, and long after, a dignity which even kings obtained, *vid. Robertson's History* of Charles V. vol. 1. p. 70. There are many instances in the records of Scotland of peers who had the title of *Miles* adjected to that of *Earl*, as in a charter to David Earl of Strathern.”

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(a) *Chart. Morav.* fol. 91. p. 2. *Hadington's Collections*, MS. Advocates Library. *Lord Kames's Essays on British antiquities*, p. 101.

A N S W E R.

This reasoning, now pronounced *childish* by Sir Robert Gordon, is what he himself repeatedly uses. Thus, p. 32. the appellation “Walterus de Lesley, *Miles*,” is quoted to shew that he was a *commoner*; and, p. 36. it is said, “James Stewart, brother to James II. was a *commoner* on the 1st March 1466. *Evidence*, Charter, b. 7. N^o 114. by James III. dilecto avunculo nostro Jacobo Stewart, *Militi*.” There are other examples of the same mode of reasoning to be found in the *Supplemental Case for Sir Robert Gordon*.

The claimant begs, that Sir Robert may either treat this reasoning as *solid*, or as *childish*; and not both ways; *solid* when urged for him, *childish* when urged against him. This is an advantage in argument which no one can be permitted to assume.

There was no occasion for quoting *Robertson* to prove, “that *Miles* was a dignity which even kings obtained;” but it is believed that *Robertson* does not say, that an Earl, when he obtained the dignity of *Miles*, laid aside his title of *Earl*.

The example of David Earl of Strathern, quoted by Sir Robert, proves the direct contrary. It shews, that the title of *Miles* was sometimes added to that of *Comes*; not that the title of *Comes* was ever relinquished.

Indeed Sir Robert does not appear to rely much on this objection; for, in the very next sentence, he resorts to an hypothesis diametrically opposite.

O B J E C T I O N II.

p. 24. “There is the strongest reason to presume, in this particular case of the Earl of Moray, that in transcribing the charter into the chartulary, the writer has inadvertently omitted Earl Randolph’s designation, in the first part of the charter. When he is first styled *Comes*, it is by an expression which refers to a former part of the charter, where he had been styled Earl; for he is characterised by the words *dictus Comes*, words plainly referring to the name *Earl*, which had formerly been given him in the charter.”

A N S W E R.

If a *clause* necessary for an argument, may be supplied in any instrument from presumption, there is provided a solution for all difficulties equally expedite and convenient.

The claimant says a *clause*; for *Thomæ Randolph Comiti, Militi*, would be a singular style. The words, then, which the transcriber inadvertently omitted, must have been *de Moravia Comiti*.

That he omitted those words is altogether improbable. The argument for an omission is of no force; for that as soon as the King granted to Sir Thomas Randolph, IV.

dulph certain lands, *tenend. in libero comitatu*, he granted him a *comitatus*; and therefore, there was no impropriety in speaking of him afterwards, as “the said Earl (b).”

Fleming Earl
of Wigton.

II. The title of honour was understood in ancient times to be so inseparably connected with territory, that the first grantee, or his heirs, being divested of the estate of the earldom, from thenceforth ceased to enjoy the dignity.

Of this, an example occurs in the earldom of Wigton; which will appear the more apposite, the more that it is examined.

That the force of this example may be understood, there will be occasion for a short historical deduction.

Sir Robert Fleming was the companion in arms, and the confident, of Robert Bruce, King of Scotland. He assisted at the slaughter of Cumyn in 1306 (a).

Robert being established on the throne, rewarded Sir Robert Fleming by a grant of the lands of *Lenzie* and *Cumbernald*; which were in the crown by the forfeiture of the Cumins (b).

He made another grant to Sir Malcolm Fleming, the son of Sir Robert, of the lands of *Kirkintulloch*, which also were in the crown by the forfeiture of the Cumins (c).

Sir Malcolm Fleming, the son of this Sir Malcolm, remained faithful to the Brucian line, at a season when loyalty was put to the severest trial. During the minority of David II. he resolutely defended the fortress of *Dumbarton*, the last resource of the few remaining followers of the King (d).

David II. being established on the throne, made a grant of a cer-

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(b) If critical emendations of charters are to be received, it would be a less violent conjecture, to suppose, that *Comiti* was erroneously written instead of *Thomæ*. There is no end of critical emendations.

(a) *Buchanan*, lib. 8. p. 141. Edit. Ruddiman.

(b) Evidence referred to in *Crawford's Peerage*, p. 492.

(c) Evidence referred to in *Douglas's Peerage*, p. 694.

(d) *Fordun*, lib. 13. c. 28. 29.

tain territory in Galloway, to be called *the earldom of Wigton*, to Sir Malcolm Fleming, “ et hæredibus suis legitimè procreatis feu procreandis, *per lineam masculinam descendentibus.*” He also bestowed on him a grant of regality, with power to judge in the four pleas of the crown (*e*).

It is probable that David II. intended, by this grant, to circumscribe the overgrown power of the Douglasses, Lords of Galloway, as well as to reward the fidelity of Sir Malcolm Fleming.

The Earl of Wigton accompanied his unfortunate master, and, with him, was made prisoner at the battle of Durham (*f*). He was committed to the tower of London (*g*).

He obtained his liberty ; but his son John was sent to England as an hostage (*b*).

The Earl of Wigton was one of the Scottish Commissioners for managing the negotiation for the deliverance of David II. (*i*).

His grandson Thomas was one of the hostages for the King's ransom (*k*).

In 1366, David II. made a new grant of the earldom to this Thomas, suspending at the same time the former grant of regality (*l*).

At length this Thomas, 2d Earl of Wigton, sold the earldom of Wigton to Archibald Douglas Lord of Galloway. One of the causes for this deed of sale was, “ The deadly feuds subsisting between him, and the chief men residing within that earldom.”

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*e*) 9th November 1342. The charter is printed at full length in Crawford's Peerage, p. 464. The King calls him *Alumnus noster*. This cannot mean one whom the King had educated ; but one who had educated the King ; a sense not unclassical.

(*f*) 1346, *Fordun*, lib. 14. c. 3. Knyghton, p. 2590. apud Twifden.

(*g*) *Rymer*, t. 5. p. 537.

(*b*) Ditto, t. 6. p. 35.

(*i*) *Rymer*, t. 6. p. 43.

(*k*) *Rymer*, t. 6. p. 109. 1358. He is styled, “ *Nepos et hæres Comitis de Wigton* ;” so that his father John was dead.

(*l*) 26th January, an. reg. 37. *Crawford*, with great probability, conjectures, that this was owing to the influence of Archibald Douglas Lord of Galloway, who could not brook the erection of a new regality within his territory. *Peerage*, p. 494.

In this deed he is styled *Thomas Comes de Wigton* (m).

Having thus sold the lands of the earldom, he resumed the ancient appellation of the family, and styled himself, "Thomas Fleming de Fulwood, DUDUM COMES DE WIGTON (n)."

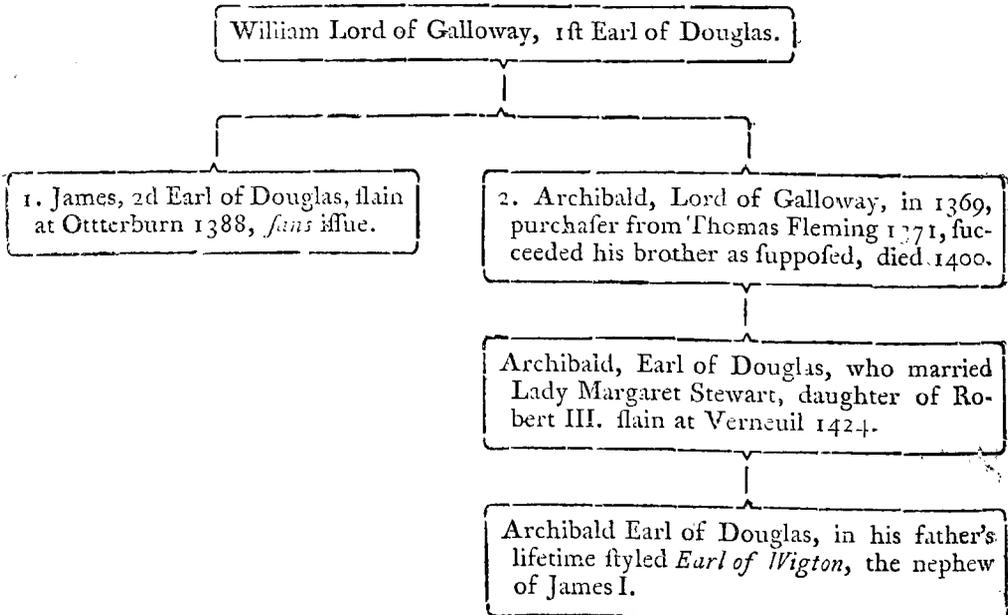
The claimant was formerly misled by the careless averments of our writers who transcribe from one another. She imagined that Archibald Lord of Galloway, after obtaining a confirmation of this deed of sale from the Sovereign, did assume the style of *Earl of Wigton* (o). She now admits that there is no evidence that he ever did;

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(m) 16th July 1371, *Charter of Confirmation* by Robert II. 8th February 1371-2, authenticated copy from the records. The deed of sale bears, "*Propter magnas et graves discordias et inimicitias inter me et majores indigenas comitatûs prædicti exortas.*"

(n) Charter of confirmation by Robert II. 20th June 1375, confirming a charter in 1372, granted by the said Thomas Fleming of Fulwood, *dudum Comes de Wigton*, to William Boyd.

(o) The claimant, in support of this proposition, quoted, as others had done, *Charter*, 6th March 1422, granted by Archibald Douglas, designed *Archibaldus de Douglas Comes de Wigton*, to Christian Ramsay. Sir Robert Gordon saw, that that *Archibaldus Comes de Wigton*, being styled *the nephew of James I.* could not be the *Archibald Lord of Galloway* who purchased from Thomas Fleming in 1371; and hence he has well confuted *Mr Dalrymple's History of Feudal Property*, p. 324. Sir Robert's proposition will become clearer from a pedigree of the Douglas family.



and when the fact is fully understood, it is not probable that he ever did. As this new earldom of Wigton was composed of certain parcels of the country called *Galloway*, it is natural to suppose, that the Lord of Galloway, having increased his territory by the purchase in 1371, would rather chuse to suffer the whole to go under one general name, than to sink the name of his great and ancient lordship in that of a parcel comparatively insignificant.

It is true that Archibald, the grandson of the Lord of Galloway, used the title of *Earl of Wigton*; but this was during the life of his father. After he succeeded to the title of Earl of Douglas, he did not use the title of Wigton; neither did any of the other Earls of the Douglas line. This shews that he had obtained no new grant of the earldom; for then it would have descended to his successors (p).

This *Thomas de Fulwood, dudum Comes de Wigton*, will remain an invincible proof, “ that in ancient times the title of honour was understood to be so inseparably connected with territory, that the first granter, and his heirs, being divested of the estate of the earldom, from thenceforth ceased to enjoy the dignity.”

This is indeed a difficulty, and therefore Sir Robert Gordon has strenuously laboured, either to untie, or to cut the knot.

O B J E C T I O N.

- p. 23. He therefore objects, “ That it is much more probable that Thomas Fleming Earl of Wigton lost the peerage by forfeiture, or by resignation into the King’s hands *ad perpetuam remanentiam*. From a charter, 18th April 1373, [not 1379, as in Sir Robert Gordon’s Case], it appears, “ That Robert Erskine had got right to the lands of Lenzie, probably as the King’s donatar to the forfeiture of Thomas Fleming. “ There is a clause in the charter, upon an exchange between Robert Erskine and Patrick Fleming, which affords *strong evidence* of Thomas

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(p) The reason why this Archibald alone assumed the title of *Earl of Wigton*, may be easily discovered. During the life of his father, the Earl of Douglas, he served in the French wars. According to the Scottish mode of those times, his proper style was *Archibaldus Magister de Douglas*. In France this style would have been ridiculous. *Le Maitre de Douglas* means the bailiff of the village; and *Magister de Douglas*, the schoolmaster. This young lord therefore, with some propriety, assumed the better-sounding title of *Comes de Wigton*.

“ Earl of Wigton’s forfeiture: “ Et si contingat quod *heredes antiqui* de Leignech, per tractatum pacis reformandæ inter Regem Angliæ et Scotiæ, prædictam baroniam de Leignech, tanquam hæreditatem suam, recuperaverint.” It is true, that in the grant confirmed in 1372, [i. e. the deed of sale 1371], Fleming is called *Earl of Wigton*; but this is only a private deed, and people forfeited are warranted by custom, even at this day, either to use or drop the appellation of *Earl*, as they see fit.”

A N S W E R.

In the course of Sir Robert Gordon’s argument, many presumptions appear. Frequent mention has been made of *presumed* creations of peers. In one instance he argues upon a *presumed* marriage between a great lady and a person unknown; here he has carried that ideal argument much further, and he has *presumed* a forfeiture.

The person whom he has sent into rebellion, and made to incur forfeiture, is Thomas Fleming, head of a family distinguished for unremitting fidelity to the Brucian line.

The condition of the forfeiting person is singular. He lost his title of honour, but he retained his estate: A remarkable circumstance, not to be paralleled in the ancient history of Scotland!

There is another defect in this hypothesis; to make it complete, a rebellion also, which has escaped the observation of historians, must be presumed. Even rebellion does not in law presume forfeiture: to presume both rebellion and forfeiture is rather violent.

The whole of this fabrick, if critically examined, rests entirely upon the clause, “ Et si contingat quod *heredes antiqui* de Leignech, per tractatum pacis reformandæ inter Regem Angliæ et Scotiæ, prædictam baroniam de Leignech, tanquam hæreditatem suam, recuperaverint.”

Sir Robert presumes, that the “ *heredes antiqui* de Leignech,” [Lenzie], implied *Thomas Fleming, and his heirs*. It has been shewn, that the lands of Lenzie belonged to the Cumins. The heirs of that family, settled in England, were obviously the *heredes antiqui*; not Thomas Fleming, who, but the year before, had sold the estate.

Had the *difenheretes* been restored by treaty, the grant from the sovereign to Sir Robert Fleming, and the conveyances by Sir Robert’s posterity, might all have been annulled. This was the event, and the only event, provided for by the deed in question (q). The fact being once understood, the argument for a presumed forfeiture vanishes (r).

The

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(q) The person whose pretensions were in view, seems to have been David de Strathbogie, the grandson of Jean Cumin, who, according to our writers, was the sister, but, according to *Dugdale*, the daughter of Cumin, slain in 1306, *Baronage*, t. 2. p. 96. This David de Strathbogie was an opulent baron, possessed of the manor of Holkeham in com. Norf. Gainefburgh in com. Linc. and many others. He died 1375.

(r) The averment, “ That, at this day, a person forfeited is warranted by custom to use

The supposition that Thomas Fleming resigned his title of honour, *ad perpetuam remanentiam*, into the King's hands, or, in more intelligible words, divested himself of his peerage, without cause, and without equivalent, is so completely Utopian, that it requires no answer.

III. There occurs a remarkable example of the connection between titles of honour and lands, in the proceedings of parliament 14th March 1457-8.

Earl of Morton, and William de Douglas, 1458.

The Bishop of Brechin, Chancellor, addressing himself to James Lord Dalkeith, set forth, that the King purposed to create him Earl of Morton.

Whereupon William Lord Borthwick appeared in the name and for the behoof of his sister Janet Lady Dalkeith (s), and asserted, that the said lands of Morton heritably belonged to her, and her son William de Douglas; and therefore humbly prayed, that the King might do nothing to the prejudice of his sister and her son concerning the said lands of Morton, their inheritance.

To this the Chancellor answered, "That the said Lord Dalkeith was not to receive his title in the earldom [*non intitulari debere in dicto comitatu*] for the lands of Morton, lying in the lordship of Niddisdale, but for the lands of Mortoun in the territory of Caldercleir."

Upon which declaration Lord Borthwick took instruments in full-parliament (t).

If

PROOFS, AUTHORITIES, and ILLUSTRATIONS:

"use the title of *Earl*," is of no consequence, when the fact, as to the Earl of Wigton, is once understood. The claimant, however, must be allowed to doubt of this custom. She is confident that it is unwarrantable.

(s) She appears to have been the second wife of the grandfather of the 1st Earl of Morton.

(t) Notorial instrument produced by the claimant: "In Dei nomine, Amen. Per hoc præfens publicum instrumentum, cunctis pateat manifestè, quod anno ab Incarnatione ejusdem millesimo quadringentesimo quinquagesimo septimo, indictione sextâ, et mensis Martii die decimâ quartâ, pontificatus Sanctissimi in Christo Patris ac Domini nostri, Domini Calisti, divinâ providentiâ, Papæ Tertii, anno tertio, coram Excellentissimo Principe, ac Domino nostro metuendissimo, Domino Jacobo, Rege Sæptorum Illustrissimo, et tribus régni sui statibus, in parlamento apud Edinburgh tento, anno, die, et mense

If the title of Earl of Mortoun had been *personal*, what possible prejudice could that title do to the proprietor of the lands of Morton, or how could it affect his right of inheritance?

But supposing it to have been *territorial*, the proprietor of the lands of Morton had great cause to request an explanation of the King's intentions; for no man can patiently see a royal grant of his estate made to another.

Stewart Duke
of Ross, &c.

IV. By act 41. parl. 2. James II. 1455, certain lordships were unalienably annexed to the crown; and, in particular, "the house and lordshippe of Brechin, the barrony of Edderdaile, called *Ardmannach*, and the Reid-castle, with the lordshippe of Rosse *perteining thereto*."

Were this statute to be modernized, the expression would be inverted thus, "and the lordshippe of Rosse, *with the Reid-castle perteining thereto*."

Nevertheless, three centuries ago, *the lordship was considered as parcel of the castle*.

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"*menſe præſcriptis, congregatis. Reverendus in Chriſto Pater, ac Dominus Georgius, Dei et Apoſtolicæ fedis gratiâ, Episcopus Brechen. Cancellarius Scotiæ, et nomine et ex parte Domini noſtri Regis, vocavit Magnificum et Potentem Dominum Jacobum, Dominum de Dalkeith, et exponendo recitavit, Quod intentionis Domini noſtri Regis fuît, ipſum Jacobum Dominum Dalkeith creare et facere Comitem, vocand. Comitum de Mortoune. Tunc vero comparuit Nobilis et Potens Dominus, Willielmus Dominus Borthwick, et nomine et ex parte ſororis ſuæ Janetæ, Dominæ de Dalkeith, aſſeruit, Quod dictæ terræ de Mortoune pertinebant ſibi, Dominæ de Dalkeith, et Domino Willielmo de Douglas filio ſuo, jure hæreditario; propter quod, humiliter imploravit dictum Dominum noſtrum Regem, ut nihil faciat in præjudicium dictæ ſororis ſuæ, et dicti ſui filii, penes dictas terras de Morton ad ipſos jure hæreditario ſpectan. Tunc vero dictus Dominus Cancellarius declaravit, Dictum Dominum de Dalkeith non intitulari *debere in dicto comitatu* pro terris de Mortoune in dominio de Niddydale exiſtend. ſed pro terris de Mortoune in Caldercleir jacen. Super qua declaratione, et præmiſſis ſupra recitatis, dictus Dominus Borthwick, nomine et ex parte dictæ ſororis ſuæ, a me notario publico infra ſcripto, ſibi publicum petiit fieri inſtrumentum. Acta erant hæc in pretorio burgi de Edinburgh, in dicto parlamento, anno, die, menſe, indictione, et pontificatu, ut ſupra annotatis."*

It will not eſcape obſervation, that in this inſtrument *dictus comitatus* is mentioned, although the word *comitatus* had not before occurred. This ſhows, that the idea of "*Comitatus de Mortoune*," was at that time implied in the words, "*Comes de Mortoune*."

James III. bestowed the title of *Marquis of Ormond* on his younger son, James Stewart.

This was an empty title, unusual in Scotland, without territory, and without jurisdiction (u).

In 1480-81, the King, purposing to bestow something more substantial on his son, granted a charter to him, and the heirs-male of his body, bearing; "omnes et singulas terras comitatûs nostri de Rofs, ac castrum de Dingwall, cum pertinen. (v)."

He also granted him another charter, "de omnibus et singulis terris dominiorum de Brechin et Navare, cum pertinen. et de omnibus et singulis terris domini de Ardmanach, nuncupat. Avauch et Eddirdale, cum monte de Ormond, et castro et fortalicio de Redcastle, cum pertinen. (w).

Henceforth James Stewart was styled "Comes Rossia, Dominus de Brechin, Navare, et Ardmanach (x).

As most of those lands were annexed property, the grant was liable to challenge.

To obviate this a ratification in parliament of the two charters was immediately obtained (y).

In 1488, James III. bestowed the title of *Duke* on the Earl of Rofs (z).

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(u) *Crawford*, Officers of State, p. 58. says, that it was bestowed at his christening.

(v) *Record Charters*, B. 9. N^o 43. 23d January 1480-81.

(w) The charter itself does not appear; but the ratification in parliament recites it, 12th April 1481.

(x) He is so styled in the narrative of the ratification just now mentioned.

(y) B. 9. N^o 60. 12th April 1481.

(z) 29th January 1487-8. The memorandum in the record has been published more than once. It runs thus: "Eodem die, Dominus Rex creavit filium suum Jacobum, secundo genitum, ducem Rossia, Marchionem de Ormond, Comitem de Edradale, aliter nuncupat. Ardmanach, Dominum de Brechin et Nevar, &c. concessit sibi terras dominiorum prædictorum, cum pertinentiis, secundum tenorem cartarum et evidentiarum sibi desuper prius confectarum, et nunc etiam confectendarum." The tenor of this memorandum shews how loose and inaccurate such jottings were. One would imagine from it, that the King had created his second son *Marquis of Ormond and Lord Brechin and Navare* in 1487-8; and yet it is certain, that not only the King, but the parliament also, gave him those appellations seven years before.

The Duke of Rofs, having embraced an ecclesiastical life, became Archbishop of St Andrew's, and Commendator of Dunfermline. Possessed of so ample an equivalent, he resigned his estates into the hands of his brother James IV.

According to the ideas of that age, the resignation of the whole estate would have carried with it the titles of honour. Thus, for example, it is plain from act 41. parl. 2. James II. that the resignation of the *Reid-castle* would have carried with it the *dominium* of Rofs "*perteining thereto.*"

For avoiding this consequence, the Duke of Rofs reserved either the principal messuage, or the *Moote-hill* (*a*) of each estate.

That this was with the view of preserving the titles, is obvious from the following exception in the instrument of resignation: "Reservato tamen dicto Illustrissimo Principi, et Reverendissimo Patri, "*ad vitam*, montem de Dingwall, juxta villam ejusdem, pro dicto "*nomine dignitatis dicti ducatus [Rofs]*; ac montem de Ormond, "*pro stilo et nomine marchionatus ejusdem*; necnon Redcastle de "*Armanoch, pro stilo dignitatis ejusdem comitatûs*; et montem "*castrî de Brechin, cum hortis ejusdem, pro nomine dignitatis* "*dicti domini de Brechin et Naver* (*b*).

As this prince was an ecclesiastic, it is obvious that a personal reservation for life was all that the circumstances of the case required.

The claimant apprehends, that this reservation points out in the clearest manner the connection between territory and titles of honour, in the beginning of the sixteenth century, and but a few years before the succession of Sutherland opened to an heir-general.

It shews that no person was supposed capable of holding a title of honour, unless he was possessed of some territory corresponding to it.

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(a) *Mons placiti*, or more shortly *Mons*, the place where courts were held, and justice executed.

(b) *Authenticated copy* of the original instrument, 15th May 1503.

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“ As this peerage was created by *investiture* in parliament 1487-8, and certainly was not territorial, the argument drawn from the Duke’s reserving the mounds in his three estates to prove, that he could not without doing so reserve his *three* peerages, falls to the ground. At this day it is *very common* in Scotland, when a man sells his family-estate, to reserve a piece of old wall, to preserve the remembrance of his antiquity, and indulge his vanity. Legal argument cannot be raised upon such foundation.”

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From what has been already observed, it is certain that the peerages of Brechin and Naver were not created in parliament 1487-8, but had existed for *seven* years before. That the other peerages were created by investiture in parliament, does not appear. The memorandum seems rather to import, that the King had ordered charters to be drawn up, conferring them; for such is the natural meaning of the expression, “ *secundum tenorem cartarum et evidentiarum sibi desuper prius confectarum, et nunc etiam confectendarum.*”

The claimant will not positively say, that the titles of *Duke* and *Marquis* were at that time *territorial*. They were borrowed from the English about a century before, seldom used, and scarcely at all, unless in the royal family. It seems plain, that *Albany* was not a territorial title. In all probability, the retaining a mound for the titles of Ross and Ormond, has been from analogy, and in imitation of the case of earldoms and lordships.

As to what is said, of “ its being very common in Scotland, when a man sells his family-estate, to reserve a piece of old wall, to preserve the remembrance of his antiquity, and indulge his vanity,” the claimant fairly acknowledges that it is new to her; and she could have wished that a few examples had been produced of a practice so very common in Scotland (c).

Besides, were the practice such as it has been represented, it would not apply

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(c) The claimant never heard of any example of this kind but one; and, if she mistakes not its circumstances, it will be found to be far from proving Sir Robert Gordon’s proposition.

A certain gentleman, studious of antiquities, bought an estate. He afterwards sold it; but retained a castle on it. Not a *piece of old wall*; but a venerable pile of ancient architecture. If the claimant is not misinformed, he had an additional reason for retaining this castle; besides his respect to antiquity, there was an apartment in it wherein he kept his library.

It is true, that various examples have occurred of estates sold, with the reservation of the family-sepulchre; but surely *that* is foreign to the matter in issue.

to the case of the Duke of Ross. The titles of honour had been acquired by the son and brother of the King of Scots; by reason of his clerical celibacy they were necessarily to terminate with his own life. A prince, an ecclesiastic of the Romish church, could never have retained a castle or a mount "to preserve the remembrance of his antiquity, and indulge his vanity!"

Some other detached objections, urged by Sir Robert Gordon against the *fourth* proposition, shall now be considered.

O B J E C T I O N I.

p. 24. "The connection between the *comitatus*, or *dominium*, and the peerage, is so insignificant, that a variety of instances can be shewn, where the *dominium* itself is conveyed, and yet the peerage does not follow the grant."

In proof of this proposition six examples are produced.

1. Robert Bruce, the father, was Earl of Carrick in 1293, 1294, and 1296; and yet, in 1293, the *comitatus* went from him to his son.

2. 8th June 1362, *an. reg.* 34, David II. gave an original grant of the *comitatus* of Fife to Thomas Bisset; and yet he was a commoner in 1366.

3. 1371, Thomas Fleming, Earl of Wigton, sold the *comitatus* of Wigton to Archibald Douglas; yet Archibald did not thereby become a peer.

4. The *comitatus* of Buchan, prior to 12th March 1406, had been transferred to John, son to Robert Duke of Albany; and yet he continued a commoner.

5. 22d April 1581, James VI. granted the earldom of Arran to Captain James Stewart; and, on 8th October 1581, gave him a patent creating him Earl.

6. 5th June 1581, James VI. granted the earldom of Morton to John Lord Maxwell; and, on the 29th October 1581, gave him a patent creating him Earl.

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Why Sir Robert should have produced those six, as examples of a *dominium* being conveyed, is hard to say, since not one of them mentions a *dominium* (*d*). He meant to speak of the conveyance of a *comitatus*.

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(*d*) It is probably an error in writing, or in printing, of which there is an innumerable multitude in Sir Robert's Case. His doer has exhibited what is called a *rectified copy*. The number of errors in *the rectified copy* is very great.

The *first* example, of the earldom of Carrick, will be fully obviated in chap. 5. § 5.; and it will be shewn, that Robert Bruce the elder [*i. e.* the son of the competitor] laid aside the title, and that Robert Bruce the younger [*i. e.* Robert I.] assumed it.

The *second* example, of Fife, is exceedingly erroneous. The first writing which Sir Robert quotes for proving, that after the grant of the *comitatus* of Fife, in 1362, Thomas Bisset continued a commoner is, 1. A protection by Edward III. to Thomas Bisset, for his lands of Upsetelyngton, Lambden, and Kymbrynham, [in the county of Marche, *vulg.* Merse, or Berwickshire], *Rymer*, t. 6. p. 129.

Unluckily this protection is dated in 1359, several years before the grant of the *comitatus* of Fife; and therefore it only proves, that Thomas Bisset did not take the title of *Comes*, before he obtained the *comitatus*.

2. A charter by David II. in 1366, b. 1. N^o 125. David II. an. reg. 36.

This charter confirms a grant by Thomas Bisset in 1362. According to Sir Robert Gordon the grant runs thus: "Thomas Byset, Dominus de Upsechyn-ton: Noveritis nos dotasse Ysabellam de Fyf, Dominam ejusdem." There follows in the record in the grant, "ante matrimonium inter me et ipsam, in facie ecclesiæ celebrat." This was rather too material a clause to be so carelessly omitted. Indeed the date of the grant by Thomas Bisset, 10th January 1362-3, shews, that it was prior to the grant of the *comitatus*. Sept. 1370 is a. r. 41. *Ruddiman*, Notes on Buchanan, p. 167. Hence Sept. 1363 is a. r. 34. It follows, that 8th June, a. r. 34. can never be 1362. It is 1363.

3. A passport by Edward III. to "*Thomas Bisset de Scotia, cum duobus fociis equitibus.*" *Rymer*, t. 6. p. 497.

There is not the most remote probability that this person was the same with *Thomas Byset de Upsetlyngton, Miles*, to whom, in 1363, David II. granted "*totum comitatum de Fyfe.*" The smallness of the retinue, no greater than what a Scots pedlar would have had in those days, is of itself sufficient to shew, that the *Thomas Bisset de Scotia* was some landless obscure person, and not the man who was possessed of the *comitatus* of Fife.

Thus it appears, that the name of Thomas Bisset never occurs directly in history, or record, after the grant made to him of the *comitatus* of Fife; and consequently, that Sir Robert Gordon can draw no inference whatever from all the authorities which he has here accumulated.

Although no direct mention is made, either in history or record, of Thomas Bisset after he obtained the *comitatus* of Fife, yet there is evidence that he was styled *Comes*. *Fordun*, l. 6. c. 53. speaking of the Priors of St Andrew's, has the following words: "Electus est vir nobilis progenie, sed moribus nobilior, Dominus Thomas Bisset, nepos Domini Thomæ Bisset Comititis de Fyfe."

The *third* instance, as to Wigton, has been already explained, and the reason given, why Archibald Lord of Galloway did not assume the title of *Earl of Wigton*.

The *fourth* also, of Buchan, has already received what the claimant is confident will be held a satisfactory answer.

As to the *fifth* instance, of Arran, it is of no consequence, although the case had been as represented by Sir Robert Gordon.

1. It is the case of a peerage by patent, so late as 1581: and surely the question concerning an ancient territorial peerage, which existed towards the be-

ginning of the 13th century, will not be determined by the circumstances of a peerage by patent which is no earlier than the end of the 16th century.

2. The patent to the Earl of Arran bears date on the 28th, not on the 8th, October 1581. Now the record of parliament, 24th October 1581, mentions, "Jacobum Arania Comitem, Dominum Hamiltoun, &c. (e)." This proves incontestably, that Captain James Stewart assumed the title of *Earl of Arran* before obtaining the patent (f).

As to the *sixth* instance, of Morton, supposing the date referred to in the patent of Nithsdale 1625 to be just, it respects a peerage by patent so late as in 1581; and therefore can be of no avail in determining a question concerning an ancient territorial peerage.

O B J E C T I O N II.

- p. 22. " From the evidence of the records of Scotland that remain, there is
 " no room to conclude, that a simple *erection* of a land-estate, without
 " special words of creation, could make a man a peer; neither is there
 " any thing whence to determine with precision the antiquity of any
 " particular form of creating peers in Scotland, so as to shew that one
 " form was more ancient than another. The creation of peers by in-
 " vestiture in parliament, appears to be as ancient as the records of par-
 " liament now extant: and the mode of creation by patent, may be as
 " ancient, either as that by creation or investiture in parliament; for
 " the ratification of the patent of Glencairn, in the year 1637, proves, that
 " that peerage had been created by patent as far back as the year 1488.
 " One of the most ancient charters of lands now on record, contain-
 " ing a creation of a peerage, is in the rolls of Robert I. That prince
 " created his brother Edward Bruce Earl of Carrick, and gives him
 " the estate of the earldom, *cum nomine, jure, et dignitate Comitis*.
 " These words of creation would have been nugatory and superfluous,
 " if the bare possession of the estate by virtue of the grant, would have
 " made Edward a peer.
 " There is another instance of the same sort in the creation of the
 " Earl of Wigton by David II.; only, in the last, the lands had not before
 " been called an earldom. If the evidence of the records, therefore, were
 " to determine the point, peerages of all sorts are mere personal grants,
 " without any relation to lands whatever (g)."

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(e) Certificate from parliamentary record produced.

(f) That vainglorious and profligate man sought to pass for the right heir of the house of Hamilton, and in that quality assumed the title of *Arran*. Being absolute master of Scotland, he took a patent in confirmation of his ideal pretensions. See *Crawford*, Officers of State, p. 137. How he was deprived of his honours, and stripped of his borrowed spoils, is recorded with peculiar elegance and perspicuity by *Robertson*, vol. 2. p. 116.—118.

(g) Prefixed to this objection there is a state of the claimant's argument, such as Sir Robert

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When the premisses are more fully considered, it will appear, that Sir Robert Gordon has been too precipitate in his conclusion. The particulars shall be separately considered.

1. It is said, "That, from the evidence of the records of Scotland that remain, there is no room to conclude, that a *simple erection of a land-estate*, without special words of creation, could make a man a peer."

By *simple erection of a land-estate*, Sir Robert Gordon must mean, by *erecting lands into a comitatus or earldom*; for an *erection of a land-estate*, without some correlative, are words without meaning (*h*).

As *this* must be the sense of the passage, if it has any determined sense at all, let this one question be asked, When lands were erected, *tenend. in libero comitatu*, what was the title of the tenant? It must have been either that of *Comes*, or none at all. If it was *Comes*, then this corresponds with the whole tenor of the claimant's argument; and is indeed just what she has already enforced, and proposes hereafter to enforce.

But if he who held a *comitatus* had no title at all in consequence of such holding, his case was singular indeed!

No one ever doubted that he who obtained lands *tenend. in dominio*, was styled *Dominus*; or that he who obtained lands erected *in unam liberam baroniam*, was styled *Baro*.

Land within a borough, granted *in libero burgagio*, could not be possessed by the grantee, without intitling him to the appellation of *Burgensis*.

When a chapter conferred *munus et officium episcopi* upon a person, he became *Episcopus*; and, *vice versa*, being *Episcopus*, he held the *episcopatus*.

The same correlative expressions run through the whole law of Scotland; as *thanagium* and *Thanus*, *firma* and *firmarius*, *emphyteusis* and *emphyteuta*, and so of the rest. But it would seem, and it is an amazing discovery, that he who was of a rank more eminent, and held his lands *in libero comitatu*, had no appellation at all in consequence of his possession of a *liber comitatus*.

When such a person appeared at the King's head court, the claimant desires

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Robert is pleased to make it. Among other things, Sir Robert makes the claimant say, "That the *present* investitures of the estate are to heirs of entail; and as *these* direct the limitation of the peerage, it must go to Lady Elisabeth, the heir of entail."

Sir Robert Gordon may manage his own argument according to his fancy, but he is intreated not to circumscribe that of the claimant according to his fancy.

(*b*) The technical phrases of the law of any country found uncouth to an ear not habituated to them. Sir Robert Gordon, by using the expression in the text, without the addition of *into*, has made it still more uncouth, and indeed unintelligible. "The erection of church-lands into a temporal lordship," is well known in the law of Scotland; but "the erection of church-lands," without the relative *into*, would be *arena sine calce*, words without connection, inferring nothing.

to know, in what manner *did* the clerk of court, and indeed in what manner *could* he mark his appearance?

The claimant contends that he marked his appearance thus: *Intrat, or Present. A. Com. de B.* Sir Robert Gordon, on the contrary, thus: *Intrat, or Present. A. qui tenet terras de B. in libero comitatu.*

It is hoped that Sir Robert Gordon will be called upon to say, whether *this* ought to have been the form of the entry; and if not, what it ought to have been.

2. It is said, "Neither is there any thing whence to determine with precision the antiquity of any particular form of creating peers in Scotland, so as to shew that one form was more ancient than another."

Whether the evidence produced for the claimant, in the course of her argument, is consistent with this modest scepticism, every impartial reader will judge.

Sir Robert Gordon admits, that we have records from about the 1300, and yet the *first* creation in parliament, that he can point out, is of Lord Home in 1473; so *here* are near two centuries which he would lay out of the account.

But says he, "The creation of peers by investiture in parliament appears to be as ancient as the records of parliament now extant."

How is it possible that *this can appear*? The certificate of the keeper of the record bears, that the records of parliament now extant begin in 1424; and yet the *first* investiture in parliament, as it is called, bears date in 1473.

Here again there are *fifty* years of record which Sir Robert Gordon would lay out of the account.

3. In order to render charters, investitures in parliament, and patents, all equal, Sir Robert Gordon adds, "That the mode of creation may be as ancient, either as that by charter of creation or investiture in parliament; for the ratification of the patent of Glencairn in 1637 proves, that that peerage had been created by patent as far back as the year 1488."

Charles I. says, in the patent 1637, that, in 1488, James III. had, *per suas literas patentes*, granted the dignity of Earl of Glencairn to Alexander Lord Kilmaurs. Sir Robert Gordon catches at the sound of the words, and confidently speaks of the peerage of Glencairn having been created by *patent* in 1488.

The claimant must beg leave to dispute the propriety of this interpretation.

[1.] In our charter Latin, a *patent* is *diploma*, not *literæ patentes*. The reference to the grant 1488 affords no evidence of the antiquity of what is properly called a *patent of honour*; for charters no less than patents are *literæ patentes*, when opposed to *literæ clausæ* (i).

[2.] It

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(i) Every one knows the distinction. "Omnibus hanc cartam visuris vel auditoris factum, Jacobus," &c. imports *literæ patentes*; but Jacobus, &c. "Vicecomiti de A. factum," imports *literæ clausæ*. A few examples, shewing the import of the words *literæ patentes*, shall be here subjoined.

1. In 1171, William the Lion promised to grant the earldom of Moray to Morgund, son of Gillocherus Earl of Marr. To his promise he subjoins these words: "Et ut hoc factum meum aliis certificaretur, prædicto Morgundo has *literas meas dedi patentes*."

The

[2.] It is highly improbable that there should have been one *diploma* or *patent of honour*, properly so called, in 1488, and yet that there should not have been a second *diploma* on the records, for near a century after.

[3.] When titles of honour came to be bestowed, in the reign of James VI. they were bestowed in the same instrument with the grant of the estate; and yet here it is supposed, that, a century before, there were two grants, one of the *comitatus*, and another of the dignity of *Comes*; in other words, that in the course of the *sixteenth* century, instruments became less numerous and verbose than in the *fifteenth*; the contrary of which is certain in every other instance.

[4.] In 1606, as is elsewhere observed, the Earls of Eglintoun and Cassilis obtained a decree of the privy council, preferring them in the order of parliament to the Earl of Glencairn; but, on the 15th June 1609, the Earl of Glencairn obtained a decree of the court of session, annulling that preference, for the following reason, "That the pursuer's predecessor was created Earl of Glencairn by James III. in the month of May 1488, before which time the defendants cannot show that the dignity of an earldom was granted to either of them."

In proof of this, there was produced a charter, with an infeoffment, granted by James III. to the Earl's predecessor, dated in May 1488.

Unhappily those instruments are not upon record; but as there is no example of an infeoffment on a patent of honour, it is evident that Alexander Lord Kilmours must have been created in the usual form, by an erection of the estate of Glencairn into an earldom.

[5.] The patent 1637 itself shews, that the *literæ patentés*, 28th May 1488, were not a *patent of honour* or *diploma*. Charles I. thereby confirms the fore-said *literæ patentés*, "cum omnibus aliis *literis patentibus*, scriptis, et evidentiis, præfato quondam Alexandro Comiti de Glencairn, vel alicui ipsius prædecessorum aut successorum, quoad attinet dictum honorem et dignitatem Comitum *tantummodo*, datis et concessis."

Now it must be admitted, that a *patent of honour*, properly so called, relates to the dignity, and to nothing else; and yet it is supposed by Charles I. that the *literæ patentés* mentioned in the patent 1637, might relate to something else

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The instrument itself is preserved in *Selden*, Titles of Honour, p. 848.; and let every reader judge, whether it is a *patent* of the earldom of Moray, or not.

2. In 1370, William Earl of Ross resigned his earldom, *per suas literas patentés*. Record Charters, b. 1. N^o 258.

3. Elizabeth, the heiress of Sir Adam Gordon, married Alexander Seton. A royal charter was granted to him, "et Elizabeth de Gordon, filiæ et hæredi quondam Adæ de Gordon, Militis," of the baronies of Gordon, Huntly, and Strathbolgy, &c. "Quæ quidem baroniæ et terræ, cum pertinentiis, fuerunt dictæ Elizabeth; et quas *eadem Elizabeth*, in sua libera virginitate, &c. in concilio nostro, tento apud Perth, in præsentia plurimum regni Prælatorum, Comitum, Baronum, &c. aliorum procerum et nobilium, nobis, per fustem et baculum, et suas *literas patentés*, sursum reddidit, purè et simpliciter resignavit," &c. Record Charters, Roll 2. N^o 32.

It is needless to observe, that in this section the arguments of Lord Kames's Essay, *Honour, Dignity*, have been adopted and enforced.

than the dignity, “quoad attinet dictum honorem et dignitatem Comitis tantummodo.”

4. Sir Robert proceeds to observe, “That one of the most ancient charters of land on record, containing a creation of a peerage, is in the rolls of Robert I. That prince created his brother Edward Bruce Earl of Carrick, and gives him the estate of the earldom, *cum nomine, jure, et dignitate Comitis*. These words of creation would have been nugatory and superfluous, if the bare possession of the estate, by virtue of the grant, would have made Edward a peer.”

Against a multitude of charters granting a *comitatus*, or granting lands to be held in *libero comitatu*, Sir Robert Gordon sets up one single grant to Edward Bruce, where the *comitatus* is given with the addition of the words, *cum nomine, jure, et dignitate Comitis*. The claimant says, *one single grant*; for he will immediately prove, that the other example, of Wigton, is nothing to the purpose.

Sir Robert urges, “That if the possession of the lands (*k*) made Edward Bruce a peer, the words of the creation would have been *nugatory and superfluous*.”

Thus, lest six words in a charter should be held *superfluous*, a continued series of creations for several centuries must be presumed, contrary to every form known in history or record; and all this for the credit of the accuracy and conciseness of a charter, confusedly expressed, and replete with tautology.

The framer of that instrument dilates the expression *heredibus masculis de corpore* thus: “et hæredum suorum masculorum exeuntibus, et tantummodo per lineam directam et masculinam continuò descendentibus; nisi casu in quod plures fuerint germani superstites; in quo casu, decedente primogenito, vel deficiente, sine hæredibus masculis de corpore suo procreatis; secundò genitus in dictum comitatum hereditariè eidem succedat; et sic de aliis, et eorum hæredibus.”

Even our own age, verbose as it may be in the form of grants, will acknowledge, that those provisos are wholly *nugatory and superfluous*, and yet they compose the greater part of the grant to Edward Bruce.

The truth is, as has been heretofore observed, that the framer of this charter being obliged to depart from the common style, imagined that he could not be too minute in his descriptions.

From the same cause the uncommon words, *cum nomine, jure, et dignitate Comitis*, have been thrown in: and indeed it was in some sort expedient that the intention of the sovereign should be repeated and enforced, seeing that this charter directly tended to the disinherison of his only child Marjory.

5. It is further said, “That there is another instance of the same sort in the creation of the Earl of Wigtoun by David II. only in this last the lands had not before been called an earldom.”

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*k*) By “*possession of the lands*,” the claimant presumes that Sir Robert means “*lands tenend. in libero comitatu*,” at the same time, it were to be wished that he had spoken with more precision.

This is altogether a mistake, as will at once appear when the words of that charter are recited.

After having granted, “ terras de Faryes, et del Rynnes, et totum burgum nostrum de Wigtoun, tenend. *in liberum comitatum*,” the Sovereign adds, “ et cùm dictus locus de Wigtoun pro principali manerio totius vicecomitatús de Wigtoun habebatur, ordinamus, et perpetuo confirmamus, ut ipse Malcolmus, et hæredes sui prædicti, ABINDE *nomen Comititis* accipiant, et Comes de Wigtoun de cætero nuncupantur.”

Here the lands to be held *in liberum comitatum* were composed of different parcels, with various names, and had not formerly been erected into a *comitatus*.

In those circumstances it became necessary for the Sovereign to determine what title the grantee was to assume: without such determination, the grantee might have styled himself Earl of *Faryes*, or Earl of *Rymes*, no less properly than Earl of *Wigtoun*.

It must be obvious to every one who peruses this charter, that the grant conferred on Malcolm Fleming the *dignity of Earl*; whereas that clause to which Sir Robert Gordon has recourse, did no more than remove any ambiguity in his *style*.

O B J E C T I O N III.

p. 24. 25. “ Lady Elisabeth’s doctrine would create a number of peerages which never were created, there being many instances of *dominia* in charters, and yet peerages of such denominations never were heard of; as *dominium de Sky, Glendowach, Strathbolgy, Buchquhidder, Ewisdale*.

A N S W E R.

The examples are ill chosen. It is certain that each of those *dominia* was termed a *lordship* (*l*); and there can be no doubt that every *dominium* would have intitled the holder to all the privileges of a lord of parliament, before the great alteration introduced by statute 123. 1587.

O B J E C T I O N IV.

p. 25. “ The territory is not a consequence of the title of honour, and often not a concomitant of it; there being many instances of mere personal

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*l*) It would appear, that Sir Robert Gordon will not permit the Duke of Buccleugh to be Lord Ewisdale, nor the Duke of Gordon to be Lord Strathbolgy.

“ peerages.

“ peerages, as those of the Earls of *March* and *Marifchal*, which behaved
 “ to have been originally official. Some have their titles from towns,
 “ as the Earl of *Dunbar*; and very ancient ones, wherein the peer is
 “ not denigned from lands or territory, but Earl fimplly, without addi-
 “ tion but that of his name, thus, *Duncanus Comes, Malife Comes*;
 “ whereof are many examples in *Anderson’s Diplomata Scotiæ*.”

A N S W E R.

This is not expreffed with precision; however, as Sir Robert Gordon’s argument relates to ancient peerages, it muft be fuppofed that he is *here* fpeaking of ancient peerages.

It is faid, 1. “ That the peerage of *March* behaved to have been originally “ official.”

Sir Robert does not recollect, that *la Marche*, now corruptedly called *the Merfe*, is a tract of country. One of the caftles of the family of *Marche* was *Colbrandfpath*, the pafs which leads from the *Merfe* into *East Lothian*. Why *Marche* fhould be a perfonal peerage, more than *Lennox*, *Athol*, or *Buchan*, is difficult to fay.

That the peerage of *March* was originally territorial, appears from the hiftory of the eftablifhment of that family in Scotland. *Gospatrick* Earl of *Northumberland* fled from the refentment of *William the Conqueror*, and took refuge with *Malcolm III*. “ On him *Malcolm* beftowed *Dunbar*, *cum adjacentibus terris in Lodoneio*, for the fupport of himfelf and his followers, until the return of more prosperous times (*m*).”

It is faid, 2. “ That the peeragé of *Marifchal* behaved to have been originally “ official.”

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*m*) “ Tenuit autem *Cospatricius* comitatum donec ei *Rex* auferret, imponens illi, quod “ confilio et auxilio affuit illis, qui *Comitem Robertum Cumin* cum fuis in *Dunelmo* perimerant, licet ipfe ibi præfens non fuiſſet, et quia in parte hoſtium fuiſſet cùm *Normanni* apud *Eboracum* necarentur. Fugiens ergo ad *Malcolmum*, non multò poſt *Flandriam* navigio petit; cui poſt aliquantum tempus *Scotiam* reverſo, donavit ei *Rex Dunbar*, “ *cum adjacentibus terris in Lodoneio* [*Laudonia*, the ſouth-eaſt parts of Scotland, to “ the ſouth of the Forth], ut ex his, donec lætiora tempora redirent, ſe fuosque procuraret.”

It is probable, that *Malcolm*, by reaſon of his long reſidence in England, placed more truſt in this *Northumbrian* Lord than in his own ſubjects; yet it was a hazardous ſtroke in policy, and it proved exceedingly hurtful to Scotland. Any one acquainted with the geography of Scotland, knows that the poſſeſſor of the caſtles of *Colbrandſpath* and *Dunbar* held the keys of the kingdom. In the ſucceſſion of ages, that independency which the ſituation of the *March* eſtate ſuggeſted to the poſterity of *Gospatrick*, was ſenſibly felt. Of this many well-known examples might be given. One ſhall be mentioned, not ſo generally known. After the battle of *Bannockburn*, “ *Counte Patrick* of *Marche* full gently received *King Edward* into his caſtel of *Dunbar*.” *Scala Chr.* apud *Leland, Collectanea*, vol. 1. p. 547.

Sir Robert Gordon must certainly know, that *Keith, Marischal of Scotland*, existed before 1174; whereas *Keith Earl Marischal* was never heard of until 1458. He cannot seriously consider a peerage which did not exist till 1458 as an ancient peerage in the present argument.

But further, there is all imaginable reason to suppose, that the peerage of Marischal was rather territorial than official; for that Robert I. granted "Robert de Keth, Militi, terras de Keth-Mareschal, *cum officio Marescallæ regni nostri, eidem terræ pertinen. cum omnibus libertatibus et pertinen. eisdem terris et officio pertinentibus (n).*"

Here the lands and the office are not only granted together, but it is said in words plain and unequivocal, that *the office pertained unto the estate.*

The charter of the earldom of Marischal does not exist. The presumption is, that it was conceived in terms similar to this grant in favour of "Robertus de Keth, Miles."

It is said, 3dly, "That some Earls have their titles from towns, as the *Earl of Dunbar.*"

The claimant presumes, that Sir Robert Gordon here means the Earl of March, sometimes called *Comes de Dunbar*; for it would not be doing justice to his argument to suppose, that he meant Sir George Home, created Earl of Dunbar by James VI. in 1608.

That the Earl of March was styled *Comes de Dunbar* from the borough of that name, is a strange imagination. Waldeve, the fourth from Gospatrick Earl of Northumberland, was styled *Comes de Dunbar* in 1174. *Rymer*, t. 1. p. 39. Does Sir Robert imagine that the town of Dunbar existed in the reign of William the Lion? Whether the proper style of the family was *de la Marche*, or *de Dunbar*, is not certain; nor is it material. Although the proper style had been *de la Marche*, this would have been very consistent with the style *de Dunbar* being used. Of this there are various examples in England while earldoms remained territorial. Thus the Earl of Suffex, from his residence at Arundel-castle, was frequently styled Earl of Arundel; and for a like reason, Ferrers Earl of Derby, was styled Earl of Tutbury.

The most remarkable example of all is, that of the celebrated Gilbert Strongbow Earl of Pembroke. He was sometimes styled Earl of Striguil, by reason that he had his chief residence at Striguil-castle, near Chepstow in Monmouthshire (o).

The Earls of March may have used the title *de Dunbar* on account of their chief residence being at the castle of that name (p).

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(n) *Charter*, Advocate's Library, A. 4. 16. There is produced a certified copy by the librarian.

(o) *Dugdale*, Introduction to Baronage.

(p) Froissart, who was personally acquainted with George, 11th Earl of March, calls him "Le Comte George de la March et de Dunbar," tom. 3. l. 126. *Dunbar*, in the Gaelic language, answers nearly to the English *Topcliff*, or *Hillbead*. In Lothian, the names of the hills and rivers are Gaelic; whereas the names of even the most ancient villages and hamlets are generally Saxon. This shews, that the Saxons once possessed the country, and that they succeeded some nation of a different language.

It is said, *4thly*, “that in very ancient earldoms, the peer is not designed from lands or territory, but *Earl* simply, as *Duncanus Comes*, *Malise Comes*; and for this reference is made to *Anderson's Diplomata Scotiæ*.

If Sir Robert Gordon had quoted Sir James Dalrymple's Collections, a book as well known as *Anderson's Diplomata*, he would have brought his own confutation along with him. When there were few Earls, and those little connected with each other, the Christian name was generally a sufficient distinction, without adding *Comes de Fyfe* to *Duncanus*, or *Comes de Strathern* to *Malise* (q). To argue from this practice, that such Earls were not territorial, but a species of Earls in the abstract, does not imply great attention to the antiquities of Scotland.

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(q) See *Sir James Dalrymple's Collections*, p. 376. &c.

Titles of Honour descendible to Females.

AS in ancient times land-estates and jurisdictions in Scotland were descendible to females as *heirs-general*; so, in like manner, ancient territorial peerages were descendible, and did *de facto* descend, to females.

I N T R O D U C T I O N.

By means of an extensive search into history and record, the claimant is enabled to treat of this subject with more precision than is to be found in any former inquiries into the state of ancient Scottish peerages. Introduction.

For obtaining a just idea of the manner of succession in ancient Scottish earldoms, it is of great consequence to procure a catalogue of them as they stood at some very distant period.

This catalogue being once procured, the next object of inquiry will be, In what manner did those earldoms descend? and by whom were they enjoyed? or, in other words, to exhibit an "history of the fate of the ancient earldoms of Scotland."

Fortunately such a catalogue still exists; and with it this inquiry shall commence.

After the untimely death of the only son of Alexander III. (a),

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(a) "Alexander regni futurus speratus hæres, A. D. 1283, apud Londoris, obiit, sepultusque est in Dunfermlyn in festo Sanctæ Agnetis secundo [28th January]." *Fördun*, lib. 10. c. 37. This historian fixes the burial of the Prince of Scotland to the 28th January 1283-4. The period between his death and funeral could not be considerable. The parliament assembled about a week after his funeral.

Introduction.

the King and his nobles saw it expedient to settle the succession. His grand-daughter, Margaret Princess of Norway, was the nearest heir in right of blood; but she was an infant, born and residing in a foreign country. In the event of her grandfather's demise, her right of succession might be disputed, competitors present themselves, discord and anarchy ensue. The most prudent measures were taken to prevent the evils foreseen.

In a parliament held at Scone, 5th February 1283-4, the Scottish nobles became bound, in certain events, to acknowledge the Damsel of Norway as their sovereign (*b*).

This was a great national measure; and accordingly it appears, that all the earls, and many of the great barons of Scotland, concurred in it.

In what order the earls are ranked in this instrument, is a matter which concerns not the present controversy. The claimant will therefore rank them in that order which may best conduce to the elucidation of what follows in her argument.

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(*b*) “ Obligamus nos et hæredes nostros arctius, per præsentés, dicto Domino nostro Regi, et hæredibus suis de corpore suo immediatè vel mediatè descendentibus, qui de jure ad successione[m] ipsius debent admitti; et in fide et fidelitate quibus eis tenemur, firmiter et fideliter promittimus,

“ Quod si contingat dictum Dominum nostrum Regem, filio aut filia, filiis aut filiabus legitimis de corpore suo non extantibus, vel de corpore dicti Alexandri filii sui, diem suum extremum claudere in hac vita,

“ Nos omnes et quilibet nostrum inclytam puellam Margaretam, filiam filie dicti Domini Regis, recipimus, et prolem legitimam ex ea descendentem, in Dominam nostram, et rectam hæredem Domini nostri Regis Scotiæ.” *Rymer*, t. 2. p. 266.

The provision in favour of the children “*de corpore dicti Alexandri filii*” has been owing to this circumstance, that the parliament assembled just after the death of Prince Alexander, when it could not be known whether his widow, daughter of the Earl of Flanders, was pregnant.

The provision by which a daughter of Alexander III. yet to be born, is preferred to his grand-daughter by a daughter already dead, might have afforded an argument for Bruce in the competition with Baliol. It is strange that it should have escaped the attention of those who, in our age, have contended for that ancient succession with all the animosities of the original competitors.

The only other observation which the claimant will make is this: How could the nobles of Scotland have used *hæredes sui* to signify the King's heirs-general, if, in their own succession, *hæredes sui* meant heirs-male?

1. Alexander de Cumin Comes de Buchan.
2. Johannes Comes de Athole.
3. Gilbertus Comes de Anegus [Angus].
4. Walterus Comes de Menethht [Menteth].
5. Rob. de Brus Comes de Carrick.
6. Duncanus Comes de *Fife* (c).
7. Willielmus Comes de Rofs.
8. Dovenaldus Comes de Marr.
9. Malcolmus Comes de Levenax [Lennox].
10. Malifius Comes de Strathern.
11. Magnus Comes de —aclin (d).
12. Patricius Comes de Dunbar.
13. Willielmus Comes Sothirland.

Here are no fewer than *thirteen* earls; and the claimant will prove, that all those ancient territorial peerages had already descended, or did afterwards, in the course of succession, descend, to heirs-general, and were enjoyed by heirs-general. From this number, however, the claimant must except three; the Earl of Marche, or de Dunbar, the Earl of Orkney, and the Earl of Strathern.

As to the *first*, it is known, that the earldom of March descended from father to son in the lineal course of succession, till the forfeiture of the eleventh earl, in the reign of Robert III.

As to the *second*, the Earl of Orkney, the claimant can say nothing with absolute certainty, the notices of that family are so indistinct and imperfect. In 1284, there was a Magnus Earl of Orkney. In

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(c) The title of this Earl is left blank by *Rymer*; certainly from an imperfection in the instrument. It ought to be supplied with the word *Fife*. It can refer to no other Earl. The Christian name of the Earl of Fife at that time was *Duncan*.

(d) The imperfect word —*aclin* will not apply to any Earl known in the whole history and records of Scotland. *Rymer*, or rather his associates, have read *aclin* for *aden*. The person here mentioned must have been *Magnus Comes Orcaden*. The Norwegian name *Magnus* greatly confirms this conjecture.

Introduction.

the next century Malife Earl of Strathern appears with the addition of *Orkney* to his own title. The genealogical writers report, that this Malife Earl of Strathern married the heiress of Orkney; and the fact is extremely probable; but as it is not authenticated beyond all exception, the claimant has no occasion to urge it.

The *third* is Strathern. By this the claimant would not be understood to mean, that the title of *Strathern* did not afterwards descend to heirs-general; what she means is, that the *old* earldom of Strathern fell to the crown by forfeiture, between 1330 and 1340, before the succession had ever opened to heirs-general.

Let Marche then and Strathern be set aside, as in them the succession never opened to heirs-general; and Orkney, as there are only probabilities, and not full evidence, that it ever did. There remain ten earldoms in 1284; and if the claimant can shew, that *nine* of them had then descended, or did afterwards descend, to *heirs-general*, it would be singular indeed if the *tenth*, *Sutherland*, should alone have been descendible to *heirs-male*.

The claimant now prays, that attention may be given to the particular examples which she is to produce in her "history of the fate of ancient territorial earldoms in Scotland."

S E C T. I.

BUCHAN, before 1214.

Buchan, 1214.

FERGUS Earl of Buchan left a daughter, Marjory (*a*), Countess of Buchan.

She made a grant to the church of the canons regular of St Andrew's, in the following terms: "*Margeria Comitissa de Buchan, &c.*"

(a) She is sometimes called *Margaret*; as will appear in the course of this section. Anciently there was much incorrectness in rendering the names of women into Latin: thus the same woman is called *Eva*, *Ela*, *Elena*.

“ Noveritis nos, et hæredes nostros de Buchan, caritatis intuitu, teneri Buchan. 1214.
 “ ad solutionem Deo, et ecclesiæ Sancti Andreæ Apostoli, et canoni-
 “ cis ibid. &c. dimid. marc. argenti annuatim de firma mea de In-
 “ verine (b).”

This Countess Marjory became the wife of William Cumin: under the title of *Marjoria Cumin Comitissa de Buchan*, she confirmed certain grants to the church of St Andrew's (c).

William Cumin Earl of Buchan, with the consent and approbation of Marjory Countess of Buchan, made a grant to the same church of certain lands (d).

“ Willielmus Cumyn Comes, et Margar. sponfa sua Comitissa de Buchan,” made a grant of the church of Buthelny to the abbacy of Aberbrothock (e).

This William Cumin died in 1233 (f). His wife Countess Marjory

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(b) *Chart. St Andrew's*, p. 379. This grant bears no date. Robert Prior of Lindores is a witness to it.

(c) “ Marjoria Cumin Comitissa de Buchan — ecclesiam de Kennanchyn, cum decimis et oblationibus, et terris, et cum omnibus eidem ecclesiæ justè pertinentibus; sicut carta Merlesuani, filii Colbani, et confirmationes hæredum fuorum, testantur.” *Chart. St Andrew's*, p. 380.

“ Marjoria Cumin Comitissa de Buchan — Kenmuck in Kennachhiufyre, &c. sicut cartæ Merlesuani, filii Colbani, et confirmationes hæredum fuorum, eidem canonicis, de eadem terra factæ, testantur; salvo redditu et servitio quæ Merlesuanus, filius Walde- ni, et hæredes sui, *mibi*, et hæredibus meis, debent, de prædicta terra.” *Chart. St Andrew's*, p. 381.

(d) “ Willielmus Cumin Comes de Buchan, &c. Sciatis nos, *ex consensu et assensu Margeriæ Comitissæ de Buchan*, concessisse, &c. canonicis in ecclesia Beati Andreæ Apostoli, &c. quandam terram, quæ dicitur Kenmukevech, in Rennothyr, &c. ita liberè, &c. sicut carta Merlesuani, filii Colbani, et confirmationes hæredum fuorum, dictis canonicis, de prædicta terra, factæ, testantur et confirmant.” *Chart. St Andrew's*, p. 378.

(e) *Chart. Aberbrothock*, vol. 1. fol. 190. *Willielmus de Bosco, Domini Regis cancellarius*, is a witness. The grant therefore could not have been made before 1211, when William de Bois became chancellor; *Chron. Melros*, p. 184. Neither could it have been made after 1221; for in that year it was confirmed by Alexander II.; *Ch. Aberbrothock*, vol. 1. fol. 81.

(f) “ Obiit Willielmus Comes de Buthhan, abbatiz de Der fundator.” *Chr. Melros*, ad. an. 1233.

Buchan. 1214.

survived him; for in 1236, a controversy respecting certain estates was adjusted between her and the abbacy of Aberbrothock (g). She moreover confirmed a grant of a mark of silver made by her father *Fergus Comes de Buchan*, to the abbacy of Aberbrothock (h).

It is probable that she did not long survive; for *Alexander Comes de Buchan* appears as witness to a charter granted by Alexander II. anno reg. 26. i. e. 1240 (i).

That this Alexander Earl of Buchan was the son of Marjory Countess of Buchan, is demonstratively certain from his confirmation of the forefaid grant. It is transcribed in a note (k).

O B-

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(g) *Chr. Aberbr.* vol. 1. fol. 10. “ Anno gratiæ 1236, apud Ordobyfyn, 3tio die Augusti, ita sopita fuit controversia mota inter abbatem et conventum de Abirbrothoc ex una parte, et *M. Comitissam de Buchan, tunc in viduitatis suæ potestate existentem*, ex altera; videlicet, Quod dictus abbas et conventus, pro se et successoribus suis, quietam clamaverunt prædictæ Comitissæ, et hæredibus suis, Brechulath, per divisas subscriptas;— dicta vero Comitissa, pro se et hæredibus suis, quietam-clamavit—totam terram de Ordbathbalth.”

(h) The grant confirmed is in *Chart. Aberbroth.* vol. 1. fol. 63. It must have been before 1199; for *Hugo Cancellarius* is witness to the ratification of it by William the Lion. Now this Hugo [Roxburgh, Bishop of Glasgow] died in 1199; *Chr. Melros*, p. 181.

The confirmation by the Countess of Buchan runs thus. “ *Margareta Comitissa de Buchan*, in legitima potestate viduitatis suæ;” confirms “ donationem illam quam *Comes Fergus, pater meus*, eis fecit, in perpetuam elemosynam, de una marca argenti annuatim.—Quare volo et concedo, ut præfati monachi, præfatam marcã argenti, a prædicto Fergus patre meo eis concessam, de me et hæredibus meis annuatim,—percipiant et habeant, ita liberè et quietè, sicut carta Domini patris mei super hoc confecta testatur. Præterea concedo, et præfenti cartâ meâ confirmo, —licentiam firmandi stagnum super terram meam de Fordun, sine gravi læsione mei, et successorum meorum.” *Chart. Aberbroth.*, vol. 1. fol. 81.

(i) 1st August, an. reg. 26. *Chart. Aberbrothock*, vol. 1. fol. 22.

(k) “ *Alexander Comes de Buchan*” confirms “ donationem illam quam *Fergus Comes de Buchan, avus meus*, fecit, in perpetuam elemosynam, de una marca argenti eis, ad terminum Pentecostes annuatim solvendo; et etiam concessionem illam et confirmationem quam, bonæ memoriæ, *Margareta Comitissa de Buchan, mater mea*, in legitima potestate viduitatis suæ existens, de prædicta marca, eisdem fecit. Quare volo, et hac præfenti cartâ meâ confirmo, ut præfati monachi, prædictam marcã argenti, a præfato *Fergus, avo meo*, eis concessam et collatam, et a prædicta matre mea, ut dictum est, concessam et confirmatam, de me, et hæredibus meis, percipiant et habeant, ita liberè et quietè, sicut carta prædicti *Fergus Comititis*, et concessio et confirmatio *Marg. matris meæ*, super hoc plenius testantur. Præterea concedo, et præfenti cartâ meâ confirmo, pro me, et hæredi-

“ bus

O B J E C T I O N .

Suppl. Case, P. 32. “ Supposing that Marjory had been the wife of William Cumin, of Buchan. 1214. which there is no evidence, she may have been Countess in consequence of Cumin’s creation upon the extinction of the peerage in her person; for the deed says, *in legitima potestate viduitatis mee*: or she may have been created peeress herself, to renew the extinct peerage; or she may have been called specially as an heir-female in the limitations of the peerage. This instance, like most of the others of Lady Elifabeth’s upon this head, is beyond the time of record; so that it becomes impossible for Sir Robert Gordon to point out the particular quality under which she took the peerage.”

A N S W E R .

In the claimant’s original case, this ancient instance of Buchan had been briefly stated; but now it is cleared up beyond controversy.

Sir Robert Gordon objects, That the deed formerly quoted was granted during her widowhood. The claimant now produces a deed granted by her as *Countess of Buchan*, and establishing a rent-charge on her estate. In this deed there is no mention either of husband or of widowhood; and therefore, were the objection good, as it is not, it would be foreign to the question.

To suppose a creation of Cumin, is to suppose any thing which may serve an hypothesis. The evidence produced shews, that Fergus styled himself *Earl of Buchan*; that Marjory was his daughter and heir, and also styled herself *Countess of Buchan*, in a deed wherein her husband is not mentioned, as well as in deeds where he is; that Alexander her son was heir to his mother, and styled himself *Earl of Buchan*.

The claimant apprehends, that the evidence of Marjory being *Countess*, is just the same as the evidence of her father Fergus, or her son Alexander, being *Earls*.

P R O O F S , A U T H O R I T I E S , and I L L U S T R A T I O N S .

“ bus meis,—licentiam illam firmandi stagnum super terram meam de Fordun, quam *prædicta mater mea*, in legitima potestate viduitatis suæ existens, eidem confirmavit, sicut *carta sua plenius testatur.*” *Chart. Aberbroth.* vol. 2. fol. 6.

It was necessary to treat thus fully of Marjory Countess of Buchan, because Douglas, in his Peerage, by an unpardonable inadvertency, has confounded the genealogy of the family, has created a second William Cumin *the son* of Countess Marjory, and has made Alexander Cumin *her grandson*. It is remarkable, that the very evidence appealed to by Douglas carries his confutation along with it. His error is the more unpardonable, as Crawford, his predecessor in peerage-making, had truly, though briefly, stated the pedigree of the family.

That

Buchan. 1214. That William Cumin her husband styled himself *Earl of Buchan*, is no proof of a creation; for, in the sequel, *this* will be shewn to have been the general practice in Scotland during many ages.

Sir Robert adds, that "Marjory may have been created a peeress, or may have been called specially as an heir-female in the limitations of the peerage." It is left with Sir Robert to explain how those presumptions are consistent with his own hypothesis of the male nature of ancient earldoms. Of all ladies, why is this Countess Marjory to be the only exception? It is exceedingly unfortunate, that there should be a necessity for this exception in the very first example of a *Countess* which is discoverable from authentic evidence in the Scottish history.

"It is beyond the time of record, and therefore Sir Robert can make no particular answer."

If by *record* Sir Robert means the *king's rolls*, he says true: but the claimant hopes, in the course of this inquiry, to shew, that many ancient facts relative to the history of Scotland may be ascertained, to the conviction of every impartial and intelligent person, without the assistance of the *king's rolls*.

S E C T. II.

ATHOLE, before 1231; 1242, 1269.

Athole.
Before 1231;
1242, 1269.

THE original erection of the ancient earldom of Athole is not extant. There is however evidence, that Malcolm Earl of Athole, and Henry Earl of Athole, his son, existed in the twelfth century (*a*).

This Henry had two daughters, Isabel and Fernelith (*b*). Isabel married Thomas de Gallovidia, brother of Allan Lord of Galloway; Fernelith, David de Hastings (*c*).

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*a*) *Sir James Dalrymple's Collections*, p. 379. *Collection of original charters* in the Advocates library, Edinburgh, N^o 60.

(*b*) There is some evidence that he had an elder daughter; however, as she had no descendants, it is unnecessary to embarrass the genealogy with any inquiry concerning her.

(*c*) *Sir James Dalrymple's Historical Collections*, p. 379.; where, however, it must be observed, he has confounded Thomas with his son Patrick. — *Grant to the abbacy of Dumfermline* by "Thomas de Gallovidia, Comes Atholiæ, et Isobella Comitissa ejus sponsa;" *Chart. Dumfermline*. — "Anno 1231 obiit Thomas, frater Alani de Galweia, Comes de Atholia;" *Fordun*, lib. 9. c. 48.

Patrick Earl of Athole, the son of Isabel and Thomas de Gallovidia, was burnt at Hadington in 1242, by the instigation, as was supposed, of Sir William Bisset (*d*).

Athole.
Before 1231;
1242, 1269.

On his death without issue, his aunt Fernelith succeeded; or, as it is expressed by an ancient historian, "David de Hastings received the earldom, accruing to him in right of his wife, the aunt of the murdered youth (*e*)."

This David de Hastings died at Tunis in the Croisade with Lewis IX. King of France, anno 1269 (*f*).

He left an only daughter, Adda, Countess of Athole, married to John de Strathbolgie (*g*).

The descendants of John de Strathbolgie and Countess Adda are well known in the history of England (*b*).

Their great-grandson David Earl of Athole, Constable of Scotland, after various changes of fortune, was attainted in the reign of Robert I. 1323, and slain at the battle of Kilblain, fighting under the banner of Edward Baliol in 1335 (*i*).

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*d*) *Fordun*, lib. 9. c. 59. *Andrew Winton's Chronicle*, MS. Advocates library, Edinburgh.

(*e*) "Post cujus obitum David de Hastings accepit ejus comitatum, provenientem sibi ex parte uxoris sue, quæ erat matertera juvenis occisi." *Chron. Melros*, apud Gale, p. 206. — There is a grant to the abbacy of Coupar by Fernelith, "Comitissa Atholix; pro salute animæ suæ, et pro anima Domini David de Hastings, quondam viri mei, Comitiss Atholix."

(*f*) *Fordun*, lib. 10. c. 27.

(*g*) Confirmation by "Johannes Comes Atholix, et Adda Comitissa," of the lands of Innith to the abbacy of Coupar, "quas David Comes Atholix, pater Addæ Comitissæ, dedit." 1283. *Sir James Balfour*, MS. Collections, Advocates library, Edinburgh. Among the Scottish Earls who became bound to acknowledge the Danish King of Norway as their sovereign, *Johannes Comes de Athole* appears. *Rymer*, t. 2. p. 266. an. 1283.

(*b*) They had great possessions in England; which, in a succession of ages, have dwindled away among heirs-portioners. *Dugdale's Baronage*, t. 1. p. 685. & 686.

(*i*) "Per judicium in parlamento tento apud Cambuskynet, de consensu totius cleri et populi editum." *Char. Dunfermline*, vol. 2. fol. 24. *Fordun*, lib. 13. c. 36.

O B J E C T I O N.

Athole. p. 34. Sir Robert Gordon briefly and peremptorily remarks, "That the passage from Fordun [Chr. Melros] only shews, that David de Hastings got the *comitatus*, that is, the land-estate, through his wife; in consequence of which, the crown has, as *it did in fifty other instances*, conferred the peerage on the husband."

Before 1231;
1242, 1269.

A N S W E R.

1. The historians of those days had no idea of a *comitatus* distinct from, and independent of, a *Comes* or *Comitissa*. 2. Instead of talking at large of "the crown in *fifty instances* conferring the peerage on the husband who possessed "the land-estate through his wife," Sir Robert would have done better to have produced *one instance* where the crown did this, while peerages remained territorial. But this he has not done, and cannot do.

S E C T. III.

ANGUS, before 1242.

Angus. 1242. THIS ancient earldom descended from father to son during many generations; at length, Malcolm Earl of Angus was succeeded in the earldom by his daughter Matildis Countess of Angus (a).

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(a) In the *Chartulary of Aberbrothock*, vol. 1. fol. 52. 53. there occurs a grant in these words. "Univerſis Sanctæ Eccleſiæ filiis, *Matildis Comitiffa de Angus* ſalutem. Sciant præſentes et futuri, me, in legitima poteſtate viduitatis meæ exiſtentem, conceſſiſſe, et hac chartâ meâ confirmâſſe, Deo, et eccleſiæ Sanctæ Thomæ Martyris de Aberbrothock, et monachis ibidem Deo ſervientibus, et ſervituris, donationem illam quam Gillechriſt Comes de Angus, proavus meus, eis fecit; videlicet, de eccleſiis de *Monifod*, *Murraus*, *Kerimor*, et *Stratheſlin*, tenend. et habend. ſicut cartæ predicti Gillechriſt, proavi mei, et aliorum anteceſſorum meorum, eis inde collatæ, melius et plenius teſtantur."

This grant was originally made by *Gilchriſt Comes de Angus*, confirmed by his ſon Duncan in the reign of William I. and again confirmed by his grandſon Malcolm, the father of Counteſs. Matildis; *Ch. Aberbroth.* vol. 1. fol. 28.

The ſame Counteſs confirmed other grants made by her predeceſſors; *ibid.* vol. 1. fol. 75.

She married, 1. John Cumin, who bore the title of *Comes de Angus* (b). 2. Gilbert de Umfraville (c), who died in 1245 (d). Angus. 1242.

She was succeeded by her son Gilbert, "who," to use the words of Lord Coke, "was Earl of Angus as heir to his mother (e)."

This Gilbert forfeited in the reign of Robert I. Although David II. conferred the earldom of Angus on Sir John Stewart of Bonkill, yet the title of Angus was possessed in England by the family of Umfraville for several generations (f).

O B J E C T I O N.

p. 30. Sir Robert Gordon is pleased to say, "that this instance turns against Lady Elisabeth. For, 1. It is acknowledged, that Matildis was twice married, and that both her husbands were Earls of Angus; so that the peerage has plainly failed in her for want of heirs-male, before her first marriage. But she took the family-estate; and, in consideration of that, John Cumin was created Earl of Angus. That marriage ended without issue-male; and, in continuation of the same favour to the family, her second husband, Gilbert de Umfraville, was created Earl of Angus also. Both of which creations communicated the title of Countess to her."

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(b) "Obiit Johannes Cumin Comes de Angus in Francia." *Chron. de Melros*, ad. an. 1242.

(c) "Dominus Gillibertus de Humframwill accepit Comitissam de Anegus in uxorem." *Chron. de Melros*, ad an. 1243.

(d) 29 Henry III. *Dugdale*, Baronage, tom. 2. p. 505.

(e) Coke, 4 Inst. p. 47. *Gilbertus de Umfravill. Comes de Anegus* is one of the nobles who swear to ratify the marriage-contract of the Princess Margaret, daughter of Alexander III. *Rymer*, t. 2. p. 1082. an. 1281.—49 Henry III. Gilbert de Umfraville is called *Earl of Angus*; *Dugdale*, Baronage, t. 1. p. 505. Summoned to parliament 25 Edward I. by the title of *Earl of Angus*; *Dugdale*, *ibid.*

(f) *Dugdale*, ut supra. *Rymer*, *passim*.

It is remarkable that the English historians considered the Stewarts Earls of Angus as usurpers of the right of the Umfravilles. Thus in *Scale Chronicon*, published by Leland, *Collectanea*, vol. 1. p. 565. 568. mention is made of "Thomas le Senefcal, that callit hymself Counte of Angus;" and of "Thomas Senefchal, that was named in Scotland Counte of Angose."

" 2. Lord

Angus. 1242.

- “ 2. Lord Coke appears to have been unacquainted with the rules of succession in ancient earldoms in Scotland, and to have blended them with the rules of succession in a barony by tenure, or by writ. Indeed, the succession of Gilbert to the Scottish titles and rights is not the point under consideration in this passage.
- “ 3. Matildis may have been created a peeress, or may have been specially called in the limitation after the heir-male of the same degree, or after the termination of all heirs-male whatever.”

A N S W E R.

It is singular, that Sir Robert Gordon should draw an inference in favour of his hypothesis from the circumstance of both the husbands of Matildis being termed *Earls of Angus*; a circumstance which the claimant considers as a great confirmation of her argument. If creations of earls are to be *supposed*, and such *suppositions* are to be used as a confutation of female succession, Sir Robert will smooth his way over many a difficulty. In this particular instance, it happens, that the supposition is not only without evidence, but palpably erroneous.

In order to make way for the creation of John Cumin and Gilbert de Umfraville, Sir Robert observes, that “ *the peerage has plainly failed in Matildis for want of heirs-male, before her first marriage;*” i. e. that before 1242, all the male descendents of the first Earl of Angus, the predecessor of Matildis, had failed.

Now, the contrary is certain. For Alexander II. bestowed the earldom of Caithness on Magnus, the son of Gilibrud Earl of Angus, and brother of Gilchrist, great-grandfather of Matildis. *Sir James Dalrymple's Historical Collections*, Pref. p. 73. *Chart. Aberbroth.* fol. 18.; and genealogists agree, that this family was subsisting in the male line 1296, when John Earl of Caithness swore fealty to Edward I.

Gilchrist, the great-grandfather of Matildis, had another brother, called *Gilbert*; *Crawford's Lives of the Officers of State*, p. 356. *From him almost the whole gentlemen of the name of Ogilvie are at this day descended in a line of males.* See the evidence of this in *Douglas's Peerage*, p. 12. &c. *Ogilvie Earl of Airlie.*

Thus, 1. It is absolutely impossible, that “ *the peerage had failed in Matildis for want of heirs-male;*” and consequently neither she nor her husbands could have taken the title of *Angus*, supposing it limited to males.

2. The censure on Lord Coke for his ignorance is rather too peremptory, when there is so much evidence for proving that there was a strong analogy between the succession to ancient earldoms in Scotland, and the succession in England to baronies by tenure.

3. The last supposition, That Matildis may have been created a peeress, or may have been specially called in certain imaginary limitations, has been already confuted; for if she was not a Countess as *heir of line*, it is plain that the eldest male descendent of one or other of her great-granduncles, Magnus and Gilbert, must have been Earl as *heir-male*.

S E C T. IV.

M E N T E T H, 1257.

AN apposite example of *female succession in lands and dignities* occurs Menteth. 1257 in the history of the earldom of Menteth. The circumstances are so singular that they merit attention.

It appears, that in the thirteenth century, Walter Cumin married the Countess of Menteth: in consequence of this marriage, the Chronicle of Melros repeatedly terms him, “W. Cumin, *called* Earl of Menteth (a).”

In 1257 [according to Fordun’s account], “Walter Comyn the old Earl of Menteth died suddenly, being poisoned by his wife, as was reported. In 1258, the Countess of Menteth, [the widow of Walter Comyn], disdainful of the addresses of the nobles who sought her in marriage, wedded John Ruffel, an unknown English knight. The nobles of Scotland, irritated at this, accused her of the murder of the Earl, her former husband, and imprisoned both John Ruffel and her (b). Meanwhile, Walter Bullock (r. Balloch) arrogantly [*protervè*] claimed the entire earldom of Menteth, in right of his wife, [*ex parte uxoris suæ*]; and, by the favour of the nobles, obtained it. The Countess, [i. e. the elder

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(a) “1255. Sed et V. [W.] Cumin, *dictus Comes de Meneteth*, cum cæteris magnatibus terræ, noluerunt apponere sigilla sua ad quoddam nefandissimum scriptum quod prædicti conspiratores fecerant”—1256. Cernentes igitur omnes majores natu Scotiæ, quorum caput erat Walterus Cumin, *dictus Comes de Maneteth*,” &c. *Chron. Melros*, apud Gale.

(b) “Eodem anno, 1258, Walterus Comyn, Comes veteranus de Menteth, veneno, uxoris suæ, ut dicitur, repentinâ morte interiit. Et anno sequenti Comitissa de Menteth, contemptis proceribus nobilibus qui eam ducere volebant, cuidam ignobili militi Angligenæ, Johanni Ruffel nomine, se nupsit. Unde magnates Scotiæ indignantes, mortem *Comitis prioris* ei imposuerunt; et tam ipsum Johannem, quam Comitissam, vinculis mancipaverunt.” *Fordun*, lib. 10. c. 11.

Menteth. 1257 “ Countess], unable to endure the multiplied insults of her adversaries, on being set at liberty, and on receiving a sum of money, disgracefully departed from Scotland with her husband Sir John Ruffel (c).”

From this passage of Fordun, it is plain, that the widow of Walter Comyn was Countess of Menteth in her own right. The dignity of her suitors, their resentment on being rejected, and the claim made by Walter Stewart *Balloch*, “*ex parte uxoris suæ*,” all concur in establishing this proposition.

Who was this lady, the wife of Walter Stewart, and *what* was the nature of her claim, does not with certainty appear. It is probable, however, from evidence to be hereafter mentioned, that she was the younger sister of the widow of Walter Comyn. If the elder sister was accused of poisoning her husband, and married a foreigner, without permission from Alexander III. the judgement of the nobles, in favour of the younger sister, was what the manners of a fierce and unlettered age might justify. Had the cause of the elder sister been tried in milder times, and by judges more intelligent, the issue of the trial might have been different.

The elder Countess of Monteith did not acquiesce in the justice of this sentence (d). “ In 1260, she dispatched her proctors to the
“ court

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(c) “ Interea Walterus Bullok, *ex parte uxoris suæ*, totum comitatum de Menteth protervè calumniatus est; quem favore magnatum adeptus est: sed et Comitissa, tot adversariorum insultationes sufferre non prævalens, libertati donata, et quâdam summâ pecuniæ acceptâ, de Scotia ignominiosè cum viro suo est profecta.” *Fordun, ibid.*

It is proper to observe, that the person called by Fordun, and other of our historians, *Walter Bullok*, was certainly Walter Stewart, the fourth son of Walter of Dundonald, *the first Stewart*. See the *authorities* referred to in *Stewart's history of the Stewarts*, p. 48. The word *Bullok* is evidently an error of Saxon transcribers for *Balloch*, which must have sounded uncouth to a Saxon ear. In the Gaelic language, *Bailloch*, pronounced as if *ai* were an open *a*, means *freckled*. It is a common mark of distinction.

(d) “ Anno 1260 Comitissa de Menteth, nuncios ad Romanam curiam destinavit, con-
“ querens de violentia sibi illata, et de spoliatione *hereditatis suæ*. Ad cujus requisitio-
“ nem

“ court of Rome, complaining that she had been injuriously treated, Menteth. 1257
 “ and spoiled of her inheritance. At her request there came after-
 “ wards to York one Pontius, nuncio from Pope Urban [IV.]. He
 “ had special powers from the Pope to inquire into the violence and
 “ injuries, which, as the Countess contended, she had unjustly suf-
 “ fered. This legate cited the Lord Walter, occupier [or possessor]
 “ of the earldom of Menteth: He also cited the bishops, abbots,
 “ and almost the whole nobility of Scotland, to give testimony in
 “ this cause. A citation to appear, and answer in judgement, with-
 “ out the limits of the kingdom, was contrary to the privileges
 “ of the King and kingdom of Scotland. Alexander considered
 “ such citations as oppressive to himself, his kingdom, and subjects,
 “ and tending to set at nought his ancient rights in questions of
 “ that nature. Ready to determine the controversy according to the
 “ laws of Scotland, he would no longer suffer himself and his king-
 “ dom to be thus unduly aggrieved: he therefore appealed from
 “ the Nuncio Pontius to the Pope; and so the matter remained un-
 “ decided.”

Meanwhile Walter Stewart kept possession of the title. Under that title, in 1262, he confirmed a grant of the church of Saint Colmanel in Kintyre, to the abbacy of Paisley (*e*).

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

“ nem postea venit quidam nuncius a latere Domini Papæ Urbani, missus in Angliam, a-
 “ pud Eboracum, Pontius nomine, ad inquisitionem faciendam, ex speciali mandato Do-
 “ mini Papæ, super injuriis et molestiis eidem Comitissæ, ut dicebat, injustè illatis.— Qui
 “ quidem legatus citari fecit Dominum Walterum Bullok, dicti comitatûs occupatorem,
 “ episcopos etiam et abbates, ac proceres ferè totius Scotiæ, ad perhibendum de his te-
 “ stimonium veritati. Quod attemptatum fuit contra privilegium Regis et regni Scotiæ,
 “ ut aliquis extra proprios fines ad alicui respondendum vocaretur. Rex autem perpen-
 “ dens, non solum se, et regnum suum ac suos, super his citationibus gravari, sed et pri-
 “ vilegia sua antiqua in hac parte annullari, cum ipse, secundum leges regni sui, paratus
 “ esset hanc causam determinare, non ulterius se et regnum indebitè sustinens gravari, con-
 “ tra dictum Pontium ad Summum Pontificem appellavit; et sic sub discussione lis adhuc
 “ pendet.” *Fordun*, lib. 10. c. 14. The expression, *lis adhuc pendet*, shews that Fordun
 had transcribed this passage from some chronicle compiled in the very age of Alexander III.

(*e*) He is therein styled, *Walterus Senescallus, Comes de Menteth*. *Ch. Paislet*, fol. 73.

Menteth. 1257

This question as to the earldom did not receive a determination during the life of the elder Countess of Menteth. Fordun observes, that in 1273, "a great controversy arose at York between John Comyn and Walter Bullok [Balloch], concerning the earldom of Menteth; for that William, the son of this John Comyn, had married the daughter of the former Countess, who was the true heir (*f*)."

It is obvious, that this was an attempt to revive the controversy which had been begun before the Pope's nuncio some years before. The family of Comyn probably expected, that their formidable influence might deter the King from opposing a trial without the limits of Scotland, where their interest was concerned. But nothing could shake the magnanimity of Alexander III.

The controversy was not decided at York. Walter Stewart *Balloch* continued to retain the title of *Earl*, and his wife the title of *Countess, of Menteth*.

In the marriage-contract of the Princess Margaret, daughter of Alexander III. he is called *Walterus Comes de Meneteth* (*g*). Fordun says, "In 1281, the Princess Margaret passed over to Norway with a splendid retinue, being accompanied by the Earl Walter Balloch, and his Countess, of Menteth. Earl Walter and his spouse returned safely to Scotland (*b*)."

The controversy as to the earldom of Menteth was finally decided in 1285, by Alexander III. in a parliament held at Scone. The

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*f*) "Magna lis orta est apud Eboracum, inter Johannem Comyn et Walterum Bullok, pro comitatu de Menteth; eo quod Willielmus, filius ipsius Johannis, desponsaverat filiam Comitissæ prioris, quæ fuit verè hæres." Fordun, lib. 10. c. 33.

(*g*) Rymer, t. 2. p. 1082.

(*b*) "Nobili transfretavit apparatu, cum Waltero Bullok Comite, et ejus de Menteth Comitissæ.—Walterus autem Comes, et uxor ejus, in Scotiam prosperè redierunt." Fordun, lib. 10. ch. 37. Had the guardians of the Lady Elizabeth been to put words in Fordun's mouth, they could have employed none more exactly suiting their hypothesis, that in ancient times a man in consequence of his marrying a *Comitissa* assumed the title of *Comes*.

King divided the estate between William Comyn and Walter Stewart [Balloch], the earldom to remain with Walter Stewart, and one half of the lands to be erected into a barony in favour of William Comyn (i). Whether this decision was in consequence of a compromise, or not? Whether it was just, or not? are questions of no moment to the present subject.

After this decision, Walter Stewart retained the title of *Earl of Menteth*. In the famous letter to Edward I. 1290, called *Litera communitatis Scotie*, he is named *Guater Conte de Meneteth* (k). In 1291, under the title of *Walterus Comes de Meneteth*, he was one of the *auditors* on the part of Robert Bruce (l). Under the same title, in 1294,

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(i) *And. Winton, Chronicle*, an. 1285. MS. *Advocates library*, Edinburgh.

“ Alexander the thride oure King,	“ That earldom to be delt in twa
“ <i>Gart</i> mak at Scone greit gadding,	“ Partis, and the tane of tha
“ The faxtene day eftir Paiche;	“ With <i>themis</i> affignit he
“ Quhen thair the Statis gadderit was,	“ Till Walter Stewart; the <i>laif</i> to be
“ William Cumyne, than of <i>lauthie</i> ,	“ Maid als gude with all proffit
“ The Lordis broder of Badyenauche,	“ Schir William Cumyne till have quyit
“ The Erle of Menteith than began	“ <i>Till</i> hald it in fre barony,
“ Before the King to pleyd than.	“ <i>Besyde the erldome</i> al quyitly.”
“ The King then of his counsaill	
“ Maid deliverance fynaill,	

The word *themys* implies the clause *cum bondis et nativis*; all the *seifs* on the estate were adjudged to Walter Stewart. See *Glossary* subjoined to *Twisden's Collection*, voc. *Theme*. The expression of *lauthie*, means “of right,” or “by law;” *gart*, “caused;” *laif*, “remainder;” *tane*, “one half;” *till*, “to;” all the rest will be intelligible to an English reader. — Sir Robert Gordon has treated one of the claimant's authorities with great scorn, because taken from an *Old Chronicle*; he will certainly give no better quarter to this authority, because taken from a dull and verbose piece of Scottish doggerel verse of the fourteenth century. Should the guardians of the claimant quote the *Old Chronicle* of Melros for its pure Latinity, or the *Chronicle of Andrew Winton* for elegance of verification, they would merit censure; but when they quote old and obsolete authors, in proof of facts to which old and obsolete authors alone can bear witness, they ought not to be censured. They trace facts and customs to their source; others may satisfy themselves with fanciful theories, *deduced from the nature of the thing*.

(k) *Rymer*, t. 2. p. 471.

(l) Ditto, t. 2. p. 552.

Menteth. 1257 Edward I. addressed a letter to him (*m*). He bore the title until the year 1298, when Edward I. put him to death.

For several generations, the earldom of Menteth remained with the descendants of Walter Stewart *Balloch* and his Countess. At length, Margaret Countess of Menteth married Robert Stewart, second son of Robert II. and afterwards Duke of Albany. Their son, Murdoch forfeited in 1425, and thus the earldom devolved on the CROWN.

S E C T. V.

CARRICK, 1270.

Carrick. 1270. CARRICK had its Earls of old (*a*). Duncan, of the family of the Lords of Galloway, was the first Earl of Carrick, and founder of the abbacy of Cross-regal (*b*).

Adam de Kilconcath, *Comes de Carrick*, engaged in a crusade 1267 (*c*). He died in the Holy Land 1270.

His only daughter and heir, *Countess of Carrick*, married Robert Bruce, son of the Lord of Annandale and Cleveland, *Earl of Carrick in her right*, and by her the father of Robert Bruce, King of Scotland (*d*).

The

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*m*) *Rymer*, t. 2. p. 644.

(*a*) "Olim Carrieta suos habuit Comites." *Camden. Britannia, voc. Carrieta.*

(*b*) *Sir James Dalrymple's Historical Collections*, p. 186.

(*c*) *Fordun*, l. 10. c. 24. p. 109. new edition.

(*d*) "Adam Comes de Carrick in Terram Sanctam pro Christo peregrinaturus, ibidem moritur, relinquens unicam filiam hæredem, nomine Martham, quæ sibi in comitatum successit. Quæ dum unâ dierum, cum suis armigeris et domicillis ancillis, quo sibi placuerat, venatum pergeret, egregio militi, juveni speciosissimo, trans eadem equitanti
" rura,

The husband of this Countess of Carrick, under the title of “Robert de Brus Comes de Carrick,” was one of the Scottish nobles who became bound to acknowledge Margaret, the Damfel of Norway,

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

“rura, Roberto de Bruce nomine, filio Roberti de Bruce, cognomine *Nobilis*, Domini Vallis de Annandia in Scotia, et de Cleveland in Anglia, obiavit: quæ quidem, peractis hinc inde salutationibus, velut curialium moris est, et osculis, ipsum venandi gratiâ spatiandique manere supplicat: sed et illius quodammodo renuentis habenas, vi quâdam, si dicere fas est, propriâ manu retraxit; et secum militem, quamvis minimè volentem, versus Turnbiri ducebat suum castrum: ibique spatio dierum quindecim vel amplius cum suis perhendinans, *Comitissam* clandestinè, benevolis etiam et amborum amicis insciis, uxorem duxit, regio super hoc consensu nullatenus procurato; quapropter totius regni vulgaris fuit assertio, quod ipsum juvenem quasi vi rapuerat in maritum. Quod ut regis Alexandri [III.] pervenit ad aures, castrum cepit de Turnbiri, ac omnes terras et possessiones illius in suis manibus fecit recognosci; eo quod, inconsultâ Majestate Regiâ, cum Domino de Bruce se maritare præsumpsit. Interveniens tandem amicorum precibus, et postâ pecuniâ quâdam summâ, Regis animum æquiores et benevolum invenit, ac etiam totum dominium idem Robertus obtinebat: ex qua, diviniâ providentiâ, filium genuit, cui nomen patris ejus impositum est, Robertus; cujus pater fuit iste Robertus, *Comes de Carrick ex parte uxoris.* Fordun, lib. 10. c. 29.

In the additions to Fordun, drawn up in the reign of James II. it is said, “Secundam filiam Comitum David, fratris Regis Willelmi, nomine Isabellam, Dom. Robertus de Bruce duxit in uxorem; de qua genuit unum filium, nomine Robertum; qui genuit Robertum *Comitem de Carrick ex parte uxoris suæ*; et ille Robertum Regem.” Fordun, lib. 11. c. 13.

To the same purpose speaks Andrew Winton, who lived in the reign of Robert III. c. 139. MS. Advocates Library.

“ This Robertis sone eftirwart
 “ Gat ane son, was callit Robert
 “ The Bruce; the quhilk in his dayis
 “ Weddit of Carrick the Countess;
 “ Sa was he Erle, and Lord haill
 “ Of Carrick, and of Annanderdaill.”

Thus also Chalmers of Ormond, a Lord of Session in the reign of Queen Mary, *Origine des Ecoffois*, p. 153. “Robert Bruce, fils de Robert Bruce Seigneur d’Annandale, eut le *Conté de Carrick à raison de sa femme*, fille unique de ce Comte trepassé en la Terre *Sainte.*”

Fordun calls this lady *Martha*; whereas the record to be hereafter mentioned calls her *Margareta*. The difference arises from the inattention of transcribers: *Marta*, a contraction for *Margareta*, was naturally mistaken for *Martha*.

The Chronicle of Melros, an ancient and venerable authority, differs from Fordun; it says, “1270 obiit Adam de Kilconecath, Comes de Karryc, in Acconia; cujus uxorem, *Comitissam de Karryc*, postea junior Rob. de Bruys accepit sibi in sponsam;” *Chron. de Melros*, p. 242. apud Th. Gale. — There seems indeed some reason to suppose, that this Countess of Carrick was the widow, not the daughter, of Adam de Kilconecath; and that her first husband, as well as her second, was Earl of Carrick in her right. For, 1. If A-

Carrick. 1270. way, as heir of the kingdom of Scotland, 5th February 1283-4, and who signed the *Litera communitatis Scotiæ* in 1290 (*e*).

In 1292, under the title of "Robertus de Brus Comes de Carrick," he addressed himself to John Baliol, King of Scotland, in manner following.

"Whereas we have granted, resigned, and quit-claimed for ever, unto Robert de Brus, our son and heir, the whole earldom of Carrick, with its pertinents; and also all the other lands which at any time we have held in Scotland, or ought to have held, *by reason of Margaret, late Countess of Carrick*, our spouse, the mother of the said Robert, as *the right and inheritance* of the said Robert our son and heir:"

He therefore prayed the King "to receive the homage of the said Robert, as true and lawful lord of the earldom aforefaid (*f*)."

Robert Bruce the son presented this petition to Baliol, in his parliament held at Stirling in August 1263; and he prayed the King to receive his homage.

It was considered, as appears from the record, that Robert Bruce, Earl of Carrick, ought to have resigned the earldom directly in the

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

Adam had been Earl in his own right, he would have been termed by the family-distinction, *de Galloweia*, rather than *de Kilconcath*. 2. The rape of Robert Bruce resembles rather the exploit of a widow than of a virgin. This hypothesis is, if possible, more favourable to the claimant's plea than the other; for, according to it, *Adam de Kilconcath, Earl of Carrick*, is an additional example of one being termed *Earl* in right of his wife.

(*e*) *Rymer*, t. 2. p. 266. 471.

(*f*) "Quia nos Roberto de Brus, filio et hæredi nostro, *totum comitatum de Carrick*, cum pertinentiis suis, et etiam omnes alias terras quas in Scotia aliquo tempore tenuimus, seu tenere debuimus, *ratione Margarete, quondam Comitissæ de Carrick*, sponse nostræ, matris ejusdem Roberti, *tanquam jus et hæreditatem ejusdem Roberti, filii et hæredis nostri*, concessimus et resignavimus, et quietam-clamavimus in perpetuum:
"Vestram Celsitudinem affectuosè per præsentem requirimus et rogamus, quatenus homagium prædicti Roberti, filii et hæredis nostri, *tanquam veri et legitimi Domini prædicti comitatus*, benignè admittere dignemini." *Rymer*, t. 2. p. 614.—It may be observed by the way, that according to Sir Robert Gordon's method of interpreting charter Latin, this passage ought to be translated, "as right and lawful *laird* of the forefaid *earldom*."

hands of the Sovereign, the son became bound to procure such re- Carrick. 1270
 signation, and at the same time resigned whatever seisin he himself had.

The sheriff of Air was appointed to take seisin of the earldom for the King, and to *extend* the lands, i. e. to estimate and report their yearly value.

Robert Bruce, the son, was appointed to bring a certificate from the sheriff, that the King was in peaceable possession of the earldom, in order to his being received to do homage (*g*).

Robert Bruce, the husband of the Countess of Carrick, retired to England after the battle of Dunbar 1296 (*b*), and died there in 1303 (*i*).

So late as 1296, Edward I. gave him his old appellation of *Comes de Carrick* (*k*). Nevertheless Robert the son (afterwards King) bore the title of *Earl of Carrick* during his father's lifetime.

In the year 1296, 24^o Edward I. the father and the son swore fealty to Edward I. They are styled in the record, "Robert de Brus le veil, e Robert de Brus le jeouene Counte de Carrik (*l*)."

1299, Robert Bruce the younger, in conjunction with the Bishop of St Andrew's, and John Comyn, addressed the famous letter to Edward I. "wishing him health, and the spirit of charity towards his neighbour." In this letter he styles himself "*Robert Bruce, Earl*

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*g*) *Rymer*, t. 2. p. 614. 615. There was a separate reason for seising the earldom in the hands of the sovereign: Robert Bruce was born in 1274, *Fordun*, lib. 10. c. 34.; and consequently had not come of age in 1293.

(*b*) *Fordun*, lib. 11. c. 25. This is confirmed by *Knyghton*, p. 2514.; where, after having mentioned the oath taken by Robert Bruce junior to the Bishop of Carlisle, and his pretext for violating it, he adds, "Pater ipsius in australibus partibus Angliæ moram faciebat, hujus fraudis nescius;" an. 1297.

(*i*) *Dugdale*, Baronage, vol. 2. p. 450.

(*k*) *Rymer*, t. 2. p. 714. 12th May 1296.

(*l*) *Pryne*, vol. 3. p. 653. *Knyghton*, p. 2482. edit. *Twisden*.

Carrick 1270 “ of Carrick, one of the guardians of Scotland, appointed by the community of Scotland, in the name of *John King of Scotland (m)*.”

It would seem, that in England, both the father and the son were usually styled *Earls of Carrick*, and that the son was distinguished by the addition of *junior*; for in 1297, Knyghton styles him *the younger Earl of Carrick (n)*.

OBJECTION.

This example, of a *Countess of Carrick*, and of her son Robert Bruce *Earl of Carrick* in her right, is utterly inconsistent with the hypothesis of Sir Robert Gordon; and therefore it is not strange that he should have laboured much to elude it.

He observes, “ That the peerage must have become extinct in the person of Margaret, through want of heirs-male, and been revived in the person of her husband Robert Bruce. For that,

“ 1. In 1293, Robert Bruce the father is called *Comes de Carrick*. Rymer, vol. 2. p. 614.

“ 2. In a letter from Edward I. anno 1294, to Robert Bruce the son, Robert the father still had the peerage; for *that* letter is directed to the son under these words, “ *Roberto de Brus Domino de Valle Annandiæ*. Rymer, vol. 2. p. 643.

“ 3. In a warrant from Edward I. 1296, Robert the father is styled *Earl of Carrick*; yet, even in 1293, the wife of Robert was dead. Rymer, vol. 2. p. 614.

“ 4. Afterwards Robert the son was Earl of Carrick upon his father’s death; *which shews plainly, that he took the peerage through his father, and not through his mother*.

“ 5. Fordun means nothing by *comitatus*, but the land-estate; and the resignation by Robert the father, of the *comitatus*, means nothing;

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(m) “ *Willielmus Sancti Andreæ Episcopus, Robertus de Brus Comes de Carrick, et Johannes Comyn filius, custodes regni Scotiæ, nomine Præclari Principis Domini Johannis, Dei gratiâ, Regis Scotiæ Illustris, per communitatem ejusdem regni constituti, ac ejusdem regni ipsa communitas, caritatis spiritum erga proximum, cum salute.*” Nov. 1299. Rymer, t. 2. p. 859.

(n) “ *Carliolensis Episcopus, et cæteri qui cum eo erant in præsidio, civitatis ejusdem et castri timentes de infelicitate, et inconstantia Roberti de Bruys junioris Comitis de Karyk.*” Knyghton, p. 2514. an. 1297. erroneously printed in Twisden 1290.

“ but

of William to the interest of Richard. From that happy æra in the Scottish annals, William was the faithful ally of England (*d*). Why female succession prevailed.

Alexander II. married a daughter of King John; Alexander III. a daughter of Henry III. Both lived in amity with the English court; both were politic and gallant princes.

For more than a century after 1189, there was no national quarrel, no national war, between the two kingdoms.

Indeed, by the acquisition of land-estates, and by intermarriages, they had become one, as much as two nations under different rulers can become.

Malcolm III. and his successors, entertained many an exiled Saxon, and many a discontented Norman Lord. The greatest part of Scotland imperceptibly became the property of those strangers. At this day, most of the nobility of Scotland are of their blood.

Many of the English barons possessed opulent estates in both kingdoms; as De Quinci, De Ferreriis, De Valloines, Baliol, Bruce.

Some of them became all-powerful in Scotland, as the Cumins, an Anglo-Norman family, during the reigns of Alexander II. and Alexander III.

From the accession of David I. to the death of Alexander III. the Chancellors of Scotland were generally of Norman or of Saxon original; as, William Cumin, *David I.*; Roger Bishop of St Andrew's, brother of the Earl of Leicester, and William Malvicine Bishop of St Andrew's, *William the Lion*; William de Boscho, the minister of *William the Lion* and *Alexander II.*; William Frazer Bishop of St Andrew's, *Alexander III.* (*e*).

The office of Great Chamberlain, accompanied with very ample jurisdiction, was often enjoyed by Anglo-Normans; and in particu-

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*d*) *Tyrrel*; ad an. 1194. His brother David assisted in suppressing the rebellion of John.

(*e*) *Crawford, Officers of State*, p. 7. 10. 11. 15.

Why female
succession pre-
vailed.

lar, from 1180 to 1234, without interruption, by Philip de Valloines, William de Valloines, and Henry de Baliol, all of Norman extraction, all possessed of estates in England (*f*).

While the Scottish kings were educated in England, or intimately allied with England, while most of their nobles and many of their ministers were English, it is not strange that the law of Scotland should have resembled that of England; it would have been strange indeed if it had not. The succession of females by the custom of England in those ages to lands, jurisdictions, and peerages, is so certain, as not to require any voucher from history or record (*g*).

Whether *Regiam Majestatem* be considered as an authentic body of law, compiled by authority of David I. or as the work of a private person about the time of Alexander II. or Alexander III. and afterwards approved by the legislature, the argument, as to the similitude of the laws of the two nations, will not be varied.

Upon the *first* supposition, there can be no doubt; upon the *second*, it must be admitted, that the private compiler would have been instantly detected, had his compilation differed much from the established laws and practice of Scotland.

The disputed succession between Bruce and Baliol estranged the two nations: From allies, united together by every tie of blood and interest, they became enemies, implacable and inveterate.

The French endeavoured, and but too successfully, to avail themselves of this unhappy breach.

It was widened, on *the one hand*, by the eagerness of the Scots, in patronising every pretender to the English crown, as the false Richard II. and Perkin Warbeck; on the *other hand*, by the heavy

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*f*) *Crawford, Officers of State*, p. 254. 261.

(*g*) No one can peruse ten pages of any provincial history of England, without discovering evidence of female succession. Thus, among all the genealogies set forth by Dugdale, *Antiquities of Warwickshire*, there will not be found above three or four, where an heir-female does not occur, either in the line of descent, or in the line of marriages.

“ of Fyfe her father, to Allan Earl of Menteth, grandfather of the
 “ Lady Margaret, spouse of the said Robert, now Earl, as by the
 “ tailzie made by the said Isabel herself, and her umquhile husband
 “ *Walter Stewart, the son of the said Robert Earl of Menteth*, to the
 “ foresaid Earl; by which, upon the said Earl’s assisting her in the
 “ recovery of her earldom, *which she had by force and fear otherwise*
 “ *resigned*; and that when the said earldom is recovered, and the
 “ Countess has got possession of it, she shall presently resign it in
 “ the King’s hands to infest the Earl himself in it,” &c. (*f*).

Fyfe.
 Between 1350
 and 1359.

Robert Earl of Menteth did accordingly succeed to the earldom, and was constantly named, “ Earl of Fyfe and Menteth.” Even after he became Duke of Albany, he continued to use the title of *Fyfe* (*g*).

His son Murdoch bore the same title (*b*). Upon his forfeiture, in the reign of James I. the earldom was annexed to the crown.

O B J E C T I O N.

p. 35. The objection to this instance is not perfectly intelligible. It is the objection of one determined to support an hypothesis. It is said, “ That
 “ the probability is, that this lady was not a peeress in her own right,
 “ but had the designation of *Countess of Fyfe*, as the widow of some
 “ person who had got a creation of that dignity, which Bisset afterwards might have got some time after 1366.”

A N S W E R.

This is indeed running objections to the dregs. By such *probabilities*, every argument may be answered. The whole transaction with the Earl of Menteth is e-

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*f*) Indenture 30th March 1371, recited in *Sir Robert Sibbald’s History of Fife*, p. 97. the word *apparent* is vitiously used instead of *presumptive*. The expression, *which she had by force and fear otherwise provided*, evidently relates to the resignation, which enabled David II. to make so limited a grant of the earldom of Fife, as to exclude the heirs-male and heirs-general of the ancient Earls, and even Isabel’s own heirs of any subsequent marriage.

(*g*) *Anderfon*, *Diplomata*, N^o 57. 61. 62.

(*b*) *Rymer*, *paffim*; and *Anderfon*, *Diplomata*, N^o 64.

Fyfe. vidently inconsistent with Sir Robert's hypothesis. Upon the supposition that the title of *Fyfe* had stood limited to heirs-male, neither Isabel, nor any of her husbands, could have pretended to a creation. The title would have belonged to the heir-male; and *he* was of the family of Wemyfs, descended from Gillimichael, fourth Earl of Fyfe (*i*).

Between 1350
and 1359.

S E C T. VII.

R O S S, about 1375.

Rofs.
About 1375.

THERE is no evidence of the erection of this ancient earldom. It is certain, however, that it was enjoyed in the twelfth century by Malcolm Earl of Rofs (*a*).

The succession was carried down in the direct male line to Hugh Earl of Rofs, in the reign of David II. This Hugh had two sons, William, and Hugh Rofs of Rarichies.

William Earl of Rofs, upon his own resignation in parliament, obtained a charter from David II. of the earldom of Rofs, and lordship of Sky, “ to the said Earl, and the heirs-male of his body lawfully to be procreated; whom failing, to Sir Walter Lesley, and Euphemia his wife, and the longest liver, and to the heirs lawfully procreated, or to be procreated, of Euphemia; with this provision, That if there be no male issue of Euphemia's body, and she have more than one daughter, then the eldest daughter of Euphemia, or of her heirs, on failure of the heirs-male, should have right to the whole earldom, lordships, and lands, without division; and failing Sir Walter, Euphemia, and the heirs of her body, the earldom, &c. is provided to Johanna, the younger

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*i*) See the authorities for this quoted by Douglas, *Peerage*, *tit.* Wemyfs Earl of Wemyfs.

(*a*) *Chartulary of Dunfermline*, fol. 186.

“ daughter

“ daughter of Earl William, and to her heirs; and in case those
 “ heirs be females, it is provided, that the eldest heir-female suc-
 “ ceed without division (b).”

Rofs.
 About 1375.

William Earl of Rofs died without issue-male. He was succeeded in his estate and dignity by his daughter Euphame: her husband, Walter Lesley, bore the title of *Earl of Rofs* (c).

Euphame had by her husband Walter a son Alexander, afterwards

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(b) *Record, Charters*, b. i. N^o 258. 23d October 1370. “ David, Dei gratiâ, Rex
 “ Scotorum, omnibus probis hominibus totius terræ suæ salutem. Sciatis nos dedisse,
 “ concessisse, et hac presenti cartâ nostrâ confirmasse, dilecto consanguineo nostro Williel-
 “ mo Comiti de Rossie, totum comitatum de Rossie, et dominium de Sky, ac omnia alia
 “ dominia, et terras, cum pertinen. quæ fuerunt ipsius Comitis ubicunque infra regnum;
 “ exceptis dominiis illis, et terris, quæ fuerunt dicti Comitis, infra vicecomitatum de A-
 “ berdene, de Dumfries, et de Wigtoun. Quem quidem comitatum, terras, et dominia,
 “ cum pertinen. idem Comes, non vi aut metu ductus, nec errore lapsus, sed merâ et spon-
 “ taneâ voluntate suâ, nobis, apud Perth, in pleno parlamento nostro tento ibidem, vicesi-
 “ mo tertio die mensis Octobris, anno Domini millesimo trecentesimo septuagesimo, in
 “ presentia Roberti, Senescalli Scotiæ, Comitis de Stratherne, nepotis nostri, Willielmi
 “ Comitis de Douglas, Georgii Comitis Marchiæ, &c. et aliorum plurium baronum et
 “ nobilium regni nostri, per suas literas patentes, &c. resignavit, ac totum jus et clameum
 “ quæ in dictis comitatu, dominiis, et terris, habuit, vel habere potuit, in futurum, pro
 “ se et hæredibus suis, omnino quietum-clamavit in perpetuum: Tenend. et habend. dicto
 “ Comiti, et hæredibus suis masculis de corpore suo legitime procreand.; quibus deficien-
 “ tibus, Waltero de Lesley, Militi, et Euphamiæ sponsæ suæ, ac eorum alteri diutius vi-
 “ ventis, et hæredibus de ipsa Euphamia legitime procreatis, seu procreand.; ita, viz.
 “ quod si hæres masculus de ipsa Euphamia non exierit, et plures fortè de se habuerit filias,
 “ senior semper filia, tam ipsius Euphamiæ, quam suorum hæredum de se exeuntium, de-
 “ ficientibus hæredibus masculis, habeat tantum jus et integrum dictum comitatum, domi-
 “ nia, et terras, cum pertinen. exceptis supra exceptis, sine divisione aliquali; et ipsis
 “ Waltero et Euphamiâ sponsâ suâ, et hæredibus de ipsa Euphamia legitime procreand.
 “ fortassè deficientibus, Joanna, junior filia dicti Comitis, et hæredes sui, et quando ipsi
 “ hæredes femellæ fuerint, semper senior hæres femella, sine divisione et participatione ali-
 “ qua, totum et integrum dictum comitatum, dominia, et terras prædictas, cum pertinen.
 “ exceptis supra exceptis, teneat et teneant, de nobis, et hæredibus nostris, in feodo et hæ-
 “ reditate, &c. adeo liberè et quietè in omnibus, et per omnia, sicut dictus Willielmus Co-
 “ mes de Ross, consanguineus noster, vel aliquis prædecessorum suorum, dictum comita-
 “ tum, dominia, et terras prædictas, cum pertinen. aliquo tempore liberiùs, quietiùs, et
 “ honorificentius, justè tenuit seu possedit, faciendo inde servitia debita et consueta. In cu-
 “ jus rei testimonium, &c. testibus, &c. apud Perth, vigesimo tertio die Octobris, anno
 “ regni nostro quadagesimo primo.”—This charter is remarkable on many accounts; and
 “ especially for this, that it proves *hæredes* to have meant *heirs-general* in the 14th century:
 “ *Quando ipsa hæredes femella fuerint.*

(c) *Rymer*, t. 2. p. 215. an. 1379.

Rofs.
About 1375.

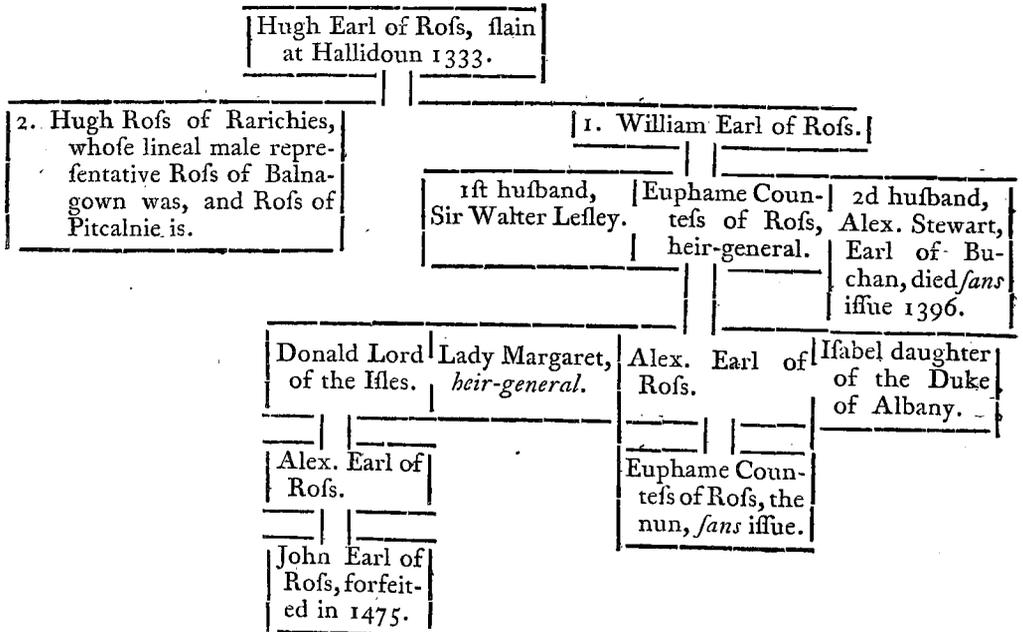
Earl of Rofs, and a daughter Margaret, married to Donald, Lord of the Isles (*d*).

After the death of Walter Lesley, Euphame married Alexander Stewart, Earl of Buchan, a younger son of Robert II. Some misunderstandings arose between her and her husband; their disputes were terminated by a judgement which their ordinaries, the Bishops of Rofs and Murray, pronounced, 1389 (*e*). In this judgement the wife is called *Euphemia Comitissa de Rofs*, the husband *Alexander Senescalli Comes de Buchan, et Dominus de Rofs*. It is impossible that she could have been called *Comitissa de Rofs*, instead of *Comitissa de Buchan*, had she not been Countess in her own right.

Euphame Countess of Rofs was succeeded in her estate and dignity by Alexander Lesley her son. He married a daughter of Robert

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*d*) *Fordun*, l. 15. c. 21. *Boec. Hist. Scot.* l. 16. fol. 341. edit. Paris 1574.—The pedigree of the family of Rofs will be more fully understood from the following table.



(*e*) *Chart. Morav.* vol. 1. fol. 101.

Duke of Albany. By her he had an only child, a daughter, Euphame Countess of Rofs. She became a nun, and resigned the earldom of Rofs in favour of her uncle John Earl of Buchan, son of the Duke of Albany, and the heirs-male of his body; whom failing, to return to the crown (*f*).

Rofs.
About 1375.

Donald Lord of the Isles, in right of his wife, the heir-general of Euphame the nun, asserted his right to the earldom: in some measure he took possession; for the Continuator of Fordun observes, that he held the castle of Dingwall *in right of his wife* (*g*).

Historians generally suppose, that the resignation by the nun occasioned the battle of Harlaw, a remarkable event in the Scottish annals (*h*).

Notwithstanding

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*f*) See below, note (*h*).

(*g*) *Fordun*, l. 15. c. 22. “ Accessit Gubernator ad castrum de Dingwall, quod fuit Domini Infularum *ex parte uxoris sue*.”

(*h*) Our historians, following Boece, l. 16. fol. 341. represent the formidable insurrection of the Lord of the Isles, and the desperate combat at Harlaw in 1411, as the consequences of the nun's resignation, and the obstinacy of the Duke of Albany in vindicating that resignation. It is evident from the words of Boece, that he had actually perused the deed. The charter following on that deed has been discovered lately, lying loose in the register-house. It is thus conceived. “ Robertus Dux Albanix, &c. dedisse, &c. carissimæ nepti nostræ, Eufamix de Lesley, filix et hæredi quondam Alexandri de Lesley, Comitis de Rossæ, totum et integrum comitatum de Rossæ, &c. Qui, quæ, et quod fuerunt dictæ Eufamix hæreditariæ; et quem, quas, et quod eadem Eufamia, non vi aut metu ducta, nec errore lapsa, sed merâ et spontaneâ voluntate suâ, *in sua pura et integra virginitate*, in præsentia Venerabilium in Christo Patrum Domini Finlai, Episcopi Dunblanen. &c. in castro de Strivelyne, die Mercurii, 12mo die mensis Junii ultimo, præterit: in manus nostras, &c. resignavit, &c. Tenend. &c. prædictæ Eufamix, et *hæredibus suis* de corpore suo legitimè procreandis; quibus forte deficientibus, Johanni Stewart, Comiti Buchanix, filio nostro carissimo, et *hæredibus suis masculis* de corpore suo legitimè procreat. seu procreand.; quibus forsitan deficient. Roberto Stewart fratri suo germano, et hæredibus suis masculis de corpore suo legitimè procreat. seu procreand.; quibus forsitan deficient. Domino nostro Regi, et *hæredibus suis* regibus Scotiæ, de Domino nostro Rege, et hæredibus suis, in feodo, &c. 15th June 1415.”

This resignation was dated on the 12th June 1415; it is plain therefore that it could not have given occasion to the battle of Harlaw, fought in 1411; this, however, is a matter of historical criticism, not affecting the question of female succession. It may be conjectured, that Donald Lord of the Isles was so early in asserting his wife's pretences, 1. Because Euphame, by assuming the veil, was dead to the world; and her nearest of kin came to

Rofs.
About 1375.

Notwithstanding the vigorous efforts of Donald Lord of the Isles, the Earl of Buchan held the earldom during his life. He was slain at the battle of Verneuil in France, 1424. James I. in virtue of the nun's limitations, assumed the earldom. This was an object of infinite moment to James I. in his great plan of annihilating the Scottish aristocracy. In 1427, he held his sanguinary parliament at Inverness. The pretence was, to suppress the bands of robbers, whereof the number exceeds belief. It is probable, however, that he had in view to humble the Lord of the Isles, whose predecessors had asserted an independency dangerous to Scotland, and, as sovereign princes, had treated with the English kings (i).

At this parliament, James formed a plan for seizing Alexander Lord of the Isles, his mother the Countess of Rofs, and most of the Highland chieftains. By a specious invitation, he enticed them singly into the castle of Inverness, and there secured them in close and separate confinement. He put many of them to death, detained the Countess of Rofs in prison, but dismissed her son.

Not long after, the Lord of the Isles came down upon Inverness, and burnt the town.

In 1429, the King routed the army of the Lord of the Isles, composed of Islanders and Rofsshire-men: he constrained him to make submissions. By this time, it would seem, that the old Countess was dead; for Alexander took the title of *Earl of Rofs* (k). In 1431, he

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

be in her right. 2. The nun may have made an absolute resignation in favour of the Albany family; this the Lord of the Isles may have considered as sufficient to divest her, but not importing any effectual conveyance to the Albany family. The Duke of Albany may have considered such a resignation as a measure too strong; and therefore judiciously took a new one, whose injustice was less immediate and glaring. To suppose that, in the charter, he has purposely misdated the resignation, would imply too violent a charge against him.—This charter is remarkable on another account: it establishes, beyond possibility of cavil, the distinction between *heredes sui* and *heredes masculi* at the beginning of the 15th century.

(i) *Rymer*, t. 8. p. 146. t. 12. p. 400. et *passim*.

(k) *Alexander de Ile, Comes Rossie*, on the 24th October 1429, grants a precept to Alexander Sutherland of Dunbeath. Original in the possession of the claimant.

gave him a free pardon (*l*). He also yielded up the earldom to him (*m*). Both he and his son John bore the title of *Earl of Rofs*, in charters, grants, and other deeds of a public nature (*n*).

Rofs.
About 1375.

This John Earl of Rofs forfeited in 1475. In the following year, the earldom was unalienably annexed to the crown by act of parliament; with power, nevertheless, to the King and his successors to bestow the earldom on a second son of the royal family (*o*).

O B J E C T I O N.

p. 32. Sir Robert Gordon observes, "That the charter 1370 is only a conveyance of the land-estate: That it appears from *Rymer*, that in 1374, Walter Lesley is described by the name of *Miles*; in 1375, having succeeded to the estate of Rofs, he is designed *Dominus de Rofs*, i. e. laird or proprietor of the estate of Rofs; in 1379, having been created Earl of Rofs, he is named *Comes de Rofs*; so that his wife came properly to be called *Countess of Rofs*, as being wife of an Earl."

A N S W E R.

¶ The superstructure is much wider than the foundation. If the charter 1370 did not convey the earldom, dignity as well as lands, it will be found, that the ancient peerages of Scotland are at this day held by no better title than a dubious, excep-

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*l*) The transactions concerning Alexander Lord of the Isles, and his mother the Countess of Rofs, are to be found in *Fordun*, l. 16. c. 15. 16. He expressly calls the mother *Countess of Rofs* in 1427, and the son *Earl of Rofs* in 1431. "Rex remisit omnem offensam Comiti Rossensi."

(*m*) Whether James I. acted from the sole principle of justice, or from an apprehension that he had engaged in an enterprise beyond his force, is a question which must remain undecided.

(*n*) This history of the earldom of Rofs is fully stated in the MS. Collections of Lord Ochiltree and Sir James Balfour, and in other histories of Scotland; it is vouched by public records, and it is thought will scarcely be questioned. Any one who is inclined to peruse a perfect composition of blunders and absurdity, may consult the article *Rofs* in Frazer of Lovat's *Answers*, p. 23. 25. July 14. 1729.

(*o*) Act 71. parl. 9. James III. July 1476.

Rofs. tionable prescription. That Walter Lesley was by Edward III. called *Dominus de Rofs* in 1375, will not deprive his wife of the dignity of *Countess of Rofs*; nor will his being called *Earl* in 1379 infer a creation in his favour. In former days, it was common to give an imperfect style to persons of rank. A few examples may suffice to prove what every antiquary knows. Thus Fordun, l. 11. c. 1. speaks of *Duncanus Comes de Fife* in 1291; and yet, in the same chapter, he calls him *Duncanus de Fife*, without any addition. Thus also, Duncan, 12th Earl of Fife, is called *Duncan de Fife*, without any addition, and that in a letter from Edward I. to the Pope, praying a dispensation for his marriage with Mary de Monthermer, Edward's niece. *Rymer*, t. 2. p. 1024. Thus Alexander Stewart is named *Comes de Buchan*, in a charter by Robert II. 5th July *anno regni* 12.; and yet in another charter granted to him by Robert II. on the 22d of the same month, he is named *Dominus de Badenach*, without any addition. Thus Isabella de Marr is called *Comitissa de Garriach* in 1393, *Obligation* by Robert III. to Thomas Lord Erskine; and yet, in 1403, she calls herself *Domina de Garriach*. See *Chartulary of Aberbrothock*, vol. 2. fol. 7. In the very same year she calls herself *Comitissa de Garriach*. See *records, charters*, b. 7. N^o 257. Thus her husband Alexander Stewart calls himself *Dominus de Gareoch*, in an original charter, 20th April 1406; and *Comes de Gareoch*, in another original charter, 12th November 1428. Not even Sir Robert Gordon will presume a new creation in this last; which is precisely similar to that of Walter Lesley, *Dominus de Rofs*, and *Comes de Rofs*. To give one example more: Walter Stewart the regicide, though Earl of Athole, *Strathern*, and Caithness, is styled *Dominus de Brechin*. *Record charters*, b. 3. N^o 48.

There is a difficulty attending Sir Robert Gordon's hypothesis, of which he seems not aware: If the charter 1370 conveyed both dignity and estate, then Euphame the wife of Walter Lesley, Euphame the nun, Margaret the wife of the Lord of the Isles, and her descendants, had all of them right to the peerage of Rofs: but if the peerage was not descendible to *heirs-general*, it was certainly descendible to the *heirs-male* of Hugh Earl of Rofs.

Now, supposing, for argument's sake, that it was descendible to *heirs-male*, it is demonstratively certain, that it must have gone to the male issue of Hugh Rofs of Rarichies, the heir-male of Hugh Earl of Rofs, and of consequence still belongs to his descendants existing in the male line. Such being the case, the crown, by creating Walter Lesley *Earl of Rofs* in 1379, bestowed that title on him to the prejudice of the heirs-male of the family then existing, and to the prejudice of all their posterity. It repeated this injury, according to Sir Robert's argument; for he must likewise hold, that it granted a new creation in favour of the heirs of Margaret, the wife of Donald Lord of the Isles. Such are the unavoidable consequences of Sir Robert's hypothesis; whereas, according to the claimant's state of the case, every thing is clear and consistent; the earldom of Rofs descended from heir-general to heir-general, in the common course of succession, until the forfeiture of John Earl of Rofs in 1475.

S E C T. VIII.

ANGUS, 1377.

THE earldom of Angus having returned to the crown by the forfeiture of the Umfravilles, was conferred, by David II. on Sir John Stewart of Bonkill. Angus, 1377.

This Sir John was succeeded by his son Thomas.

Thomas, 2d Earl of Angus, had two children; Thomas, 3d Earl of Angus, and Margaret.

Thomas, 3d Earl of Angus, died in 1377 without issue.

He was succeeded in his estate and dignity by his sister Margaret (a).

She married, 1. Thomas Earl of Marr. Upon his death, without issue, she married William Earl of Douglas; by whom she had a son, George.

Upon her resignation in parliament, in 1389, Robert II. granted the earldom of Angus to *George de Douglas* her son, and his heirs lawfully to be procreated of his body;—to *Sir Alexander de Hamilton*, and *Elifabeth*, sister of the said lady the Countess, and to the heirs, procreated, or to be procreated between them;—to the lawful heirs whatsoever of the foresaid *Elifabeth*;—reserving to the said Countess the franc tenement of the earldom and lordships foresaid during all the days of her life (b).

This

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(a) *Charter*, by Margaret Countess of Marr and *Angus*, daughter and heir of the deceased Thomas Stewart Earl of Angus, 12th August 1381, confirming a grant made to Sir John Lion by William Earl of Douglas and Marr.—*Charter*, by Robert II. 10th April 1389, confirming a donation by *Margaret Countess of Angus and Marr*.

(b) This charter is the earliest now extant of the earldom of Angus. It is conceived,
 “ Georgio de Douglas, et hæredibus suis de corpore suo legitimè procreandis; quibus for-
 “ tæ

Angus, 1377.

This George de Douglas married the daughter of Robert III. To the marriage-contract 1397, the King and George's mother are parties. She is there styled, "Countess of Marr and of *Angus*;" but George is styled, "Lord of *Angus* (c)."

In a subsequent charter, granted by Robert III. 1398, George is styled *Earl of Angus* (d).

O B J E C T I O N.

Sir Robert Gordon endeavours, as usual, to elude the force of this instance, by observing, "That it is highly probable, that William Earl of Douglas would be created Earl of *Angus*, to himself, and the heirs-male of the marriage, when he married the heiress of the estate." What Sir Robert, upon conjecture, without evidence, suggests, as *highly probable* in p. 21. rises to *certainty* in p. 31. There it is said, "It has been shewn, p. 21. that upon the death of Thomas without heirs-male, the peerage became extinct; that it was revived in the person of Margaret's husband, William Douglas; and that upon his death, George, the son of that marriage, took the peerage, even during the lifetime of his mother."

A N S W E R.

It is a most improbable supposition, that William Earl of Douglas was created *Earl of Angus*. What purpose could it serve for him to acquire a new title? It could not add to his dignity, power, or influence. He certainly considered himself as better born than any descendent of Sir John Stewart of Bonkill.

The supposition that he took the title to the heirs-male of the marriage, so far from being *highly probable*, is *palpably erroneous*. Sir Robert will admit,

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

"tè deficientibus, Alexandro de Hamilton, Militi, et Elifabeth, forori dictæ Dominæ Comitissæ, et hæredibus inter ipsos procreatis seu procreandis; et illis deficientibus, legitimis hæredibus prædictæ Elifabeth quibuscunque; libero tenemento dictorum comitatûs et dominiorum eidem Comitissæ reservato pro toto tempore vitæ suæ."

(c) *Contract of marriage*, 24th May 1397, in the possession of Sir Robert Gordon's agent; and whereof a copy is printed in the Appendix for Archibald Douglas, Esq; p. 34; an authority referred to by Sir Robert Gordon.

(d) *Charter* Robert III. "Georgio de Douglas Comiti de Angus, et hæredibus suis."

that William Earl of Douglas died in 1384. His eldest son, James Earl of Douglas, was slain at Otterburn in 1388. Now, as George Douglas was the heir of the marriage with Margaret, it follows, according to Sir Robert's own argument, that George Douglas was Earl of Angus from 1384; and yet it has been shewn, that in 1389 he was styled *Georgius de Douglas*, without any addition whatever, and *that* in the very deed wherein his mother is styled *Comitissa de Angus*. Nay more, in his marriage-contract with the King's daughter in 1397, he is styled only *Lord of Angus*, in virtue of his right of apparen-^{Angus. 1377.}cy, while his mother is styled *Countess of Angus*. Thus, by Sir Robert's hypothesis, George Douglas continued in name, a commoner, for *thirteen years*; during all which time he was actually Earl of Angus. Either this unvouched strange improbability must be held, or it must be held that Margaret was Countess in her own right.

Neither is it of consequence, that, in 1398, Robert III. his father-in-law, gives him the appellation of *Comes de Angus* during the lifetime of his mother. According to Sir Robert's general course of reasoning, this ought to have been in consequence of a new creation in 1398; but he never creates peers, unless where it serves his purpose. The obvious solution is, that he was called *Earl of Angus* in 1398, because he was the heir-apparent, and in the fee of the earldom. A similar instance occurs in the title-deeds of the earldom of Sutherland. Besides, Countess Margaret was no party to the charter 1398; and a style given to her son in a charter to which she was no party, could not impair that right which it has been shewn from the deeds 1389 and 1397 was actually in her.

S E C T. IX.

M A R R, 1379.

THIS is one of the earldoms whose origin is lost in its antiquity. Marr. 1379. It existed before our records, and before the æra of genuine history.

In 1171, William I. granted a renewal of the investitures of this earldom to Morgund, the son and heir of Gillocherus Earl of Marr, "to be held by the said Morgund and *his heirs* (a)."

The

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(a) This curious writing is preserved by the excellent *Selden*, Titles of Honour, p. 848. It runs thus. "Willielmus Rex Scotorum, univervis Episcopis, Comitibus, Abbatibus, Prioribus, Baronibus, Militibus, Thanis, et Præpositis, et omnibus aliis probis hominibus totius terræ suæ, tam clericis quam laicis, salutem æternam in Domino. SCIATIS præsentis et futuri, Morgundum, filium Gillocheri quondam Comitibus de Marre, in mea præsentia

Angus. 1377. The descendents of Morgund, in the direct line of succession, enjoyed this earldom. Donald Earl of Marr was stifled to death at the rout of Duplin in 1332 (b).

Donald left a son, Thomas; and a daughter, Margaret. Thomas married Margaret, eldest daughter of Thomas Earl of Angus; but died without issue.

The earldom devolved on his sister Margaret, and she bore the title of *Countess of Marr* (c).

She married William Earl of Douglas, who thereupon added the title of *Marr* to his own title of *Douglas* (d).

By William Earl of Douglas she had issue a son, James; and a daughter, Isabel.

This lady was early divorced from her husband; for about 1369 there is a grant of lands made to Archibald Douglas, generally believed to be her husband's son by a second marriage (e).

It

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

“ præsentia venisse, apud Hindhop Burnemuthæ, in mea nova foresta, decimo kalendarum Junii, anno gratiæ MCLXXI. petendo jus suum de toto comitatu de Marr, coram communi consilio et exercitu regni Scotiæ ibidem congregato: Ego verò cupiens eidem Morgundo, et omnibus aliis, jura facere, secundum petitionem suam, jus suum inquisivi per multos viros fidæ dignos, videlicet, per Barones et Thanos regni mei; per quam inquisitionem inveni dictum Morgundum filium et hæredem legitimum dicti Gillocheri Comitis de Marr; per quod concessi et reddidi eidem Morgundo totum comitatum de Marr, tanquam jus suum hæreditarium, sicut prædictus Gillocherus, pater suus, obiit vestitus et saisitus: Tenendum et habendum eidem Morgundo, et hæredibus suis, de me, et hæredibus meis, in feodo et hæreditate, cum omnibus pertinentiis, libertatibus, et rectitudinibus suis, adeo liberè, quietè, plenariè, et honorificè, sicut aliquis Comes de regno Scotiæ liberiùs, quietiùs, plenariùs, et honorificentius, tenet vel possidet; faciendo inde ipse, et hæredes sui, mihi, et hæredibus meis, forinsecum servitium, videlicet, servitium Scoticanum, sicut antecessores sui, mihi et antecessoribus, facere consueverunt.”

(b) *Fordun*, l. 13. c. 24.

(c) *Charter* by James Earl of Douglas to John Bentay, “ ad instantiam charissimæ nostræ Dominiæ Margaretæ Comitissæ de Douglas et Marr; ” 3d April 1385. *Sir James Dalrymple's Collections*, p. 380.

(d) *Record Charters*, Roll 5. N^o 91. &c.

(e) *Charter*, 40mo Dav. II. to Archibald Douglas of the lordship of Galloway.
The

It appears, that she afterwards married Sir John Swinton (*f*).

Her first husband, the Earl of Douglas, died in 1385; and was succeeded by her son James (*g*). During his mother's life, he took the style of *Earl of Douglas* only, and *that* in the deed wherein his mother is called "Countess of Douglas and Marr (*b*)."

Upon her death, he took the title of *Earl of Douglas and Marr*. He was slain at the battle of Otterburn in 1388; and was succeeded in the earldom of Douglas by Archibald, said to have been his brother-confanguinean, and in the earldom of Marr by his sister-german, Isabel *Countess of Marr* (*i*).

O B J E C T I O N.

- p. 31. " This, says Sir Robert Gordon, is an unlucky instance. It was made clear as the light in the condescence given in in the competition for the peerage of Lovat, that her husband, the Earl of Douglas, was the peer, not she: for after his death, his son was designed " Comes de Douglas, et de Marr," in several charters, although his mother Margaret was then alive. *Vide, Answers*, 14th July 1729, to Mr Mackenzie's condescence in the Lovat papers, p. 16.

PROOFS, AUTHORITIES, and ILLUSTRATIONS;

The second wife of William Earl of Douglas was Margaret, daughter of Patrick Earl of March. His *third* wife, which is singular, was Margaret, the widow of his *first* wife's brother. *Douglas's Peerage*, and authorities there quoted, p. 185.

(*f*) *Crawford's Peerage*, p. 296. says, " I have seen a charter granted by James Earl of Douglas and Marr to the monks of Melros in 1388, in which Sir John Swinton is called " *his dearest father.*"

(*g*) *Fordun*, lib. 14. c. 49.

(*b*) *Charter*, by James Earl of Douglas, 3d April 1385, quoted at note (*c*).

(*i*) " Cui succcessit Archibaldus Douglas Dominus Galvidiæ ad comitatum de Douglas." *Fordun*, lib. 14. c. 53. Charters by Robert. III. 1398 and 1403. respecting " *Isabella Comitissa de Marr et de Garriach.*"

A N S W E R.

Marr. 1379. Since Sir Robert Gordon has thought proper to adopt this strange unlearned rhapsody, it will be necessary to transcribe the passage "which *made it as clear as the light*, that William Earl of Douglas was the peer, not his wife." It runs thus: "It appears as plain as any thing can be, that the honour was in the Earl of Douglas himself, and not in the Lady, his wife, though the estate was in her person: for after the death of the Earl of Douglas in 1384, James, his son, is designed *Comes de Douglas, et de Marr*, in several charters in the roll of King Robert II. although his mother was then alive, and who long survived him, and married a second husband, Sir John Swinton, who calls himself *Dominus de Marr*, as appears by a writ in the hands of the Duke of Queensberry, in 1389."

There are several things which the author of this passage ought to have explained, in order to make his argument *as clear as the light*. 1. What could have induced William Earl of Douglas to seek to be Earl of Marr, any otherwise than as husband to Countess Margaret? The accession of such a title by grant from the crown, could that have been obtained, would not have added to his dignity, nor to his power and influence.

2. How came it to pass, that the son of this Earl Douglas and Countess Margaret contented himself with the title of *Earl of Douglas*, while he calls his mother *Countess of Douglas and Marr*?

3. If William Earl of Douglas was also Earl of Marr, how came it to pass, that his second son, Archibald, was not *Earl of Marr*, as well as *Earl of Douglas*?

4. What evidence is there that James Earl of Douglas took the style of *Earl of Marr* in the lifetime of his mother? or that she long survived him? Her second husband, Sir John Swinton, may naturally have styled himself *Dominus de Marr*, as having a certain right to the revenues of that earldom by courtesy, in virtue of his marriage with an heiress; but his assuming that style in 1389, is no proof that Countess Margaret was alive in 1389.

5. If James Earl of Douglas was put in the fee of the earldom by his mother, what would have been the impropriety of his styling himself *Earl of Marr* even in his mother's lifetime?

It is probable, that none of those queries ever occurred to the writer of the *Answers for Simon Fraser*. He had an hypothesis to defend, where very positive assertions frequently supply the place of historical knowledge, argument, and truth.

Whether the instance of Margaret Countess of Marr is so *unlucky an instance* for Lady Elizabeth, may now be submitted without further reasoning.

S E C T. X.

L E N N O X, before 1384.

THE Earls of Lennox are mentioned in histories and public deeds so far back as the twelfth century (*a*).

Lennox.
Before 1384.

In 1238, Alexander II. granted to "Maldoveny [or Maldwin], filio Alwini Comititis de Levenax, *comitatum de Levenax, quem pater ejus tenuit, cum omnibus justis pertinentiis: Tenend. sibi et hæredibus suis, de nobis et hæredibus nostris, in feodo et hæreditate (b).*"

In 1272, Alexander III. granted a charter, "Malcolmo Comiti de Levenax," of certain lands, "tenend. &c. dicto Malcolmo, *et hæredibus suis, de nobis, &c. in liberam forrestam (c).*"

From Maldwin, and Malcolm, the earldom descended, in the direct line of male succession, to Donald, 6th Earl of Lennox. He was one of the *Magnates Scotiæ* who granted commission for treating about the ransom of David II, (*d*)

This Donald died, leaving issue an only daughter, Margaret, married to Walter, son of Allan de Faflane.

In 1384, Robert II. granted a charter to Walter de Faflane, which

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*a*) Fable and tradition carry them farther back: There was a Saxon Lord called *Arkill*, who withstood William the Conqueror; in the family of Lennox there was one *Arkyll M'Arkyll*; and therefore he was the grandson of the Saxon *Arkill* by a second marriage.—The claimant satisfies herself with tracing the laws of Scotland, and the history of families, as far back as records extend; she leaves her competitor master of the ages of conjecture, and historical theory.

(*b*) *Chartulary of Lennox*, N^o 16. 24to Alexander II.

(*c*) *Chartulary of Lennox*, N^o 12. 23tio Alexander III.

(*d*) *Rymer*, t. 6. p. 43.

Lennox.
Before 1384.

deserves particular attention; because it illustrates the ideas of the fourteenth century concerning peerages, in a more forcible manner than any laboured argument can do. By it the Sovereign grants
 “ Waltero de Fosselane, Domino de Levenax, et hæredibus suis Comitibus de Levenax, demonstrationes armorum totius dicti comitatûs de Levenax, &c. Et quod nec dicti Comites, nec eorum hæredes, nec aliqui alii homines manentes infra dicti comitatum, comparebunt coram Vicecomitibus nostris, sed ubicunque probaverint in dicto comitatu suam demonstrationem armorum retinent. De qua quidem dicta armorum demonstratione videbamus evidentiam factam Malcolmo Comiti de Levenax, et suis hæredibus, per Robertum Regem Scotiæ, nostrum prædecessorem, sub forma præscripta. Insuper concessimus dicto Waltero, et hæredibus suis Comitibus de Levenax, quod ipse, et sui dicti hæredes, gaudeant pro perpetuo omnibus et singulis libertatibus infra comitatum prædicti. quibus ipse, aut antecessores sui, Comites ejusdem, usi sunt tempore nostro, aut prædecessorum nostrorum Regum Scotiæ temporibus quibuscunque retroactis,” &c. (e)

Words cannot more strongly express the notion of those times, that it was the possession of the *comitatus* which conferred the dignity of *Comes*. It will not be disputed, that *Walter de Faslane* had no right to the *comitatus*, other than as the husband of *Margaret de Lennox*; the same charter which in one place terms *Walter de Faslane Dominus de Levenax*, in another holds him to be *Comes de Levenax*; nor can it be supposed, that the *antecessores* of *Walter de Faslane* were *Comites*, and that the *hæredes sui* were also to be *Comites*, while he himself remained a commoner. The grant of musters is founded on a former grant, by *Robert II.* to *Malcolm Earl of Lennox, et suis hæredibus*. This would have been altogether impertinent, had *sui hæredes* meant *heirs-male*: for then the meaning of the Sovereign

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(e) *Chartulary of Lennox*, N^o 13.

would

would have been this: “ My father bestowed on the *heirs-male* of “ the Earl of Lennox the right of summoning to *weaponsbarwings* “ or musters; and therefore I take that right from them, and *bestow* “ it on you, who are married to the *heir-general*, and possess the e- “ state transmissible to the heirs of the marriage.”

Lennox.
Before 1384.

In consequence of a resignation by Walter de Faflane, and Margaret de Lennox, in 1385, Robert II. granted a charter to their son, Duncan, of the tenor following. “ Dilecto et fideli nostro Dunca- “ no de Levenax, Militi, totum comitatum de Levenax, et domi- “ nium ejusdem, cum pertinen. Qui quidem comitatus, cum domi- “ nio ejusdem, fuit Walteri, filii Alani, de Fosselane, et Margaretæ “ sponsæ suæ, *ratione dictæ sponsæ*. Et quæ dicti Walterus et Marga- “ reta, non vi aut metu, &c. in præsentia plurium regni nostri pro- “ cerum, die confectionis præsentium, in castro nostro de Streve- “ lyne, sursum reddiderunt, &c. Tenend. et habend. dictum comi- “ tatum, et dominium ejusdem, cum pertinen. &c. dicto *Duncan*o, “ *et heredibus suis*, de nobis, &c. adeo liberè, &c. sicut aliquis de “ antecessoribus dicti Duncani, dict. comitatum, et dominium e- “ jusdem, &c. tenuit seu possedit (*f*).”

This charter of the *comitatus* is all the right which Duncan had to the dignity of *Comes*. The charter expressly bears, that Walter's right was *by reason of his wife*; and therefore the right of Duncan was no other than that of Walter.

That this inference is not strained, will best appear from the account of the charter 1385, as given by a late author, who wrote under the auspices of the heir-male of Donald, 6th Earl of Lennox. This testimony will not be considered as partial to the pretensions of *heirs-general*. It runs thus: “ Walter of Faflane, and Margaret the “ heirs, were succeeded in the territory of Lennox by their eldest “ son, Sir Duncan Lennox, Knight, grandson of Donald, the 6th

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*f*) *Chartulary of Lennox*, N^o 15.

Lennox.
Before 1384.

“ Earl, and heir of line of the family ; who, having the prospect of a great estate, and Malcolm Macfarlane, ancestor of the Laird of Macfarlane, the undoubted heir-male of the old Earls, declining to accept a dignity which he thought he had not estate to support, King Robert II. out of a grateful remembrance of the many and eminent services performed to the Kings his predecessors, by the family of Lennox, conferred *de novo* upon the said Sir Duncan, and his heirs, the dignity of *Earl of Lennox*, after it had lain dormant for the space of eight or ten years, ever since the death of Earl Donald in 1373 (*g*).” It is singular, that the authority quoted in support of all this deduction, should be no other than the charter 1385.

The history of the after transmission of the earldom of Lennox belongs not to this part of the argument ; it is related elsewhere.

As this instance of female succession in the ancient earldom of Lennox was not explained in the former cases, it is not known what objections Sir Robert Gordon may oppose to it.

S E C T. XI.

M A R R, 1388.

Marr. 1388. JAMES Earl of Douglas and Marr, slain at Otterburn 1388, left no issue.

The earldom of Douglas went to Archibald, said to have been his brother-consanguinean ; the earldom of Marr, to his sister-german, Isabel. She was *Countess* of Marr (*a*).

Concerning this lady, there are more writings extant, than concerning any other Scottish peer of ancient times ; and they all agree in proving her to have been *Countess* of Marr in her own right.

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*g*) *Douglas, Peerage*, p. 397.

(*a*) Charters, by Robert III. in 1398 and 1403, respecting “ *Isabella Comitissa de Marr et de Garriach.*”

She was married twice: 1. To Sir Malcolm Drummond, brother of Annabella, the Queen of Robert III. 2. To Alexander Stewart, the natural son of Alexander Earl of Buchan, fourth son of Robert II. Marr. 1388.

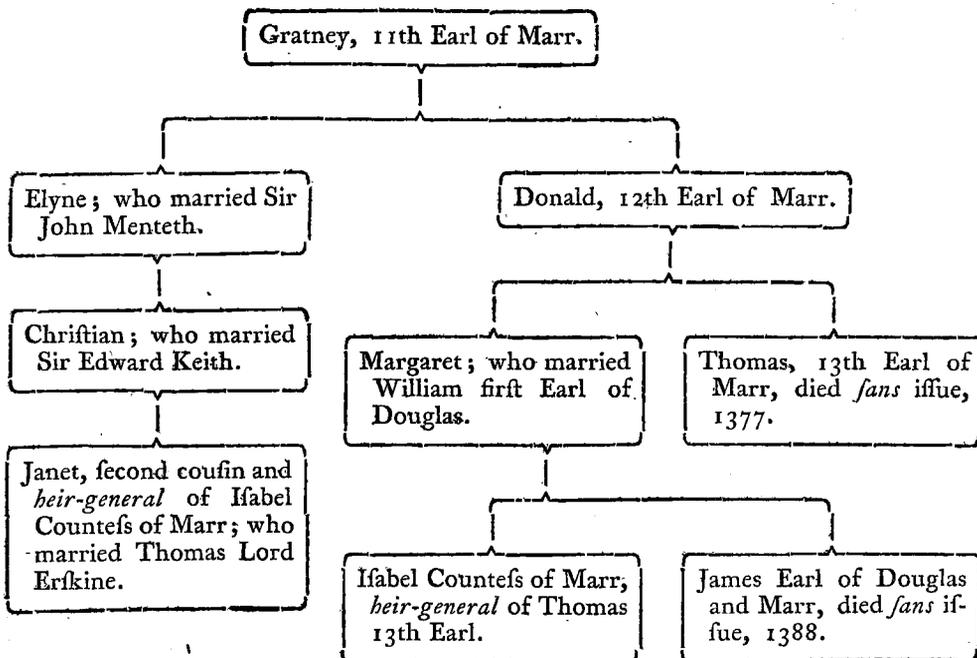
Her first husband, Sir Malcolm Drummond, was styled *Dominus de Marr (b)*. Why he did not assume the title of *Earl of Marr*, as the husbands of peeresses generally did, is uncertain; and it is judged better to leave it uncertain, than to account for it by doubtful conjecture.

Janet Keith, the wife of Thomas Lord Erskine, was the undoubted heir-general of Countess Isabel in the earldom of Marr. She was the grand-daughter of Elyne, the daughter of Gratney, 11th Earl of Marr (c).

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(b) Charter Robert III. 5th March, anno regni 9no, confirming a charter by Robert Duke of Albany to his son John Stewart, of the baronies of Coul and Onell, dated 18th February 1398; to which *Malcolmus de Drummond Dominus de Marr* is a witness.

(c) The following pedigree will shew the connection between the old Earls of Marr and Lord Erskine.



Marr. 1388.

In 1395, Lord Erskine, being justly apprehensive of attempts to disappoint the succession of his wife, took an obligation, under the great seal, from Robert III. By it the King became bound, not to ratify any contract, or accept of any resignation, by which *Isabella de Douglas, Countess of Marr and Gareoch*, might attempt to alienate those earldoms, or any part of her lands, in prejudice of the true heirs thereof. Such is the substance of this obligation. It is transcribed below from the original (*d*).

On the 3d November 1402, *Isabella, Comitissa de Marr, et Domina de Garrioch*, granted a charter of certain lands to Alexander de Keth (*e*).

In 1403, *Isabel Douglas, Comitissa de Marr, Domina de Garvyach*, in her widowity, confirmed to the abbacy of Aberbrothock, a carrucate of land in Kyalchmund, which had been granted to that abbacy by David Earl of Garrioch, brother of William King of Scots. She renewed this grant, “pro salute animarum quondam bonæ memoriæ, Domini Willielmi de Douglas, patris nostri, et Dominæ Margaretæ de Douglas, Comitissæ ejusdem, nostræ matris, et salute animæ nostræ, et fratris nostri, quondam Domini Jacobi de Douglas, Comitis ejusdem, et prædecessorum nostrorum

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*d*) “Robertus, &c. Sciatis quod, consideratis laboribus et bene meritis dilecti consanguinei nostri Thomæ de Erskine, Militis, multipliciter impensis, concessimus sibi, quod licet *Isabella de Douglas, Comitissa de Marr et de Gareoch*, ex informatione vel contractu cujusunque personæ, dictos comitatus, vel aliquam partem terrarum, vel annuorum reddituum eorundem, aut aliquas terras, five annuos redditus suos alibi jacen. infra regnum nostrum, quibus hæredes dicti Thomæ succedere debent, in hæreditatem nobis voluerit resignare, aut alienationes de eisdem cuicunque personæ facere, in præjudicium verorum hæredum suorum concedentium, nos siquidem hujusmodi resignationes non recipimus in futurum, nec hujusmodi alienationes, ratificationes, vel confirmationes. Et si aliquas hujusmodi receptiones, confirmationes, aut ratificationes forsan negligenter fecerimus, ipsas pro irritis et vacuis reputari volumus et haberi, ita ut careant virtute penitus firmitatis;—jure tamen nos, et successores nostros, concernente, in iisdem comitatibus, terris, aut annuis redditibus, semper salvo. Datum, sub testimonio magni sigilli, apud Edinburgh, vigesimo secundo die Novembris, anno regni nostri quarto.” [1395.]

(*e*) Charter confirmed by Robert III.

“in hac parte.” This grant is dated at Kyndromy [Kildrummie], Marr. 1388. the capital messuage of the family of Marr, 27th May 1403 (*f*).

Alexander Stewart, a natural son of the Earl of Buchan, was a daring adventurer of those days. Historians agree, that his first appearance in life was at the head of a formidable band of robbers in the highlands of Scotland (*g*).

This person cast his eyes on the Countess of Marr. He stormed her castle of Kildrummie; and whether by violence, or by persuasion, obtained her in marriage.

On the 12th August 1404, under the title of *Isabel Countess of Marr and Garriach*, she granted her earldom of Marr and Garriach, with all other lands, &c. belonging to her by right of inheritance, to “Alexander Stewart, and the heirs to be procreated between him and her; whom failing, to his lawful heirs and assignees whatever,” to be held as freely (says the deed) as we or our predecessors, Earls of Marr or of Douglas, held the same (*h*).

It would seem, that Alexander Stewart, enterprising as he was, soon became sensible, that, to seize the castle, to wed the heiress, and to carry off the earldom from the Countess’s children by another marriage, were measures too bold, even in an age of misrule.

He therefore endeavoured to palliate his conduct, and, in appearance, to repair the injury which he had done by extorting so extraordinary a deed as that of the 12th August 1404.

On the 19th September 1404, he presented himself at the castle-gate of Kildrummie, and surrendered to the Countess, not only the castle, but all its furniture, and the title-deeds therein kept. In

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*f*) *Chart. Aberbrothock*, vol. 2. fol. 7.

(*g*) *Fordun*, lib. 16. c. 25. “In juventute erat multum indomitus, et ductor catervarum.” *Buchanan*, lib. 10. p. 191. *Edit. Ruddiman*.

(*h*) *Record of Charters*, b. 7. N^o 257. Registered, “de speciali mandato Domini Regis,” 16th April 1476.

Marr. 1388. testimony of this, he delivered the keys into her hands, “*freely, and with a good heart, for her to dispose of them as she pleased.*”

The Countess, “holding the keys in her hands, of mature advice chose the said Alexander for her husband, and in free marriage gave to him the castle, with its pertinents, the earldom of Marr, &c. and all other lands belonging to, or which might belong to her, either by *her father or her mother*, to be held by her said husband and herself, and *the heirs to be procreated between them; which failing, to the said lady, and her lawful heirs*; upon all which, the said Alexander took instruments (i).”

In terms of this declaration, the Lady, under the title of *Ifabella de Douglas, Comitissa de Marr, et de Garriach*, granted a charter, 9th December 1404. This charter was sealed and dated “in presence of Alexander Bishop of Ross, and the haill tenants, in the fields, without the castle of Kildrummie,” that it might appear to have been granted without force on the part of Alexander Stewart, or fear on hers (k). This farce was sanctified by the authority of the Sovereign.

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(i) Instrument transcribed from the archives of the family of Marr by *Douglas, Peerage*, p. 461. This article of Marr is the most curious and accurate of any in the voluminous work of Douglas.

(k) “Omnibus hanc cartam visuris vel auditoris, nos *Ifabella de Douglas, Comitissa de Marr et de Garviach*, salutem in Domino sempiternam. Noveritis nos, in nostra pura et libera viduitate, proviso solemni tractatu et diligente, dedisse, concessisse, et hac præfenti cartâ nostrâ confirmasse, nobili viro Alexandro Senescallo, filio Nobilis Domini et Potentis Domini Alexandri Senescalli Comitis Buchaniæ, in liberum maritagium cum persona nostra contrahend. totum comitatum nostrum de Marr, cum castro nostro de Kyndrumy, totum dominium nostrum de *ly Garviach*, cum servitiis liberè tenentium nostrorum dicti comitatus et domini, cum ecclesiarum advocacionibus, necnon baroniam de Strathelvech, infra vicecomitatum de Banff; necnon baroniam de Crechmond in Buchania, cum omnibus earundem pertinentiis, et ducentas marcas annui redditus cultunæ de Hadington; necnon forestam de Gedword, cum omnibus terris ad illam forestam pertinentibus; ac etiam omne jus et clameum quod vel quæ habemus, vel haberi poterimus, in quibuscunque terris a nobis injustè detentis, tam ex parte patris, quam ex parte matris: Tenend. et habend. prædicto Alexandro, et hæredibus inter ipsum et nos procreandis; quibus fortè deficientibus, hæredibus nostris legitimis *ex utraque parte*; semper reservatis liberis tenementis omnium prædictarum terrarum, cum pertinentiis, dicto Alexandro et nobis, et nostrorum diutius viventi, pro toto tempore
“vitz

Sovereign. Robert III. upon the 21st of January 1404-5, by a charter under the great seal, ratified the charter 9th December 1404 (l). Marr. 1388.

After this singular event, Alexander Stewart was uniformly styled *Comes de Marr, et Dominus de Garvyach* (m). Under that title he, with consent of his wife, granted investitures to the vassals of the earldom, bearing the lands to be held “*de nobis ratione dictæ consortis nostræ* (n).”

The Countess of Marr died before her husband, without issue. Had the obligation by Robert III. to Lord Erskine been remembered, or had the limitations in the charters 9th December 1404, and 21st January 1404-5, been regarded; nothing would have remained in-

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

“*vitæ nostræ, &c.*—Volumus etiam et concedimus, pro nobis et hæredibus nostris, quod nullus hæredum nostrorum habeat introitum et iusnam, aut possessionem aliqualem, in feodo dict. comitatûs, domini de Garviach, vel aliarum quarumcunque terrarum aut reddituum, durante tempore vitæ dicti Alexandri, &c. In cuius rei testimonium, nos, liberâ potestate existens, non vi coacta, sed in præsentia Reverendi in Christo Patris Alexandri, Dei gratiâ, Episcopi Rossen. et omnium nostrorum tenentium, huic præsentî cartæ nostræ, extra castrum nostrum de Kyndromy, non in eadem clausa vel detenta, figillum nostrum apponi fecimus, ibidem, nono die mensis Decembris, anno Domini 1404.”—It must be observed, in passing, that Douglas has mis-translated the clause, *Quibus fortè deficientibus, hæredibus nostris legitimis ex utraque parte.*—He supposes it to mean to *their lawful heirs*; whereas it is the Countess *alone* who speaks. *Ex utraque parte* means, and is so expressed in the antecedent obligation, “*heirs by the mother’s side as well as the father’s.*”—The Countess alludes to the hope of succession to the Earl of Douglas.

(l) Original charter, in the claimant’s possession.

(m) Rymer, ad. an. 1406. t. 8. p. 460. 461. 500. &c.

Andrew Winton, MS. Chronicle, Advocates Library, has more than one chapter on the actions of Alexander Stewart. Winton was his cotemporary. He constantly styles him *Earl of Marr*; for example, he thus speaks of his marriage with the Countess of Marr, after the death of Sir Malcolm Drummond.

“*Quhen that Malcolm the deid had tane,
The Erle of Buchan’s sone Stewart
Alexander hir weddit eftirwart;
Scho deyt, and till him na barne bair,
And he remanyt Erl of Marr.*”

(n) Original Charter, 20th April 1406, by “*Alexander Senescall Comes de Marr et Dominus de Gareoch,*” &c.—It is to be observed, that *Garrioch*, a district of Aberdeenshire, is variously spelt in ancient writings, thus, *Garvyach, Garriach, Gareoch.*

Marr. 1388.

Alexander Stewart but a liferent-right of courtesy to the earldom of Marr. But all this was difregarded.

It was the great aim of the fagacious, but too precipitate policy of James I. to unite the ancient earldoms to the crown, and thus to fap the foundations of a formidable and hated aristocracy. What progrefs he made, and how he perished in the attempt, is known from hiftory.

Alexander Stewart, confcious that he had nothing in him but a liferent-right, ufed the device of refigning the earldom in the hands of James I. Immediately upon this, a charter of the earldom was granted by the King, “ to his dearly-beloved coufins, Sir Alexander Stewart, and Sir Thomas Stewart, his natural fon; to Sir Alexander for his life, and after his death, to Sir Thomas, and the lawful heirs-male of his body; whom failing, to return to the crown (o).”

Thus the earldom, inftead of defcending to the heirs-general of the ancient Earls, was limited to the heirs-male of the body of Sir Thomas Stewart.

That event which the fagacity of James I. forefaw, took place in the courfe of a few years. Sir Thomas Stewart died without iffue. Sir Alexander did not furvive him long. He died in 1435 (p).

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(o) “ Cariffimis confanguineis noftris Alexandro Stewart, et Thomæ Stewart, filio fue naturali, Militibus. Tenend. et habend. prædicto Alexandro pro toto tempore vitæ fue, et post ejus deceffum, præfato Thomæ, et hæredibus mafculis de corpore fue legitime procreatis feu procreandis; quibus forfan deficientibus, nobis et hæredibus noftris liberè reverfur.” *Record*, Charter, 28th May 1426, B. 2. N^o 8.

(p) *Fordun*, l. 16. c. 25. “ Anno Domini 1435, circa feftum Sancti Petri ad vincula, [*Lammas*, 2d Auguft, corrupted from *ad vincula miffa*], obiit Dominus Alexander Stewart, Comes de Marria, baffardus filius Domini Alexandri Stewart Comitis de Buchania, filii Domini Roberti Secundi Regis. Hic fuit vir magni conqueftûs, qui in juventute erat multùm indomitus, et ductor catervanorum [*Katheranes*, bands of robbers mentioned in the statute-book]; fed postea ad fe reverfus, et in virum alterum mutatus, placenter trans montes quasi totum aquilonem gubernabat. — Homo magnarum opum et ingentium expensarum, clari nominis, et famofus in diverfis regionibus, habebatur; cujus industrioſe probitati adſcripta est victoria facta apud Leodium, pro parte Johannis Ducis Burgundiæ, et fimiliter apud Harlaw, de infulanis, fibi attribuitur præconium triumphale. Potens enim erat valde in rebus animatis et mobilibus: Quibus omnibus, utpote baffardi, fuceffit Rex.”

S E C T. XII.

M A R R, 1435.

THE ministers of James II. took possession of the earldom of Marr Marr. 1435. as devolved to the crown. Robert Lord Erskine, the son of Thomas Lord Erskine, and Janet Keith, attempted to vindicate his just rights to the earldom. For this purpose, he obtained himself served nearest lawful heir to Isabel Countess of Marr (*a*). The evidence of his propinquity was clear; and, in the present age, is admitted to be indisputable.

In consequence of this, Robert Lord Erskine assumed the title of *Earl of Marr*, and granted various charters to the vassals of the earldom (*b*).

Nevertheless he attained not to the peaceable possession of the earldom. The ministers of James II. had procured an act of parliament, "That no landes nor possessions pertaining to the King, be given or granted till onie man, without the advice and consent of the three estaites of the realme, unto the time of his age of twenty-one years (*c*)." This served as a pretext for holding possession of the earldom of Marr during the minority of the Sovereign.

During the life of Robert Lord Erskine, various applications were made to parliament, and to the privy council, for restitution of

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*a*) *Douglas*, in his *Peerage*, p. 467. quotes, from the archives of the family of Marr, the service, 22d April 1438, a precept for infesting him as heir to the Countess, and the feisin following on it, both in November 1438.

(*b*) *Douglas*, *ibid.*

(*c*) *Act 1. parl. 1. James II. 1437.*—It is termed *act 2d* in the printed statutes; but erroneously; what is termed *act 1st* being nothing more than a memorandum of the coronation of James II.

Marr. 1435. the earldom. Terms of accommodation were proposed, and an agreement for a temporary possession was made. Nothing, however, was finally adjusted when Robert Lord Erskine died.

Then the crown took a bold measure indeed; by an after declaration of the legislature, we are authorized to give it its true appellation, that of *an act of injustice*.

James II. insisted against Thomas Lord Erskine in a reduction of his father Lord Robert's service. The reasons of reduction were *four*: 1. Because there were no witnesses who could swear to his descent from Elyne of Marr, long ago dead. 2. Because the service was contrary to the statute, touching the King's right to keep possession of all lands whereof his father was possessed. 3. Because Isabel Countess of Marr was not the person last seized in that earldom, but Alexander Stewart, and Thomas Stewart; to both of whom the King was heir, by reason of their bastardy. 4. Because the King himself was heir to Isabel Countess of Buchan, as descended from Isabel de Marr, the wife of Robert I. who was the elder sister of Elyne de Marr.

In 1457, an assize of error was assembled, at Aberdeen, in presence of James II. The verdict of that assize reduced the service of Robert Lord Erskine; and found, that the King had right to the earldom of Marr, because, in virtue of the charter 12th August 1404, and the subsequent charter 1426, to Alexander, and his natural son, the earldom of Marr had devolved to the King, "*ratione bastardiæ (d)*."

It will not escape observation, that the later charters, 9th December 1404, and 21st January 1404-5, were totally overlooked by this assize. The reason is plain: *They* terminated in a clause to the heirs-general of the Countess, and gave nothing to the husband, but a

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(d) Transumpt of the reduction of Lord Erskine's service, 5th November 1457.

right of liferent; they could not be transformed by any royal charter into a right of property in the husband, and his natural son, with a clause of return to the Sovereign. Marr. 1435-

The four reasons of reduction were also in themselves captious, and grounded upon mistakes in fact as well as law.

This the family of Erskine demonstratively proved, as soon as a favourable opportunity occurred for setting aside the verdict 1457.

In 1555, John Lord Erskine obtained leave from the crown to have the question re-tried, Whether he was heir-general to Countess Isabel?

He shewed, that the reasons of reduction on which James II. had obtained the verdict in 1457, were utterly erroneous.

As to the *first*, That it was new in law, to plead, that a claimant might not prove his propinquity to remote ancestors by writings as well as by witnesses: That if this was ruled for law, the Sovereign, from the lapse of time, and the defect of living testimonies, might arrogate to himself half the earldoms in Scotland, as well as the earldom of Marr.

As to the *second*, The statute 1438 might exclude the claimant from possession during the minority of the King, but could not prevent the affize from taking trial of the propinquity, or set aside the verdict when returned.

To the *third*, the answer was obvious, That Alexander Stewart had no more than a right of liferent in him by the charters 9th December 1404 and 21st January 1404-5; that he could resign no more, and that the crown could grant no more upon his resignation.

To the *fourth*, That it was grounded on an error in fact; for that Isabel de Marr, the wife of Robert I. was not the daughter, but the sister of Earl Gratney; and consequently was removed a degree farther back than Elyne, the daughter of Earl Gratney.

These reasons were so simple, and so conclusive, that on the 5th May 1555, the inquest found John Lord Erskine to be the nearest heir of Robert Earl of Marr and Garrioch, who was the nearest heir

Marr. 1435. of Isabel Countess of Marr, and of Gratney Earl of Marr, her great-grandfather (*e*).

In 1565, Mary Queen of Scots at length made reparation to the family of Erskine for the shameful oppression which it had endured from her forefathers. She restored John Lord Erskine, and granted a charter of the earldom of Marr to him, his heirs, and assignees. This charter proceeds on the narrative, That Isabel Countess of Marr had granted that earldom to Alexander Stewart, her husband, and to the heirs to be procreated between them; whom failing, to Isabel's heirs whatever, [alluding to the charter 9th December 1404]; that Isabel died without issue; and that John Lord Erskine was returned nearest heir to Robert therein, and was undoubted heir of Isabel (*f*). This charter was afterwards ratified in parliament (*g*).

John Lord Erskine and his heirs did accordingly enjoy the dignity and estate of the earldom of Marr, until the attainder of John Earl of Marr for his accession to the rebellion, 1mo Georgii I.

O B J E C T I O N.

Sir Robert Gordon, in his objections to those instances of female succession in the earldom of Marr, has multiplied presumptions upon presumptions, in such a manner as to *distinguish* his hypothesis in this case from all his other hypotheses.

p. 31. As to the first instance, he admits, "That Isabella, in a private charter, 1404, is styled *Comitissa de Marr*;" but he adds, "that she was then in her widowhood; and that it is probable, if she truly had right to the title, that it was *as the wife of a former husband, who had been created Earl of Marr*."

As to the second, he argues, "That the Lords Erskine were the heirs of line of Gratney Earl of Marr; and therefore, if they had had right

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*e*) See all this fully recited by *Douglas*, Peerage, p. 467. & 468. from the archives of the family of Marr.

(*f*) *Record Charters*, B. 32. N^o 501. 23d June 1565.

(*g*) *Records of parliament*, B. 13. 1567. and B. 17. 1597.

“ to the peerage, they must have succeeded on the death of Countess I. Marr. 1435:
 “ Isabel; but, on the contrary, they continued in the rank of Lords Ba-
 “ rons: That the charter by Queen Mary is a grant of the estate, not
 “ of the peerage; and as John Lord Erskine is soon after styled *Earl of*
 “ *Marr*, it must have been by creation from the crown, *by whose in-*
 “ *dulgence* he got the estate.”

A N S W E R.

The recital of facts already premised affords an answer to those objections, which have been made without a competent knowledge of the facts. It has been shown, that it was not merely in a *private charter* 1404, that Isabel was termed *Countess of Marr*.

It is scarcely possible that an ancient grant by an heiress, or in favour of an heiress, could occur, unless during her coverture or her viduity. Every one knows that an heiress under age never had any administration of her affairs: *the gift of her marriage* was generally made over to some needy, or to some powerful courtier. Whichever of those characters belonged to the husband-expectant, it is obvious, that the young lady would not be permitted to remain in celibacy any longer than necessity required. It follows, of unavoidable consequence, that the name of an heiress would seldom appear on deeds unless while she was married or a widow.

In this case the presumption that Countess Isabel had her title in right of a former husband is singular, even in an argument composed of presumptions. To presume a creation is no great matter, for we are favoured by Sir Robert Gordon with a multitude of such presumptive creations; but *to presume a third husband* to a woman who has two upon record is new. It happens unluckily that Sir Malcolm Drummond, Countess Isabel's first husband, did not follow the common practice of assuming the title of *Earl of Marr*; so that *he* cannot be the *presumed* Earl of Marr to whom Sir Robert alludes: it must therefore be some other person. *Who* he was, *when* he lived, and *what* became of him; are questions left with Sir Robert to answer.

As to the second instance, of the Lords Erskine, heirs-general of Gratney Earl of Marr, it is plain, that if Isabel had right to the title, so had they. That Queen Mary conferred the title of *Earl of Marr* on John Lord Erskine, is an ideal supposition; as it also is, that Lord Erskine owed the estate of Marr to the *indulgence* of Queen Mary: he owed it to justice alone; and nothing less than such an example of justice could efface the national opprobrium of that scandalous verdict 1457. To restore an earldom to a Noble Lord, of which his predecessors had been unjustly divested for 130 years, was no indulgence. That the family of Erskine remained Lords Barons for so long a space, was the natural consequence of their being so long divested of the earldom.

S E C T. XIII.

STRATHERN, between 1370 and 1414.

Strathern.
Between 1370
and 1414.

THE Earl of Strathern is mentioned in the reign of Malcolm IV. (a)

The succession is held by all our historians to have been carried down in the direct line of male descendants, until Malise, 7th Earl of Strathern.

He was one of the Scottish nobles who signed the letter to the Pope, asserting the independency of Scotland, 1320 (b).

During the minority of David II. Earl Malise opposed the invasion of Edward Baliol. For this he forfeited. The earldom was bestowed on John Earl of Surrey and Warren, who, from that time, was styled "Comes Surriæ et de Strathern (c)."

Malise died without being restored to the earldom. [He is said to

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(a) *Fordun*, lib. 8. c. 4. "Sex Comitês, *Ferchard*, scilicet, *Comes de Strathern*, et alii "quinque, adversus Regem, non utique pro singulari commodo, seu proditiosâ conspiratione, immo reipublicæ tuitione commoti, ipsum capere nisi sunt."

(b) *Fordun*, l. 13. c. 2. *Sir James Dalrymple's Collections*, p. 376. & 377. *Sir James Balfour's MS. Collections*.

(c) *Rymer*, t. 4. p. 595. & 614. *Dugdale, Baronage*, vol. 1. p. 80. 81. It appears, that his wife was the nearest heir to the earldom; for Sir James Dalrymple, *Historical Collections*, p. 376. observes, "That Johanna, the daughter of Malise Earl of Strathern, "was forfeited for marrying the Earl of Warren, an enemy to the King and kingdom." It must be plain to every reader, that Dugdale runs into confusion about the different wives of Earl Warren; at the same time, it is not to be dissembled, that both the existence and the forfeiture of Johanna depend upon the authority of Sir James Dalrymple. According to his general custom, he neglects to produce the evidence of his assertion; yet his narrative is so circumstantial, and his reputation for integrity is so well established, that the fact may be presumed probable, if not certain. Be this as it will, it does not vary the argument of the claimant. Every thing relating to Johanna is included within *crotchets*, left the claimant should seem to assert more than she can prove.

have left issue a daughter, Johanna, who forfeited for "having married Earl Warren, an enemy of the King and kingdom (*d*)."]

Strathern.
Between 1370
and 1414.

David II. having recovered possession of his kingdom, bestowed the earldom of Strathern, now in the crown by [a double] forfeiture, on Sir Maurice Murray, the nephew and heir of Malife, 7th Earl of Strathern, and on the heirs-male of his body; whom failing, to return to the crown (*e*).

Maurice Earl of Strathern was slain at the battle of Durham in 1346 (*f*).

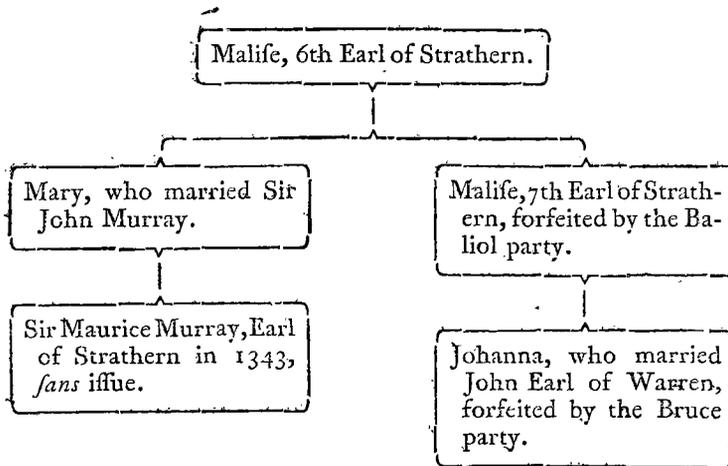
He left no issue: the earldom devolved on the crown. David II. bestowed it on his nephew Robert, Steward of Scotland, afterwards Robert II. He took the style of *Earl of Strathern* (*g*).

Robert II. at his accession to the crown, granted a charter of the

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*d*) *Sir James Dalrymple*, as above, at note (*c*).

(*e*) Original charter 1343, in the possession of Murray of Abercairnie. *Sir James Dalrymple*, *ibid*. This Maurice Earl of Strathern is witness to the charter by David II. erecting the earldom of Sutherland into a regality. *Charter*, 10th October, anno regni 17. 1347. The pedigree of the family of Strathern will appear from the following table.



(*f*) *Fordun*, l. 14. c. 3.

(*g*) *Sir James Dalrymple's Collections*, p. 376. There are many charters extant, granted by Robert the Steward, under the title of *Earl of Strathern*.

Strathern.
Between 1370
and 1414.

earldom of Strathern to his younger son, David. Much argument has been founded upon this charter, and therefore it shall be here recited. It grants "David Senescalli, Militi, comitatum de Strathern, cum pertinen. Tenend. et habend. *sibi, et hæredibus suis, in omnibus, et per omnia, juxta formam et tenorem chartæ sibi exinde confectæ; et adeo liberè, &c. sicut quondam Malifius Comes de Strathern, vel aliquis alius Comes ejusdem, ipsum comitatum, cum pertinen. aliquo tempore liberius tenuit seu possedit,*" &c. Then follows a grant of regality (*b*).

At what time David Earl of Strathern died, is uncertain. He left issue an only daughter, Euphame, *Countess of Strathern*, married to Sir Patrick Graham. She and her husband were styled *Earl and Countess of Strathern*, in many deeds, public as well as private (*i*).

Euphame was succeeded by her son Malise: he is styled *Earl of Strathern* when he became an hostage for James I. (*k*).

On the return of James I. a statute was enacted for inquiring what lands belonged to the crown at the demise of Robert I. or at any time since that period, comprehending no less than *ninety-four years*; and the King was empowered to call for the production of all "charters and evidents (*l*)."

When the Scottish nobles concurred in enacting this law, they little imagined that they were furnishing a handle for that axe which might bring the loftiest of them to the ground.

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*b*) There are several charters on record of the earldom of Strathern, by Robert II. to his son David, *et hæredibus suis*. B. I. N^o 294. 303. 304. 310. Roll 4. N^o 4. *Rymer*, t. 7. p. 345.

(*i*) *Charters*, 28th March 1414. 8th October 1414. 10th August 1418. *Sir James Dalrymple's Collections*, p. 377. *Rymer*, t. 8. p. 544. & p. 735. *Fordun*, lib. 15. c. 23. "Joh. Dromond de Conrag, Miles, interfecit dominum suum D. Patricium de Graham, *Comitem de Stratherne, infidiosè.*"

(*k*) *Rymer*, t. 10. p. 309.

(*l*) Act 9. parl. 1. James I. 1424.

In the course of his inquiries, the King turned his attention to the earldom of Strathern, under pretence, as is said, that it was a *male fee*. He divested Malise (*m*), and conferred the earldom for life on Walter Earl of Athole, his uncle (*n*).

Strathern,
Between 1370
and 1414.

To Malise he granted the lands of Craynis, &c. He erected those lands “into the earldom of Menteth, to be held in a free earldom by Malise, and the heirs-male lawfully procreated or to be procreated of his body; whom failing, to return to the crown (*o*).”

Accordingly Malise was, at his release from captivity in England, styled *Malifius Comes de Menteth* (*p*).

James I. in his attempts to humble the aristocracy, always did too much, or too little. This was probably owing to his situation. His plans were boundless; his power of execution limited.

By his disposal of the earldom of Strathern, he exasperated the relations of the young, inoffending, and absent Malise; yet he did not conciliate the favour, nor remove the suspicions, nor satiate the ambition of Athole. The fatal consequences are well known. The

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*m*) *Buchanan*, lib. 10. c. 48. In making answers to Sir Robert Gordon's objections, there will be occasion to examine this fact.

(*n*) *Récord Charters*, b. 2. N^o 88. *pro toto tempore vitæ suæ*.

(*o*) Charter, 6th September 1427. “*Quas quidem terras, cum pertinen. in liberum comitatum de Menteth, constituimus, ordinamus, et de novo erigimus; tenend. et habend. præfato Malifio, et hæredibus suis masculis de corpore suo legitime procreatis seu procreandis; quibus fortè deficientibus, nobis et successoribus nostris liberè revertendas, de nobis et hæredibus nostris in liberum comitatum de Menteth in feodo et hæreditate, &c.*”

(*p*) *Rymer*, t. 11. p. 339. It may be observed, in passing, that this example proves, that the ceremony of *belting* was not necessary in order to confer the title of *Comes*. Malise, while absent from Scotland, could not be *gladio cinctus comitatûs*. There is an apposite example of this in *Memoriale patris Gualteri de Coventre*, apud *Leland*. *Collectanea*, vol. 1. p. 293. “*Johannes Rex [1198] die coronationis suæ, accinxit Gul. Marefcallum gladio comit. de Striguil, et Gaufridum Petri gladio comitatûs de Effex, qui, licet ante vocati essent Comites, et administrat. comit. suorum habuissent, non tamen erant accincti gladio comitatûs.*”

Strathern.
Between 1370
and 1414.

King fell a victim to his own great, but impracticable undertaking, and his reign fet, as it rose, in blood.

After two centuries had elapsed, William Earl of Menteth was served nearest heir of blood to Euphame Countess of Strathern, and to David Earl of Strathern, her father. In consequence of this, Charles I. by patent ratified the service and the title of honour to the Earl of Menteth, in virtue of the charters granted by Robert II. to David Earl of Strathern, and *his heirs* (q).

The service and the patent were afterwards called in question, and set aside by Charles I. This happened from reasons of state, explained by our historians (r). It is remarkable, that they were set aside, not upon this erroneous reason in law, That a grant *hereditibus suis* implied a limitation to *heirs-male*; but upon a reason in fact, equally erroneous, That David Earl of Strathern died without issue (s).

O B J E C T I O N.

p. 20. Here Sir Robert Gordon observes, " That the land-estate of the earldom of Strathern stood limited *hereditibus suis*; that is, *to heirs-male*; and failing them, to return to the crown: That the peerage *must have become extinct* upon Earl David's death; but his daugh-

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(q) *Record Charters*, b. 53. N^o 48. 31st July 1631. "*Virtute chartarum per dict. quond. Regem Robertum II. concess. præfato quondam Davidi Comiti de Strathern, suisque hereditibus.*" This serves to shew, that the ministers of Charles I. considered the charters of the earldom of Strathern to be equivalent to what, in later ages, was conceived in the form of a patent of honour.

(r) " William Earl of Menteth having served heir to David Earl of Strathern, obtained a patent for the earldom, with the precedency of David Stewart Earl of Strathern. But this title of Strathern was recalled, more from a mistake in our historians, asserting Euphame Ross [the mother of David Earl of Strathern] to be the first wife of Robert II. than any solid ground;" *Sir James Dalrymple's Historical Collections*, p. 377. See also a cotemporary, though no courtly historian, *Scotstarvet*, p. 140. 157. He mentions some words which dropt from the Earl of Menteth, bordering upon treason.

(s) *Duric's Decisions*, 20th and 22d March 1633, p. 682. 683. *Sir James Dalrymple*, as above.

" ter,

“ter, niece to the Duke of Albany, Regent, possessed of the great family-estate, and *representative of the family*, could not have difficulty to procure a *renewal of the extinct peerage* to her husband; and accordingly he, and his son Malise, appear to have been *Earls of Strathern*. But when James I. understood that the family-estate, which, by the limitations in the investitures, ought to have returned to the crown, was in the hands of Malise, whose mother had no right to it, he took the estate from Malise; but afterwards, to *make him reparation*, bestowed upon him the earldom of Menteith, and created him Earl of Menteith, and gave the estate and peerage of Strathern to the Earl of Athole; the latter probably *with the consent of Malise*.”

Strathern.
Between 1370
and 1414.

A N S W E R.

In stating those objections, Sir Robert greatly errs; and even argues against his own principles.

1. That a clause, *heredibus suis*, in 1370, implied a limitation to *heirs-male*, has been already proved an error in law and history.

2. If, as Sir Robert argues, females were excluded from succession, how could Euphame be *representative* of the family?

3. There is no evidence that David Earl of Strathern survived his brother Robert III.; and consequently there is no evidence that the earldom had not returned to the crown, by Sir Robert's hypothesis, before the Duke of Albany became regent.

4. It is a mistake to suppose, that Euphame, by being the niece of the Duke of Albany, had any interest with him. There was no harmony between the children of Elisabeth Muir and the descendants of Euphame Ross.

5. Sir Robert presumes a creation by a regent; which is in itself improbable; and which is also inconsistent with the Earl of Menteith's service, in 1630, to Euphame Countess of Strathern. If the peerage had not been in her, a service to her was not the method of transmitting it. The service ought to have been to Sir Patrick Graham, her husband.

6. The nature of the resumption by James I. is stated from Buchanan, lib. 10.

c. 48. “Melissus Gramus a Rege, dum in publicum patrimonium *diligentius inquiri*, Iernia est spoliatus; quod eam comperisset avo ejus materno eâ lege datam, ut, deficiente stirpe masculâ, ad Regem rediret; feudumque esset masculinum, ut interpretes juris nunc loquuntur.” The expressions of Buchanan are intentionally ambiguous, and may imply, either that James I. acted according to law, or violently, and with injustice. It is hardly possible to suppose, that James I. could have resumed the earldom upon the pretence that *heredes sui* implied a limitation to *heirs-male*. Had that been the case, the charter of Menteith granted to Malise would have been conceived *heredibus suis*, instead of being anxiously conceived to *heirs-male of the body of Malise*.

The pretext for the resumption seems to have been this. It has been held, that the expression *heredes sui*, though implying *heirs-general*, may, from circumstances, be so understood as to introduce a limitation to *heirs-male*. By the charter to David Earl of Strathern, the earldom was to be held *as it had been held by Earl Malise*. Now, as Sir Maurice Murray, the heir-general of Earl Malise,

Strathern,
Between 1370
and 1414.

Malife, accepted a charter of the earldom directly from David II. it might be argued, that this imported an acknowledgement on his part, that the ancient earldom had stood limited to heirs-male. James I. and his ministers, might have passed over the circumstance, that [both] Earl Malife [and his daughter Johanna] having forfeited, Sir Maurice Murray could only take by grant from the crown, and not of right.

Be this as it will, the refumption of the earldom of Strathern by James I. was certainly regarded as a violent measure, and its consequences were dreadful.

7. If Malife Graham had no right to the earldom, what is meant by the King's *making reparation to him*, or his *consenting* to the grant in favour of the Earl of Athole? Besides, there is neither proof nor presumption offered for establishing this extraordinary consent.

8. Sir Robert ought not to have distinguished between the granting the earldom of Menteith to Malife Graham, and the creating him an Earl. It is plain, that both were effected by the same deed, the charter 6th September 1427.

S E C T. XIV.

B U C H A N, 1551.

Buchan. 1554.

THIS instance of female succession in titles of dignity seems perfectly conclusive; and therefore it will be proper to make a full recital of all the circumstances of the case.

Lady Jane Somerset, the heroic Queen of James I. (*a*), married a brother of Stewart Lord Lorn. By him she was the mother of Sir James Stewart.

James III. bestowed the earldom of Buchan on this Sir James Stewart (*b*).

The original grant is not now extant. It is however referred to in a subsequent charter granted by James III. of the earldom of Buchan, "to James Earl of Buchan, and the heirs-male of his body;

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*a*) When the assassins burst into his chamber, she opposed herself to their daggers; when he was struck to the ground, she threw herself upon his body, and before she could be forced away, was twice stabbed by the murderers of her husband.

(*b*) *Sir James Dalrymple*, Historical Collections, p. 365. and all our genealogists.

" whom

“whom failing, to return to the Sovereign (c).” This charter proceeds on the Earl’s own resignation. Buchan. 1551.

Seisin or livery of the earldom of Buchan was accordingly given to this James Earl of Buchan, *super montem de Ellane (d)*, afterwards called *Earlshill*. 1476.

James was succeeded by his eldest son Alexander, and Alexander by his son John. This John was seised in *the earldom of Buchan, and Earlshill thereof*, as nearest heir served and returned to his father Alexander (e). 1519.

Hitherto the earldom of Buchan, in the descendants of Sir James Stewart, was a male fee, standing limited to heirs-male.

But John, 3d Earl of Buchan, upon his own resignation, obtained a charter of his whole estate, lordship, baronies, heritable offices, and of the *Earlshill*, in favour of John Stewart, his son and heir-apparent, *et hæredibus suis*, with reservation of the father’s life-rent (f). 1547.

A few days after, John the son was killed at the battle of Pinky, in the lifetime of his father, and before taking investiture on the charter 1547. He left an only child, a daughter, Christian. By virtue of a royal precept under the quarter-seal, she was investiture in the estate, heritable offices, &c. contained in the charter 1547, as heir to her father (g). Sept. 10. 1547.
1551.

After this, she granted charters to the vassals of the family, under

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(c) “*Jacobo Comiti Buchaniæ, et hæredibus suis masculis de corpore suo legitime procreatis seu procreandis; quibus fortè deficien. nobis, hæredibus et successoribus nostris liberè reverten.*” *Record Charters*, b. 8. N^o 35.

(d) *Attestation by the Sheriff of Aberdeen*, 28th October 1476.

(e) *Instrument of seisin*, 29th August 1519.

(f) *Record Charters*, 4th August 1547, b. 30. N^o 139.

(g) *Instrument of seisin*, 14th, 15th, and 16th, July 1551.

Buchan. 1551. the title of “ Fiar of all and whole the earldom of Buchan (b).”

If *hæredes sui*, in the charter 1547, meant *heirs-male*, not *heirs-general*, the royal precept and feisin, and grants made by Christian, were all erroneous; for that, at that time, John Earl of Buchan had another son, *James*, the uncle of Christian. He, however, so far from pretending any right to the earldom of Buchan, in preference to Christian, did acknowledge her right, even during the lifetime of his father and her grandfather.

He entered into a contract for marrying her to James Commendator of St Andrew's, afterwards known in history by the name of *Regent Moray*. In this contract he styles himself “ James Stewart, fecond son to John Earl of Buchan, and appeirand heir [i. e. heir-prefumptive] to Christian Stewart, dochter and heir to John Master of Buchan (i).”

According to Sir Robert Gordon's hypothesis, he ought to have styled himself “ John Master of Buchan, fiar of the earldom of Buchan.”

This James had a son also called *James*, who was served and retoured heir-male to his father, to his grandfather John Earl of Buchan, to his great-grandfather Alexander Earl of Buchan, and to his great-grandfather's father James Earl of Buchan; yet in all those retours he is styled *James Stewart* simply (k).

According to Sir Robert Gordon's hypothesis, he ought to have been styled “ James Stewart Earl of Buchan.”

After the death of John Earl of Buchan, her grandfather, Christian was univerfally called *Countess of Buchan* (l). This is one of

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(b) *Charter*, 1st July 1555, by Christian Stewart, “ filia et hæres quondam Johannis Stewart Magiftri de Buchan, feoditaria totius et integri comitatûs de Buchan.”

(i) *Contract*, 16th January 1549.

(k) *Record Retours*, B. 7. p. 45. &c.

(l) *Lord Ochiltree and Sir James Balfour*. MS. Collections, Advocates Library, Edinburgh.

the few facts averred by Lady Elifabeth which Sir Robert Gordon Buchan. 1557. does not controvert.

She married Robert Douglas, son of Sir Robert Douglas of Lochleven, brother-uterine of Regent Moray: he thereupon assumed and bore the title of *Earl of Buchan (m)*.

A royal charter of the family-estate, heritable offices, and the *Earlshill*, was granted to Robert Douglas Earl of Buchan, and Christian Stewart Countess of Buchan, his wife, in conjunct fee, "and to the heirs-male of the marriage;—to the eldest heir-female of the marriage;—to the heirs of the body of the said Dame Christian; and lastly, to the nearest lawful heirs whatsoever of the said Earl (n)." 1574.

Of this marriage there was a son, James. He, under the name of *James Douglas*, obtained himself served nearest and lawful heir of Robert Earl of Buchan his father (o). 1583.

But afterwards, having obtained himself served nearest and lawful heir of Christian Stewart Countess of Buchan, his mother, he was styled "James now Earl of Buchan (p)." 1588.

S E C T. XV.

BUCHAN, 1606.

THIS James died, leaving an only child, a daughter, *Mary Douglas* Buchan. 1606. *Countess of Buchan.*

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(m) *Anderfon's Historical Collections*, vol. 2. p. 228.

(n) *Record Charters*, 7th April 1574, B. 34. N^o 123. "Et hæredibus masculis inter ipsos legitime procreat. seu procreand.; quibus deficient. feniori hæredum feminearum, absquæ divisione, inter ipsos legitime procreat. seu procreand.; quibus deficient. hæredibus de corpore dictæ Dominæ Christinæ legitime procreand.; quibus deficient. legitimis et propinquieribus hæredibus dicti Comitis quibuscunque."

(o) *Service*, 2d April 1583.

(p) *Service*, 24th May 1588.

1606. In 1606, certain commissioners appointed by James VI. pronounced a decree for ranking the nobility of Scotland. In it *the Countess of Buchan* is ranked after the Earl of Glencairne (*a*).

1615. This Mary Douglas, Countess of Buchan, obtained herself infeft, as nearest and lawful heir of Christian Stewart Countess of Buchan, her grandmother, in several baronies, and especially in the lands of *Earlshill* (*b*).

1617. She married James Erskine son of the Earl of Marr: he thereupon assumed the title of *Earl of Buchan*.—On the resignation of the Countess, with his consent, a royal charter of the earldom of Buchan was granted to “ Mary Douglas Countess of Buchan, and her husband, in conjunct fee and liferent, and to the longest liver of them, and the heirs-male of their marriage;—to the nearest lawful heirs-male, and assignees whatsoever, of the said James Earl of Buchan.”

This charter contains a *Novodamus*; and, in conclusion, this clause. “ And we decern and ordain, and for ourselves, and our successors, we declare, that James Earl of Buchan, and his heirs-male forefaids, shall exerce [or enjoy] and possess, in all our parliaments, conventions of estates, and others our public services, all honours, dignities, and precedencies, which the Earls of Buchan of old exercised or possessed in any time past (*c*).”

This additional clause to the charter had become necessary, by rea-

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*a*) Decree of ranking, 1606.

(*b*) Instrument of seisin, 7th, 8th, and 9th, November 1615.

(*c*) *Record Charters*, 22d March 1617. B. 48. N^o 390. “ Hæredibus masculis inter ipsos legitime procreat. seu procreand. ; quibus deficientibus legitimis et propinquieribus hæredibus masculis ac assignatis dicti Jacobi Comitis Buchaniæ.— Ac decernimus et ordinamus, et pro nobis ac successoribus nostris declaramus, quod præfatus Jacobus Comes Buchaniæ, et hæredes sui masculi prædicti. exerceant et possideant in omnibus nostris parliamentis, statutum conventionibus, aliisque nostris publicis servitiis, omnes honores, dignitates, et præeminencias, quas Comites Buchaniæ ex antiquo exercuerunt seu possiderunt ullo tempore præterito.”

son of the practice now introduced, of conferring titles of dignity separate from, and unconnected with, the land-estate. Buchan. 1606

In 1625, this Earl and Countess of Buchan obtained a new charter of the earldom of Buchan, with the *honours and dignities* thereunto belonging, in favour of themselves in life, and their eldest son in fee, and the heirs-male of his body; which failing, to return to the said James Earl of Buchan, and the heirs-male between him and Mary Douglas Countess of Buchan; which failing, to the nearest lawful heirs-male, and assignees whatever, of the said James Earl of Buchan (*d*).

1625.

After this, Mary Douglas Countess of Buchan was served nearest heir to James Earl of Buchan her great-great-great-grandfather, to John Earl of Buchan her great-great-grandfather, and to John Master of Buchan her great-grandfather (*e*).

Upon these titles a decret of the court of session was obtained by her, as heir immediately by progress to James 1st Earl of Buchan, and by “ James Earl of Buchan her spouse; who is heritably infeft in the earldom of Buchan, &c. *with the honours, dignities, titles, and privileges, of the same, upon the resignation of the said Dame Mary Douglas, Countess of Buchan, his spouse (f).*”

This decret is pronounced against the Earls of Eglington, Montrose, Cassilis, Caithness, and Glencairn. It reduces the decret of ranking 1606; whereby those Earls had precedency allotted to them before the said Dame Mary Douglas and her husband. It establishes the precedency of Buchan, and sets aside all charters, infeftments, creations of dignity, &c. inconsistent therewith, of which the five Earls, in their own right, or in that of their predecessors, “ *by the father or mother’s side,*” might be possessed.

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*d*) *Record Charters*, 25th November 1625, B. 51. N^o 80.

(*e*) *Services*, 29th September 1627.

(*f*) *Decreet*, 25th July 1628.

Buchan. 1606

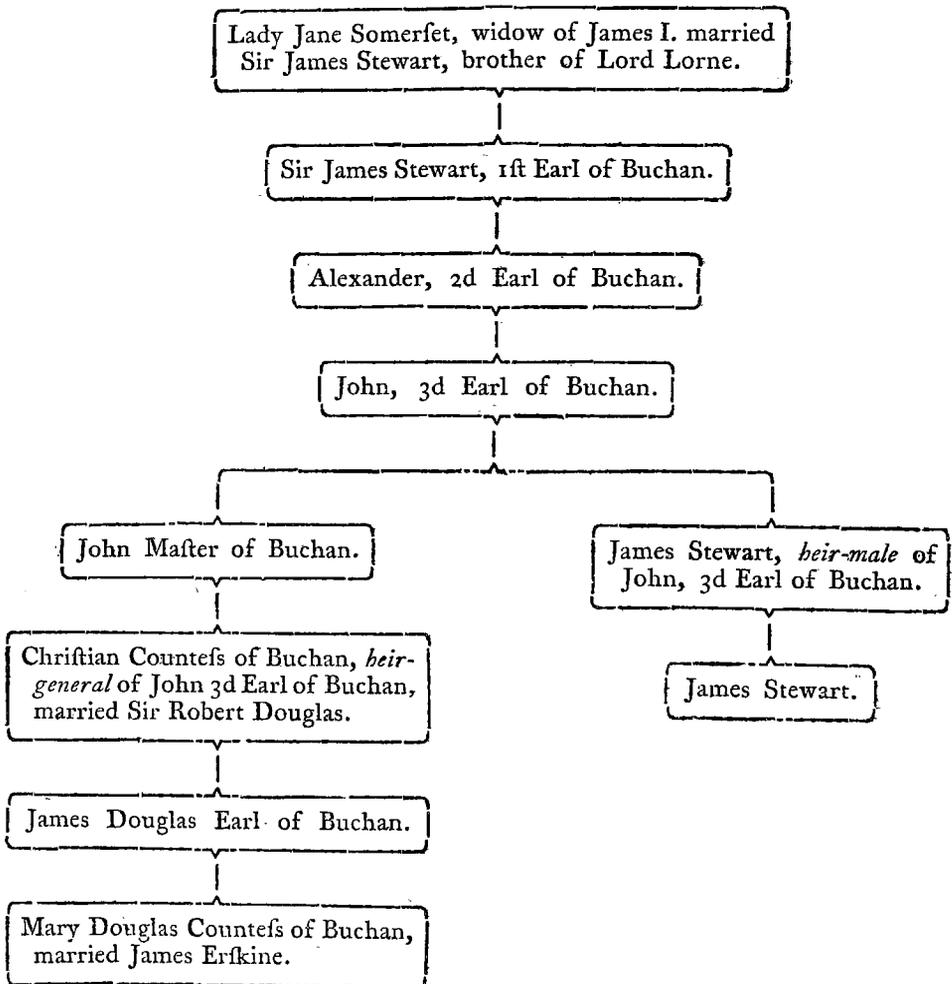
After the death of the Countess of Buchan, this decree was ratified by act of parliament (g).

OBJECTION, as to Buchan 1551.

It is pitiful to see how Sir Robert Gordon struggles to disengage himself from this complicated instance of female succession in titles of honour.

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(g) *Record*, act of parliament, 20th June 1633.—That the two instances in the succession of Buchan may be more easily understood, a pedigree of the family is subjoined.



- p. 32. 1. As to Christian Stewart, he admits that she took the title, though only *heir-general* of John Earl of Buchan; and that it does not appear that James, though the *heir-male*, ever took it; "whether on account of his not having the family-estate, he was indifferent about it, or upon what other account, cannot at this distance of time be known." Buchan.
2. Christian assumed the title for some time, and her husband continued a commoner. For this he quotes precept of apprising, 20th December 1563, "Quæ fuerunt Christianæ Comitissæ de Buchan, et Margiftri Roberti Douglas, ejus conjugis, pro suo interesse." He adds, "But afterwards, to secure the peerage, her husband got a creation from his brother-uterine, Regent Moray, and sat in parliament 1567. He is designed *Earl of Buchan* in 1574, and sat in parliament 1579. This creation of the husband shews that Christian could not be Countess in her own right."

A N S W E R.

1. When the *heir-general* assumes a title, and when that title is acknowledged by the crown, and by every one else, and when, at the same time, the *heir-male* makes no pretensions to the title, the obvious presumption is, that the *heir-general* has right to the title, and that the *heir-male* has not.

But it is conjectured, "That the *heir-male* was indifferent about the peerage, because he took not the family-estate." This is just the excuse made by *Douglas*, in his Peerage, for the *heir-male* of Lennox, in similar circumstances, and will serve equally well for any *heir-male* in ancient times.

It would seem, however, that this *heir-male* was as indifferent about the family-estate as about the title. The charter 1547 was *hereditibus suis*, without the addition of the magical word *quibuscumque*; the estate therefore, according to Sir Robert Gordon, stood limited to *heirs-male*; yet the *heir-male* claimed it not. And as he did not claim the estate, it is not strange that he did not claim the title!

2. Sir Robert admits, that Christian Stewart was called *Countess*; but he accounts for this, by observing, that "she assumed the title." He ought to have added, as his argument required, "without any lawful pretensions for so doing."

It may be remarked, in passing, that the precept of apprising 1563 is not conclusive any way. That one of Sir Robert Douglas's creditors gave him the name of *Robert Douglas* simply, will not determine what title he did bear, or was by custom authorised to bear; and indeed, for the same reason, the style of *Countess of Buchan*, there given to Christian Stewart, would not certainly determine what title she herself took.

Sir Robert adds, that "afterwards, to secure the peerage, her husband got a creation from his brother the Earl of Moray, Regent."

The claimant will elsewhere have occasion to inquire, how far the Regent could bestow a title of honour. Here it is sufficient for her to observe, that he did not bestow it on his brother.

It is perfectly clear that Robert Douglas was not created Earl of Buchan by Regent.

Buchan. Regent Moray. We know from the Statute book, that, on the 24th July 1567, the ill-fated Mary yielded up the reins of government, which she could no longer hold, and appointed the Earl of Moray Regent. Moray at that period was absent from Scotland, and did not accept of her nomination till 22d August 1567; *Anderson*, vol. 2. p. 251. *His title was not ratified in parliament till the 25th of December 1567.* See *Statute book*. The Earl of Buchan was one of the Lords who ratified it.

Nevertheless Sir Robert Gordon, with the Statute book lying open before him, asserts, that the Earl of Buchan was created a peer by Regent Moray; by that very person whose authority *he* contributed to ratify. With more propriety it might be said, that the Earl of Buchan made Moray regent, than that Moray made him a peer.

Such being the true state of the case, it is needless to examine the force of Sir Robert Gordon's argument, "That Christian could not be Countess in her own right, *because* her husband was created an Earl." It may suffice to observe, that, by the same mode of reasoning, in the last century, Lady Anne Hamilton was not a Duchess.

OBJECTION, as to Buchan 1601.

p. 32. "Mary Douglas having the family-estate, was anxious to have the peerage also. With this view she assumed the title, hoping thereby to make it believed that she got the peerage by female descent from her grandmother Christian. Her husband, James Erskine, the Lord Treasurer's son, was created Earl of Buchan by a charter, 22d March 1617, to him, and his heirs-male by the heirs of Buchan; but being conscious of the right of the heir-male of John Earl of Buchan, and afraid lest he should make claim to the ancient peerage, they procured a revival of that peerage, with the concurrence of the heir-male, thereby validating their right."

A N S W E R.

This solution is in every respect ingenious. 1. It is admitted, that Mary Douglas took the title of Buchan many years before her marriage; and it must be admitted, that she was ranked in 1606 as *Countess of Buchan*.

She was anxious to get the peerage, and with this view assumed the title; and yet, in 1606, when that title was given her in judgement, she was an infant. This is a fact which cannot be disputed.

Hoping to make it be believed that she got the peerage by female descent from her grandmother. Who could ever be persuaded into such belief, if Robert Douglas had been created Earl of Buchan by Regent Moray not forty years before? Was the memory of such recent transactions so soon obliterated?

There is an insinuation added, as if the title of Buchan had been turned out of the right channel by means of the power of the Earl of Marr, *Lord High Treasurer*. This is a high-sounding name, and meant to convey an idea of power like that of Burleigh or Salisbury; but the truth is, that the office at that time was

was of no public importance. The Earl of Marr had no influence in administration after the accession of James to the crown of England; and had he had influence, his character would have placed him above the suspicion of employing it to dishonourable purposes.

Buchan.

The concurrence of the *heir-male* is misunderstood. It has no relation whatever to the peerage. It probably respects some pretensions he might have to the reversion of wadsets, or other incumbrances on the family-estate. Sir Robert Gordon might as well contend, that the Earl of Marr and his wife had a right to the ancient peerage of Buchan; for that their consent to the charter of the lands, is obtained in the same manner as that of the *heir-male*.

It may now be proper to exhibit a chronological series of the earldoms in 1284, which descended to heirs-general, and were possessed by heirs-general.

Marjory Countess of Buchan married Sir William Cumin of Tindail.	Buchan, before 1214.
Isabel Countess of Athole married Thomas de Gallovidia.	Athole. 1231.
Fernelith Countess of Athole married David de Hastings.	— 1242.
Adda Countess of Athole married John de Strathbogie.	— 1269.
Matildis Countess of Angus married, 1. John Cumin; 2. Gilbert de Umfraville.	Angus. 1242.
N—— Countess of Menteith married William Cumin.	Menteth, before 1257.
N—— Countess of Menteith married Walter Stewart Balloch.	— 1257.
Margaret Countess of Carrick married Robert de Brus.	Carrick. 1270.
Euphemia Countess of Ross married, 1. Sir Walter Lesley; 2. Alexander Stewart Earl of Buchan.	Ross. 1375.
Margaret Countess of Ross married Donald Lord of the Isles.	— 1410.
Isabel Countess of Fyfe married, 1. Sir William Ramfay; 2. Sir Thomas Biffet; 3. Walter Stewart.	Fyfe, between 1350 & 1359.
Margaret Countess of Marr married, 1. William Earl of Douglas; 2. being divorced from him, Sir John Swinton.	Marr. 1379.
Isabel Countess of Marr married, 1. Sir Malcolm Drummond; 2. Alexander Stewart, the bastard of Buchan.	— 1388.
Robert Lord Erskine, the heir-general of Isabel Countess of Marr.	— 1435.
Margaret Countess of Lennox married Walter de Faflane.	Lennox. 1332.

In this catalogue the claimant has omitted the "heirs-general" who, in after times, succeeded to earldoms, of the same name indeed with those in the record 1284, but which had fallen to the crown by forfeiture, and had been erected anew; such as,

- Angus. 1377. Margaret Countess of Angus, married, 1. Thomas Earl of Marr;
2. William Earl of Douglas.
- Strathern. 1414. Euphame Countess of Strathern, married Sir Patrick Graham.
- Buchan. 1551. Christian Countess of Buchan, married Robert Douglas.
- 1601. Mary Countess of Buchan, married James Erskine.

It remains only to be observed, that among the Earls who appear in the record 1284, there are *two* "heirs-general," and *three* the husbands of Countesses, viz.

1. Gilbert de Umfraville, the son of Matildis Countess of Angus.
2. Alexander de Cumin, the son of Margaret Countess of Buchan.
3. John de Strathbogie, the husband of Adda Countess of Athole.
4. Walter Stewart Balloch, the husband of N—— Countess of Menteith.
5. Robert de Brus, the husband of Margaret Countess of Carrick.

THUS has the claimant examined the history of the *ten* ancient earldoms appearing upon the record 1284; and she has shewn that *nine* of them descended to *heirs-general*. If the present controversy is to be determined by custom and analogy, the claimant may justly conclude, that the *tenth* earldom also was descendible to "heirs-general;" and therefore that she, under the character of *heir-general*, is intitled to the honours of Sutherland.

Examination of *the Reasons of Preference* urged by Sir Robert Gordon.

I N T R O D U C T I O N.

IF the propositions laid down in the five preceding chapters have been proved, it follows, that Elifabeth Sutherland took the honours of Sutherland as *heir-general* of Earl John.

And if she so took the honours, the claimant, Lady Elifabeth, is in like manner intitled to take them, being not only the heir-general of Earl John, but the heir of the body, and the heir-general, of Elifabeth Sutherland.

Reasons of preference are urged by Sir Robert Gordon, and *here* is the proper place for examining them.

His *first* reason is thus expressed: “*When the limitation of the peer- age appears in the instrument of creation, that must regulate every que- stion of succession thereto: but when, by the loss of the instrument, the limitation is unknown, the question must be determined by legal pre- sumption.*” p. 16.

The presumptions, “*That the limitation of the Sutherland peerage was not to heirs-female,*” are, according to Sir Robert, no fewer in number than *nine*.

They shall be separately stated, and answers shall be made to each of them in their order.

General view of the FIRST PRESUMPTION for Sir ROBERT GORDON.

p. 16. Lady Elifabeth admits, p. 2. of her case, “*That the Thanes of Su- therland were more ancient than the time of Malcolm the Third (a);* and Reason I.
Presumption 1.
“*that*”

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(a) In a note (o), *Supplemental Case*, p. 23. it is said, “*One of the Lady Elifabeth’s tutors has lately published some ingenious writings, to prove, that the laws of Malcolm II. are*”
“ a

Reason I.
Presumption I.

“ that the Earls of *Sutherland* were as ancient as the time of that prince.
 “ As the former, they were feudal barons ; as the latter, they were feudal officers ; and both when the Feudal law was the governing law of Scotland. The Books of Fiefs were written 120 years after the last of these periods. By that law women were excluded from the succession to fiefs of every kind, whether of land-estates or offices. Lady Elifabeth has brought no instance of a female’s holding a land estate in Scotland before the end of the twelfth century ; and no authority from a law-book for female descent, even in land-estates, until the *Regiam Majestatem*, which all good antiquarians agree was borrowed from *Glanville* ; and consequently could not have been written before the fourteenth century ; that is, three centuries after the origin of the peerage in question. But she cannot bring rules of descent from the thirteenth and fourteenth centuries to prove the limitations of a peerage which was created two or three centuries before these rules were thought of. Thus by the double relation of feudal vassal and feudal officer, the descent of the peerage in question must, from its original nature, have gone to heirs-male in exclusion of heirs-female.”

A N S W E R.

This first presumption contains much curious matter, which must be examined in detail.

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“ a forgery ; or, at least, wrote at a later period. By the same mode of artificial argument, the claimant could prove, that *Magna Charta* was a forgery, or composed some centuries after its date. The claimant hopes, and does not doubt of his cause being judged by those laws, which the lawyers, the judges, the parliament, and the people, of Scotland, have held to be authentic above seven centuries.”

In more simple language, this means, “ That an hypothesis, concerning *LL. Malcolmii*, has been framed with a view to the claim of the *heir-general* of Sutherland.”

The person whom the note (o) honours with its censure would ill-deserve favour in the literary world, were he capable of framing an historical hypothesis, with the view of serving any particular cause whatever. He does not understand what influence the *LL. Malcolmii* can have in the determination of the present question : he is sure, that, in treating of them, he had no view to it. He had long ago learned from Spelman, that *LL. Malcolmii* ought not to be ascribed to Malcolm II. ; and yet, from the strain of the note (o), it would seem as if he had been the first writer who ever ventured to question the authenticity of the laws of Malcolm II.

His arguments have been submitted to the public judgement. They may seem artificial now ; but they would have been within the comprehension of every ale-woman in the days of the Conqueror ; for they chiefly turn upon the contents of a Saxon and a Norman shilling.

A dissertation, proving, by similar arguments, that *Magna Charta* is a forgery, will be a matter of more exquisite learning. It is presumed, that the learned author of this threatened tract knows, that the original of *Magna Charta* is extant, and that the writing of that age is ascertained by certain rules of criticism.

Meanwhile it may be remarked, that this ardent zeal for *LL. Malcolmii* is somewhat singular, in a treatise where *Regiam Majestatem* is adjudged from David I. upon the authority of that Spelman who had denied *LL. Malcolmii* to be of the age of Malcolm II.

What

What Sir Robert Gordon calls an *admission* on the part of the claimant, was thus expressed. "The Thanes of Sutherland are mentioned as early as the eleventh century; and the title of Thane was most probably converted into that of Earl by Malcolm III. who began to reign in the year 1057, and first introduced the title of Earl into Scotland." Reason L. Presump. 1.

The claimant, in giving an account of the family of Sutherland, began at the earliest period where the common genealogical writers speak of the state of that country. She never meant to acknowledge that there was any genuine history of Scotland of a date so early. She could not admit, that the Earls of Sutherland were as ancient as the age of Malcolm III. nor could her admission have made that to be fact, of which there is no evidence. The claimant suggested what seemed probable; at the same time she added, "that it was impossible to ascertain, with precision, the pedigree of the most ancient Earls of Sutherland; but that, from the year 1245, the pedigree is proved by undeniable evidence." In the pedigree annexed to her original case, she mentioned *the supposition of family-histories*. The latter part of her state of the fact ought to have been set forth as well as the former. p. 2.

If however Sir Robert Gordon, after inspection of the most ancient writings in her possession, shall be of opinion, that *Hugh Friekin* was Earl of Sutherland, and that his son *Gulielmus Dominus de Sutherland* was at that time also Earl, the claimant is willing that *this* be held as the fact. If it is, Sir Robert Gordon must admit, that in the beginning of the thirteenth century, *Dominus de Sutherland* meant *Earl*, not *Laird*.

FIRST PRESUMPTION.

Upon the supposition that the *Earls of Sutherland* came in the place of the *Thanes of Sutherland*, Sir Robert Gordon, in the passage just quoted, and in the passages there referred to, argues thus.

p. 2. "When the Germans conquered the different provinces of the Roman empire, the conquering prince parcelled out certain portions of the conquered land among his chieftains, under a condition of military service, and attendance in council. Those proprietors were in Scotland called *Thanes*: they judged and led to war the people upon their estates: from the nature of those estates, they went to males; because males only could fulfill the condition upon which the grant had been made.

"But the whole land of the conquered province was not so distributed. Many of the ancient inhabitants kept their lands on the ancient allodial footing; and such of the new intruders as were not attached to any chieftain, taking possession of vacant land, possessed it on the same footing. It was necessary to reduce to subjection under government in a political, those who were not subjected in a feudal capacity; and therefore the prince sent his own officers to judge, and to lead to war the possessors of those lands. This officer in Scotland was called *Earl*. The office had no connection with lands. At first it was during pleasure; afterwards it came to be made hereditary, and was granted, like all other

Reason I.
Presump. I.

“ grants of the time, in the feudal form, under a condition of military service, and of attendance upon the King’s council. Thus an *Earl-dom* went to heirs-male. 1st, Because it was of the nature of a *Fief*: 2^{dly}, Because it was of the nature of an *office*.”
The capital conclusion from all this is, “ That the *Thanes* of Sutherland were feudal barons, the *Earls* of Sutherland feudal officers; and that by the double relation of feudal vassal and feudal officer, the descent of the peerage in question must, from its original nature, have gone to heirs-male, in exclusion of heirs-general.” Q. E. D.!

A N S W E R.

The claimant is unwilling to enter into this labyrinth of conjectures. She will proceed no farther than where she has record to direct her.

Whether Sir Robert’s system be applicable to the ancient state of the continent of Europe, she has neither leisure nor abilities to examine.

But with respect to the ancient state of Scotland, his system is improbable and erroneous.

His leading proposition is, “ That Sutherland was part of a Roman province conquered by the Germans.”

Where he made this discovery, is difficult to determine: nothing surely can be more improbable.

His description of the nature of *Thanes* in Scotland, has no authority whatever to support it. None of his numerous quotations, p. 2. make any mention of Scottish *Thanes*; unless perhaps it be the *History of Feudal property*; and that, however respectable, is a very modern authority.

What was the nature of *Thanes* in ancient times, can only be learned from record. Sir Robert avers, “ that they were chieftains, among whom the conquering prince parcelled out certain portions of the conquered land, under a condition of military service, and attendance at council.”

He is left to reconcile his definition with the following statute of David I.
“ Recordatio facta coram Domino Rege David apud Perth, per omnes iudices.
“ — De illis qui ab exercitu defuerunt, quod Rex debet habere *forisfactum*.
“ *Comitum si Thani eorum remanserint ab exercitu*. — De omnibus verò aliis qui ab exercitu remanserunt, scilicet, de terris Episcoporum, Abbatum, Baronum, Militum, et *Thanorum*, qui de Rege tenent, debet Rex solus habere *forisfactum* (b).”

Here there are persons called *Thani Comitum*, and others *Thani*, holding of the King, and yet distinguished from *Barones* and *Milites*.

In 1171, William King of Scots granted a renewal of the investitures of Marr to Morgund the son of Gillocherus. It is addressed, “ Universis Episcopis,

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(b) In Skene’s edition of the ancient books of law, this is printed among *Statuta Alexandri II.* c. 15. But in Lord Cromerty’s MS. Adv. Library, it is among *Statuta David I.* ch. 24.

“ Comitibus

“Comitibus Abbatibus, Prioribus, Baronibus, Militibus, *Thanis*, et Præpositis, &c. (c)” Reason I. Presump. 1.

Thanes are here expressly distinguished from *Barones* and *Milites*. This also is inconsistent with Sir Robert Gordon's definition of *Thanes*.

In a charter by Alexander II. mention is made of “*Firmarii, vel Thayni, Præposituræ de Kymly (d).*”

As to the *theory of Earls*, Sir Robert Gordon seems to speak of times when the office of *Comes* was personal, and when a salary was bestowed on him for his personal duty of judging the community in times of peace, and of heading them in war.

If he indeed speaks of such times, it would be a fruitless labour to inquire how a man, possessed of an office for the term of his life, with a salary depending on it, did transmit the office and the salary to his descendents. It would be just the same thing, as if one were at this day, to inquire *who* was the heir, male or general, of the chief justice of England, or of the auditor of the exchequer, in the office of chief justice or auditor.

With all his inquiries, Sir Robert Gordon has omitted to prove, that such personal office of *Comes* ever existed in Scotland.

Nor will it escape observation, that in his preliminary discourse, he expressly asserts, that the office of *Comes* had no connection with lands; and yet throughout his whole *Supplemental Case*, he always interprets *comitatus* to be a *land-estate*.

It may be true, that under the Saxon government in England, *Earls* were originally officers of state, holding personal offices unconnected with lands: but from that very page of Spelman which Sir Robert Gordon quotes, p. 1. note (e), it appears, that before the conquest the office had begun to assume an hereditary appearance (e).

In what manner *Earls* were introduced into Scotland, and what was their original nature, cannot be known. This much however is certain, that after the manner of the Norman Earls, the title was hereditary, and that the estate of the earldom went along with the title; and it has been already proved, that both title and earldom went to *heirs-general*, so early as in the reign of William the Lion, that is, *before 1214*.

Sir Robert Gordon argues, “that the Feudal law was the governing law of Scotland in the eleventh century. That the Books of Fiefs were written 120 years after the age of Malcolm III. and that by that law, women were excluded from the succession in Fiefs of every kind, whether of land-estates or offices.”

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(c) Published by *Selden*, in *Titles of Honour*, p. 848. Many other examples of the same kind might be produced, were it necessary.

(d) *Chart. Morav.* vol. 1. p. 14.

(e) *Spelman. Gloss. voc. Comes*, p. 141. To the same purpose *Scale Chr.* apud Leland, *Collectanea*, vol. 1. p. 529. “*Walteof [son of Sivard, E. of Northumberland] was very young, and had few frendes; and the King, [Edward the Confessor], by procurement, gave Northumberland to Costin [I. Tofti], Godwin's sunne.*”

For

Reason 3. 4. For proving that the Feudal law was the law of Scotland in the *eleventh* century, reference is made to the opinion of Craig in the *seventeenth* century, lib. 1. dieg. 8. § 16.

This passage has been often quoted; and as often misapplied as quoted. Craig's position is this: "Quod si novus aliquis casus supervenerit, qui *neque jure scripto, neque consuetudine, comprehendatur*, neque ex iis quæ dicimus dirimi potest, et casus illius decisio in jure Feudali reperitur, præferendum jus Feudale et juri Pontificio et juri Romano."

If words can express an unambiguous opinion, the opinion of Craig is this. When both statutes and custom are silent as to the decision of any particular case, and when that case is decided by the Feudal law, i. e. the Longobardic Feudal law, the Feudal, not the Canon or Civil law, ought to be followed.

The reason which Craig immediately gives, that *repetendæ sunt origines*, pleads more strongly for the Anglo-Norman law, than for the Longobardic.

However, let the preference which Craig shews to the Longobardic law be supposed just.

His rule of preference is this. 1. *Statute or positive law*. This is clear; for the voice of the legislature must be heard, and no judge nor private man ought to presume to oppose his sentiments to the law of the land. 2. *Custom, practice, precedents*; implying the general opinion and acquiescence of a nation. This is termed *consuetudinary law*. 3. In the limitation, so to speak, *the Longobardic Feudal law*. (f)

By a strange inattention, the *second* source of the law of Scotland, as pointed out by Craig, is totally overlooked; and Sir Robert Gordon greedily flies to the *third*. In it indeed he may find the rule of masculine succession established; mean while custom, practice, precedents, though preferred by Craig to any Longobardic decisions, are totally overlooked.

During the thirteenth century, we have *some* records; during the fourteenth *many*; during the fifteenth and sixteenth centuries, we have instruments innumerable.

Can it be supposed, that in the course of so many ages, the rule of succession in the direct and in the collateral line remained uncertain? If the rule was determined, then, according to Craig's principles, no recourse can be had to the Feudal law; our own customs, practice, precedents, have determined it.

That the rule was fixed in land-estates, in jurisdictions and titles of honour, has, in the claimant's humble apprehension, been irrefragably proved.

Vainly therefore does Sir Robert Gordon attempt, by quotations from President Montesquieu, to prove, that the ancient succession in Scotland must have been limited to *heirs-male*, when custom and precedents show, that *heirs-general* were constantly let in.

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(f) It is remarkable, that Chambers of Ormond, a judge of the court of session, who wrote about forty years before Craig, appears to have known nothing of the authority of the Longobardic laws. His words are, "Si d'aventure quelque cause se presente laquelle on ne scauroit trouver être decidée, ni par les constitutions royaulx, ni par les arrests et coutumes du pays, en supplement ils ont recours aux raisons des loix Civiles." *Recherche de singularités d' Ecosse*, fol. 23. p. 2. Paris, 1579.

Inquiries into the state of a nation, where records are wanting, may amuse the fancy, but will not inform the judgement. (g) Reason F. Presump. 2r

In treating of this *First Presumption*, Sir Robert Gordon further urges, “ That the claimant has brought no instance of a female’s holding a land-estate before the end of the 12th century, [*i. e.* before the 1200]; and no authority from a law-book for female descent, even in land-estates, until the *Regiam Majestatem*, which all good antiquaries agree was borrowed from Glanville, and consequently could not have been written before the 14th century, [before the 1300]; that is, three centuries after the origin of the peerage in question. But she cannot bring rules of descent from the 13th and 14th centuries, [from 1200 to 1400], to prove the limitations of a peerage which was created two or three centuries before these rules were thought of.”

Here also there is much curious matter, which deserves to be particularly considered.

The claimant could not produce many examples of female succession before the 1200, because there are very few examples of any succession at all before that æra.

She has, however, produced one before 1165, of *Eda, filia et heres Symonis Fraser*, in the reign of Malcolm IV.; and many during the three subsequent reigns of William the Lion, Alexander II. and Alexander III. As authentic instruments multiply, so also do her examples of female succession.

To produce more ancient examples, was impossible: for more ancient instruments with respect to private inheritances do not exist.

If she has established female succession as far back as the records of Scotland reach, she has done all that was possible, or could be required of her. If she has proved the law of succession to have been the same six hundred years ago as now, it is incumbent on Sir Robert Gordon to prove, that a different law prevailed before that period of six hundred years.

Had the claimant chosen to call in the aid of fable and tradition, she might have procured ample materials from Hector Boece. She might have quoted that law of Malcolm II. which established the ward of heiresses (*h*); and that law of Macbeth, which established the right of primogeniture as to females (*i*); and she

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(g) It is hard to say what inference can be drawn from this circumstance, that the Books of the Fiefs were composed long after the days of Malcolm III. unless it be, that Gerardus and Obertus, in compiling their work, had the assistance of the Feudal Constitutions, established in Scotland by Malcolm III.

(h) Boece, Scot. Hist. lib. 11. fol. 245. “ Barones vero, ne non suppetarent ad regiam dignitatem facultates, ut cujuscunque agri domino excedente ex humanis, heres, si mas fuerit, siue femina, usque ad alterum supra viceesimum ætatis annum, Regis esset. sub tutela, — uno omnium suffragio sunt assenti.”

(i) Ibid. fol. 250. “ Fœmina primogenita sicut et mares in hæreditatem succedito.”

Reason I. might have proved the authenticity of this constitution of Macbeth by the testi-
 Presump. I. mony of *the best of our antiquaries* (k).

Resting *her* cause on record, she seeks not the aid of fanciful theory, or vain and credulous traditions.

“ For proving female succession, the claimant has produced no book of the “ law of Scotland more ancient than *Regiam Majestatem*.”— A heavy charge indeed, when it is remembered, that there was none more ancient to produce !

Whether *Regiam Majestatem* be the work of David I. or a system drawn up by a private person, and afterwards approved by the Scottish legislature, is not material to the question in issue.

In so far as it contains any passages similar to Glanville, let it be supposed a copy from Glanville ; yet still it is an ancient, and a most respectable authority.

That “ it could not have been written before the 14th century because copied from Glanville,” is a wonderful position. Glanville’s work was composed while he held the office of Chief-Justice of England. Every one knows, that he died at the siege of Acon, 1st Ric. I. (l) ; and therefore a copy from Glanville might have been made a full century earlier than what Sir Robert Gordon finds it expedient to admit.

But although the claimant should not have been able to produce the authority of a law-book, for female succession, earlier than the 1400, she has produced what is more satisfactory, the authority of a record, a retour of heirs-parceners in the 13th century, 1271.

Sir Robert Gordon holds a retour of heirs-parceners to be something awkward and unfeudal ; his own principles therefore oblige him to admit, that, if the retour of such heirs was known in a remote corner of Scotland so early as 1271, the succession of females must have been fully established before that period, and consequently in 1245, when the Earls of Sutherland first make their appearance on record, but *twenty six years* before 1271.

That no retours of heirs-general are discoverable till 1271, is owing to the penury of records. That there must have been many such retours, appears from the ancient examples of female succession.

“ Eda, filia et hæres Symonis Frazer,” must have been retoured as such before 1165, although the evidence has been lost by the injury of time.

Thus the claimant, instead of leaving two or three centuries for theory to sport itself in, has traced back female succession beyond the æra of the existence of the family of Sutherland.

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(k) *Craig de Feudis*, lib. 1. dieg. 8. § 2. “ Et in Macbetho quædam de successione fæminarum caventur.”

(l) See *Dugdale, Chronica series Cancellariorum*, &c. p. 4. where the authorities are quoted.

SECOND PRESUMPTION.

p. 16. "When lands fell into commerce, which they did as early as the *Re-* Reason I.
giam Majestatem, female succession was introduced. Purchasers in- Presump. 2.
 "sisted, that their heirs, both male and female, should take; and wo-
 "men were allowed to do the service of a fief by a substitute: but
 "peerages were never the subject of commerce; nor could a woman sit
 "in parliament by a substitute.
 "Land is easily divisible among coparceners, but a peerage cannot be
 "divided; it was therefore not unnatural, as the rigour of the Feudal
 "law abated, that women should be let into the descent of land; but
 "unnatural, from the nature of peerages, that they should succeed to
 "such.
 "The law was stricter in the descent of peerages than of lands. Thus
 "the collateral heir-male of the first grantee of the land took the land;
 "but the collateral heir of the patentee could not take the peerage, be-
 "cause not of the body of the patentee. This was so decided in the
 "case of *Oxenford* 1735. Lands conveyed to one and *his assigns*, will
 "go to assigns; a peerage will not even at this day. This was so decided
 "in the case of *Stair*, 1748."
 "Women indeed sometimes held peerages, not by legal descent, but
 "by exception from it; 1. When the woman was created a peeress;
 "2. When the heir-female was, in the instrument of creation, specially
 "named in preference to remoter *heirs-male*, or upon failure of all
 "heirs-male: but where, for want of the original instrument, the *ex-*
 "ception appears not, their exclusion by the *general rule* must be pre-
 "sumed."

A N S W E R.

Here Sir Robert Gordon is at last obliged to admit, that female succession was introduced when land became the subject of commerce: An ample concession indeed; for it is not known at what period lands became the subject of commerce in Scotland; probably as soon as a landed man needed money, and a married man needed land (a).

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(a) That land was the subject of commerce in Scotland before 1300, is plain from the following evidences.

Among the instruments preserved in the archives of Alexander III. there is, "Carta de terra empta de Willielmo de Valloniis, et obligatio ejusdem, juxta S. rivelyn." *Rymer*, t. 2. p. 219.

By the Canons of the Church of Scotland 1242, c. 23. it is provided, "Ut clerici beneficium de cetero domus aut possessiones laicas, ad opus concubinarum, et filiorum suorum, emere non præsumant."

Reason I. The distinction between succession to lands purchased, and to lands acquired,
 Presump. 2. is ideal. The limitation in both cases must be held as conceived *heredibus suis*. A limitation in a disposition of lands purchased, to *heirs, female as well as male*, would be a novelty. *Heredes sui* then must have been interpreted in different senses, just as the lands happened to be acquired by purchase or by grant. A search for centuries past would have been often necessary for ascertaining the original mode of acquisition, and for determining the import of that clause *heredes sui*, which occurred in every title-deed of the nation. All this must have happened; and yet no vestige whatever of such a distinction is any where to be found. Towards the close of the eighteenth century the counsel for Sir Robert Gordon have discovered it, not by record, but from theory.

That there was no such distinction, is evident from the ancient charter of Panmure (*b*). It was granted to Valloines, *et heredibus suis*. No one can imagine, that it was granted for a price paid to the Sovereign; and yet the lands were enjoyed by the daughter of Valloines.

Sir Robert Gordon adds, "That peerages were never the subject of commerce; and although a woman might do the service of a fief by a substitute, she could not sit in parliament by a substitute."

This observation is rather singular, as in the very same paragraph Sir Robert admits, "That a female might hold a peerage, either by creation, or by a limitation in the patent to *heirs-general*."

The claimant would ask, Did such a peeress sit in parliament by a substitute? Whether she did or did not, the argument from the necessity of appearing personally in parliament flies off.

Besides, it is too peremptory to say, "That peerages were never the subject of commerce." Personal peerages cannot; but when peerages were territorial, such commerce might take place. Rarely indeed; because in a country where there is much pride of family, there will be few sellers; and where there is little money, there will be few purchasers.

It is true, that in one sense territorial peerages could not be the subject of commerce, properly so called: for that, if the Sovereign made a grant of a *comitatus*, with jurisdiction, to a man, *et heredibus suis*, such grant could not oblige the Sovereign to let in assigns and purchasers. And thus the territorial dignity could not be transferred, without the consent or ratification of the Sovereign. This observation will disengage the case from much perplexity, which Sir Robert Gordon, by not attending to the nature of the Scottish constitution, has created.

If the service of a fief was twofold, implying attendance in war, and attendance in council, a woman might perform the one by a substitute as well as the other.

Our means of knowledge in the ancient Scottish history are so scanty, that we cannot trace every circumstance of the law of parliament.

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*b*) Grant by William the Lion before 1214. *Crawford*, Officers of State, Appendix, N^o 25. formerly quoted.

The record 1284 shews, that more persons than one appeared in the parliament of Alexander III. in right of their wives (c).

Reason I.
Presump. 2.

It has been shewn, that a very great number of *baronies* did descend to *heirs-general*. If they performed their service in council, as well as in war, by a substitute, or rather by a husband in their room, they must have been freed from part of the burden of their tenures.

At this day the husbands of heiresses vote at elections in virtue of their wives freehold; and there is nothing to prevent the whole freeholders of Scotland being represented in parliament by men having no right of property or superiority in their own persons, independent of their relation as the husbands of female freeholders.

From the ancient practice in England, we may conclude by analogy as to the ancient practice in Scotland.

In 1282, Edward I. summoned many ladies to accompany him in his wars against the Welsh (d).

In 1291, he summoned the ladies of Cumberland and Westmoreland to attend him at Norham, "with horse and arms, and all service due (e) : " A summons which, by reason of its consequences, Scotland will never forget.

In 1294, he summoned other ladies to the wars in Gascony (f).

In 1361, Edward III. summoned a council of those who held lands in Ireland. In this summons the names of many ladies appear : they are required to send proxies (g).

It was usual to summon husbands to parliament in right of their wives (h).

That a peerage cannot be divided while lands may, is no reason for females being excluded from a peerage while they succeed to lands. The same reason would equally operate against female succession in other particulars. The capital mesuage and jurisdictions are no less indivisible than a peerage; yet they have gone constantly to the eldest *heir-general* by the ancient customs of Scotland. So also have ancient peerages (i).

Sir

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(c) *Rymer*, t. 2. p. 266. John de Strathbolgie, Earl of Athole, and Walter Stewart, Earl of Menteth.

(d) *Rymer*, t. 2. p. 200. Isabella de Fortibus Comitissa Albemarl. et Devon. Elena le Zuche. Amabilia de Segrave, Domina de Wyth, Agn. de Vefcey.

(e) *Rymer*, t. 2. p. 525. Domina de Ros, Domina de Kendall, Margareta de Ros, Isabella de Clifford, Idonia de Leyburn, Matilda de Multon Domina de Gillesland.

(f) *Rymer*, t. 2. p. 642. Mileferta de Monte Alto, Margareta de Nevil, Isabella de Ros.

(g) *Rymer*, t. 2. p. 318.—20. " Aliquem vel aliquos mittatis."

(h) Many such examples are produced by *Dugdâle*, Summons of Nobility, p. 576.

(i) There is one example in the family of Dunbar, Earl of Moray, where both the co-parceners assumed the title; and yet the youngest, as it would seem, maintained the possession. James Dunbar, Earl of Moray, died in the reign of James II. leaving two daughters; *Janet*, the wife of James Lord Crichton; and *Mary*, the wife of Archibald

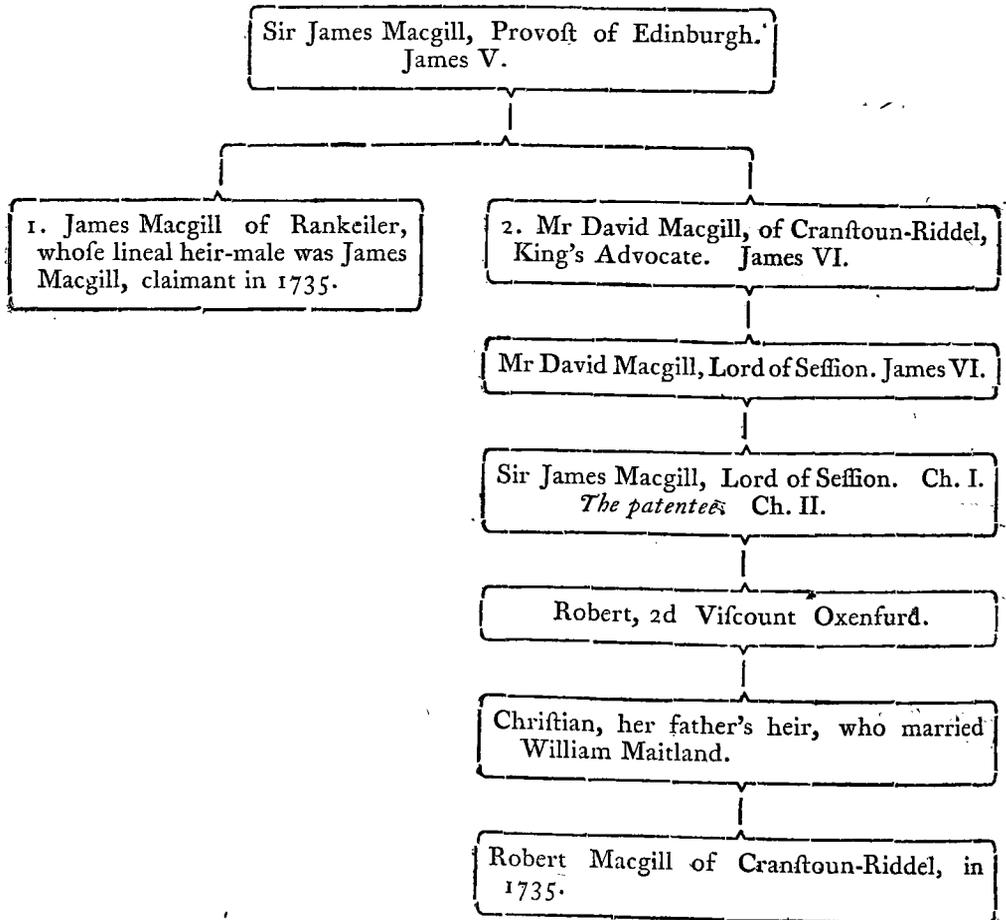
Reason I. Sir Robert Gordon saw the necessity of establishing different rules in the suc-
 Prefump. 2. cession to peerages and to lands. He therefore avers, "That the collateral heir
 " of the patentee would not take the peerage devised *hereditibus suis*, although
 " the collateral heir of the first grantee would take the lands (*k*)." This, he
 says, was determined by the House of Peers in the case of Oxenford.

There is an obvious difference between the one case and the other; founded
 on this, that the patentee is the stream by which the titles flow from the sove-
 reign, the fountain of personal honour. When the sovereign distinguishes a fa-
 mily, for the merits of a particular person, he may be presumed to have extend-
 ed the *effects* of this distinction no farther than its *cause*.

Had such been the circumstances of the case of Oxenford, decided by the House
 of Peers, such might be presumed to have been the principle of the decision.
 But indeed the case of Oxenford has no relation to what Sir Robert Gordon is
 pleased, upon its authority, to lay down as certain law.

In 1651, Charles II. granted the dignity of Viscount Oxenford and Lord Mac-
 gill of Cranstoun, to Sir James Macgill, with a limitation, "*ad heredes mas-*
culos tallie et provisionis quoscunque."

In 1735, James Macgill of Rankeiler claimed the peerage. The nature of his
 claim will appear from a pedigree of the family.



[To make room for the above pedigree of the family of Oxenford, the notes are carried to the next page.]

From this pedigree it appears, that James Macgill the claimant was the *heir-male* of the patentee, being descended from the elder brother of the patentee's grandfather. Reason 1. Presump. 2.

He was not however the *heir of provision* of the patentee. That character belonged to Robert Macgill of Cranftoun-Riddel, the son of Christian, who was the grand-daughter of the patentee.

Robert Macgill, the heir of provision, did not himself claim, but he opposed the claim of James.

On the 25th April 1735, "The Earl of Crawford reported from the Lords Committees for privileges, that they are of opinion, that the petitioner has not made out any right to the honours and titles of Viscount of Oxenford and Lord Macgill of Couland. Which report was agreed to by the House."

This was a decision unexceptionably and demonstratively just. The claimant had in his person *one half* of the description in the limitation; but he had not *the other half*. In such circumstances, his claim for the honours of Oxenford was put in, heard, and dismissed.

Nevertheless Sir Robert Gordon quotes this case as a precedent in point for proving, "that the collateral heir of the patentee could not take the peerage, because not of the body of the patentee."

This was a question, which, from the nature of James Macgill's claim, the House of Peers had no occasion to determine in the case of Oxenford.

For the reason formerly given, this question touches not the present one, even in the way of collateral argument.

It is believed, however, that if the question were ever brought before the House of Peers, their Lordships, before pronouncing judgement, would permit the nobility of Scotland to be heard.

More titles of honour than one are at this moment enjoyed, without challenge, in direct opposition to that principle which Sir Robert Gordon here lays down.

The case of Stair was determined upon a principle different from that which Sir Robert Gordon mentions: see the *Printed Cases*. Had it been determined upon the general principle, that a Scottish peerage could at no time have been transmitted to *assigns* by virtue of a patent so conceived, the determination would have proved fatal to the peerage of Roxburgh, and several others.

In the conclusion of his *second* presumption, Sir Robert argues, "that

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

Douglas, brother of James Earl of Douglas. That Janet assumed the title of *Countess*, appears from *Ch. Dunferm.* vol. 2. where there occurs a confirmation of a charter granted by "Joneta de Dunbar, *Comitissa Moravia*, ac Domina de Fren draught, et de Crech-ton," in favour of Walter Ogilvy of Beaufort, of an annual rent of 33 s. and 4 d. out of her lands of Fordochy, and the superiority of the lands of Fordochy and Kethic, dated 8th November 1454. It is no less certain, that the other daughter, Mary, assumed the title of *Countess*. Whether this was owing to some compromise ratified by the King, or to the exorbitant power of the Douglas family at that period, cannot with certainty be discovered. One example of this kind, while it confirms the rule as to female succession, will not invalidate the right of primogeniture in co-parceners by the custom of Scotland.

(k) It is plain that he means to speak of a patent devised *hæredibus suis*; although, by the inaccuracy of his expression, he has left this to be collected from the general strain of the argument.

Reason I. “ women held peerages only by exception from the general rule ; and, therefore,
 Presump. 2. “ that their exclusion by the *general rule* is rather to be presumed, than their admittance by the *exception*.”

The claimant has already answered this argument at great length ; and, as she humbly trusts, to the conviction of every intelligent reader.

She has shewn, that the *general rule* is ideal ; and therefore she has no occasion to resort to the *imagined exception* in support of her claim.

T H I R D P R E S U M P T I O N .

p. 16. 17. “ Even in lands, as well as peerages, by a limitation to *heredibus suis*, or *heredibus inter ipsos*, were for some centuries understood in Scotland heirs-male only, p. 2. of this Case, Notes, letter (I), where the authorities are quoted. Now, if even the express words, *heredes*, or *heredes inter ipsos*, would not have let in females at the time this ancient peerage was created, how can the instrument of creation, the terms of which are not known at all, because lost, or *pretended* to, be presumed to admit them ?”

A N S W E R .

The inference is fair, and, bating that injurious and ill-chosen word *pretended*, is fairly urged. But the defect of the argument lies in the proposition, “ That, by the limitation *heredibus suis*, or *heredibus inter ipsos*, heirs-male alone were understood.”

The only apology which the claimant can make for the length of her argument in support of the contrary supposition, is not to resume it again.

F O U R T H P R E S U M P T I O N .

p. 17. “ It is a rule, *Quod plerumque fit, presumitur ; quod raro fit, non presumitur*. Since the creation of Scots peerages, whose limitations can be discovered, near nine tenths have been limited to heirs-male, or to heirs of line only upon the failure of heirs-male. Lady Elisabeth can claim no favour from the loss, or *pretended* loss, of the instrument of creation, but must submit to the presumption arising from the most customary limitations of peerages, whereby she is excluded, at least during the existence of any heir-male.”

A N S W E R .

The rule here laid down is a good one, when rightly understood. In a question concerning the succession to a peerage which existed in the 13th century, a presumption will arise from the mode of succession to peerages in the 13th century.

But to presume for a mode of succession in the 13th century, from the form of patents in the 17th and 18th centuries, is to deviate from the rules of moral evidence ; it is a presumption illogical and inconclusive.

By the same mode of reasoning, we must presume, that ancient titles of honour in England stood limited to heirs-male of the body of the patentee, because modern patents generally stand so limited.

Whether *nine tenths* of the *creations* of Scottish peerages are limited to heirs-male, the claimant knows not. The only authority for the assertion is *Douglas*, whose inaccuracy Sir Robert Gordon acknowledges, even while he quotes him. For the reasons already given, the fact is perfectly immaterial to the question in issue (1).

FIFTH PRESUMPTION.

p. 17. “ In a doubt concerning the descent of a peerage whose limitations do not appear, *the prevailing course in similar cases* must afford a sound ground of presumption. It was *the continual custom* of Scotland, *without exception*, that, in such peerages, the remoter heir-male succeeded, in prejudice of the heir of line. Sir Robert Gordon has produced a long list of instances of these things subjoined in the note (i), with the proper evidences to support them.”

A N S W E R.

Sir Robert Gordon was aware, that an instance or two running contrary to a *prevailing course*, would have been of little importance; *that* might have been owing to the error of conveyancers, or to other causes unknown: and he therefore judiciously appeals to *the continual practice of Scotland, without exception*.

For proving this proposition, he has subjoined a list, containing *twenty-eight* examples, between 1379 and 1767, comprehending a period of four centuries.

The list in outward shew is goodly; but upon a narrow inspection it will be found, that in some of the instances, neither the heir-female nor the remoter heir-male succeeded; that in others the heir-female, and her issue, did succeed *both* to the estate and dignity, and excluded the heir-male; and that in all the other instances, the dignified fief stood limited to *heirs-male*; and accordingly that the remoter heir-male did succeed to the dignity, and also to the estate, if existing.

The claimant, for the sake of perspicuity, has ranged the twenty-eight instances in chronological order.

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(1) The appeal made by Sir Robert Gordon to the *personal knowledge* of the sixteen peers of Scotland, is somewhat singular. He cannot require any peer to set forth the limitations of his own peerage: neither is any peer presumed to know the limitations of another's peerage. More might be said upon this subject, were not the claimant afraid of being insensibly led into an impropriety.

Reason I.
Presump. 5.

She proposes to examine the lordships first, and then the earldoms.

Lorne. 1466.

I. L O R N E.

- p. 17. “ The peerage of Lorne, the limitations of which are unknown, was enjoyed in 1452 by John Lord Lorne. He died without issue-male; and though he left daughters, who got *a part of the estate*, yet his brother Walter succeeded as heir-male to the peerage of Lorne.” Evidence, Royal Charter, “ Johanni Domino Lorne, 20th June 1452, b. 4. N^o 176. &c.”

A N S W E R.

It is true, that John Lord Lorne died without issue-male; that he left issue-female; and that his brother Walter is styled *Dom. Lorne*.

But this, instead of invalidating the claimant's plea, strengthens it; and is one example, out of many, that the titles of honour went with the dignified fief.

That *very charter* which Sir Robert Gordon quotes, is of the “ *dominium de Lorne, baronia de Innermeath,*” &c. limited, “ *Johanni Domino de Lorne, et hæredibus masculis de corpore suo legitimè procreatis seu procreandis; quibus fortè deficientibus, Waltero Stewart, fratri germano dicti Johannis, et hæredibus masculis de corpore suo,*” &c.

The *dominium de Lorne* descended to Walter Stewart, failing the issue-male of John, for such was the express limitation of the grant.

When Sir Robert Gordon said, that “ the daughters of John got *part of the estate,*” he ought to have explained himself, by saying, his *separate estate*; for they could get no part of the *dominium de Lorne*.

Not long after, Walter Lord Lorne resigned his lordship of Lorne to Colin Earl of Argyle, husband of Isabel, the eldest daughter of John Lord Lorne.

The Earl of Argyle, in consequence of this, obtained a royal charter, 17th April 1470. In the charter Walter is styled from his other barony, *Lord Innermeath*.

In 1472, Colin Earl of Argyle is styled, *Dominus Lorne*, 26th February 1472.

Ever since that period both the estate and the title of Lorne have been enjoyed by the family of Argyle.

Haliburton.
1519.

2. H A L I B U R T O N.

- p. 20. “ This is an ancient peerage, of which the limitations are not known. Some time prior to the 1519, the peerage was enjoyed by Patrick Lord Haliburton. He died without issue-male; but leaving several daughters, the eldest was married to William Master of Ruthven, eldest son of Lord Ruthven. But the peerage *extinguished* by the death of her father.”

A N-

A N S W E R.

Sir Robert Gordon's proposition led him to prove, that the *remoter heir-male* succeeded in preference to the *heir-general*. Here, however, he avers, not that the *remoter heir-male* did succeed: he only attempts to prove, that the *heir-general* did not. Reason I. Prefump. 5.

Even in this he greatly errs. It is easy both to point out his mistake, and its cause.

The full title of the once potent family of Haliburton was *Haliburton and Dirleton*; or perhaps, more properly, *Haliburton of Dirleton*; like *Frazer of Lovat*, *Forbes of Pitligo*, &c.

In the rolls of parliament, the Lords Barons are often named by the double title of their surname and their barony. Thus there occur in the rolls, *Lord Herries of Terregles*, *Crichton of Sanquhar*, *Lindsay of Byres*, *Hay of Yester*, HALIBURTON OF DIRLETON, all pointing out the connection between the *lordship* and the *Lord*.

Sometimes the title is marked from the surname alone; at other times from the barony alone.

Thus, in the roll 1469, *Haliburton* is the title; in the roll 1487, *Dirleton*.

Sir Robert Gordon, not observing any mention in the records, after 1519, of Lord Haliburton, has presumed, that the title was annihilated (a); yet it is certain, that both the estate and the title went to the heirs-general of Patrick Lord Haliburton of Dirleton.

In a subsequent note, p. 29. Sir Robert Gordon has stated evidence for proving, that the estate stood limited *hæredibus suis*. Here he states evidence for proving, that in 1529 the heir-general took the estate.

By this charter, confirmed in 1529, the lands are taken to be held "*de Nobili Domina Joneta Halyburton (b)*, filia seniore ac una hæredum quond. *Nobilis Domini Patricii Domini de Dirleton, Halyburton, et Lambden, suis hæredibus et assignatis.*"

To this charter she appoints to be appended, "*SIGILLUM MEUM PROPRIUM, una cum sigillo dict. sponsi mei in signum sui consensûs.*"

The title of *Lord Dirleton* remained in Patrick, the son (c), and in William, the grandson, of Lady Janet Haliburton.

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(a) The claimant says *annihilated*, instead of *became extinct*; for there is no doubt that the male descendants of Haliburton of Pitcur, a second son of the first Lord Haliburton, did then exist.

(b) Sir Robert Gordon, by quoting a different clause in the charter, has omitted *Nobilis Domina*. If *Nobilis Dominus*, which just follows, means, in the language of that age, *ane Nobil Lord*, surely *Nobilis Domina* must mean *ane Nobil Lady*.

(c) A celebrated personage in the Scottish history: He it was who slew Rizzio in 1566.

Reason I. Her grandson, bearing the title of *Lord Ruthven and Dirleton*, was created Earl of Gowrie (*d*).
 Presump. 5.

Her great grandson, John Earl of Gowrie, forfeited in 1600; and thus the title of *Lord Haliburton*, or *Dirleton*, returned to the crown.

This instance, therefore, instead of supporting Sir Robert Gordon's hypothesis, utterly subverts it.

Home. 1531.

3. H O M E.

- p. 18. " This is an ancient peerage, of which the limitations are not known.
 " Alexander Lord Home left a brother George, and a daughter Janet.
 " Janet was excluded from the peerage by her uncle George."

A N S W E R.

This instance also, when explained, is a further confirmation of the claimant's plea.

In 1516, Alexander Lord Home obtained a royal charter, limiting the *dominium et baronia* of Home to Alexander, and his heirs-male, " *secundum formam cartæ talliæ, per quondam nobilissimos prædecessores nostros, bonæ memoriæ, prædecessoribus suis, et eorum hæredibus masculis, defuper factæ.*"

Immediately after obtaining this charter, Alexander Lord Home forfeited, and suffered death for high treason.

Had it not been for this event, his brother George must have succeeded to him. Sir Robert Gordon has elsewhere shewn (*e*), that the sentence of forfeiture was afterwards rescinded. In consequence of this, the estate and honours went to the heir-male, just as they would have done had there been no forfeiture.

Gray. 1541.

4. G R A Y.

- p. 19. " Patrick Lord Gray died in 1541, leaving an heir-male; his nephew,
 " Patrick Gray, and many daughters. This Patrick succeeded in the
 " peerage, to their prejudice."

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*d*) Royal Charter, and instrument of creation, 20th October 1581, " *Willielmo Domino Ruthven et Dirleton;*" and ratification in parliament, of the heritable infeoffment and charter granted to " *William Earl of Gowrie, Lord Ruthven and Dirleton;*" with the confirmation thereof in parliament, Nov. 1581, containing a new erection in favour of " *James Earl of Gowrie, Lord Ruthven and Dirleton,*" 5th June 1592. This James died childless, and was succeeded by his brother John, slain at Perth, 5th August 1600.

(*e*) *Supplemental Case* for Sir Robert Gordon, p. 9. note (*x*).

A N S W E R.

The answer to this instance is to be found in a royal charter 1542, reciting and confirming another royal charter, of the whole family-estate, baronies, offices, &c. limited, "quond. Patricio Domino de Gray, et *heredibus suis masculis* de corpore suo legitime procreatis feu procreandis; quibus deficien. *Gilberto Gray de Buttergask, ejus fratri, et heredibus suis masculis* de corpore suo legitime procreat. feu procreand.; quibus deficientibus, legitimis et propin- quioribus *heredibus masculis* dict. quondam Patricii, arma et cognomen de Gray gerentibus, quibuscunque." Reason E. Prefump. 5.

This limitation of the land-estate, baronies, and offices, to a series of heirs-male, accounts for the transmission of the honours to the heir-male.

5. H E R R I E S.

Herries. 1550.

p. 20. "This peerage was enjoyed before 1550 by William Lord Herries. He died without heirs-male, but leaving three daughters; the eldest of whom was married to Sir John Maxwell: upon the death of Lord William, the peerage became extinct. *Evidence*, Royal Charter, 1st February 1550, b. 30. No 497. "Dilectis nostris Johanni Magistro de Maxwell, et *Agneta Herres, seniori filiarum, et uni trium heredum, quond. Willielmi Domini Herres, sponſæ dicti Johannis.*" Upon the extinction of this peerage, the King renewed it in the person of this Sir John Maxwell. *Evidence*, Records of parliament, 16th April 1567."

A N S W E R.

Here again Sir Robert Gordon, instead of proving, "That the remoter heir-male succeeded to the prejudice of the heirs-general," expressly asserts, that the peerage became extinct. This answer might suffice for shewing, that the instance of Herries does not aid Sir Robert's hypothesis.

But the claimant will do more: she will shew, that in 1550 there existed an heir-male; that he did not take the title; that the heir-general took the estate, which stood limited *heredibus suis*; and that she, and her husband in her right, took the title also.

William Lord Herries died before 1550, leaving issue three daughters: the eldest, Agnes, married John *Master of Maxwell* (f).

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(f) In the language of those times *Master* implied the heir-presumptive of a peer.—Robert Lord Maxwell, the elder brother of this gentleman, had no children at that time.

Reason I. That William Lord Herries left an heir-male, is proved by a royal charter, 7th
 Presump. 5. August 1562, confirming a charter 22d March 1561, granted by "Archibaldus
 " Herreis de Madinpany, ac *hæres masculus quond. Wilhelmi Domini Herreis de*
 " *Terreglis*, Honorabili Viro Johanni Maxwell de Terreglis, Militi, et *Domina*
 " Agnetæ Herreis. ejus conjugi (g)."

Here the *heir-male* is so far from assuming the title, that he acknowledges the right of the *heir-general*.

In 1566, the whole barony of Terregles was, by a royal charter, of new erected into a barony and lordship, and granted to the foresaid John Maxwell, "et *Domina* Agnetæ Herreis, suæ sponsæ."

In 1567, this John sat in parliament under the title of *Lord Herreis*.

Hence Sir Robert Gordon infers, that the King *revived* the peerage in the person of John Maxwell. Of this revival there is no vestige. And indeed the thing is impossible: for if the peerage did not go to the *heir-general* of William Lord Herreis, it must have gone to the *heir-male*; it could not be lost between them: nor could there be a *revival* of a peerage *not extinct*.

From all which it may be concluded, that John Maxwell appeared in parliament in right of his wife.

Fleming. 1557

6. F L E M I N G.

p. 17. "James, the son of Malcolm Lord Fleming, who lived in 1557, left
 " a younger brother John, and a daughter Jean; but John succeeded in
 " the peerage, to her exclusion."

A N S W E R.

Here the fact stood thus: James Lord Fleming had made over the whole family-estate to his brother John, and his heirs and assigns, under a condition of return to the heirs-male of his own body, and of payment of certain portions to his daughters. In 1557, John obtained a royal charter, confirming this grant. By virtue thereof he took both estate and dignity, to the exclusion of his niece Jean, the heir-general.

Hay of Yester.
 1591.

7. H A Y of Y E S T E R.

p. 17. "Yester is an old peerage, the limitations of which are unknown.
 " William Lord Hay of Yester died sometime before 1591, leaving several daughters, but no issue-male: yet was succeeded in the peerage

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(g) This Archibald Herries of Madinpany [pronounced *Mabie*] was probably the son of Robert, younger brother of William Lord Herreis.

“ of Yester by James Hay his brother. Jane Hay, one of his daughters, Reason I:
 “ married Alexander Horsburgh. Evidence : 1. Royal charter, “ *Wil-* Presump. 5.
 “ *lielmo Domino Hay de Yester*, penult. Feb. 1590, b. 38. N^o 281. In
 “ this charter James the brother is mentioned, and the daughters of
 “ Lord William. 2. Royal charter, confirming a charter by the provost
 “ of the collegiate church of Bothans, *Jacobo Domino Hay de Yester*,
 “ 6th September 1592, b. 37. N^o 494. 3. Retour, 17th May 1620,
 “ b. 71. fol. 292. in which the jury return, “ *Quod quondam Williel-*
 “ *mus Dominus Hay de Yester, proavus Alexandri Horsburche, filii*
 “ *legitimi natu maximi Alexandri Horsburche de Eodem, inter ipsum et*
 “ *quondam Jeannam sponsam, unam filiarum quondam Willielmi Do-*
 “ *mini Hay de Yester, legitime procreat.*” &c.

A N S W E R.

Here Sir Robert Gordon has confounded two different persons. The service of Alexander Horsburgh is as one of the six heirs-parceners of William Lord Hay, who died in August 1586; and could not be the same person who obtained the charter in February 1590-1.

This may serve to shew, that Sir Robert Gordon did not understand the state of the family of Lord Hay of Yester.

Had a proper search been made into the records, this instance would never have been produced by Sir Robert Gordon.

The fact is, that in 1590, William Lord Hay of Yester, upon his own resignation, obtained a royal charter of the barony of Yester, and various other lands, all erected into one lordship and free barony, to be called, “ *Dominium et baronia de Yester.*”

The charter 1590 is limited thus: “ *Willielmo Domino Hay de Yester, et hæredibus suis masculis de corpore suo legitime procreatis seu procreandis; quibus deficientibus, Jacobo Hay, ejus fratri germano, suisque hæredibus masculis de corpore,*” &c.

The charter contains a clause which merits particular attention: It provides, “ *Propter exonerationem nostræ conscientiæ, et conscientiæ dicti Willielmi Domini Hay de Yester, in excludendis filiabus et hæredibus femineis a suo natalicio;*” that if Lord Hay died without issue-male, his brother should pay certain sums of money to his issue-female.

It happened, that before taking infeofment on this charter, William Lord Hay of Yester died, leaving no issue-male.

Upon a recital of this event, the King granted a new charter to James Hay, and his heirs-male; [29th May 1591], of the “ *dominium et baronia de Yester;*” containing a new erection, and a grant of a vote in parliament. &c. “ *et omnes alios honores, dignitates, et præeminentias, quæ per dict. quondam Willielmum Dominum Hay de Yester, aliosve suos prædecessores, aliquo tempore retroacto possessæ vel gavisæ fuerunt; simili modo, et adeo liberè, ac si dict. quond. Willielmus Dominus Hay de Yester in hæreditario feodo præfat. terrarum, baroniarum, et dominiorum, obiisset; et ac si dict. Jacobus, ejus frater*

Reason I. “frater germanus, sibi in eisdem, tanquam hæredi masculo et talliæ, per bre-
 Prefump. 5. “via capellæ nostræ, intrasset (h).”

It was about this period that the practice of making a special grant of titles of honour began to prevail. In this particular case, such grant seems to have been thought necessary, for excluding all claim of the daughters of William Lord Hay of Yester.

The retour 1620 is not to this Lord Hay; for, by reason of his settlements, the descendents of his heirs-general could take nothing: it is to his father, who died in 1586; and it would have transmitted any subject not contained in the charter 1590.

Had Sir Robert Gordon consulted the records, he never would have averred, that the limitations of the peerage of Hay of Yester were unknown; nor would he have argued from the preference of the *heir-male* in that case to the *heir-general*.

Lindesay of
 Byres. 1609.

8. L I N D E S A Y.

p. 18. “This peerage was enjoyed before 1609 by John Lord Lindesay: He
 “left a brother Robert, and a daughter Ann: Robert took the peerage
 “in preference to her.”

A N S W E R.

The “*dominium et baronia de Byres*” stood limited to heirs-male, near a century before. *Royal charter* to John Lindesay, eldest son and apparent heir to Patrick Lord Lindesay of Byres, and his heirs-male, 30th May 1524.

Hence the retour of Robert Lindesay in 1609 is, “tanquam legitimus et propinquior *heres masculus* quondam Johannis Domini Lindesay de Byres, fratris sui, in terris et *dominio et baronia de Byres*.”

This accounts for the preference of the heir-male to the heir-general.

Gray. 1628.

9. G R A Y.

p. 19. “Andrew Lord Gray, who lived in the beginning of the last century,
 “left a daughter, and sole heir, married to William Gray younger of
 “Pittendrum: but she being a female, could not take the peerage; and
 “therefore Charles I. revived it by a patent to this William Gray, and

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(h) In this charter, the vestiges of the ancient territorial ideas appear. In our days it is of no moment whether the last peer be infeoffed or not; the title of honour still descends. In 1591, a different notion appears to have prevailed. If we adjust every ancient fact to the standard of our own times, we must often stretch, and often lop.

“ the heirs-male of the marriage betwixt him and Anne Gray, the daughter of Lord Andrew.” Reason I. Prefump. 5.

A N S W E R.

For proof of this proposition, a charter of Charles I. 8th January 1628, is quoted, uncouth in itself from its verbosity, and rendered more uncouth by strange typographical errors.

It is demonstratively plain, that *this* is no instance of “a remoter heir-male succeeding in the peerage to the exclusion of the heir-general.”

The charter recites, That Andrew Lord Gray had given his only daughter in marriage “*Gulielmo Gray juniori*, legitimo et primo filio Gulielmi Gray de Pittendrum;” and that he had settled his estate upon his daughter, her husband, and their heirs-male.

It adds, that the King, upon the supplication of Lord Gray, granted to the foresaid William Gray younger, the title of *Master of Gray*, during the life of Lord Gray, and after his death the title of *Lord Gray*; “tam liberè omni ratione et respectu, ac si præfatus Gulielmus Gray junior, filius legitimus de corpore dicti Andreæ Domini Gray, procreatus esset, eique tanquam hæres masculus successurus esset.”

In this instrument William Gray of Pittendrum *elder* is mentioned as alive; so that his son could not be even heir-presumptive to the honours of Gray.

That Gray of Pittendrum was the nearest heir-male, is not asserted in the instrument.

Upon the supposition of his being heir-male, there was no injury done to his family; upon the contrary supposition, the interest of the heir-male of the family of Gray has been overlooked.

Indeed the only way of justifying this charter, is by supposing it equivalent to a new grant of peerage upon a resignation by the peer in possession.

In no way can it aid Sir Robert Gordon’s argument; for if Gray younger of Pittendrum be held heir-male, the charter gave him nothing which he was not intitled to take by the ancient investitures; and if he be not so held, this can be no instance of the preference of the heir-male.

10. B O Y D.

Boyd. 1640.

p. 17. “The limitations of this peerage are unknown. Robert Lord Boyd died in September 1640 without issue. He left several sisters; and his peerage went to his uncle James Lord Boyd, to the exclusion of his sisters (i).”

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(i) The claimant has, to the best of her abilities, corrected the typographical errors in Sir Robert Gordon’s Supplemental Case. Thus, in the present instance, 1640 is a correction for 1540, *sisters* for *daughters*, and *without issue*, for *he left no issue-male*.

A N S W E R.

Reason I. It was scarcely pardonable to quote this instance, when the records, which
 Presump. 5. Sir Robert Gordon ought to have consulted, so plainly prove it foreign to the purpose.

In 1591, Thomas Lord Boyd made a resignation of his whole estate in the hands of the King.

Upon this the King granted him a charter of that estate, containing a *Novodamus*, and an erection of the whole into one free lordship and free barony, to be called "*Dominium et baronia de Kilmarnock.*"

This grant stands limited, "præfato Thomæ Domino Boyd, in libero tenemento, five vitali redditu, pro omnibus ipsius vitæ diebus, et sæpéfato Roberto Magistro de Boyd, suo filio feniori, ac hæredibus masculis de corpore suo."

There follows a long substitution in favour of *heirs-male* to the exclusion of *heirs-general*.

Robert Lord Boyd, the great-grandson of Thomas Lord Boyd, died in 1649 without male-issúe.

To him his uncle James was retoured, "*hæres masculus, ratione talliæ, in terris, dominiis, et baronia de Kilmarnock.*"

He took both estate and dignity by the charter 1591, "*ratione talliæ.*"

The sister of Robert Lord Boyd having no right to the *dominium et baroniã*, could have no right to the dignity.

Rofs. 1649.

II. R O S S.

p. 17. "This is an ancient peerage, of which the limitations are not known.
 "William Lord Rofs died some time before the year 1649, leaving a granduncle, William, and sisters. His granduncle took the peerage, to the exclusion of the sisters of the deceased."

A N S W E R.

As early as 1548, the family-estate, *viz.* the barony of Melvill, &c. upon the resignation of Ninian Lord Rofs, was limited, by a royal charter, "*Jacobo Rofs, filio legitimo Niniani Domini Rofs de Halkhead, et hæredibus suis masculis quibuscunque.*"

In consequence of this limitation, "*Willielmus nunc Dominus Rofs de Halkheid et Melvill,*" was retoured, in 1649, to be "*legitimus et propinquior hæres masculus dict. quondam Willielmi Domini Rofs, ejus fratris nepotis, in terris, dominio, et baronia de Melvill,*" &c.

Sir Robert Gordon mentions this retour, but omits the lands, lordship, and barony, to which it relates.

He also mentions the retour of Mrs Mary Rofs, as one of the *heirs-parceners* of

of Robert Lord Rofs her brother ; but he omits the subject of that retour. She is retoured heir to her brother, “ in terris ecclesiasticis et gleba rectoria ecclesiæ parochialis de Melvill.” Reason I. Prefump. 5.

This was a subject totally distinct from the *dominium de Melvill*. In all probability it was acquired after the Reformation, and consequently was no part of the estate of Ninian Lord Rofs. It therefore descended to heirs-general in the common course of succession, while the *dominium de Melvill, &c.* descended by the charter 1548, together with the honours, to the heir-male.

12. S E M P I L L.

Sempill. 1685.

p. 18. “ Robert Lord Sempill, who died in the end of the last century, left a daughter Anne, to whom he had devised his estate ; but not having resigned the peerage in her favour, she could not take the peerage. The King conferred this peerage of new on the heirs-male of Lady Anne Sempill, by Mr Abercrombie of Fetterneir, her husband ; whom failing, on her heirs-male of any other marriage. But as an heir-male of the family existed, it became necessary to procure his consent to the transmission of the peerage ; which he accordingly gives, and Mr Abercrombie is created Lord Glafsford for life.”

A N S W E R.

The evidence produced for all this, is a patent of the honours of Glafsford to Francis Abercrombie of Fetterneir, bearing, That Robert Lord Sempill had limited his *honours* and estate, failing heirs-male of his own body, to Lady Anne Sempill, his eldest daughter, then wife of Francis Abercrombie of Fetterneir. This settlement the King ratified ; and also conferred on Francis Abercrombie the title of *Lord Glafsford* for life.

The patent also sets forth, That Robert Sempill, heir-male of Robert Lord Sempill, had resigned, in favour of Lady Anne Sempill, all title, right, or *pretence of right* whatever, which he had, or could pretend, to the title of Lord Sempill.

How this narrative should prove, that the heir-general did not take the peerage, or that the remoter heir-male did, is beyond comprehension.

According to Sir Robert Gordon, the eldest daughter of Robert Lord Sempill could not originally take the peerage. A renewal of the peerage to her issue-male, was certainly no patent to her ; and yet it is certain, that she always bore the title of *Baroness of Sempill*, and that her son did not till after her death.

13. F R A S E R of L O V A T.

Lovat. 1730.

p. 19. “ This peerage was enjoyed by Hugh Lord Frazer of Lovat in the end of the last century. Upon his death, his daughter Emilia Frazer assumed
“ med.

Reason I.
Presump. 5.

“ med the title of *Lady Baronefs-Frafer*. But Simon Frafer, the heir-male, claimed the peerage in the court of session in Scotland, and obtained judgement for him.”

A N S W E R.

This judgement, though pronounced by a most incompetent court, and upon pleadings incredibly loose and inaccurate, will not aid Sir Robert Gordon.

The ancient investitures of the barony and *dominium* of Lovat, so far back as 1539, stood limited to Hugh Lord Frafer of Lovat, and “*heredibus suis masculis.*”

Lord Bankton remarks, that upon this charter to *heirs-male*, the court of session adjudged the title to Simon Frafer, the *heir-male (k)*.

And consequently had the ancient investitures stood limited to *heirs-general*, a different judgement must have been pronounced.

Borthwick.
1762.

14. B O R T H W I C K.

p. 19. “ In 1681, John Lord Borthwick enjoyed the peerage: he left heirs-female, who never pretended any right to it. *Evidence*, Retour 26th January 1681. “ Quod quondam Johannes Dominus Borthwick, avunculus Johannis Dundas de Harviestoun, obiit vestit in terris de Harvieston, &c. et quod dict. Johannes Dundas est legitimus et propinquior hæres dict. quondam Johannis Domini Borthwick, sui avunculi. The House of Lords, in 1762, decreed the peerage to a remote heir-male, without calling the heirs-female to be heard for their interest.”

A N S W E R.

That the ancient limitation of the *barony* of Borthwick was to *heirs-male*, is proved by a royal charter in 1538 to William Lord Borthwick, and his *heirs-male*, and by another charter 1543 to John Lord Borthwick, and his *heirs-male*.

The service 1681, of John Dundas, to John Lord Borthwick, who died in 1672, is not in the barony of Borthwick, but in a separate parcel of lands called *Harviestoun*.

There was no opposition made by the heir-general to the claim of Henry Lord Borthwick. Upon the footing of the charters 1538 and 1543, there was no ground for opposition.

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

To all this it might be added, if necessary, that there was no evidence before the House of Lords, of the existence of an heir-female in 1762. Reason I. Prefump. 5.

15. A N G U S.

Angus. 1379.

- p. 21. " This peerage *failed* with Thomas Earl of Angus. He left two daughters. Margaret, the eldest, was married to William Earl of Douglas. Soon afterwards this peerage has been *renewed* in the person of the Earl of Douglas," &c.

A N S W E R.

It is hard to say how this narrative of *extinctions* and *renewals* can aid the proposition, " That the remoter heir-male was preferred to the heir-general."

This instance is fully explained in chap. 5. § 8.; and it is *there* shewn, that the peerage did not fail with Thomas Earl of Angus; that it was enjoyed by his daughter Margaret, and by her transmitted to her posterity.

16. S T R A T H E R N.

Strathern. 1400.

- p. 20. " David Earl of Strathern lived about the middle of the 14th century; but died without issue-male, leaving a daughter, Eupheme, married to Sir Patrick Graham. The land-estate of the earldom stood limited *heredibus suis*; THAT IS TO SAY, TO HEIRS-MALE; and failing them, to return to the crown. The peerage *must have become extinct* upon Earl David's death," &c.

A N S W E R.

Enough, and perhaps more than enough, has been already said as to this instance of Strathern. See chap. 5. § 13.

Sir Robert Gordon produces it as one of his *twenty-seven* instances where the remoter heir-male took in preference to the heir-general; and yet he states the case thus: " The peerage *must have become extinct* upon Earl David's death."

17. D O U G L A S.

Douglas. 1440

- p. 18. " Archibald Earl of Douglas, who lived about the middle of the 15th century, left a daughter and *heir*, Margaret, and yet was succeeded in this peerage by an heir-male of the family."

A N S W E R.

Reason I. This is ill told. Sir Robert Gordon should have said, That upon the death of
 Presump. 5. William 6th Earl of Douglas, in 1440, his uncle James, Earl of Abercorn, succeeded to the honours of Douglas, and not Margaret, his sister, and heir-general.

Margaret was the heir at law of William 6th Earl of Douglas; but she did not succeed to the estate of the earldom. The limitation of the earldom of Douglas at that period does not appear. There is, however, unquestionable evidence, that it has been to *heirs-male*.

In 1409, Archibald Earl of Douglas obtained a charter of the *dominium Vallis Annandie*, limited to him and his *heirs-male*.

In 1449, William Earl of Douglas obtained two charters, upon his own resignation, of the *dominium et regalitas Gallwidie*, Forest of Ettrick, &c. limited to himself and his *heirs-male*.

In 1451, on his own resignation, he obtained a royal charter of the *comitatus de Douglas*, &c. limited in like manner to himself and his *heirs-male*.

Indeed the exorbitant power of James the 7th, and of his son William the 8th Earl of Douglas, does of itself sufficiently prove, that the estate of the earldom had gone, at that period, to heirs-male.

Such being the state of the fact, this example proves, just what the claimant asserts, that in ancient times the honour and the estate of the earldom went together; to the heir-general, if the limitation in the charter stood *heredibus suis*; to the heir-male, if *heredibus masculis*.

Crawfurd.
1518.

18. C R A W F U R D.

p. 18. " David Earl of Crawfurd left a brother John, and a sister Margaret.
 " John succeeded to the peerage; and was succeeded therein, not by his
 " sister Margaret, but by his uncle Alexander, the heir-male of the family;
 " and Alexander was succeeded in the peerage by David his son. *Evi-*
 " *dence*, Royal Charter, 1st April 1518, b. 22. N^o 45.

A N S W E R.

The limitation of the earldom of Crawfurd, at that period, is not precisely known from record. It appears, however, from that very charter to which Sir Robert Gordon is pleased to appeal, that the heir-male stood possessed of the whole lands of the "*comitatus seu dominium Crawfurdie*."

This instance, therefore, is a further proof of the claimant's proposition.

19. E R R O L.

p. 18. "William Earl of Errol died, without issue-male, some time before
" 1562, [r. 1535.], and left only one daughter, Lady Jean Hay; who
" became the wife of Andrew Master of Errol. This Andrew was the
" son of George Hay of Logiealmond; who, upon the death of his
" [father's] cousin-german, William Earl of Errol, the father of Lady
" Jean, succeeded as heir-male to the honours of the house of Errol, to
" the exclusion of Lady Jean."

A N S W E R.

William Earl of Errol died before 1535, leaving issue a daughter Jean.

Upon this event, James V. granted two charters to George Hay of Logiealmond; the one of the constabulary of Scotland, barony of Slains, &c.; the other " terrarum et domini de Errol," &c.

Both charters proceed upon a just and grateful recital of the valour and fidelity of the ancestors of the grantee, " quibus dictus Georgius succedit, tanquam legitimus et propinquior HÆRES TALLIÆ," &c.

This clause shews by what means George Hay succeeded to the office of constable, and to the family-estate.

The original grant by Robert I. was *heredibus suis*; but this grant by James V. shews, that a limitation had been afterwards made to certain *heirs of entail*, which carried the office of constable, and the family-estate, to the heir-male.

In 1542, Andrew, the son of this George, obtained, upon his father's resignation, a royal charter, containing a *Novodamus*, limiting the *comitatus et baronia* de Errol " Andreæ Hay, Magistro Errolia, filio et hæredi Georgii Comitatis Errolia, *heredibus suis masculis* et assignatis."

Injustice is never to be presumed; and therefore the existence of the *entail*, which James V. recites as the cause of succession, must be presumed, although from the injury of time it may have perished.

20. A N G U S.

Angus. 1556.

p. 21. " Archibald Earl of Angus died without issue-male, leaving a daughter, Lady Margaret Douglas; yet he was succeeded in his peerage,
" not by his daughter, but by an heir-male of the family of Angus."

A N S W E R.

It has been formerly proved, that George Douglas became Earl of Angus in right of his mother Margaret Countess of Angus. See chap. 5. § 8.

The

Reason I. The estate and dignity of the earldom of Angus were enjoyed by George Douglas, and his heirs, in the direct line of male succession, down to Archibald, 6th Earl of Angus of the Douglas family.

This Earl Archibald married Margaret, the daughter of Henry VII. of England, widow of James IV. King of Scots.

By her he had a son James, and a daughter Margaret, married to Matthew Earl of Lennox.

As the Earl of Angus had only one son, and as his daughter had married into a great family, it became an object of importance, that Angus should not be swallowed up by Lennox.

The Earl of Angus therefore made a resignation of the whole estates of the earldom; and, in 1547, obtained three new charters thereof, each containing certain lordships and regalities, to himself in life, and to James Douglas, his son and heir-apparent, “*et suis heredibus masculis dicti nostri consanguinei, et suis assignatis quibuscunque.*”

James Douglas died before his father; Archibald Earl of Angus died about 1556.

In 1564, Queen Mary granted a charter, confirming the three charters 1547 to Archibald Earl of Angus, as nearest *heir-male of tailzie* to James Douglas, his granduncle's son (*l*).

This, and the charters confirmed, are the capital charters of the earldom of Angus, next to the charter 1389, formerly recited.

They are the first which altered the course of succession from *heredes sui* to *heredes masculi*.

Notwithstanding all this, the pretensions of the heir-general were esteemed so formidable, that Archibald Earl of Angus, the heir-male, found it expedient, in 1565, to obtain a ratification of his title to the earldom, a renunciation by Lady Margaret Douglas the heir-general, and the consent of the Earl of Lennox her husband, and Henry Lord Darnley, their eldest son and heir-apparent (*m*).

The circumstances of this case were so well known, that it is strange that Sir Robert Gordon should have produced it in support of his argument.

Moray. 1570.

21. *S T E W A R T Earl of M O R A Y.*

p. 20. “An ancient peerage, of which the limitations are unknown. Prior to 1st January 1580. [r. 23d January 1570], the Regent James Earl of Moray enjoyed this peerage; but by his death the peerage became *extinct*. This peerage was afterwards *revived* by creation in the person of James Stewart [r. son of Lord] Doun. Records of parliament, b. 17. fol. 74. 5th June 1592.”

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*l*) Charter of confirmation to Archibald Earl of Angus, 11th November 1564. In it the three charters 1547 are ingrossed.

(*m*) *Contract*, the Earl and Countess of Lennox, &c. and the Earls of Angus and Moray, 12th, 13th May, and 26th June 1565.

A N S W E R.

If in this instance the peerage became extinct, how can it afford evidence of a remoter heir-male being preferred? Reason I.
Presump. 5.

Besides, every one knows, that James Stewart neither was, nor could be, the heir-male of Regent Moray.

Here the claimant might rest her answer: she will, however, examine the instance of Moray; and she will show, that it has been misunderstood by Sir Robert Gordon.

There is an intricacy in the grants to the family of Moray, which will require some pains to unravel.

The earldom of Moray being in the crown, was granted by Queen Mary to her natural brother James Stewart, Prior of St Andrew's, "et hæredibus suis masculis de corpore suo legitime procreandis;" whom failing, to return to the crown (n).

On the 7th February 1561-2, Queen Mary granted to him a charter of the earldom of Marr, with the same limitations as in the earldom of Moray (o).

From some political reason, it appears, that Queen Mary thought fit that her brother should bear the title of Marr, rather than that of Moray (p); and therefore she added to her grant, "ac similiter facimus et creamus dict. Jacobum, fratrem nostrum, et hæredes suos masculos, Comites omnibus temporibus futuris de Marr vocandos, ac dando eis honorem, dignitatem, locum, et votum in parlamento."

The earldom of Marr was soon after restored by Queen Mary, *per modum justitiæ*, to John Lord Erskine; who from that time assumed his maternal title of Marr.

Upon this the Prior of St Andrew's reassumed the title of *Earl of Moray*, conferred on him by the charter 1561-2.

Under that title, in 1563, he obtained from Queen Mary another charter of the earldom of Moray, limited "præfato Jacobo Moraviæ Comiti, et hæredibus masculis de corpore suo legitime procreatis seu procreandis;" whom failing, to return to the crown (q).

In June 1566, upon his own resignation, the Earl of Moray obtained another charter from Queen Mary, and her husband Henry, granting "terras domini et comitatus Moraviæ," to himself and his wife, and to the longest liver, "et hæ-

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(n) Charter, 30th January 1561-2, Privy-Seal Record.

(o) Charter, 7th February 1561-2, Privy-Seal Record.

(p) There is no place here for extraneous dissertations on history, and therefore some mistakes in our historians concerning this matter must remain without correction.

(q) Record of parliament 1567, ratifying a charter 22d January 1563.

Reason I. "redibus inter ipsos legitimè procreatis seu procreandis; quibus deficientibus, Presump. 5. "legitimis et propinquioribus hæredibus, seu assignatis, quibuscunque (r).

However much the parties may differ in interpreting the *first* clause of this limitation, they must agree in holding, that the *second* comprehends *heirs-general*.

In 1567, the Earl of Moray obtained a ratification in parliament of the charter 22d January 1563, limiting the earldom to himself, and the heirs-male of his body, but making no mention whatever of the intermediate charter 1566 (s).

Why he should have relinquished the charter 1566, is impossible to determine.

It certainly gave his descendents a more ample right than the charter 1561-2 or 1563 did.

In 1570-1, the Earl of Moray was slain. He left two daughters, but no male issue.

Upon the footing of the charters 1561-2 and 1563, and the ratification in parliament 1567, it is plain, that both the estate and the dignity of the earldom returned to the crown, in default of heirs-male of the Regent's body.

Nevertheless, in 1580, James VI. made a gift to James Stewart, son and heir of Sir James Stewart of Doun, of the ward and marriage of Elisabeth and Margaret, the daughters and heirs of James Earl of Moray deceased (t).

A few days after, James Stewart married Elisabeth, the eldest daughter, and immediately assumed the title of *Earl of Moray* (u).

Of his creation there is no evidence; nor indeed does Sir Robert Gordon pretend, that at that time there was any creation.

At that time he could not possibly be Earl of Moray in his own right.

He may perhaps have considered the charter 1566 as the latest title of the family, and as sufficient to convey the dignity of Moray to his wife.

Unless he assumed the style of *Earl of Moray* upon that footing, it was an obvious usurpation.

In 1592, James VI. and the Scottish parliament, ratified to James Earl of Moray, son of James Stewart, and Lady Elisabeth, "the charter by our Sovereign Lords umquhile [sometime] father and mother to umquhile James Earl of Moray, first Regent to our Sovereign Lord, and gudfire [grandfather] to the said James now Earl of Moray, umquhile Dame Agnes Keith, his spouse, and to the said umquhile Earl's heirs therein designed, of the Earldom of Moray, dated 1st June 1566, and all other charters and infestments granted or given to the said umquhile James Earl of Moray, Regent foresaid, and to umquhile Dame Elisabeth Stewart, Countess of Moray, his lawful daughter, and mother of the said James, now Earl of Moray (v)."

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(r) Record of parliament 1592.

(s) Record of parliament, 1567.

(t) Privy-Seal Record.

(u) Record Charter, 25th April 1581.

(v) Record of Parliament 1592.

The title-deeds of Regent Moray were, [for the reason already mentioned, Reason I. ambiguous and intricate. Presump. 5.]

But this ratification 1592 rendered the succession of the family of Moray utterly inexplicable.

The charter 1566, limited to *heirs-general*, was confirmed; but at the same time the other charters, limited to *the heirs-male of the body of Regent Moray*, were also confirmed.

It is probable, that this irreconcilable diversity in the destination of succession was immediately discovered; for James Earl of Moray made no delay in obtaining a charter of the earldom of Moray, limiting the succession to heirs-male (*w*).

This charter, joined to possession, must be the cardinal right of the family of Moray, unless there has been some posterior resignation and new grant. As to this, the claimant knows nothing; he has no right to ransack the archives of the family of Moray.

22. A N G U S.

Angus, 1588.

p. 21. "Archibald Earl of Angus, who died in 1588, is said to have left
"two sisters; yet there is evidence, that the peerage went to a remote
"heir-male, Sir William Douglas of Glenbervie."

A N S W E R.

By the charters 1547 and 1564, formerly mentioned, it is certain, that the earldom stood limited to *heirs-male*; and while such heirs existed, could not possibly go to *heirs-general*.

Sir William Douglas of Glenbervie had a more potent competitor than the sisters of the last Earl.

In 1588, James VI. grandson of Lady Margaret Douglas, Countess of Lennox, renewed his claim to the earldom of Angus.

He brought a suit against Sir William Douglas, for reducing the charters 1547, granted to heirs-male in exclusion of the heirs-general, "lineal and lawful, expressly against the law of God, the law human, and of nature."

Nevertheless judgement went for the heir-male against the King, in respect of Queen Mary's confirmation of the charters 1547, and of the renunciation by the Countess of Lennox (*x*).

Facts so universally known, ought not to have been overlooked by Sir Robert Gordon.

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*w*) Record Charters, b. 46. N^o 383.

(*x*) Decree-*absolvitor*, Sir William Douglas against the King, 7th March 1588-9.

Reason I.
Presump. 5.

Athole. 1595.

23. 24. A T H O L E.

p. 19. "The limitations of this peerage are unknown. Prior to 1595 it was
"enjoyed by John Earl of Athole. He left no heir-male, but several
"daughters. Mary, one of his younger daughters, was married to Lord
"Innermeath. Dorothy, his eldest daughter, was married to William
"Earl of Tullibardin. By the failure of heirs-male, the peerage became
"extinct. In order to revive it, James VI. created Lord Innermeath,
"who had married the younger daughter, Earl of Athole. Evidence,
"Charter, 6th March 1595, b. 61. N^o 19.
"This peerage became extinct a second time in the person of James
"Earl of Athole, the son of the last-mentioned Lord Innermeath.
"Charles I. therefore revived it in the person of John Earl of Tullibar-
"din, who had married Dorothea, the eldest daughter of John Earl of
"Athole; in whom the ancient male line of Stewart Earl of Athole had
"failed. Evidence, Royal Charter, 7th February 1629, b. 52. N^o 89.

A N S W E R.

Here again, in support of the proposition, "That the remoter heir succeed-
"ed," two instances are produced; in each of which it is said, that there was
no heir-male; that the peerage had become extinct; and that it was revived by
patent.

How far the constant repetition of this error is excusable, must be submitted
to superior judgement.

Those two instances are not only foreign to the purpose, but also totally mis-
understood.

The original charter of the *comitatus Atholiæ*, was granted by James II. to
his brother-uterine Sir John Stewart.

It is limited to him, "*et hæredibus suis masculis de corpore suo legitime pro-*
"creatis seu procreandis;" whom failing, to return to the crown (y).

Sir Robert Gordon, therefore, ought not to have said, that *the limitations of*
this peerage are unknown.

John Earl of Athole, the last descendent in the male line of Sir John Stewart,
died in 1594, without issue-male.

He left several daughters; particularly, 1. Dorothy, the wife of William Earl
of Tullibardin; by whom she had a son, *John Murray*; 2. Mary, the wife of
James Stewart, son of John Lord Innermeath.

By the death of John Earl of Athole, the earldom of Athole, in consequence
of the original limitations, returned to the crown.

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(y) Record Charters, b. 10. N^o 7.

In those circumstances it was that James VI. made the grant 1595 to John Lord Innermeath. Reason 1.
Presump. 5.

This grant is so miserably curtailed in the *Supplemental Case*, that it becomes necessary to transcribe it in a note (z).

It will be remarked, that a clause occurs in it which the *Supplemental Case* has expressed by an &c. “ De quo, et [per] *speciales provisiones talliæ contentas in antiquis cartis et infeofamentis per nostros nobilissimos progenitores, prædecessoribus dicti quondam Johannis Atholiæ Comititis de prædict. comitatu, terris, et aliis subsequen. factis et concessis eidem liberè, reversæ sunt, et nunc nobis pertinent, et in manibus nostris, et ad nostram dispositionem, deveniunt.*”

PROOFS, AUTHORITIES, and ILLUSTRATIONS

(z) “ Jacobus, &c. Sciatis, quia nos nunc post nostram ætatem triginta annorum completam, et omnes nostras revocationes speciales et generales intelligentes, quod totæ et integræ terræ et comitatus de Athole, aliaque subtus script. quæ per prius nostro quondam charissimo consanguineo Joanni Atholiæ Comiti, proximè defuncto, et suis prædecessoribus, hæreditariè pertinuerunt, nunc in manibus nostris, per decessum dicti quondam Joannis Atholiæ Comititis, et suorum prædecessorum, absque hærede vel hæredibus masculis nunc superstitibus legitimè de eorum corpore procreatis, devenerunt; ex quo, et speciales provisiones talliæ contentas in antiquis cartis et infeofamentis per nostros nobilissimos progenitores, prædecessoribus dicti quondam Joannis Atholiæ Comititis, de prædict. comitatu, terris, et aliis subsequen. factis et concessis eidem liberè, reversæ sunt, et nunc nobis pertinent, et in manibus nostris, et ad nostram dispositionem, devenerunt: Nos tamen memoriæ repetentes et intelligentes, valde perutile et expediens nobis, et successoribus nostris, ac reipublicæ nostri regni, fore, ut domus et familia dicti comitatûs de Athole remaneat et continuetur, et alius vir nobilis ejusdem cognominis et sanguinis, eodem statu et loco dignus, eidem provideatur, unde nos, et successores nostri, nullo tempore affuturo, ejusdem honorabili et maximè egregio servitio nobis, et successoribus nostris, per Atholiæ pro tempore Comites, tam infra regnum nostrum, quam in exteris nationibus, præstito et impenso destituamur; ac etiam certam cognitionem habentes, charissimum nostrum consanguineum Joannem, nunc Dominum de Innermeath, virum nobilem antiquissimæ familiæ et cognominis de Stewart, et dictum quondam Atholiæ Comitem, et suos prædecessores proximè sanguine attinentem, et maximè idoneum hujusmodi notabile et honorabile servitium nobis, et successoribus nostris, præstandum et supplendum; ideo, ac pro bono, fideli, et gratuito servitio nobis, nostrisque prædecessoribus, per dictum Joannem, Dominum de Innermeath, suosque prædecessores, præstito et impensè, ac pro diversis aliis bonis causis et considerationibus nos moventes, ex certa scientia, et proprio motu, dedimus, &c. dicto Joanni, Domino de Innermeath, suisque hæredibus masculis de corpore suo legitimè procreatis seu procreandis; quibus deficient. nobis, nostrisque successoribus, liberè reverten. totum et integrum comitatum de Athole, ac omnes et singulas terras ejusdem comitatûs, cum suis pertinen.” &c.—which his Majesty of new erects, &c. “ in unum liberum comitatum, dominium, et baroniam, præfato nostro prædicto consanguineo Joanni, Domino de Innermeath, suisque hæredibus masculis prædictis, comitatum de Athole omni tempore affuturo nuncupand. dando et concedendo præfato nostro consanguineo Joanni, Domino de Innermeath, suisque hæredibus masculis prædictis, omni tempore affuturo, titulum, nomen, honorem, gradum, et statum Comititis, imperium Comititis Atholiæ nuncupand. cum omnibus privilegiis, dignitatibus, et immunitatibus, ad Comitem pertinen.” &c.—6to Martii 1595.

Reason I. The limitation in the original grant to Sir John Stewart shews what were the
 Presump. 5. “*speciales provisiones talliæ*,” in consequence of which the earldom of Athole had returned to the crown.

According to the practice established during the reign of James VI. the grant of 1595 specially conferred “*titulum, honorem, gradum et statum Comitis Atholiæ*.”

Here again the *Supplemental Case* omits the limitations by the grant 1595. The estate and title are limited to John Lord Innermeath, *suisque hæredibus masculis de corpore suo*; whom failing, to return to the crown.

John Lord Innermeath, and Earl of Athole, was succeeded in his estate and title by his son James. James died without issue-male; and thus both returned again to the crown, by virtue of the limitation in the grant 1595.

The manner of the renewal of the peerage by Charles I. is singular.

John Earl of Tullibardin was the son and heir of William Earl of Tullibardin, and Lady Dorothy Stewart, the eldest daughter of John Earl of Athole, deceased in 1594.

He obtained himself served and retoured nearest heir to Sir John Stewart, the brother-uterine of James II.

Charles I. granted letters-patent, confirming this service and retour, in the following words. “And we being moved, from honour and conscience, to ratify and confirm the foresaid title, right, and style, of the honour and dignity of Earl of Athole, in the person of the foresaid John Murray; therefore, &c. we ratify and confirm, &c. the foresaid service and retour, dated, at Perth, 6th August 1628, whereby the foresaid John Murray, *now Earl of Athole*; was found, declared, served, and retoured, in right of his mother, nearest and lawful eldest heir of the late John Earl of Athole, brother-uterine of the late King James II. (a).”

The grant contains also a *Novodamus* of the title and dignity, “*without prejudice*” to the Earl’s right as heir-general to John Stewart, first Earl of Athole.

This retour, as heir-general to the first Earl of Athole, might have carried any separate estates acquired by him, or by his descendents; but it could never carry the *comitatus* of Athole, which stood expressly limited to the heirs-male of his body.

It is therefore manifest, that Charles I. misunderstood the fact, when he considered himself as bound, in honour and conscience, to ratify this retour,

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(a) “Et nos, ex honore et conscientia, ad titulum, jus, et styllum dicti honoris et dignitatis Comitatus Atholiæ, in persona præfati Johannis Murray, ratificandum et confirmandum, moti; igitur, &c. ratificavimus et confirmavimus, &c. dictam deservitionem et retornatum, unde præfatus Johannes Murray, *nunc Atholiæ Comes*, proximus et legitimus hæres senior, ex parte matris suæ, antedicti quondam Johannis Atholiæ Comitatus, fratris uterini dicti quondam Jacobi Regis Secundi, repertus, declaratus, deservitus, et retornatus est, de data apud Perth, 6to die mensis Augusti, an. Dom. 1628.” *Diploma Johannis Comitatus Atholiæ*, 17th February 1629. Records, b. 52. N° 89.

together with the dignity of Athole, in the person of John Earl of Tullibardin. Reason I. Prefump. 5.

Indeed the Earl of Tullibardin himself seems to have doubted of the efficacy of this ratification; and therefore he most judiciously obtained a new patent of the honours of Athole.

The ratification of the retour shews what was understood to be law at that time; but it could not convey the earldom of Athole, which had already devolved to the crown by the limitations in the grant 1595.

The two instances of Athole, being explained, are undoubtedly foreign to the purpose for which they are quoted by Sir Robert Gordon.

25. G L E N C A I R N.

Glencairn.
1670.

p. 17. 18. "This is an ancient peerage, the limitations of which are unknown. " Alexander Earl of Glencairn, who died in May 1670, left a brother " John, who succeeded him in the peerage, to the exclusion of Alexander's daughter, Margaret Countess of Lauderdale. Evidence, Retour " of John Earl of Glencairn, to his brother Alexander, 29th September " 1670, b. 30. fol. 103."

A N S W E R.

The retour quoted is a retour of John Earl of Glencairn, as *heir-male* to his brother. It proceeds upon a royal charter of the family-estate, viz. the barony of Kilmaurs, &c. limited " Willielmo, nunc Comiti de Glencairn, Domino Kilmawers, &c. *heredibusque masculis* tunc de suo corpore legitime procreand.; " quibus deficient. dict. quondam Willielmo Domino Kilmawers, *heredibus suis* " masculis et talliæ, in infeofamento terrarum de Glencairn specificat." 27th July 1642. The case of Glencairn is fully treated of elsewhere.

26. M O R A Y.

Moray. 1702.

p. 20. " The limitations of this peerage are unknown. James Lord Down, " son and heir-apparent of Alexander Earl of Moray, died some time " prior to the year 1702, without issue-male, but leaving daughters. " The heir-male of the family, Lord Down's brother, succeeded to the " peerage, to the exclusion of his nieces."

A N S W E R.

This has been already obviated. The charter of the earldom of Moray in the reign of James VI. being limited to *heirs-male*, necessarily carried the succession to the *heir-male*.

Reason I.
Presump. 5.

Cassilis. 1759.

27. C A S S I L I S.

- p. 19. " An ancient peerage, of which the limitations are not known. It
" was enjoyed by John the 8th Earl of Cassilis, who died in the year 1759,
" without issue. Sir Thomas Kennedy, his heir-male, and the Earl of
" March, his heir of line, both claimed the peerage. The House of
" Lords decreed it to Sir Thomas Kennedy."

A N S W E R.

In the case of Cassilis, it was proved, that David Lord Kennedy became Earl of Cassilis in 1509. Had any instrument of creation appeared, the descent of the peerage must have been determined by it; but as none appeared, there was a necessity of determining the descent of the peerage by some legal presumption.

- p. 3. It appeared by two charters of Robert III. in 1404 and 1405, and by four charters of James III. in 1450, that the lands and estate of Cassilis were expressly limited to *heirs-male*, in exclusion of females. It appeared, that there was a charter to David Kennedy in 1501, upon his father's resignation, *et heredibus suis*: but then there was added, *secundum tenorem antiquarum infeodationum dict. terrarum eis desuper confect.* Every one knows, and it is laid down by Sir Robert Gordon, " That the meaning of *heredes sui* is governed by the investiture to
" which they relate;" and here they related to investitures strictly *male*.

It also appeared, that those heirs-male were, by one of the charters of James III. declared to be the head of the potent tribe of the Kennedys.

David Lord Kennedy, the first Earl of Cassilis, could never have intended to separate his honours from his whole estate, and from the darling right of *chieftainship*, in those days more esteemed, and indeed more estimable, than any land-estate (*b*).

The Sovereign could never have intended to bestow an empty title on the *heirs-female*, while the whole estate, and the chieftainship, were descendible to the *heirs-male*.

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*b*) This was a valuable right, even independent of the power and influence which attended the *Chief*. The estates of the family of Cassilis lay in Galloway and Carrick. Perhaps some modern lawyers may know little of the *caupes* of Galloway and Carrick. They are described by Skene, *De verborum significatione*, in the following words. " *Caupes*, " *Calpes*, in Galloway and Carrick, signifies a gift, sike as horse, or uther thing, quhillk
" a man in his awin lifetime, and *liege poustie*, gives to his maister, or to onie uther man
" that is greatest in power and authoritie, and *speciallie to the head and chief of the clann*,
" for his maintenance and protection."—These *caupes* were not suppressed before parl. 22.
c. 21. James VI. 1617.

Neither could any *heir female* have been found, in those days, willing to accept an empty title of honour, without power, influence, or estate. Reason I. Presump. 5.

From the limitation of the land-estate, and right of chieftainship, to *heirs-male*, there arose a presumption for the descent of the titles of honour to *heirs-male*.

The claimant, therefore, will hold it to be a rule of law, established in the case of *Cassilis*, “That in descendible honours, where the instrument of creation is lost, so that the limitation therein contained does not appear, nor is supplied by other evidence, the legal presumption is in favour of the heir to whom the land-estate stood limited at the time of the creation, whether heir-male or heir-general.”

A rule established upon such a presumption will maintain itself as long as the law of Scotland remains.

The claimant has no opportunity of knowing with certainty every argument urged in the case of *Cassilis*.

Although she knew them all, she is not at liberty to mention any of them.

She has all possible deference for the judgement of the supreme court; but she may observe, and she hopes without offence, that every topic employed before judgement is not of equal authority with the judgement itself.

The succession to the peerage of *Cassilis* was no object to the Noble Person who bore the character of *heir-general*.

It is certain, that the argument for him was conducted with little attention; much was overlooked, and much admitted without cause.

Although the argument had been more carefully conducted, the event would still have been the same: for there was nothing that could be opposed to the legal presumption raised from the limitation of the estate and chieftainship to *heirs-male*.

Upon this footing, therefore, the claimant does hold, and ever will hold, the decision in the case of *Cassilis* to be unexceptionably just.

28. C A I T H N E S S.

Caithness. 1767.

p. 18. “This is an ancient peerage, the limitations of which are not known. Alexander late Earl of Caithness died a few years ago, without male issue. His daughter, Countess Fife, does not claim the peerage; and there is now a competition *for it* in dependence, betwixt two remote heirs-male of the family, [*i. e.* between two persons claiming the character of *heir-male*]. Evidence, Information given to the court of session, 20th June 1769, by William Sinclair of Ratter, against James Sinclair in Reis.”

A N S W E R.

It is somewhat singular to say, “That there is a competition for the peerage of Caithness depending before the court of session.” The judges of that court are

E e

not

Reason I. not so ignorant of their duty, as to suffer such a competition to be heard before
 Presump. 5. them. They were called upon to determine the fact, *Who was heir-male to the*
 late Earl of Caithness? With the consequences of that fact they have no
 concern.

It is not strange that Countess Fife does not claim the peerage of Caithness, since so late as 1698 the peerage devolved to her grandfather, as *heir-male*, in preference to the *heir-general*.

The cause of this preference might have been discovered from record; had Sir Robert Gordon made researches equally accurate as extensive.

William Sinclair, Earl of Caithness in the fifteenth century, was twice married:
 1. To Lady Margaret Douglas, daughter of Archibald 4th Earl of Douglas. By her he had a son, William; who obtained from his father the lands of Newburgh in Aberdeenshire (c). He was the ancestor of Lord Sinclair's family.

William Earl of Caithness, married, 2. Marjory, daughter of Alexander Sutherland of Dunbeath (d).

By her he had two sons: 1. Sir Oliver, who obtained from his father a charter of the baronies of Roslin, Herbertshire, &c. (e).

2. William, for whose sake the Earl of Caithness resigned his earldom.

In consequence of this extraordinary predilection, James III. granted "Willielmo Sinclair, filio Willielmi Comitum Cathaniæ, et Domini de Sancto Claro, inter ipsum et Marjoriam, Comitissam Cathaniæ, sponsam suam, genito, omnes et singulas terras comitatus Cathaniæ, &c. Tenend. et habend. dicto Willielmo Sinclair, filio dicti Willielmi Comitum Cathaniæ, et hæredibus ipsius Willielmi filii quibuscunque, de nobis," &c. (f).

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(c) Henry, son of this William Sinclair of Newburgh, obtained the following declaration in parliament. "Anent [concerning] Sir Henry Sinclair, that our Sovereign Lord, with the advice and deliverance of the estates of his parliament, declares, that sine [since] the said Sir Henry's grantchier and father, Lords Sinclair for the time, are deceased, and the said Sir Henry rightwise heritor to them, *that he is chief of that blude*, and will therefore that he be called *Lord Sinclair* in time to come, with all dignities, eminences, privileges, *tenands, tenandries, belangand tharto, after the form of the charters and evidents made tharupon.*" Records of parliament, b. 4. fol. 113. 26th January 1488-9.

(d) *Will and settlement* of Alexander Sutherland of Dunbeath, in favour of his daughter Marjory, and William Earl of Orkney and Caithness, and the bairns gottin and to be gottin betwixt them, &c. 15th November 1456, produced by the claimant. The counsel for Sir Robert Gordon have had occasion to be acquainted with this lady. She is the *Phantom of Sutherland*, raised up to combat one proposition in law, That *hæredes sui* meant *heirs-general*; and another in fact, That the earldom of Sutherland was descendible to heirs-general.

(e) *Charter* William Earl of Caithness, to Sir Oliver Sinclair, his son, procreate betwixt him and Dame Marjory Sutherland, his wife, 9th September 1476. It has been sometimes averred, that Sir Oliver was the *second son* of the second marriage. This, however, is nothing to the present question.

(f) *Record Charters*, b. 7. N^o 393. 7th December 1476.

Had the grant of the earldom continued upon the footing of this charter, it would, beyond all doubt, have descended to *heirs-general*. But George, the grandson of this William Sinclair, resigned the earldom into the hands of James V.; and the King granted it to John Sinclair, the heir-apparent of George, “*et hæredibus suis masculis, tenend. in libero comitatu et dominio (g).*” Reason I. Presump. 5.

From that time the succession went in the male line.

The claimant has thus stated the twenty-eight instances produced for Sir Robert Gordon in support of his *fifth* presumption, and she has made answers to each of them.

According to the plan formerly laid down, she will now state the result of the whole.

F I R S T C L A S S.

Three instances, where neither the heir-female, nor the remoter heir-male, succeeded in that character.

1570. 21. Moray. | 1595. 23. Athole. | 1628. 24. Athole.

Five instances, where the heir-female, and her issue, did succeed *both* to the estate and dignity.

1519. 2. Haliburton.		1379. 15. Angus.
1550. 5. Herreis.		1400. 16. Strathern.
1685. 12. Sempill.		

Twenty instances, where the dignified fief stood limited to *heirs-male*, and where accordingly the remoter heir-male did succeed to the dignity and to the estate, if existing.

1466. 1. Lorne.		1762. 14. Borthwick.
1531. 3. Home.		1440. 17. Douglas.
1541. 4. Gray.		1518. 18. Crawford.
1557. 6. Fleming.		1535. 19. Errol.
1591. 7. Hay of Yester.		1556. 20. Angus.
1609. 8. Lindesay of Byres.		1588. 22. Angus.
1628. 9. Gray.		1670. 25. Glencairn.
1640. 10. Boyd.		1702. 26. Moray.
1649. 11. Ross.		1759. 27. Caillis.
1730. 13. Frazer of Lovat.		1767. 28. Caithness (h).

In all twenty-eight instances *in support* of the presumption of Sir Robert Gordon.

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(g) *Record Charters*, b. 29. N^o 270. 2d October 1545. Here it may be observed, in passing, that if such resignations, and new grants of the *comitatus*, did not carry the title of dignity, there have been *eight* successive Earls of Caithness all usurpers; and that the peerage does at this day belong to the heir of Sir Henry Sinclair of Newburgh. This is one of the many extravagant consequences of Sir Robert Gordon's hypothesis.

(h) In propriety of speech, this example ought to be omitted; for that the claim of the heir-male mentioned by Sir Robert Gordon has not been heard and allowed by the House of Lords. The claimant only mentions it as an instance where the heir-female stood excluded by reason of the limitations in the charter.

Reason I.
Presump. 5.

p. 26. - In support of his own argument, and in answer to that of the claimant, Sir Robert Gordon observes, "That there are many precedents, where, though the heir-female took the estate, yet by the failure of heirs-male the peerage extinguished."

A N S W E R.

The precedents mentioned are *eight* in number; and they shall be examined with all possible brevity.

1. F L E M - I N G.

p. 26. "The investitures of this estate were not to *heirs-male*, and yet the peerage went to them. Malcolm Lord Fleming had two sons, James and John. James had a daughter, named *Jean*, who got the family-estate of Thankerton and Biggar. *Charter*, 30th October 1583. John succeeded to the peerage in preference to Jean the heir of line."

A N S W E R.

For proving his proposition, That the peerage *extinguished*, Sir Robert Gordon brings evidence that *it descended to the heir-male*.

It has been already shown, that James Lord Fleming made over the whole family-estate to his brother John, and his heirs and assignees, under a condition to return to the heirs-male of his own body; and that John, in 1557, obtained a royal charter confirming this grant.

Thankerton and Biggar are expressly contained in the grant by James to his brother; and in the charter 1557, confirming that grant. It is incumbent, therefore, on Sir Robert Gordon to shew how they could belong to Jean Fleming in 1583. By the charter quoted it appears, that her right to those estates, of whatever nature it may have been, was not through her father Lord James, but through her grandfather Lord Malcolm; and this of itself shews, that she did not succeed to her father. It has probably been some collateral right in Malcolm Lord Fleming, which was supposed to subsist in his *heir-general*, as not being specially conveyed by James Lord Fleming to his brother John.

2. L E N N O X.

p. 26. "Esme Stewart was created a Duke on the 5th of August 1581, by a creation, intituled, *Constitution of the earldom of Lennox in a Dukerie*,
" produced,

“ produced, copied from the *Earl of Hadington's collections* from the Reason I.
 “ records, Advocates Library at Edinburgh, A 4. 20. p. 460. In con- Presump. 5.
 “ fequence of this creation, he sat in parliament as Duke of Lennox,
 “ 28th November 1581.
 “ The charter founded on by Lady Elisabeth, in favour of Esme Duke
 “ of Lennox and his heirs-male, is posterior to both those periods, be-
 “ ing dated 13th December 1581; and instead of being the creation of
 “ a peerage, is only the erection of the estate into a dukedom.
 “ The proofs of the exclusion of the heir-female in this case consist of
 “ two retours: 1. Retour of Charles II. as heir-male to Charles Duke
 “ of Lennox; 2. General retour of Catharine Stewart, Dominæ Obrien,
 “ et Baronissæ de Clifton, to her brother Charles Duke of Lennox.”

A N S W E R.

This instance proves, what the claimant has always averred, that the charter regulated the succession to the peerage, as well as to the estate.

The constitution of the earldom of Lennox into a dukedom, ingrossed in Hadington's MS. contains not only such erection, but also a creation, whereby the Earl of Lennox is made *Duke of Lennox*. The creation is personal, without any mention of heirs; and the King “ ordains him to be invested therein, with all solemnities requisite.”

Immediately after this the King, with advice and consent of the three estates assembled in parliament, granted him a charter, erecting the earldom of Lennox, and several other lordships, baronies, offices, regalities, &c. “ in unum liberum ducatum, comitatum, baroniam, et regalitatem, nuncupand. omni tempore affuturo, Ducatum de Lennox;” limited thus: “ Esino Duci de Levenox, Comiti Dernlie, Domino Tarboltoun, Dalkeith, et Aubigny, &c. et heredibus suis masculis de corpore suo legitimè procreatis seu procreandis; quibus deficient. nobis et successoribus nostris reverfur.”

Sir Robert Gordon quotes this as a precedent for proving, “ That the heir-female took the estate, while, by the failure of heirs-male, the peerage extinguished.”

Where he discovered, that Catharine Lady Obrien took the estate of Lennox, or had the smallest pretension to take it, is left with him to explain.

3. S E M P I L L.

p. 26. “ It has been shewn, p. 18. note (i), that the estate of Robert Lord
 “ Sempill went to his daughter; and that, in order to make the peerage
 “ go to her, which otherwise opened to the heir-male, he resigned his
 “ right in the peerage in her favour.”

A N S W E R.

Reason 1. In note (i), p. 18, just the reverse is averred: "That Robert Lord Sempill
Presump. 5. "not having resigned the peerage in her favour, she could not take it." A
strange example of inattention!

It has been formerly shewn, that there is *no* evidence of the peerage of Sempill having been devised to *heirs-male*, and that there *is* evidence of Lady Sempill having taken both the peerage and the estate.

4. B O R T H W I C K.

p. 26. "It has been shewn, p. 19. note (i), that John Lord Borthwick left
"an heir of line, John Dundas, who got the estate, of which he died
"possessed. For as to the ancient estate of Borthwick itself, it was pur-
"chased by Sir James Dalrymple of Borthwick, and a number of other
"persons."

A N S W E R.

Sir Robert Gordon, instead of shewing, that "the heir-female took the estate," justly observes, that it was sold off in parcels, to various purchasers. Indeed he seems conscious that the estate of Borthwick, the dignified fief, never descended to *heirs-general*.

He observes, That part of it was sold to Sir James Dalrymple. Surely not so early as 1681, when the heir-general was retoured in the lands of Harviestoun; for at that time Sir James Dalrymple was a lad, a younger brother, and having a father alive.

That the heir-general took the lands of Harviestoun is nothing to the purpose, unless, with all his paradoxes, Sir Robert had advanced this, That every parcel of land acquired by a peer, was by the very deed of acquisition absorbed in the dignified fief.

Were it not too ludicrous, the claimant might dwell a little longer on the great propriety of proving, from this precedent, "That the heir-female took the estate; and yet, by the failure of heirs-male, the peerage extinguished;" where there was *no* estate for the heir-female to take, where there was *no* failure of heirs-male, and where the peerage was *not* extinguished.

5. C A I T H N E S S.

p. 26. "The late Earl of Caithness left not his estate to *either* of his two
"heirs-male who are now contending for his peerage."

A N S W E R.

The ancient estate of the earldom was carried off several generations ago by legal distress; so *that* is out of the question. Reason I. Presump. 5.

It is certain that the last Earl of Caithness did not leave his paternal inheritance, and his own acquisitions, either to his heir-male, or to his heir-general.

And is not this an admirable precedent for proving, "That the heir-female took the estate, while, by the failure of heirs-male, the peerage extinguished?"

6. H A L I B U R T O N.

p. 27. "It has been shewn, p. 20. note (i), that Patrick Lord Haliburton, upon whose death without issue-male this peerage became extinct, left daughters heirs-portioners in his estate."

A N S W E R.

It has been already demonstrated, that the peerage did not become extinct by the death of Patrick Lord Haliburton, but that it was enjoyed by his eldest daughter, and lost by the forfeiture of her grandson, John Earl of Gowrie, in 1600.

7. H E R R E I S.

p. 27. "It has been shewn, p. 20. note (i), that William Lord Herreis, upon whose death without issue-male the peerage became extinct, left daughters heirs-portioners in his estate."

A N S W E R.

It has been shewn, that William Lord Herreis left an heir-male, who laid no claim to the title of honour; and that the daughter of Lord Herreis took *both* the estate and the title of honour, and transmitted *both* to her posterity.

8. M O R A Y.

p. 27. "It has been shewn, p. 20. note (i), that upon the death of James Earl of Moray, Regent, without heirs-male, his peerage became extinct;

Reason I.
Presump. 5.

“ tinct; and that he left daughters, who were heirs to him in his estate.
 “ *Further evidence*, Charter by King Henry and Queen Mary, ¹⁵⁶³ ~~1566~~, ¹⁵⁶⁶ ~~1563~~, which shews, that the Earl of Moray had resigned the earldom, ¹⁵⁶⁶ ~~1563~~, ^{i. e.} ~~to his~~
 “ his land-estate, in favour of his heirs of line; and failing them, ^{to his}
 “ assigns.”

A N S W E R.

Had there been nothing in the case of Moray but what Sir Robert Gordon mentions, the claimant would have contended, That this resignation of the earldom in 1566 was sufficient to convey the titles of honour to *heirs-general*; and *this* the more especially, because there is neither evidence nor probability, that Lord Down was ever created Earl of Moray.

But the charter formerly mentioned, dated 1563, and ratified in parliament 1567, is what occasions the intricacy. *It* surely was sufficient to exclude the *heirs-general* altogether.

The only way of accounting for all this, upon the footing of the title-deeds actually existing, is to suppose, that there was an error and a contradiction (*i*); and that all was rectified and reduced into order, by the charter of the earldom in favour of James Earl of Moray, the Regent's grandson, and his *heirs-male*.

- p. 27. Sir Robert Gordon further observes, “ That there are many instances
 “ where the *estate* stood limited before, at, or soon after, the creation
 “ of the peerage, simply *hæredibus suis*, or *hæredibus quibuscunque*;
 “ in which either the heir-male succeeded to the peerage, in exclusion
 “ of the female heir of line, or the peerage became extinct by the failure
 “ of heirs-male.” The instances here quoted are fourteen out of the twenty-eight quoted under a former head.”

A N S W E R.

There is nothing so fallacious as the use of general indefinite terms. The word *estate* is of this nature: It may mean the *dignified fief*, such as the barony, lordship, or earldom; or it may mean any heritable right, however inconsiderable.

 PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*i*) Men in the highest public offices are sometimes amazingly careless about their own private affairs. It is probable, that Regent Moray left the drawing up of the ratification in parliament to the care of some man of business; and that he, by mistake, made the act to ratify the charter 1563, instead of the charter 1566. This seems the most natural way of accounting for the error: that there *was* an error, is past all doubt.

The claimant suspects, that some recourse may have been had to the indefinite meaning of the word *estate*. Reason I. Presump. 5.

Sir Robert Gordon, instead of pointing out the limitations of the *family-estate*, has ransacked the records for charters of detached parcels of land, tenements in boroughs, rocks, annuities, appurtenances, superiorities, offices, and every thing else wherein a limitation to *heirs-general* appears.

Had the subjects contained in those charters been particularly specified, the muster-roll would have made a most uncouth appearance.

1. Y E S T E R.

p. 27. Sir Robert Gordon quotes several charters, not one of which relates to the lordship or barony of Yester. One in particular, 12th January 1451-2, is of a *fourth part* of the lands of Yester, before it was erected into a barony, and before a *Lord Yester* existed.

He adds, "That a charter, 18th October 1533; bears, "*hæredibus inter ipsos legitime procreat. seu procreand.; quibus deficien. legitimis et propinquiioribus dicti Johannis quibuscunque*; and that it deserves particular attention, because it marks the opposition betwixt *hæredibus* and *hæredibus quibuscunque*; plainly importing, that the former are "*heirs-male*, and the latter *heirs of line*."

A N S W E R.

The counsel for Sir Robert Gordon must have entertained a mean opinion indeed of the knowledge of those who act for his competitor, when they hazarded such an observation.

The opposition in the charter is not between *hæredes* and *hæredes quicunque*, but between *hæredes de corpore* and *hæredes quicunque*: and surely it does not require great experience in the law of Scotland to understand the meaning of this clause, "to the heirs of my body; whom failing, to my heirs whatever." *The heirs of my body* are necessarily *my heirs whatever*; but *my heirs whatever* are not necessarily the *heirs of my body*.

2. B O Y D.

p. 27. Sir Robert Gordon observes, "That Robert Boyd was created a peer some time betwixt the 5th and 7th year of Q. Mary, [*i. e.* between 1548 and 1550]; and he produces certain charters about that period, taken by Lord Boyd *hæredibus suis*."

A N S W E R.

Reason I. The imagination that the family of Boyd of Kilmarnock was ennobled by Queen Mary, requires no answer. See authorities quoted by Douglas, Peerage, p. 376. *Kilmarnock*. — Not one of the charters have the smallest connection with the dignified fief of *Kilmarnock*; they are of the lands of Auchintuarlie, Portincroie, Quayhytinck, &c.

3. R O S S.

p. 27. “ This peerage was created between 1472 and 1499. In 1490, 1499, 1501, 1502, 1505, 1508, the investitures stood limited *heredibus*, or *heredibus et assignatis*.”

A N S W E R.

None of the charters here produced relate to the dignified fief of *Hankhead*. By a charter in 1508, the barony of Melvil, which had come to the family by the marriage of an heiress, stood limited *heredibus suis*; but even that was altered by the next Lord Ross.

4. F L E M I N G.

Sir Robert Gordon observes, “ That the peerage of Fleming was created before 1472; and he quotes a multitude of charters for proving, that the investitures of the family, from 1496 to 1541, stood limited *heredibus suis*.”

A N S W E R.

The only charter of the dignified fief, the barony of *Cumbernauld*, to which Sir Robert refers, is dated in 1539, about *seventy* years after the creation of the peerage. This can never prove his proposition, which respects the limitations *before, at, or soon after*, the creation of the peerage.

Reference is also made to some charters of the baronies of Biggar and Thankerton; but Sir Robert might have seen in the record an older charter of those baronies, *anno* 1508, to Margaret Stewart, daughter of Matthew Earl of Lennox, and the *heirs-male* to be procreated betwixt her and John Lord Fleming; whom failing, to return to Lord Fleming and his *heirs-male*.

Had not this charter been overlooked, the section concerning *Fleming* would have dwindled away to nothing.

5. G L E N C A I R N.

p. 28. "The peerage of Glencairn was created in 1488 by letters-patent. *Evidence*, Renewed Patent 21st July 1637. In 1511 the investitures of the *comitatus* and barony of Glencairn stood to *heirs-male*. This is the first charter on record of the investitures of the family-estate; and as it limits the *comitatus* by express name, *heredibus suis*, it destroys at once all the Lady Elifabeth's fine-spun argument, That the presumption for determining the limitations of the peerage, arises from the limitation of the estate in the investitures approaching nearest to the time of the creation of the peerage." *Evidence*, Royal Charter of the *comitatus*, 24th July 1511, b. 17. No 86. *heredibus suis*. [Sir Robert meant to have added, "that the peerage of Glencairn went to the remoter heir-male in 1670, in exclusion of the heir-general."]

Reason I.
Presump. 5.

A N S W E R.

The claimant would not consider her argument as in the least impaired, although two or three instances in as many centuries were produced, where from a defect in the records the argument did not precisely apply.

This case of Glencairn deserves a more exact inquiry than Sir Robert Gordon has bestowed on it.

Alexander Lord Kilmaurs was faithful to the cause of James III. In May 1488 the King granted to him a charter of the *comitatus* de Glencairn. Whether he also made him any separate grant, shall be inquired hereafter.

On the 11th June 1488, he fell in battle, together with his ill-fated Sovereign.

At the accession of James IV. it was the first object of the new government, to void the later grants made by James III.

Accordingly, on the 6th October 1488, a proclamation, formerly issued at Scone, was ratified in parliament. By it, besides other enactments, "all *creations of new dignities* granted sen the second day of Februar last [1487-8], be umquhile our Sovereine Lordis father," were annulled (*k*).

It is undeniable, that by virtue of this statute, Robert, the son of Alexander, slain on the 11th June 1488, was reduced to his former rank of Lord Kilmaurs.

But as it was exceedingly problematical, whether the prevailing faction had justice on their side, the severity of the statute 1488, made in the first heat of power newly acquired, was insensibly mitigated (*l*).

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*k*) Act. 5. parl. 1. James IV. 1488.

(*l*) Of this, any one conversant in the history of Scotland will recollect many examples; but the detail would better suit a dissertation than a note.

Reason I. The family of Glencairn, in particular, assumed that title, which Alexander
 Presump. 5. Lord Kilmaurs had purchased at so dear a rate.

After the union of the crowns, the Scottish nobility became as jealous of their rank in processions, as their forefathers had been of the right of combating at their Sovereign's side, and of dying with him.

In 1606, the Earls of Eglinton and Cassilis obtained a decree of the privy council, preferring them in the order of parliament to the Earl of Glencairn.

But, in 1609, the Earl of Glencairn obtained a decree of the court of session, annulling that preference, for the following reason: "That the pursuer's predecessor was created Earl of Glencairn by James III. in May 1488; before which time the defendants cannot shew that the dignity of an earldom was granted to either of them."

Thus the judgement of the privy council stood one way, the judgement of the court of session another: and at pronouncing this last judgement, it is probable that the act 5. parl. 1. James IV. was overlooked.

In 1637, Charles I. removed all doubt and ambiguity, by ratifying the grant of James III. 28th May 1488 (*m*).

To the ancient grant the King gives the appellation of *literæ patentæ*, which Sir Robert Gordon translates by the word *patent*. But that this interpretation is liable to just exception, the claimant has elsewhere shewn.

Unfortunately the grant 28th May 1488 is not upon record. The patent 1637, instead of repeating it, holds it as repeated.

From a charter of the *comitatus* of Glencairn in 1511, limited *hæredibus suis*, Sir Robert Gordon argues, that the grant 1488 was also limited *hæredibus suis*; yet he observes, that, in 1670, the title of honour went to the remoter heir-male; and hence he concludes, that the limitation of the peerage cannot be determined from the limitation of the estate in the investitures approaching nearest to the time of the creation of the peerage (*n*).

It is true, that the distance in point of time between May 1488 and 1511 is small; but then it will be remembered, that during that interval great changes had happened in the family of Glencairn. Alexander, slain in 1488, was succeeded by his son Robert, and he again by his son Cuthbert, the grantee in the charter 1511. How the investitures stood in the person of Alexander, or of his son Robert, is not discoverable from record, and the claimant has not the power of discovering them by a search into the archives of the family of Glencairn.

The limitations in the person of the grandson will not necessarily ascertain the limitations in the person of his father, and of his grandfather.

Besides, it is most presumable, that soon after 1511, the investitures were limited to *heirs-male*: for there is extant on record, a charter in 1531, of many lands to William Master of Glencairn, the son of Cuthbert, the grantee, in 1511, et *fuis hæredibus masculis*; quibus deficien. seniori hæredum suarum fœminearum abf-

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*m*) This grant was certainly good, to create a peerage; and, from the usages of Scotland, it might be good to establish a precedency: but whether it could, revive a grant [May 1488], null by a statute, is a question between law and prerogative.

(*n*) This seems to be the import of his argument, though obscurely expressed, by reason of some error or omission in printing.

“*que divisione.*” This charter has been overlooked by Sir Robert Gordon, although he has given himself the trouble of quoting another charter twenty years later; it is a charter of *apprising* of the lands of Challauchwrae, most naturally limited *heredibus et assignatis*. Reason I. Piesump. 5.

The claimant's proposition receives additional force from the limitation in the charter of the barony of *Kilmawers*, the ancient family-estate, in 1642. It is to William Earl of Glencairn, “*et heredibus suis masculis et TALLIÆ in in- feofamento terrarum de Glencairne specificat.*”

It is remarkable, that the patent by Charles I. in 1637, is not to *heirs male*, nor yet to *heirs-general* simply, but it is to “*heredes sui et successores.*”

Unless by *successores* be understood *heirs of entail*, by some limitation then subsisting, the claimant will shew, from Sir Robert Gordon's own express concession, that, in 1670, the *heir general*, not *the remoter heir-male*, ought to have succeeded to the title of honour by the patent 1637. His words are, “By the terms *heredes sui*, in limitations either of lands or *peerages*, were understood only the ancient heirs, *viz. heirs-male*. It required the introduction of the words *heredes quoscunque*, in the thirteenth or fourteenth century, to make room for the admission of females into *either*. But after such admission, the word *quoscunque*, which was once necessary, was dropped, as no longer so.” He adds, which is the expression to which the claimant alludes, “*and heredes sui, now mean heirs of both kinds.*” p. 2. 3.

If the words *heredes sui* do now mean *heirs-general*, as indeed they do, it will not be said that they had another meaning in 1637. It therefore follows, that, by virtue of that expression in the patent 1637, the *heir-general* ought to have taken in 1670.

As she did not, it must be concluded, that the *remoter heir-male* took by virtue of the expression *successores*.

6. E R R O R.

p. 28. “The earldom of Errol was created about the beginning of the thirteenth century. The earliest charter which Sir Robert Gordon can find on record of any part of the estate of Errol, is 31st January 1466-7; and limits the estate, “*heredibus inter ipsos; quibus fortè deficientibus, veris et propinquieribus heredibus dicti Nicholas quibuscunque.*” In 1510, 1512, 1521, 1530, the investitures of the family are *heredibus suis.*”

A N S W E R.

What pretence Sir Robert Gordon had to quote those charters as relating to the *estate of Errol*, or as proving *the investitures of the family*, is to the claimant unknown.

Not one of them has the most remote connection with the earldom of Errol. No 1. is of the lands of Ergath, No 2. of the sheriffdom of Aberdeen, No 3. of the *sixth* part of the lands of Inchmartin, No 4. of the barony of Downie, and No 5. of the lands of Argeth.

Reason I. This affords a striking example of the consequences arising from the use of the
 Presump. 5. ambiguous and indefinite term *estate*.

7. D O U G L A S.

p. 28. “ Sir Robert Gordon has not been able to ascertain the time of the
 “ date of the creation of this ancient peerage, but the first charter he
 “ has discovered on record of any part of the estate of this family is in
 “ 1370, the limitation of which is, *Willielmo Comiti de Douglas, et*
 “ *hæredibus suis et assignatis*. In 1373, the same limitation continues.—
 “ In another charter of Robert II. the limitation is, *hæredibus suis*. In
 “ 1426, the ancient barony of Bothwell, on which the Earls of Douglas
 “ used to reside, and a very large estate, is limited *Archibaldo, et Eu-*
 “ *famiæ sponsæ suæ, et eorum diutius viventi, ac hæredibus inter ipsos*
 “ *legitimè procreatis seu procreandis; quibus fortè deficientibus, ve-*
 “ *ris, legitimis, et propinquioribus hæredibus dicti Archibaldi quibus-*
 “ *cunque.*”

A N S W E R.

Although Sir Robert Gordon might not be able to ascertain the precise period of the commencement of this peerage, he might have seen from *Rymer*, t. 6. p. 108. that *Willielmus Comes de Douglas* existed in 1357. He must have seen, that the charter which he quotes as in January 1370, was not of the *earldom of Douglas*, but of the *lands of Balmouth*; that the *second* is of the *forest of Cabrach*; and the *third* of the *lands of Tillicutry*; all of them subjects unconnected with the earldom of Douglas, and utterly insignificant in the present question.

As to the *ancient barony* of Bothwell (o). It is now an *ancient barony*, in the possession of the Douglas family; but it was not an *ancient barony* in 1426. It accrued to the Earls of Douglas, by the marriage of Archibald, the 3d Earl, with Jean, the daughter and heiress of Thomas Murray, *Dominus de Bothwell*.

It is obvious, from a comparison of dates, that the barony of Bothwell did not accrue to the Earls of Douglas, for *thirty* years after the creation of the peerage. William Douglas was Earl in 1357; James, 2d Earl of Douglas, was slain at Otterburn in 1388; he was succeeded by Archibald, the husband of the heiress of Bothwell.

No limitation therefore of the barony of Bothwell can serve to shew in what

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(o) It is said, “ That the Earls of Douglas used to reside in the barony of Bothwell.” The late Duke *did*, about ten years ago, after his own castle was burnt. Dalkeith was the principal seat of the first Earl of Douglas.

manner the dignified fief of Douglas stood limited, "before, at, or soon after, the creation of that earldom." Reason I. Prefump. 5.

The limitation in the charter 1426 of the barony of Bothwell to *heirs-general* was most natural and reasonable, for that the grantee held it in right of his grandmother.

8. CAITHNESS.

- p. 28. "The peerage of Caithness was renewed in the family of Sinclair between 1452 and 1476. The only charter which approaches near to the period of the creation of Sinclair Earl of Caithness is a charter 7th December 1476. It grants, *omnes et singulas terras comitatus Cathaniæ, Willielmo Sinclair, filio dicti Willielmi Comitis Cathaniæ, et heredibus ipsius Willielmi filii quibuscunque.*"

A N S W E R.

There is no difficulty in ascertaining with the utmost precision the date of the creation of William Sinclair, Earl of Caithness; for the original charter still exists. It is dated 28th August 1455, and stands limited *heredibus suis*. This charter 1455, and the charter 1476, would no doubt have carried the peerage to *heirs-general*; but the claimant has formerly shewn, that George, the grandson of the grantee in the charter 1476, resigned the earldom, and obtained a new grant *heredibus masculis*; that the peerage has been enjoyed upon this grant; and that, if it was not good to convey the peerage, all those persons who assumed the title of Caithness during a period of 200 years were usurpers.

9. LINDSAY of BYRES.

- p. 29. "Sir Robert has not been able to ascertain the precise date of the creation of this peerage; but the first charter he discovers to Lord Lindsay, is in the year 1495. It contains a grant of the lands and barony of Byres, *Johanni Domino Lindsay de Biris*. The limitation of the estate is, *heredibus inter ipsos legitime procreatis seu procreandis; quibus fortè deficien. veris, legitimis, et propinquioribus heredibus dicti Johannis Domini Lindsay quibuscunque.*"

A N S W E R.

In his former case Sir Robert mentioned Lord Lindsay as appearing on the rolls of parliament 1457; and if *Dominus de Lindsay* meant *Lord Lindsay*, the family was ennobled before 1398. *Rymer*, t. 8. p. 35.

Even according to Sir Robert's last account of the matter, the Lord Lindsay

Reason I. fay who obtained the charter 1495 was the *third* peer of the family; and from
 Prefump. 5. the limitation in his charter, a presumption is raised as to the limitations in former charters; while at the same time Sir Robert has omitted mention of the royal charter obtained in the lifetime of Patrick, the immediate successor of this John, limiting the *dominium et baronia de Byres* to John Lindsay, his eldest son and heir-apparent, and his *heirs-male* (p).

10. S E M P I L L.

p. 29. “ This peerage was created some time between 1474 and 1505. In a charter 1474, the estate of Elliotstoun and Glasford is limited *filio Roberti Sempill, Militis, et heredibus suis*. In a charter 1505, the same estates are limited, *Johanni Domino Sempill, et heredibus suis*.”

A N S W E R.

1. The two charters relate not to the dignified fief, and consequently are not to the purpose.

2. Good evidence was formerly stated, for proving that an heir-female inherited both the estate and the dignity.

11. B O R T H W I C K.

p. 29. “ This peerage was created some time betwixt 1410 and 1458. The limitations in the investitures immediately prior to the creation are, *heredibus suis*; in 1483, *heredibus et assignatis*.”

A N S W E R.

One of the charters is of the lands of Glengelt, the other of the lands of Little-Lochquharret. Neither the one nor the other has any relation to the dignified fief. The first erection of the *barony* of Borthwick in 1538, is limited by a royal charter to *heirs-male*; and this again is renewed by another royal charter in 1543.

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(p) Royal Charter, penult May 1524. Records, b. 45. N^o 364.

12. F R A S E R of L O V A T.

p. 29. b15 " This family were made peers some time betwixt 1430 and 1480. E- Reason I.
 " vidence, Retour 1430, in which *Hugh Frazer de Lovat* is retoured by Presump. 5.
 " that designation. Royal Charter 1480, in which Hugh is designed
 " *Hugo Dominus Frazer de Lovat*. Eleven charters between 1432 and
 " 1536, are produced, for proving, that during that period the limita-
 " tions of the investitures were *hæredibus suis*, and *hæredibus quibuscun-*
 " *que*."

A N S W E R.

It is singular, that although Sir Robert Gordon has ransacked the records for examples, and has even swelled their number, by making reference to *apprisings*; yet that he has not produced one single charter relative to the dignified fief of Lovat.

He stops short just at the period when a royal charter of the whole family-estate appears upon record. The claimant will supply this defect in his narrative.

In 1539, Hugh Lord Frazer of Lovat resigned his whole family-estate into the hands of the King, and obtained a new charter, uniting, creating, and incorporating, "in unam integram et liberam baroniam, omni tempore affuturo, Baroniam de Lovat nuncupand." limited "dicto Hugoni Domino Frazer, et *hæredibus suis masculis* de corpore suo legitime procreat. seu procreand.; quibus deficientibus, legitimis et propinquioribus *hæredibus suis masculis* quibuscunque, arma, insigniaque, et cognomen de Frazer, portantibus et gerentibus; quibus deficient. hæredibus suis quibuscunque, de nobis, &c. in feodo et hæreditate, ac libera baronia."

This is the charter upon which the court of session, rightly, although incompetently, adjudged the honours of Lovat to Simon Frazer.

13. H A L I B U R T O N.

p. 29. " The first charter on record to a Lord Haliburton is in 1451. The
 " limitations in the investitures of the family-estate were *hæredibus suis*
 " at that time."

A N S W E R.

The fact is admitted; and it has been proved on the part of the claimant, that the heir-female did succeed to the family-estate, and to the dignity; and that both devolved on the crown by the forfeiture of her grandson in 1600.

14. H E R R E I S.

- Reason I. p. 29. " The peerage of Herreis was created some time between 1486 and
 Presump. 5. " 1493. The limitation of the estate, in a charter 1486, is *heredi-*
 " *dibus suis*, in 1493 *heredibus de corpore*; whom failing, *heredibus*
 " *quibuscunque.*"

A N S W E R.

It has been already proved, that as the investiture of the dignified fief stood *heredibus suis*, the daughter of William Lord Herreis succeeded to the honours and estate, in preference to the heir-male.

S I X T H P R E S U M P T I O N.

- p. 18. " Another presumption arises from the sentiments of peers who were
 " in a similar situation. There are a variety of instances of peers resign-
 " ing peerages *whose limitations were unknown*, and taking new crea-
 " tions, limiting the honour to heirs-female on failure of males; which
 " prove their sense, that a *definite and express* limitation was necessary
 " for letting in females, who were otherwise excluded under an unknown
 " and indefinite one." It is added in a note, " A great number of them
 " were pointed out in the printed cases concerning the earldom of Stair
 " in 1748."

A N S W E R.

The claimant cannot admit this presumption. It would infer, that the peers of Scotland always employed men of business, conversant in law, and in the history of their country, not actuated by self-conceit and caprice, nor subject to timorousness and over-caution, nor willing to multiply parchments and writings without cause.

But indeed there is nothing in the presumption; and had Sir Robert Gordon, instead of referring to the cases of Stair, been pleased to print the examples themselves, it would have been perceived at once, that there was nothing in the presumption.

Among those examples, there does not occur any one of a peer resigning a peerage *whereof the limitations were unknown*.

All the examples relate to peerages created by patent since 1600, and afterwards resigned for the purpose of letting in heirs of entail and provision, succeeding to the estate of the resigner.

As to what Sir Robert observes, in another passage of his Supplemental Case, that the new creation of Napier “ expressly bears, that it was granted to *heirs-general*, because, without the resignation, it must have gone to *heirs-male*,” the answer is to be found in the original patent itself. It is to Archibald Lord Napier, and was limited to him, and *the heirs-male of his body*. In 1677, his grandson followed the custom then prevalent: he resigned his dignity, and obtained a new charter, transmitting it in the same channel as his estate, first to the heirs-male of his body, then to the eldest heir-female of his body, and last of all to his heirs of entail and provision.

Reason I:
Presump. 6.
p. 33.

SEVENTH PRESUMPTION.

The claimant will now examine a capital presumption argued upon by Sir Robert Gordon, with an exultation equally confident and astonishing.

P. 4. P. 20. “ There is,” says he, “ DIRECT PROOF, that in the first instance where the succession opened to an heir-female, the peerage went to the heir-male, in exclusion of the heir-female. For this Earl John had two sons, *Alexander* and *John*: *Alexander* died before his father, leaving a daughter, *Marjory*, married to the Earl of *Caithness*. In order to prevent any claim, however weak, of hers, by means of her husband’s powerful family, to his estate, he made a resignation, in 1455, in favour of his second son *John*. In 1460, *this second son, the heir-male, succeeded to the peerage, in prejudice of Marjory, the heir-female.*”

In support of this proposition Sir Robert quotes many authorities.

A N S W E R.

The claimant admits, that a *Marjory Sutherland* married the Earl of *Caithness*, and had issue. She knows that at this day there are thousands of persons in Scotland descended of that lady.

But “ that Earl John had an eldest son, *Alexander*, who died before him,” is a proposition *without evidence*. “ That *Marjory Sutherland* Countess of *Caithness* was the daughter of *this Alexander*,” is a proposition *contrary to demonstrative evidence*.

By what means it happened that this error concerning a *Marjory*, the daughter of the *supposed Alexander*, has crept into genealogical histories, the claimant knows not, nor is she bound to inquire.

But that it *is* an error, she will, by production of an authentic instrument, prove to the conviction of every impartial person. She wishes to add, to the conviction of the managers for Sir Robert Gordon, and Mr *Sutherland of Forfe*; but she much fears that *they* are *already* convinced (*p*).

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*p*) Before the publication of the Supplemental Cases, (if she is not misinformed), an agent of Sir Robert Gordon saw a copy of this instrument; and an agent of Mr *Sutherland of Forfe* was actually possessed of the original.

Reason I. For explaining *who* this Marjory Countess of Caithness was, there is produced an original precept by "Alexander de Ile, Comes Rossie, ac Dominus Insularum, dat. sub sigillo nostro, apud Inverness, 24^o die mensis Octobris, anno Domini 1429."

It grants "Alexandro de Sutherland, et Mariotæ de Ile, forori nostræ, spouæ suæ, et eorum diutius viventi, et eorum hæredibus inter se de corporibus suis procreatis seu procreandis, omnes et singulas terras nostras dominii de Dunbeath, cum castro ejusdem, &c. jacen. in comitatu Cathaniæ."

This is evidently an original grant, not proceeding on a resignation or other antecedent title.

Who was the father of this Alexander Sutherland of *Dunbeath*, has not hitherto been discovered. That John Earl of Sutherland was *not* his father, is evident from the deed now to be stated.

It is an original latter-will and settlement by Alexander Sutherland of Dunbeath; to this is prefixed an inventory of all his goods, made, at Roslin, 14th November 1456.

The inventory contains, among other articles, the following. "Item, The Earl of Southerland tuk of my gold, sylver, jeoullis, clethyng, fermys, mat, [malt], yrn, and uther gudis, *mar than a thusand pundis, quhat first what last*, atour his *lettres of seil and bodylik aythis*, before notable witness, the quilks I have to shaw for me."

The settlement contains the following bequeathment. "I give and I leve to my Lord Erle of Caithness and Orkney, and Marjory my daughter, and to the bairnes gottin and to be gottin betwixt thaim, the thousand lib. that the Erle of Southerland has of myn, and is awand me, or *quhat* may be recovered tharof. Item, I give and laif to the bairns gottin and to be gottin betwixt my said Lord Erle of Caithness and Orkney, and Marjory my daughter, all the lands that I have in wedsetting of the said Lord Erle within the earldom of Caithness," &c.

By the same deed Alexander Sutherland of *Dunbeath* bequeathes legacies to the persons following. To "my son Mr Alexander of Southirlande, erlden [*i. e.* archdean] of Caithness;—my son Robert;—my son Nicholace;—my son Edward;—my daughter Marion;—my daughter Elynor;—my daughter Katheryn;—my daughter Janet."

He also names as one of the executors of his will, "Alexander of Straitoun, laird of Louriston, *my sistar son*."

He, moreover, mentions, "my lands of Dunbeath;" and makes a bequeathment to "my Lord Erle of Ross, he being gud Lord manteynar, supplear, and defender, to my barnes," &c.

This deed is sealed by the granter, and is authenticated by two notaries-public.

The original is in the possession of Mr Sinclair of Roslin, a gentleman lineally descended from William Earl of Caithness and Countess Marjory Sutherland. It is verbatim ingrossed in Mr Richard Hay's MS *Memoirs*, Advocates Library, Edinburgh.

After so full a recital of this deed, it would be indecent to use many words for proving, that Alexander Sutherland of Dunbeath, father of Marjory Countess of Caithness, was *not* the son of John Earl of Sutherland, *nor* the elder brother

ther of John also Earl of Sutherland; and consequently that *Marjory Countess of Caithness, grand-daughter and heir of line of John Earl of Sutherland, is al-* Reason I. Presump. 7.
together a fabulous personage.

From the deed itself, the following circumstances appear:

1. That Alexander Sutherland of [Dunbeath the *supposed* Master of Sutherland] was a person who thought himself oppressed by the Earl of Sutherland, his *supposed* father. The Earl of Sutherland had taken from him even his cloaths, and the grain, the produce of his lands, [*clethyng, fermys*]; the injury had been repeated, [*quhat first quhat last*]; the extent of the injury had never been liquidated, [*mar than a thousand pundis*]; obligations and solemn promises to indemnify him had been given, but never made effectual, [*lettres of feil, and bodylik aythis*].

The deed is dated at Roslin in Mid-Lothian, the castle of his son-in-law the Earl of Caithness.

He recommends his children to the protection of his superior, Alexander Earl of Ross, the grand-nephew of *Mariota de Yle*.

All this speaks the condition and the language of a *little* man, oppressed by a *potent* neighbour.

2. Besides his daughter Marjory, wife of the Earl of Caithness and Orkney, and four daughters more, he mentions no fewer than *four* sons, Alexander, Robert, Nicholas, and Edward. Had *he* been *Master of Sutherland*, how could Countess Marjory be his heir at law, in prejudice of his *four* sons, *all* alive in 1456?

3. This deed is dated 14th November 1456; how then could John, his *supposed* younger brother, be *heir-apparent* of the Earl of Sutherland in the February preceding, 1455-6.

The claimant, Lady Elisabeth, will draw no other conclusion from the history of this PHANTOM, "Marjory Countess of Caithness, the daughter of Alexander, "heir-apparent of Sutherland," but this, That they who come to plead before the Highest and Most Honourable Tribunal in Europe, ought not to be as careless, and as inattentive to evidence, as if they were pleading before a *court of Piepowders*.

E I G H T H P R E S U M P T I O N .

p. 21. " If the investitures of the family-estate can afford a presumption, they
 " stand against Lady Elisabeth's claim. For during the first period of the
 " peerage, viz. from its origin until its new root in Adam Gordon,
 " they are all to heirs-male. During the second period, viz. that which
 " succeeded the creation of Adam Gordon, down to 1706, the same li-
 " mitations in the investitures continue: for in 1559, the grant of the
 " sheriffship of Inverness is to heirs-male expressly; and the regality
 " granted by King David II. sunk only because it could not, under a li-
 " mitation *heredibus inter ipsos*, go to heirs-female. In 1601, John
 " Earl of Sutherland, probably with a view of obviating any possible dis-
 " pute from the alteration made in the limitations of his estate by the
 " charters 1546, and 1580, resigned it into the King's hands, and got a

Reason I.
Presump. 8.

“ new grant to heirs-male, under the definite term: *heredes mascul.*
 “ In this investiture heirs-female are not even called in the last termina-
 “ tion, though it is proved the grantee had daughters living at the time.
 “ The charters 1631 and 1662 are likewise to heirs-male; and by that
 “ in 1681, Earl George settles his estate upon the heirs-male of his own
 “ body, failing those of his eldest son, to the prejudice of his son’s
 “ daughters. But the contract 1705, and charter 1706, shew more
 “ clearly than any of the foregoing, that the Earls of Sutherland knew
 “ their peerage had been originally granted, and must descend, to heirs-
 “ male; seeing John Earl of Sutherland attempted, though without suc-
 “ cess, to resign it, in order to let in heirs-female: and it appears, from
 “ the last Earl of Sutherland’s marriage-contract in 1761, that he enter-
 “ tained the same sentiments as the former Earls upon this point; for,
 “ failing issue of his own body, he settles his estate upon his heirs suc-
 “ ceeding him in the title and dignity of Earl of Sutherland; thereby ex-
 “ pressing a strong doubt of his female heir at law’s being that person.”

A N S W E R.

According to the method already used, the different clauses of this eighth pre-
 sumption shall be separately considered.

1. “ During the first period of the peerage, viz. from its origin until its new
 “ root in Adam Gordon, all the investitures of the family-estate are to *heirs-*
 “ *male.*”

It has been proved over and over again, that all the ancient investitures of the
 family stood *heredibus suis*, or *heredibus inter ipsos*; and that those limitations
 did anciently, as they do now, imply *heirs-general*.

While the investitures stood *heredibus suis*, Elisabeth was served and retour-
 ned nearest lawful heir to her brother John. At that time Richard Sutherland of
 Forfe, or his son John, certainly existed, and was as certainly the heir-male of
 Earl John.

Upon what authority then does Sir Robert Gordon persist in averring, that
 the ancient investitures of the family were to *heirs-male*?

2. “ During the second period, viz. that which succeeded the creation of
 “ Adam Gordon, down to 1706, the same limitation in the investitures conti-
 “ nue; for in 1559, the grant of the sheriffship of Inverness is to heirs-male ex-
 “ pressly.” This is more fully set forth, p. 13. in the following words. “ By a
 “ precept and seisin in 1559 it appears, that George Lord Gordon, the Earl of
 “ Huntly’s son, had granted a charter, constituting John Earl of Sutherland,
 “ and his heirs-male, sheriffs-depute of the county of Inverness, over the bounds
 “ of the earldom of Sutherland; which charter not only proves the general li-
 “ mitation to heirs-male, but also, that the regality, which had been given to
 “ Earl William in the year 1347, had not descended to Elisabeth, because she
 “ was a female; for if that regality granted to Earl William, *et heredibus inter*
 “ *ipsos*, had passed through a female, the sheriffship within the bounds of the
 “ earldom

“ earldom could not have taken place, a sheriffship and regality in the same bounds being utterly incompatible (q).” Reason I. Presump. 8.

A limitation in a grant made by the Earl of Huntly's son, can never infer any presumption as to the limitations of the family-estate of Sutherland; and *this* the more especially, because in the next paragraph Sir Robert Gordon admits, that in 1559 the investitures of the estate of Sutherland stood limited by a charter in 1546, “ *hæredibus inter ipsos; quibus deficien. legitimis et propinquioribus hæredibus quibuscunque seu assignatis.*”

Here then Sir Robert pleads for the general limitation to heirs-male, contrary to that very evidence which he himself produces: the contradiction is direct and palpable.

There is nothing in the grant 1559 for proving, that the regality in the grant 1347, had not descended to Elisabeth: The grant 1559 is of a sheriffdom *infra*

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(q) Sir Robert's criticism, founded on the inaccuracy of the writer of the charter 1583; respecting the barony of Farr, and the mention of the word *masculi* in the *Reddendo*, is rather trivial. That charter proceeds on George Earl of Huntly's resignation in favour of Alexander Earl of Sutherland, “ *hæredibus suis et assignatis.*” Original Instrument, 29th May 1583, in the claimant's possession. Besides, the inaccuracy, if material, was soon corrected by Alexander Earl of Sutherland, the grantee in the charter; for he resigned the lands, and obtained a new charter thereof in 1588, in favour of his son and heir, “ *suisque hæredibus et assignatis hæreditariè quibuscunque.*”

Were charters of detached parcels of land to be of any weight in the determination of the present controversy, the following royal charters might be stated.

1. Royal charter of the lands of Cracock, Estirloch, &c. “ *Joanni Comiti de Sutherland, et Margaretæ Comitissæ de Sutherland, sponsæ suæ, et eorum alteri diutius ventis, et hæredibus inter ipsos legitimè procreatis seu procreandis; quibus fortè deficien. veris legitimis et propinquioribus hæredibus dicti Joannis quibuscunque,*” 29th April 1451.

2. Royal charter of the lands of Nevyndale, Eafter Garthe, Wester Garthe, &c. “ *Alexandro Gordoun, Magistro de Sutherland, filio et apparenti hæredi consanguinei nostri Adæ Comitis de Sutherland, et Janetæ Stewart, ejus sponsæ, et eorum alteri diutius viventi, in conjuncta infeodationè, et hæredibus inter ipsos procreatis seu procreandis; quibus deficien. legitimis et propinquioribus hæredibus dicti Alexandri quibuscunque,*” 4th March 1527.

Those two charters are stated in Sir Robert Gordon's First Case, and contradict his averment, That the charter 1546 is the first alteration of the ancient investitures, by introducing *hæredibus quibuscunque.*

3. Royal charter, confirming a charter by the Bishop of Caithness, of the lands of Gauldwell, and sundry other lands, “ *Alexandro Sutherlandiæ Comiti, et hæredibus suis masculis de corpore suo legitimè procreatis seu procreandis; quibus deficientibus, seniori hæredum feminearum ipsius Comitis de corpore suo legitimè procreatis seu procreandis, absque divisione; quibus deficientibus, legitimis et propinquioribus hæredibus et assignatis dicti Comitis quibuscunque,*” 23d November 1581.

4. Royal charter of the lands and barony of Farr, &c. “ *Alexandro Sutherlandiæ Comiti, suis hæredibus et assignatis,*” 5th July 1583.

5. Royal charter of the lands of Stroakel, &c. “ *Alexandro Sutherlandiæ Comiti, hæredibus suis et assignatis quibuscunque,*” 3d March 1584.

6. Royal charter of the lands and barony of Farr, &c. “ *Joanni Gordoun, filio nato maximo et hæredi apparenti charissimi nostri consanguinei Alexandri Sutherlandiæ Comitis, suisque hæredibus et assignatis hæreditariè quibuscunque,*” 21st May 1588.

Reason I. *ſingulas bondas comitatús Sutherlandiæ*; a very different thing from a ſheriffdom.
 Prefump. 8. *over the bounds of the earldom of Sutherland*, as the words are translated by Sir Robert.

The probability is, that the grant 1559 was made in order to prevent all ſolliſion of juřiſdiction, ariſing from the boundaries of the regality and of the ſheriffdom not being exactly known or aſcertained by uſage.

If the regality did not deſcend to Elifabeth, the heir-general of Earl William, it muſt have deſcended to his heir-male, who, in 1559, was Richard Sutherland of Forſe.

Beſides, when James VI. of new erected the earldom of Sutherland into a regality, *anno* 1601, he referred to the former grant made by David II. in favour of Earl William.

And, which is concluſive againſt Sir Robert's argument of incompatibility, that ſame inſtrument 1601, which grants the regality, expreſsly grants a right of ſheriffdom *infra bondas reſpective prædict.*

3. " In 1601, John Earl of Sutherland, probably with a view of obviating any poſſible diſpute from the alteration made in the limitations of his eſtate by the charters 1546 and 1580, reſigned it into the King's hands, and got a new grant to heirs-male, under the definite term *heredes masculi*. In this inveſtiture, heirs-female are not even called in the laſt termination, though it is proved the grantee had daughters living at the time."

It has been already proved, that the charters 1546 and 1580 made no change in the ancient inveſtitures: the ancient inveſtitures briefly expreſſed thoſe limitations which the charters 1546 and 1580 expreſſed more at large.

What is meant by *obviating any poſſible diſpute*? There could be none as to the import of the limitations 1546 and 1580.

The charter 1601, by which Sir Robert ſays, that *every thing was ſet to rights*, is of a ſingular nature. Failing Earl John, and his two brothers, and the heirs-male of their bodies, the eſtate is limited to Adam Gordon, and his heirs-male whatſoever; in other words, if Earl John, and his two brothers, both very young men, died without iſſue-male, the eſtate of Sutherland was to ſink for ever in the family of Huntly.

This ſettlement was in every view irrational. By it the heirs-general of the family, Gordon of Garty, the heir-male of Adam Gordon and Counteſs Elifabeth failing Earl John and his brothers, and alſo Sutherland of Forſe, the heir-male of the ancient Earls of Sutherland, were all excluded.

At that time the Earls of Huntly and Sutherland were zealous Roman Catholics: The great object of the ſettlement 1601 muſt have been to ſupport the intereſt of that party. This, together with the ſtrange partiality for the ſucceſſion of males which prevailed in Scotland during great part of the 17th century, will ſerve to account for the great deviation from the ancient form of the inveſtitures of the family of Sutherland.

In 1681, the charm of ſuperſtition was diſſolved, and the inveſtitures were again turned into their ancient channel.

4. "The contract 1705, and charter 1706, shew more clearly than any of the foregoing, that the Earls of Sutherland knew their peerage had been originally granted, and must descend, to heirs-male; seeing John Earl of Sutherland attempted, though without success, to resign it in order to let in heirs-female." At p. 15. it is said, that "Queen Anne, from a principle of justice and sound policy, refused to sign the charter." Reason 7. Presump. 8.

It is hard to say, why *this principle of justice and sound policy* should have affected Queen Anne and her ministers, in the particular case of Sutherland, at a period when such resignations for letting in heirs of provision were usual.

Sir Robert Gordon has no other reason for averring, that Queen Anne refused to sign the charter, but this, that it was not signed.

Greater favours would not at that critical period have been denied to the Earl of Sutherland.

Family-reasons may have induced him to vary the natural order of succession, and other family-reasons may have moved him to depart from that plan.

Nevertheless it ought to be acknowledged, that the evidence of John Earl of Sutherland's being conscious that the peerage must have descended to heirs-male, is rather singular, when, according to the plan of the charter 1706, it was proposed to prefer the second son to the daughter of the eldest son!

That proposed limitation might be urged as a more convincing evidence of the direct contrary proposition, thus: John Earl of Sutherland knew, that the peerage must have descended to *heirs-general*; and therefore he proposed, by means of a resignation, to let in *heirs-male*.—But the most singular argument yet remains.

5. It is said, "That it appears from the last Earl of Sutherland's marriage-contract in 1761, that he entertained the same sentiments as the former Earls upon this point. For, failing issue of his own body, he settles his estate upon his heirs succeeding him in the title and dignity of *Earl of Sutherland*; thereby expressing a strong doubt of his female heir at law being that person."

Were it of consequence, the claimant could prove, that as her grandfather had wakened the action of precedency in 1746, so her father wished to have that question tried. *This* of itself shews, that he entertained no such sentiments as those which Sir Robert Gordon is pleased to ascribe to him.

Besides, the limitations in the marriage-contract 1761 are too much abridged in the Supplemental Case. They run thus: "To the said William Earl of Sutherland himself, and the heirs-male to be procreated of this marriage, and the heirs whatsoever of their bodies; whom failing, to the heirs-male to be procreated of his body of any other marriage, and the heirs whatsoever of their bodies; whom failing, to the daughters of this marriage, and the heirs whatsoever of their bodies; whom failing, to the Earl's other heirs succeeding to him in the dignity of the Earl of Sutherland; the eldest daughter, or heir-female, through the whole course of succession, always succeeding without division, and excluding all other heirs-portioners."

Are there any words in this deed which seem to imply, that the Earl of Sutherland had a doubt, that the daughter of his son, or his own daughter, *i. e.* his heir-female, would succeed to the peerage of Sutherland?

Reason I. The expression, his *other heirs*, subjoined to that of *the heirs-general* of his own body, shews the direct contrary; as does the provision in favour of the eldest female, through the *whole course of succession*.

N I N T H P R E S U M P T I O N .

The claimant has at last arrived at the *ninth*, and what may be termed *the Giant presumption*, in Sir Robert Gordon's Supplemental Case.

It respects the methods by which Adam Gordon is supposed to have acquired the estate and dignity of Sutherland.

This presumption, briefly resumed at p. 21. 22. is enforced with a profusion of historical criticism, from p. 5. to p. 9.

New discoveries in history, like new discoveries of unknown countries, are scanty and imperfect, especially where hypothesis is the guide.

The claimant, tracing Sir Robert's course, will endeavour to supply what may be wanting, and to rectify what may appear erroneous, in his historical delineation of the state of Sutherland about the commencement of the sixteenth century.

The very words of Sir Robert Gordon shall be stated. The remarks on them will sometimes be unavoidably prolix: it is hoped, however, that this will be excused, by reason of the great curiosity of the matter.

H I S T O R I C A L D E L I N E A T I O N .

p. 5. " John Earl of Sutherland, who succeeded in exclusion of Marjory the heir-female, died some years before 1514. A few years after his death, a material alteration happened in the line of the Sutherland peerage, which deserves great attention in the present dispute."

R E M A R K .

This Earl John *did not succeed in exclusion of Marjory, the heir-female*. It is demonstratively certain, and has been demonstrated, *Answer to Reason 1. Presumption 7.* that a Marjory, the daughter of an elder brother of this Earl John, never existed, unless in the imagination of genealogists. She may perhaps have had a transitory existence in the prejudices of some other persons who grasp eagerly at shadows.

H I S T O R I C A L D E L I N E A T I O N .

p. 5. " This Earl John left behind him two sons, John and Alexander, and a daughter, Elisabeth, who was married to Adam Gordon, second son to the Earl of Huntly. John, the eldest, was a weak man; Alexander, the second, was a minor."

R E M A R K.

Alexander has always been esteemed a bastard. Sir Robert Gordon's predecessor, the historian of the family, expressly asserts, that Alexander was a bastard. He mentions the name of his mother, and the name of his bastard-brother of *full blood*. Why the other bastard-brother has been omitted in this genealogy, the claimant knows not. Sir Robert Gordon, now for the first time, introduces Alexander into the scene, and labours to establish his legitimacy, for "*the inaccuracies in his original case and appendix, which were printed before the proofs arrived from Scotland, are now corrected.*" Concerning this supplemental legitimacy of Alexander, there will be occasion to treat hereafter at large.

Reason 1.
Presump. 9.

P. 1.

HISTORICAL DELINEATION.

p. 5. 6. "Adam, the husband of Elisabeth, was a man of great ambition, and had high pretensions, his mother being daughter to King James I. and widow of the great Earl of Angus, head of the Douglasses. His father was Lord Chancellor; his sister married to Perkin Warbeck, who, though *afterwards* found an impostor, was yet, by one half of Europe, long believed to be Duke of York, and rightful heir of the crown of England. His eldest brother was Lord Lieutenant of the North, one of the governors to the young King, the most potent of the highland chieftains, and, without doubt, one of the greatest subjects in the kingdom."

R E M A R K.

Whether Adam Gordon was *a man of great ambition*, or not, is a circumstance which must remain undecided. At Flouden field he displayed that personal valour hereditary in the house of Gordon. The rest of his character is unknown; for his name never occurs in history, except on the fatal 13th September 1513.

It will be observed from the context, that the date of the *high pretensions* of Adam Gordon is 1509. They shall be separately and fairly examined.

That his mother was daughter of James I. is true; and this great truth is the more valuable, because most of his other *high pretensions* were ideal in 1509.

His mother's first husband, James 3d Earl of Angus, was not *the head of the Douglasses*. He died childless, and was succeeded by his uncle George. This George suppressed the rebellion of the Earl of Douglas in 1455, and obtained a grant of the Douglas estate in 1457. Hence it appears, that the only connection of this lady with the Douglas family was, that her husband's uncle did, in all probability,

Reason I. probability, stand bound to make her jointure good : A *high pretension* indeed
 Presump. 9. for all the favour which the head of the Douglasses could bestow !

His father was Lord Chancellor in 1498 ; but was removed from his office in 1502, *seven* years before 1509. *Crawford*, Officers of State, p. 57.

His sister, whom the generous English affectionately denominated the *White Rose*, was, for reasons of state, sacrificed in marriage to Perkin Warbeck. Warbeck was executed in November 1499, *Bacon*, Life of Henry VII. *ten* years before 1509.

His brother was Lord Lieutenant of the North, and *one* of the *seven* governors of the young king in 1517, *Buchanan*, lib. 14. p. 259. *eight* years after 1509.

Thus, independent of the royal alliance, no great matter in those days, the *high pretensions* of Adam Gordon in 1509 stood thus.

The family of Angus was probably burdened with the payment of his mother's jointure.

His father had been removed from the office of Chancellor *seven* years before.

His sister had married Warbeck, who was executed as an impostor *ten* years before.

Eight years after, his eldest brother, a man of great authority and influence, was to be appointed to certain offices of trust.

Armed with those *pretensions*, Adam Gordon trampled under foot every law, human and divine, and by fraud and violence acquired the estate and honours of Sutherland, to himself, and his *issue-male*. Such is the general view of the hypothesis adopted by his issue-male.

HISTORICAL DELINEATION.

- p. 6. “ It was usual in former days, for the crown to transfer peerages from
 “ one family to another, upon the resignation of the peer, or indeed
 “ upon his consent sufficiently manifested to the King ; *Patent* to
 “ Campbell of Glenorchy of the peerage of Caithness, 1677 ; *Patent*
 “ to Robert Lord Maxwell of the peerage of Nithsdale, 1620. A va-
 “ riety of instances whereof appeared in the competition for the peerage
 “ of Stair, determined in 1748.
 “ The state of the Sutherland family, together with this practice, sug-
 “ gested to Adam Gordon views of avarice and ambition. To wait the
 “ death of his wife's two brothers, was tedious ; and even though they
 “ died, he could not get the peerage to his children through his wife,
 “ having the instance just before his eyes, of his wife's father succeed-
 “ ing in prejudice of his elder brother's daughter, as the peerage of
 “ Sutherland went not to females. He therefore formed a resolution of
 “ effectuating his views by the act of his wife's brothers ; and the steps he
 “ took were as follow.”

R E M A R K.

The precedent of the exclusion of Marjory could have no influence upon Adam Gordon; for he certainly knew, as well as Sir Robert *now* does, that Marjory never existed. Reason 1.
Presump. 5.

Neither could it favour his views of ambition, "that it was usual in former days for the crown to transfer peerages from one family to another upon the resignation of the peer;" for this simple reason, That the resignation of peerages was not known, nor could be known, in the reign of James IV.; neither indeed is there a single instance upon record of any such resignation for a century after.

By *peerage*, is here meant a peerage in Sir Robert Gordon's sense of the word; that is, "a title of honour, independent of the dignified fief."

Here therefore Sir Robert Gordon is exceedingly unfortunate in the motives of ambition and avarice which he is pleased to ascribe to his predecessor.

Sir Robert proceeds to illustrate his mistake, by referring in general to the cases in the question concerning the peerage of Stair 1748; and, in particular, to the patent of Nithsdale 1620, and of Caithness 1677.

All the examples produced in the cases 1748 are of peerages created by patent since 1600, and afterwards resigned for the purpose of letting in heirs of entail and provision succeeding to the land-estate of the resigner.

The case of Nithsdale is utterly misunderstood: the patent itself serves to explain it.

In 1581, on the forfeiture of Regent Morton, John Lord Maxwell obtained a grant of the earldom of Morton. On the reversal of the Regent's forfeiture in 1585, Lord Maxwell was obliged to yield up the estate and dignity of Morton; and Archibald Earl of Angus, and Sir William Douglas of Lochleven, both of them heirs of entail of Regent Morton, successively enjoyed the title. By way of compensation to Lord Maxwell, the son of him who bore the title of *Morton*, James VI. created him Earl of Nithsdale, with precedency from the date of his father's creation.

Here there was no consent required, unless that of a Lord Baron's agreeing to become an *Earl*. The patent of Nithsdale itself makes it evident that Robert never was Earl of Morton, for that he is therein styled *Lord Maxwell*, and no more.

Such being the circumstances of the case, it is a singular idea of Sir Robert Gordon's, that "upon the restoration of Douglas Earl of Morton, it was thought improper that both Maxwell and Douglas should hold the same peerage; and therefore, to content the former, James VI. created him Earl of Nithsdale." All this seems by Sir Robert's account to have happened at *one* period, and yet there was an interval of *thirty-five years*; and in that interval there were *two Lords Maxwell*, who did not bear the title of *Morton*.

The case of the patent of Caithness 1677 is equally foreign to the matter in issue, not only because it is a recent case, but because the patent to Glenorchy bears the reason of its being granted; namely, that the Earl of Caithness had made over his whole estates to him. Besides, all the world knows, that the

Reason I. patent did not long subsist. The heir of the Earl of Caithness claimed the dignity; his claim was allowed, and Glenorchy was created Earl of Breadalbane.

HISTORICAL DELINEATION.

p. 6. “ In the year 1509, he took out briefes for serving his wife’s brother
 “ Earl John, heir to his father; which service was to proceed before the
 “ Earl of Huntly, Adam’s own brother, as sheriff of the county. Alex-
 “ ander the brother had at this time prepared to oppose the service, pro-
 “ bably on account that John being a weak man, Alexander thought he
 “ might represent him as an idiot, and thereby object to his capacity of
 “ being served; but as Alexander was at that time but eighteen years
 “ old, and could not act by himself, the sheriff the Earl of Huntly ap-
 “ pointed him curators. These curators named by the Huntly family,
 “ acted as might have been expected of them. For after conferences
 “ with Elifabeth Sutherland and Adam Gordon, they agreed, or, as
 “ the instrument of resignation, hereafter to be mentioned, expresses it,
 “ [Curatoribus] *pro concordia colloquentibus, tandem in unum convene-*
 “ *runt et appunctuarunt*, that Alexander should renounce, in favour of
 “ his brother John and his sister Elifabeth, and their heirs, his *chance of*
 “ *succession* to the estate of Sutherland, for an annual rent of 40 merks
 “ to be paid him by Adam Gordon; but that it should return to himself, if
 “ they had no heirs. The renouncing words are, *Quod ipse Alexander*
 “ *juri suo in et ad dictum comitatum, in favorem dicti Johannis Su-*
 “ *therland, et Elifabeth Sutherland, heredumque suorum, pro certa*
 “ *compositione, renunciaret*. And to fix Alexander the faster, he is
 “ bound to swear never to impugn this transaction, and to renounce the
 “ objection of minority and restitution *in integrum*.”

R E M A R K.

Adam Gordon cannot be censured on account of his having concurred in the
 briefe for serving John Sutherland heir to his father. According to Sir Robert
 Gordon’s own argument, he might have had a pretence for opposing that service,
 upon the supposition that John was an idiot, and Elifabeth the next in succession.

That “ the service was to proceed before the Earl of Huntly, Adam’s own
 “ brother,” is insinuated as a circumstance presuming some foul machination;
 and yet Sir Robert Gordon, in the very same sentence, shows, that the service
 proceeded properly before the Earl of Huntly, for that he was “ sheriff of the
 “ county.”

Surely it would be superfluous to prove, that the service ought to have pro-
 ceeded before the sheriff of the county (r).

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(r) See *Reg. Majestatem*, l. 3. c. 28. *Stat. Rob.* III. c. 1. act 127. *parl.* 9. James I.

What

What title Alexander had to oppose this service, is difficult to understand. It is plain that it was not as Sir Robert Gordon conjectures, because "Alexander might represent John as an idiot, and thereby object to his capacity of being served." For the very instrument here quoted, sets forth, that Alexander asserted, "*se in dicto comitatu jus hereditarium habere.*"

Reason 1.
Presump 9:

As Sir Robert Gordon admits, that John was the *eldest* son of the former Earl; it is to be considered how Alexander, even supposing him legitimate, could have right to the earldom of Sutherland. By the course of succession it is evident he could not.

Alexander has constantly been considered as a bastard, and it would seem that till of late he was so considered by Sir Robert Gordon himself:

But it does not from thence follow, that Alexander was a bastard in the modern acceptance of the word; that is, the fruit of an immoral intercourse with a lewd woman.

If his mother, the daughter of Ross of Balnagown, was in the degree of *fourth in kin* to John Earl of Sutherland, and had married him without a Papal dispensation, the offspring of that marriage would, in the times of Popery, have been as completely illegitimate, as if the mother had been the most abandoned low prostitute in the kingdom; with this difference indeed, that the Earl of Sutherland, in the reign of James IV. by marrying the prostitute, would have legitimated the child; whereas a child born to him by his cousin could not be legitimated without an expensive interposition of Papal authority.

It might seem invidious to search into the family-histories of the Scottish nobility for examples of this nature, such however may be found.

Had the claimant imagined that Sir Robert Gordon was to have reared up any argument from the transactions concerning Alexander Sutherland, she would have furnished him with an instrument; it is the only writing extant, so far as she knows, from whence the nature of Alexander's claim may be conjectured.

When the service of Elisabeth Sutherland was about to proceed, upon the 3d October 1514, Robert Munro, the *brother* and procurator of Alexander Sutherland, was admitted to object to the breve. It appears, that he made none of the exceptions receivable by act 94. parl. 6. James IV. 1503, *i. e.* "against the judge, against the inquest, and the exceptions of bastardy." But, "*per cedulam in scriptis porrectam allegavit, terras et comitatum Sutherlandiæ, per cartam Domini Regis, tailiatis seu talliatum esse.*" Munro was called upon to produce this *charter of entail*, but he produced it not (s).

Here

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(s) "In Dei nomine, Amen. Per hoc præfens publicum instrumentum cunæis pateat evidenter, Quod. anno Incarnationis Dominicæ 1514to, mensis vero Octobris die tertiâ, indictione secundâ, pontificatûs Sanctissimi in Christo Patris et Domini nostri Domini Leonis, divinâ providentiâ, Papæ Decimi, anno secundo, in mei notarii publici, et testium subscriptorum, præsentia, personaliter constitutus in curia vicecomitis de Inverness, die datæ præfentis publici instrumenti, in pretorio de Inverness, per providum virum Andream Auchleck, burgen. de Inverness, et vicecomitem deputatum, pro deservitione unius brevis inquisitionis capellæ regię impetrat. per Elisabeth Sutherland, sororem quond. Johannis Comitis de Sutherland, de et super terris et comitatu de Sutherland,

Reason I. Here there are traces of the nature of Alexander's claim. It was not in right
 Presump. 9. of blood, but as an heir of provision *per cartam talliæ*; and it is possible that
 John Earl of Sutherland may have executed some settlement, to the prejudice
 of his right heirs, in favour of Alexander Sutherland.

Such settlements are not without example in the history of the great families
 of Scotland.

What particular exceptions there may have been against this deed, supposing
 it to have existed, cannot now be known.

Besides its irrationality, it may have been made *contra fidem tabularum nup-
 tialium*.

For proving that Alexander was the lawful son of John Earl of Sutherland,
 Sir Robert Gordon seems to rest much upon an expression in an instrument im-
 mediately to be mentioned, where it is said, "ex adverso comparuit Alexander
 "Sutherland *filius etiam* dicti Comititis;" and that the force of this expression
 may be the more perceived, *ETIAM* is printed in capital letters. As John is
 said to be *filius legitimus*, and Alexander *filius etiam*, the inference seems to be,
 that Alexander was *filius* in like manner as John, that is, *filius legitimus*.

That Alexander in his claim described himself as *filius* of the Earl of Suther-
 land is plain; but it is equally plain that the word *etiam* is the operation of the
 notary who framed the instrument; for that Alexander in his claim could never
 have referred to the claim of John, his competitor.

The word *filius* means nothing else than *son*, without relation to legitimacy
 or illegitimacy; it respects the natural, not the civil relation. In Scotland it

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

"Sutherland, comparuit venerabilis vir Magister Joannes Calder, procurator Roffen. ac-
 tornatus, et eo nomine dictæ Elifabeth, cum mandato lecto et admisso hujusmodi breve
 "legitimè, ut asseruit, proclamatum, executum, et indorsatum, produxit, et executionem
 "ejusdem probari fecit; et hoc in præsentia cujusd. Magistri Roberti Munro, fratris et
 "procuratoris Alexandri Sutherland, ad quantum dictum breve excipien. prætenden. et
 "interesse habere allegan.: Et quia præfatus Magister Robertus, procurator pro dicto A-
 "lexandro admiffus, nihil tunc quantum dictum breve, proclamationem, et executionem
 "ejusdem, aut quantum membra curiæ opposuit, aut in specie allegavit, dictus vicecomes
 "deputatus, ad electionem assisæ pro deservitione dicti brevis processit, et eandem assisam
 "jurari fecit, tactis sacris Dei evangelis: Et quia dictus procurator præfati Alexandri,
 "per quandam cedulam in scriptis porrect. allegabat, quod non patebat tutus accessus
 "dicto Alexandro ad burgum de Inverness, ad defendend. quantum dictum breve, pro-
 "pter servitiam Alexandri Comititis de Huntlie, et amicorum suorum dictæ Elifabeth fa-
 "ven. idem, dictus Comes, et Adam Gordon de Aboyn, ejus frater, sponfusque dictæ
 "Elifabeth, pro se, et suis conpluribus, obtulerunt dare cautionem dicto Alexandro legi-
 "timam, et sub magnis pœnis, adeund. et redeund. ad burgum de Inverness, pro sua legi-
 "tima defensione utenda. Post hæc, quia præfat. procurator, per hujusmodi cedulam
 "in scriptis porrectam, allegavit, terras et comitatum Sutherlandiæ, per cartam Domini
 "Regis, talliatis seu talliatum esse, unde per assisam electam et juratam, et vicecomes de-
 "putat. ad hujusmodi cartam talliæ producend. postulat. fuit procurator prius hujusmodi
 "cautionem oblatam nullam tunc talliæ cartam produxit; et sic assisæ ad retorationem
 "dicti brevis processit. De et super quibus omnibus et singulis," &c.

was often used; and even in very early times, where the person so styled was confessedly illegitimate (t). Reason I.
Presump. 9.

“As Alexander was but eighteen years old, the sheriff, the Earl of Huntly, appointed him curators.” Sir Robert Gordon adds, “These curators, named by the Huntly family, acted as might have been expected of them.”

Surely the Earl of Huntly deserved no censure for naming curators to a minor in the situation of Alexander Sutherland: it was the duty of his office; and had he omitted it, he might have been termed partial and oppressive.

Posterity will judge of every one as he deserves: in *dedications*, *epitaphs*, and *peerages*, those wretched monuments of vanity and adulation, it will not seek for the characters of men; but as it is *just*, it will be *candid*, and will not brand men with perpetual infamy, as violators of their most solemn oath, as betraying their trust, and abandoning a defenceless orphan, merely because they were appointed curators by the Earl of Huntly, sheriff of the county.

Those curators were *five* in number. *Willielmus Spine Præpositus de Thane*, and *Thomas Roberti Rector de Assynt*, are obscure men, unknown in history; and therefore Sir Robert Gordon may, without contradiction, represent them as *fcelerates*.

But it might have been expected that he would have shewn more indulgence to *William Earl of Caithness*, the son of his *own creature* Marjory, *heir-general of the Sutherland family!*

Another curator was Andrew Stewart, Bishop of Caithness; from his *office*, the proper guardian of minors within his diocese; from his *country*, no dependent on the family of Huntly; by a like *macula natalium*, a wellwisher of Alexander Sutherland (u).

The *fifth* curator was *John Master of Athol*, the ancestor of the present Duke of Athol, one of high rank and fortune, as well born as any of the parties, and who proved himself a man of honour, by dying with his sovereign at Flodden field.

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(t) A few examples shall be here subjoined.

“Duncanus filius Malcolmi [III.]” is mentioned, *Rymer*, t. 2. p. 561. He was undoubtedly illegitimate.

Every one knows, that Malcolm IV. surnamed the *Maiden*, was never married; and yet in *Ch. Kelfo*, fol. 16. b. there is a grant by him to a church, “Ubi corpus filii mei primâ post obitum nocte quievit.”

Robert Bruce calls his bastard son Robert, by the name of “dilectus filius meus.” See *Authorities* quoted by *Douglas*, *Peerage*, p. 131.

“Thomas Stewart, filius Alexandri Stewart Comitis de Marr,” obtained a grant from James I. *Record Charters*, 28th May 1426, b. 7. N^o 8. His bastardy is undisputed. See chap. 5. §. 11.

James IV. granted the earldom of Moray, then in the crown by forfeiture, “Jacobò nostro filio, et hæredibus,” &c. There are other examples of the same nature; but these may suffice.

(u) “A natural son of the house of Invermeath, [settled in Perthshire], whose legitimation is to be seen in the public records.” *Keith*, *Catalogue of Scottish Bishops*, p. 127.

Reason I. What is a fair fame transmitted to ages unborn, if the overflowings of every
 Prefump. 9. foul standish can pollute it!

It is said, that those guardians agreed, for a certain sum covenanted, “that Alexander should renounce, in favour of his brother John, and his sister Elisabeth, and their heirs, his *chance of succession* to the estate of Sutherland.”

No vestiges of the *kindred* appellations of *brother* and *sister* can be discerned in all this compromise.

Neither are there any words corresponding to *his chance of succession*. There was no question as to a *chance of succession*: Alexander Sutherland claimed a *jus hereditarium*, and he renounced *juri suo*; that is, “his right, or claim, “or grounds of claim, to the inheritance (*x*).”—Such is the true interpretation of the Latin phrases used in the instrument 1509. Concerning a *chance of succession* the instrument says nothing.

Neither does it mention the *chance of succession returning* to Alexander on the failure of John and Elisabeth, and the heirs of their bodies.

The unambiguous meaning of the compromise is, that on the failure of John and Elisabeth, and their heirs, the claim of Alexander should remain entire, as if no compromise had been ever made.

It is added, “That to fix Alexander the faster, he is bound to swear never to impugn this transaction, and to renounce the objection of minority and restitution *in integrum*.”

This oath seems to have been administered according to the usage of the Canon law. In the law of Scotland, properly so called, it was ineffectual (*y*); and it will hereafter appear, that Alexander Sutherland insisted in his claim, just as if the oath had not been administered.

HISTORICAL DELINEATION.

p. 6. 7. “All these things appear, from an instrument of renunciation, dated 24th July 1509, wherein Adam Gordon being present is the person, and not his wife, who delivers the security to Alexander for the forty merks, *pro quadam compositione et contentatione quadraginta mercatarum terrarum eidem Alexandro, per dictum Adam Gordon, per chartam et fasinam datarum*; and his brother, the Earl of Huntly, is acting as sheriff. The reason why this remuneration to Alexander was made by Adam is obvious: for though this renunciation was in favour

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*x*) There is much labour bestowed by Sir Robert Gordon on the interpretation of the words *jus suum*, p. 38. If *jus suum* meant a right intrinsically good, it follows, that whenever one competitor renounced in favour of another, the person renouncing had the justice of the cause on his side; for he always renounced *juri suo*: in other words, every man who gave up his pretensions, ought to have prevailed in them.

(*y*) Reg. Mag. lib. 2. c. 8. § 2.

“ of Adam’s wife, yet he was to have all the benefit of it; seeing by the Reason I.
 “ law of Scotland he must have the *jus mariti* during her life, and the Presump. 9.
 “ courtesy of the estate after her death.”

1 “ The renunciation took effect: for in the account rendered 23d July
 “ 1512, by Andrew Bishop of Caithness, to King James V. [r. IV.], in
 “ the exchequer, for the rents of the earldom, as then due to the King
 “ by nonentry, there is this article to the credit of the accountant: *Et*
 “ *Alexandro Sutherland, filio quondam Johannis Comitis Sutherlandiæ,*
 “ *in quadraginta marcis, per literas Domini Regis, sub subscriptione*
 “ *direct. auditoribus ad allocand. de anno compoti XXXVI. XIII. Sol.*
 “ *IV.*”

R E M A R K.

Sir Robert Gordon might have discovered a much more satisfactory reason why the remuneration was made by Adam. It was in the form of an heritable security: now John Sutherland could grant no such security, as not being served and infeoffed in the earldom; neither could Elifabeth, as not being possessed of any land-estate.

There is one circumstance which ought not to have been passed over in silence; and that is, the number and the rank of the witnesses to this transaction, which of itself shews, that every thing was conducted in the view of the world, without secret machination or disguise.

Among the witnesses to this transaction there appear Thomas Frazer *Dominus de Lovat*, John Grant of Freuchy, Hugh Rose of Kilravock, and Alexander Ogilvy, heir-apparent of Sir James Ogilvy of Deskfurd; the most powerful barons who were *sectatores curiæ*, or bound to give *suit and presence* at the sheriff-court of Inverness (z).

HISTORICAL DELINEATION.

p. 7. “ Adam Gordon having thus got one brother to renounce his right in
 “ the estate, proceeded next to the other. In order to frighten Earl
 “ John, he took out a breve of idiocy against him in May 1514, and
 “ went so far, as to set a jury upon him. But to stop the effect of this, Earl
 “ John judicially agreed to declare, that Elifabeth Sutherland, and her issue,

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(z) The mention of Thomas Frazer, *Dominus de Lovat*, shews how ill founded Sir Robert Gordon’s criticism is, p. 35. as to the article *de* being the distinction of a *Laird*, opposed to a *Lord of Parliament*. He himself observes, p. 29. that the family of Lovat were made peers before 1480; and yet there occurs in 1509, “ *Dominus de Lovat*,” according to Sir Robert’s hypothesis, a *simple Laird*.

“ failing

Reason I.
Presump. 9.

“ failing his own, should succeed to the estate, and to give his full and ample consent to such right of succession in a instrument then prepared. Earl John was farther prevailed upon to name Adam Gordon, and another person, his curators and managers. After these concessions Adam Gordon proceeded no farther in the breve of idiocy.”

R E M A R K.

The *breve of idiocy* reaches to every one who is not of sound mind, be he *furiosus, fatuus, or mente captus*. Whether Earl John was supposed to be an *idiot* in the vulgar sense of the word, or whether he was rather a lunatic, with lucid intervals, is a point which from want of evidence must remain doubtful: at the same time, the whole strain of the proceedings concerning him, render it more probable that he was a *lunatic*, than a *natural fool*, as our law speaks.

Sir Robert Gordon is pleased to assert, “ That Adam Gordon, to frighten Earl John, took out a breve of idiocy against him, and went so far as to set a jury upon him.

If Earl John was within the description of the breve, the interposition of a jury was proper; if he was not, the conduct of Adam Gordon would more naturally have excited conscious indignation than fear.

It is probable that Sir Robert’s counsel have forgot, that the answer to this breve was to be made in chancery upon the oath of fifteen jurors; and that the proceedings upon it were *at Perth*, not *at Inverness*, where it seems the nod of the Earl of Huntly was law.

Let the meaning of the word *frighten* be exactly weighed; it will then appear, that Adam Gordon thus addressed himself to his brother-in-law: “ Unless you declare, that Elisabeth Sutherland is your lawful successor, failing heirs of your own body (a), and at the same time *interdict yourself to me*, I will instantly convey you to a neutral place in the low country, where I will procure an assize of fifteen gentleman to swear, that you are an idiot, or a lunatic. And *this* shall be done in the presence of the Earls of Errol and Athole, of the Lords Ruthven and Glamis, and of many other persons of distinction.”

Is not this a fair interpretation of the word *frighten*, as explained by the only evidence to which Sir Robert Gordon appeals?

It has been already observed, that, from defect of evidence, it is impossible to ascertain what was the state of Earl John’s mind.

If his intellects were weak or disordered, the presumption of nature is, that

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(a) In this part of the Case, Sir Robert Gordon has forgot his own hypothesis, and uniformly translates *heredes de corpore* by the word *issue*, instead of *heirs-male of the body*.

he would be apt to waste his estate, and still more apt to make settlements of it, with a limitation of heirs (*b*). Reason I. Presump. 9.

In this view of the case, the conduct of Adam Gordon was not injudicious: While Earl John was in a neutral place, and surrounded by strangers, unconnected with the family of Sutherland, he was called upon to declare, *who* was his heir; and it shall be supposed, that he was moved to interdict himself (*c*).

Thus was an obstacle thrown in the way of those who might aim at eliciting settlements from him.

Suppose, for example's sake, that Alexander Sutherland, turbulent and enterprising as he is confessed to have been, had obtained such a settlement in his own favour. The proceedings at Perth would have met him. If he held Earl John as of sound mind, the declaration of succession, and the voluntary interdiction, would have been opposed to him, on the one side; but if he held Earl John as not of sound mind, the impropriety of obtaining a settlement from one of unsound mind would have been opposed to him, on the other.

Whether Adam Gordon meant to have proceeded farther in the breve of idiocy, is impossible to determine. For it is admitted, that Earl John died immediately after the transactions at Perth.

The probability, however, is, that he would not have proceeded to extremities. It is believed, that in 1514 the King had the custody of those who were cognosed upon a breve of idiocy; and that it was not till act 18. parl. 10. James VI. that the right of the nearest agnate was admitted.

HISTORICAL DELINEATION.

p. 8. "Earl John died in July 1514. His sister was, upon the 3d of October following, served heir to him in his estate, without taking any notice of Alexander, and as if *he* had been dead also. But as she had no claim to the peerage, on account of being a female, and of her brother Alexander's being living, she was served by the name simply of *Elisabeth Sutherland*, not of *Countess of Sutherland*. In the instrument of feisin, which is dated so low as the last of June 1515, her being a *gentlewoman*, and not a peeress, is still more strongly marked: for

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*b*) Every lawyer of practice knows that this observation is justified by experience. Within the memory of many yet living, there existed a person of some rank who amused himself, during the course of a long life, in making discordant settlements of his estate; and at length, on deathbed, conveyed it to his heir at law. There was also another, an attorney, who, after wasting a ream of paper on settlements, left the bulk of his fortune, not for erecting a foundling-hospital, but to a foundling-hospital in case it should be erected.

(*c*) A voluntary interdiction is known and approved in law; and yet no judge ever imagined that such *interdiction* was *voluntary* in the logical sense of the word, as proceeding from the unbiassed motion of the will of the party.

Reason I.
Presump. 9.

“ she is only called a *Noble Damsel, Nobilis Dominicilla Elifabeth Sutherland, sponsa providi viri Adæ Gordon de Aboyn.*”
 “ *It merits attention*, that at the date of this seisin, the last day of June 1515, Adam Gordon was not Earl of Sutherland: for, instead of being called *Nobilis et Potens Dominus Comes de Sutherland*, he is called *providus vir* Adam Gordon de Aboyn.”

R E M A R K.

Sir Robert Gordon is not satisfied with declaring Alexander to be legitimate, although all the world had considered him as illegitimate for 250 years: he proceeds one step farther; and, by his own private authority, he declares him to be the *frater germanus* of John, as Elifabeth was the *soror germana*.

This is the purport of his observation here. For if Elifabeth was John's sister of full blood, and Alexander his brother of half blood, it is demonstratively plain, that Elifabeth would have been authorized to serve herself heir to John, whether Alexander was legitimate or illegitimate, whether dead or alive.

John was infeoffed in December 1512. Now, who could take up the *hereditas jacens* of John, and feudally connect with him, but his sister of full blood? It is plain, therefore, that unless Alexander was the brother-german of John, his legitimacy, though proved, would have signified nothing.

Although Elifabeth took no notice of Alexander, yet Alexander did not suffer her service to pass without observation. It has been already mentioned, that his brother Robert Munro, as attorney for him, appeared, and pleaded on a supposed *charta tallie*; which, however, he produced not.

This is one example out of many which have occurred in reviewing the *Supplemental Case*, how much more completely one may be acquainted with a cause, after the lapse of two or three centuries, than the parties themselves were.

Alexander Sutherland aimed at the proof of *a limitation to heirs of entail*: but he mistook his cause; he ought to have pleaded on *proximity of blood*!

The evidence that Elifabeth Sutherland was a *gentlewoman, not a peeress*, on the 30th of June 1515, is rather singular, when, but two pages before, Sir Robert Gordon had produced an instrument, repeatedly mentioning “ *Johannes, filius et hæres quondam Johannis Comitis de Sutherland.*”

According to Sir Robert Gordon, this instrument proves, that John was “ *a gentleman, not a peer,*” after the death of his father. Had he been a peer, he would have been stiled, *Nobilis et Potens Dominus Johannes Comes de Sutherland.*

The truth is, that it was customary in Scotland to serve the eldest-son of a peer heir to his predecessor, under his simple name and surname, without any addition of titles of honour.

It is an irksome task to be obliged to prove what ought to be known by every one who pretends to discourse of the antiquities of the Scottish law.

Besides the example of Earl John, just now mentioned, more than one example of this practice occurs in the family of Sutherland itself.

John,

John, the grandson of Elisabeth, was served heir in the earldom to Alexander, his father, under the appellation of *John Gordon (d)*. Reason I. Prefump. 9.

In like manner, Alexander his son was served heir to him, under the appellation of *Alexander Gordon (e)*.

The Earls of Angus were usually served heirs to their predecessors, under the simple description of *Archibald Douglas, &c.* without the addition of any title of dignity (*f*).

The claimant will add two or three more examples : were it necessary, she might add still more.

1. Precept of *Clare constat*, by John Lord Glamis and his tutor, in favour of *John Stewart*, nearest and lawful heir of Alexander Earl of Buchan, his father, 30th May 1506.

2. Instrument of feisin, in favour of *John Graham*, nearest and lawful heir of William Earl of Monteith, his father, 9th September 1545.

3. Instrument of feisin, proceeding on a precept from chancery, in favour of *John Master of Ereskine*, as heir of John Lord Ereskine, his father, 8th November 1555.

The criticism upon the word *domicilla*, is strange : for the word properly means *an unmarried or young princess (g)*. Thus Margaret, the grand-daughter of Alexander III. is in the same instrument styled *Domina Regina, et hares regni Scotiæ*, and *Domicella (h)*. The only inference, therefore, that can be drawn from the mention of the word *Domicilla*, is, that Elisabeth Sutherland received an appellation which more peculiarly belonged to the royal family.

HISTORICAL DELINEATION.

p. 8. “ But Adam’s ambition was still unsatisfied, unless he got the peerage
 “ of Sutherland also. The time which offered itself for this was upon the
 “ arrival of the Duke of Albany, to take the regency of Scotland, in sum-
 “ mer 1515. That Duke had been educated in France, and was a stranger
 “ to Scotland. He had many points to carry : he was to defend his title
 “ of Regent against the Queen, the kingdom against Henry VIII. him-
 “ self against his enemies, the powerful Lords of Home and Angus, and
 “ the general mutinous disposition of the Scottish nobility, and to secure
 “ an act of parliament, declaring him next heir to the crown, failing

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(d) *Service*, 4th May 1546, produced by the claimant.

(e) *Service*, 8th July 1573, produced.

(f) See *Appendix* for Archibald Douglas of Douglas, Esq; an authority appealed to by Sir Robert Gordon in his *Supplemental Case*.

(g) See *Du Cange*, Gloss. vv. *Domicellus, Domicella*.

(h) *Rymer*, t. 2. p. 448.

Reason I.
Presump. 9.

“ issue of James V. It is certain from history, that, to protect himself
“ from those of the Home and Angus faction, he sent for troops from
“ France.” *Stewart’s History of the Stewarts.*

R E M A R K.

The claimant is not engaged to write a history of Scotland; and therefore she will slightly pass over this account of Scottish affairs in summer 1515. She will just observe, that the Duke of Albany was called to the office of Regent by the means of Lord Home, contrary to the wishes of the Queen, and of the Angus faction; that the Queen never disputed the office with the Duke of Albany; that Henry VIII. had no inclination to attack Scotland; and that *Stewart’s History of the Stewarts* is now, for the first time, quoted as a book of authority.

HISTORICAL DELINEATION:

p. 9. “ At this distance of time, it is not incumbent upon Sir Robert Gordon to specify the mean by which the peerage was transferred from the old Sutherland family to Adam Gordon, or the mode of creation by which the transfer was made good. It is very probable, that he had got either John, who was weak, or Alexander, who was dependent upon him, the one having given up to him the management of his estate, with the succession to it, and the other his *birthright* in the estate, either to *resign the peerage* in his favour, or to give such consent to the transfer as was, according to the custom of the times, a sufficient warrant for obtaining a new grant. *It is also possible*, that Alexander *may have been attainted*, either in the rebellions which succeeded the Duke of Albany’s arrival, or on account of his outrages to get possession of the Sutherland estate by force, which he had renounced.”

R E M A R K.

It is pitiful to see how Sir Robert Gordon bewilders himself in conjectures; and the hesitation in this paragraph is curiously contrasted with his triumphant summing up of the evidence, where, instead of saying, *it is possible*, or *it is not improbable*, he speaks of “ *the irresistible concatenation of proofs.*”

When it is considered, that lands, jurisdictions, and dignified fiefs, were descendible to *heirs-general*; that by *heredibus sui* was implied *heirs-general*; that the *comitatus* of Sutherland stood so limited in the person of Elizabeth’s father; that Elizabeth was served lawful heir to her brother John, and enjoyed both the estate and the dignity;—there will be no room left for conjectures; every thing will be plain and simple in the transmission of the estate and dignity of Sutherland,

Sutherland, and will appear to have happened according to the common course of the law and usages of Scotland.

Reason I.
Presump. 9.

The only thing left to be accounted for, is the circumstance of Adam Gordon's having assumed the style of *Earl of Sutherland*. And this also will be accounted for by shewing, that Adam Gordon, in assuming the title of *Earl*, did no more than what the husbands of peereffes had been accustomed to do for many centuries before, and what they did for a century after.

This the claimant has partly made appear in the 5th chapter of this case; and she will, in the sequel, make appear by more connected evidence.

Sir Robert Gordon saw, that Adam, the husband of the Countess of Sutherland, assumed the style of *Earl*: hence he supposes not only a creation, but also a limitation of the title to *heirs-male*.

In order to make way for this creation, it became necessary to divest the old family of the dignity of Earl.

The death of John, and of his newly legitimated brother Alexander, would not serve the purpose.

That all the male descendants of all the Earls of Sutherland had failed in 1515, was too extravagant an idea to be entertained.

Mr Sutherland of Forse had proved; that an heir-male descended of the ancient Earls of Sutherlands, existed in 1514.

If any credit is to be given to the universal opinion of Scotland, the family of Duffus, now forfeited, could have traced their pedigree from Kenneth Earl of Sutherland, slain at Hallidonhill in 1333.

There are *three* several hypotheses which Sir Robert Gordon here *suggests*; for indeed he does not seem to *maintain* any one of them.

1. A resignation by John, in favour of Adam Gordon. 2. A like resignation by Alexander. 3. A forfeiture of Alexander, by which the dignity returned to the crown, and was conferred on Adam Gordon by the Duke of Albany, Regent.

As to the *first*, a resignation by John, it is an utter impossibility.

It rests on this fundamental error, That a resignation of the dignity, without resigning the dignified fief, was known in Scotland about 1515.

Besides, if the resignation of a bare title of honour had been then known, why would John have resigned it to any one but to the heir of his estate?

But, what is still worse, this hypothesis is inconsistent with that observation to which Sir Robert Gordon had just before summoned all the attention of his readers, "That Adam Gordon was a commoner on the 30th June 1515."

In June 1514, John declared, that Elisabeth was his lawful heir; in July 1514, he died; in October 1514, Elisabeth was served nearest and lawful heir to him; and in June 1515, she was infeoffed.

It follows, that John must have made this resignation in the last month of his life; and that it was not accepted till a year after his death.

Supposing him to have made the resignation sooner than June 1514, it will be so much the worse for Sir Robert Gordon's hypothesis.

The claimant desires to know, *who* was Earl of Sutherland between July 1514 and the arrival of the Duke of Albany in Scotland in June 1515; at

Reason I. which time it is averred, that Adam Gordon was a commoner; and after which
 Presump. 9. time it is averred, that he was created Earl by the Duke of Albany, Regent.

Sir Robert Gordon, if he is consistent with himself, must hold, that Alexander was Earl of Sutherland during that period. — And this leads the claimant to examine his *second* supposition, a resignation by Alexander.

This seems for a while to be relished by Sir Robert as a mighty probable conjecture: for he observes, “That Alexander was dependent on Adam, and had “given up his *birthright* to him.”

How Alexander gave up his *birthright* to Adam Gordon, is hard to say: the compromise in favour of Elizabeth and her heirs, can hardly be said to be a surrender of a *birthright* to the husband of Elizabeth.

That Alexander was *dependent* on Adam Gordon, is altogether a mistake; and Sir Robert himself has produced much evidence from the records of the privy council to prove, that for many years Alexander maintained his *independency*, not only against Adam Gordon, but against the laws of his country.

If Sir Robert had looked into the history of the family of Sutherland, compiled by his predecessor, he would have seen enough to satisfy himself, that Alexander was not of a disposition to resign the peerage of Sutherland to Adam Gordon, supposing that he had a right in it, and that such a measure had been known in those days.

Can a greater contradiction be figured, than that Alexander should possess himself of the castle of Dunrobin, contrary to the solemn compromise 1509, and yet resign the title of honour to Adam Gordon?

The error in the *third* supposition is not so obvious as that in the other two: it is, however, an error.

Sir Robert conjectures, that Alexander *may* have forfeited; and that upon his forfeiture Adam Gordon *may* have been created Earl of Sutherland.

Here he takes it for granted, that Alexander was Earl of Sutherland, which is contrary to his *first* supposition; and that he forfeited, which is contrary to his *second*.

Here also, as in other parts of the *Supplemental Case*, there occur a presumed rebellion, and a presumed forfeiture.

“It is possible,” says Sir Robert Gordon, “that Alexander may have been attainted, either in the rebellions which succeeded the Duke of Albany’s arrival, or on account of his outrages to get possession by force of the Sutherland estate, which he had renounced.” And in p. 12. he avers, “That the creation of Adam Gordon must have happened between the 30th June 1515, and the 3d September 1516.”

The claimant does not see, from history, that there were any rebellions upon the Duke of Albany’s arrival. Sir Robert may, if he chuses it, dignify with that appellation the conduct of the factions of Angus and Home; but why should Alexander Sutherland, a very young man, and a native of the other extremity of Scotland, be supposed to have been the partisan of either faction?

Besides, the two writings produced by Sir Robert, dated 12th October 1515, prove, that at that time there was no forfeiture; and the multitude of writings produced,

produced, from 26th March 1517, to penult February 1517-8 (i), prove, that Alexander had a *persona standi* during that period. Reason I. Prefump. 9.

It is conjectured that Alexander had incurred the pains of forfeiture, because he was *in ward* during September 1517 and February 1517-8.

Any one who knows what a *charge to enter in ward*, and the *being in ward*, implied, needs not be informed, that the circumstance of Alexander's being *in ward* confutes the conjecture.

If Alexander's outrages in Sutherland had occasioned his forfeiture between the end of 1515 and the beginning of 1517, there can be no reason for presuming, that his after conduct would have procured so speedy a pardon and restoration. Sir Robert Gordon himself has furnished evidence, that the outrages of Alexander, instead of ceasing, rose to the most daring acts of violence (k).

Thus it appears, that the *third* supposition, of the forfeiture of Alexander Sutherland between June 1515 and September 1516, is just as ideal as the *first* and *second* (l).

But although this forfeiture should, for argument's sake, be presumed, still Sir Robert Gordon has not overcome half the difficulties which stand in his way.

He must next *suppose*, that Adam Gordon was created Earl of Sutherland by the Duke of Albany, Regent.

The claimant is yet to learn, that a Regent of Scotland ever had, or pretended to the power of conferring hereditary titles of honour.

Of an original creation under a regency there is no example.

Indeed there could be none. A Regent is a tutor; and the powers of a tutor are limited to ordinary and necessary acts of administration; but the conferring of hereditary titles of honour can never be held an act of ordinary and necessary administration.

Hence it was determined in parliament, in 1431, That a Regent could not

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(i) The counsel for Sir Robert Gordon imagine, that February 1517 is an earlier date than August 1517; consistently enough with this they aver, that February 1517 in Scotland answered at that time to February 1516 in England.

(k) Were it necessary, more evidence to the same purpose might be produced from the *History of Sutherland*, by Sir Robert's predecessor.

(l) It is observed, in manner of illustration, "that the fact as to Lord Home's attainder in 1516, would be unknown, if the evidence of his restoration against the attainder had not been accidentally preserved in certain charters 1535." This is amazing inattention; for Buchanan, in b. 14. quoted by Sir Robert, gives an ample account of the whole circumstances of the trial, conviction, and execution of Lord Home, and has not even omitted dates. See also *Pitcottie*, p. 232. Glasgow edition 1749. In a word, there is no one fact in the history of Scotland more distinctly known than this, nor do the charters 1535 convey half the information concerning it that is to be found in every historian of James V.

Reason I. give away from the crown any lands that had devolved to the crown by the death
 Prefamp. 9. of a bastard without heirs (*m*).

Hence also it was determined in parliament, in 1434, That a Regent could not restore a person forfeited for treason. *Sir George Dunbar against the King* (*n*).

If this assertion is confirmed by record and history as much as a negative can be confirmed, it must be fatal to Sir Robert Gordon's argument.

p. 12. He is obliged to maintain, "That the Duke of Albany conferred, *by creation*, " the dignity of Earl of Sutherland on Adam Gordon;" and he says expressly, " in the intermediate space between June 1515 and October 1516 *he must have been created; there was no other way by which he could acquire the peerage* (*o*)."

It

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*m*) Parl. 10. Jam. I. c. 153.

(*n*) Parl. 12. Jam. I. c. 136. The reason given by Sir George Mackenzie for this judgement is, "because a regent *is a tutor*." See Observations on act 133. parl. 10. Jam. I. Buchanan, from his political notions, was inclined to censure the government of the Stewart line; and, from his political connections, must have been inclined to extend the powers of a regent; and yet he does not condemn the judgement of parliament in 1434 as illegal. He gives the same reason for it which Sir George Mackenzie gives. That case must be clear where Buchanan and Sir George Mackenzie agree in principles.

(*o*) Sir Robert Gordon observes, that there is direct evidence by history, that Adam Gordon was created Earl of Sutherland by the Duke of Albany. He quotes Lord Stair, as saying, "That *histories* are probative in all cases, where the same is relevant, *if they be authentic*, " and not contradicted by more authentic histories of the same time, as in the case of "propinquity of blood, or of antiquity and priority of dignity, titles of honour," &c. This quotation is made with the view of introducing the following paragraph. "Johannes Ferrerius was a cotemporary of Adam Gordon, and *well versed in the Scots history*. He lived three years at court with Reid Bishop of Orkney, a minister of state, "at the very time when Adam Gordon was acknowledged Earl of Sutherland. In the "history of George Earl of Huntly, father of Earl Adam, the words of Ferrerius are these: "Adamum secundo genitum Dominum de Aboyne instituit; cui postea per nuptias Elisabetham Sutherlandie heredem junxit matrimonio; qua de re Comes Sutherlandie *deinceps creatur*."

The counsel for Sir Robert Gordon have perused a late tract, intitled, "Examination of "some of the principal arguments for the high antiquity of *Regiam Majestatem*." In that tract, p. 20. — 30. they might have seen an ample specimen of the *great knowledge* of Ferrerius in the history of Scotland; and had they looked into his account of the abbots of Kinlofs *there* quoted, they would have perceived how mean his abilities were, and how contemptible his station. It is believed, that Ferrerius did not come to Scotland till after the date of those royal charters granted to Adam Gordon. That circumstance, however, is of no moment; for a foreigner, of no rank, and ignorant of the Scottish manners and language, could know nothing of honours, resignation of creations, or of courtesies. So monstrously ignorant is he of history, that he asserts, that one of the Earl of Huntly's predecessors was created *Lord Gordon* by Malcolm III.; and that another of them, commander of a Scottish army, killed Richard I.

Let the condition of Ferrerius be modernized. A Norman comes over to London in the

It is hoped that this cardinal proposition in Sir Robert's case will be constantly kept in memory. Reason 7. Presump. 9.

If no Regent on any other occasion exercised such a royal prerogative, it follows, that Sir Robert is obliged to found his hypothesis upon this palpable improbability, That the Duke of Albany, a foreigner, and a stranger, in the very first days of his government over a jealous and high-spirited nation, ventured upon an act of power without example, and without imitation.

The counsel for Sir Robert Gordon perceived the force of this argument. They judiciously took up their ground for defence, and they averred, "That there are a variety of creations by Regents in Scotland."

Could this ground have been maintained as successfully, as it was judiciously taken up, the defence would have been made good, and the claimant would have been deprived of one collateral argument.

No fewer than *twenty* instances are produced of creations by Regents in Scotland. When cleared from many gross typographical errors, and digested in chronological order, they stand thus.

J A M E S I.

1. Between 13th May 1407, and 6th November 1413, John Stewart *Earl Buchan* of *Buchan*.

J A M E S II.

- 2. 1442, Sir Allan Cathcart, *Lord Cathcart*. Cathcart.
- 3. Between 13th May 1440, and 1449, Alexander Seaton, *Earl of Huntly*. Huntly.
- 4. 1445, Lawrence Abernethy, *Lord Abernethy of Salton*. Abernethy.
- 5. Between 27th April 1442 and 7th April 1450, William Crichton, *Lord Crichton*. Crichton.
- 6. About 1450, Money penny, *Lord Money penny*. Money penny.

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the *suite* of the British ambassador, with the hopes of being provided for as usher of an academy in Yorkshire: he remains three years upon the town, altogether ignorant of the English language. Such a person must be admirably well qualified for giving an account of the patents of honour of the English nobility: he certainly could tell when a title had merged, and when it was in *abeyance*.

Such was that Ferrerius, whose report, delivered in two words, is opposed to the united testimony of all the Scottish writers; and especially to that of Sir Robert Gordon's predecessor. His words are, "Lady Elisabeth married Adam Gordon of Aboyn, the second son of George Earl of Huntly; and so their posterity became, by this marriage, not only Earls of Sutherland, but also lawful heirs by blood and succession to all the rights, titles, privileges, precedence, and all honours and dignities whatsoever, pertaining to the ancient Earls of Sutherland." To the same purpose speak Rossius, Lord Ochiltree, Sir James Balfour, Martin, Dalrymple, Crawford, and Douglas.

J A M E S III.

Reason I.
Presump. 9.

- Buchan. 7. Between 1st March 1466 and May 1477, James Stewart, *Earl of Buchan*.
Home. 8. 2d August 1473, Alexander Home, *Lord Home*.

J A M E S IV.

- Bothwell. 9. 17th October 1488, Patrick Hepburn, Lord Hailes, *Earl Bothwell*.

J A M E S V.

- Methven. 10. Between 17th July 1528 and 20th September 1529, Henry Stewart, *Lord Methven*.

Q U E E N M A R Y.

- Ochiltree. 11. Lord *Ochiltree* was created 15th March 1543.
Boyd. 12. Between 1548 and 1550, Robert Boyd of Glins, *Lord Boyd*.
Marr. 13. 7th February 1561, James Stewart, *Earl of Marr*.

J A M E S VI.

- Buchan. 14. Between 26th December 1563 and December 1567, Robert Douglas, *Earl of Buchan*.
Lennox D. 15. 26th June 1578, Robert Stewart, *Duke of Lennox*.
Lennox E. 16. Between 18th April 1572 and 5th August 1581, Charles Stewart, *Earl of Lennox*.
Arran. 17. 22d April 1581, James Stewart, *Earl of Arran*.
Lennox D. 18. 5th August 1581, Efme Stewart, *Duke of Lennox*.
Orkney. 19. 28th October 1581, Robert Stewart, *Earl of Orkney*.
March. 20. 25th October 1582, Robert Stewart, *Earl of March*.

This is in appearance a formidable band of *creations by Regents*; upon a nearer inspection it will vanish into air.

It is all error; and indeed it seemed hardly possible to comprise so many historical mistakes within so narrow bounds.—This will appear from a more narrow inspection of the particulars.

I. B U C H A N.

- James I. “ John Stewart, son to the Regent, Duke of Albany, was a commoner on the 12th March 1406. Charter-roll of the Duke of Albany 11th,
“ N^o 16.

“ N^o 16. by his father to him of that date, *filio nostro Johanni Senescallo*, Reason I.
 “ Domino de Buchan. Charter-roll 11. N^o 19. from the same to the Presump. 9.
 “ same, 13th May 1407, in the same terms. But on the 6th November
 “ 1413 he had been created a peer, charter-roll 12. N^o 27. of that date,
 “ from the same to the same, *filio nostro Johanni Senescalli*, Comiti
 “ Buchaniæ. Charter-book 11. N^o 30. by James I. 25th February an-
 “ no 1426. *Johanni Stewart Comiti Buchaniæ.*”

A N S W E R.

That a full answer may be made to this example, it will be necessary to go a little farther back than Sir Robert has gone.

John Cumyn Earl of Buchan forfeited in the reign of Robert Bruce. The earldom continued with the crown till Robert II. granted it to his younger son Alexander. Our genealogical writers mention this grant as in the rolls of Robert II. 1374. After a diligent search it cannot be found. This Alexander died in 1394. *Monumental inscription*, published by *Crawfurd* in his Peerage, p. 47. He left no issue; and the question is, What were the limitations in the grant of the earldom? That failing his issue, there was a limitation to Robert Duke of Albany, his elder brother, is probable, almost certain; for that in a charter immediately to be mentioned, 20th September 1406, the Duke of Albany styles himself, “ *Dux Albanix, Comes de Menteth et de Buchan.*” The *first* title he got from the crown, the *second* by his wife; and it must be presumed that he got the *third* by the demise of his brother Alexander without issue.

Thus the earldom of Buchan was in the Duke of Albany on the 20th September 1406, after the death of his brother Robert III. who died 29th March 1405.

On the 20th September 1406, the Duke of Albany made a grant in these terms: “ *Omnibus hanc cartam visuris vel auditoris, Robertus Dux Albanix, Comes de Menteth et de Buchane, salutem in Domino. Noveritis nos dedisse, concessisse, et hac presenti cartâ nostrâ confirmasse, carissimo filio nostro Joanni Senescalli, Domino de Onelle, pro homagio et servitio suo nobis impenso et impendendo, totum prædictum comitatum nostrum de Buchane, cum pertinentiis suis, in unam integram baroniam: Tenend. et habend. prædicto Joanni, et hæredibus suis masculis de corpore suo legitimè procreandis; quibus fortè deficientibus, Andreæ Senescalli fratri suo germano, et hæredibus suis masculis de corpore suo legitimè procreandis; quibus fortè deficientibus, Roberto Senescalli fratri suo germano, et hæredibus suis masculis de corpore suo legitimè procreandis; quibus omnibus, quod absit, deficientibus, ad nos et nostros hæredes legitimos liberè revertend.*” &c. He confirmed this grant two days after; and it is remarkable, that in his confirmation he no longer takes the style of *Comes de Buchane*. This is a case in point for confirming the claimant’s proposition, That a person divested of the *comitatus*, was no longer styled *Comes*.

Robert Duke of Albany, *himself Earl of Buchan*, conferred the earldom on his son John Lord Onell and Coull. This did not hurt the crown; it rather advantaged it, by diminishing the extensive estate and influence of the Duke of Albany,

Reason I. Albany, Earl of Menteith, Fife, and Buchan. Any map of Scotland will shew what that estate was; but no map can shew what that influence was, in an age, when every vassal was more dependent on his lord, than the meanest tenant at will is, at this moment, on the landholder, the most opulent, and removed at the greatest distance from the seat of justice.

A creation in favour of John Stewart, is a mere modern idea, arising from the modern form of a diploma or patent of honour. In ancient times something more solid than parchment and wax went to the creating a peer; something which the Kings of Scotland could not always bestow, a land-estate.

From the general and proved customs of Scotland, it may be concluded, that this charter of the *comitatus* of Buchan, was the only thing which authorized John Stewart to assume the title of *Comes*.

The limitation was to the heirs-male of his body, failing him; and in like manner, to his brothers Andrew and Robert.

This John Earl of Buchan, Constable of France, was slain at the battle of Verneuill 1424; *Mezerai*, vol. 2. p. 608. With him his brother Robert fell. The other brother, Andrew, must have died young; for his name is only known from the charter 1406. None of them left any male issue; and thus the earldom, in virtue of the limitations, devolved on the nearest heir of the Duke of Albany, *Earl of Buchan*, the donor.

This heir was the unfortunate Murdoch Duke of Albany; whose weakness might have pleaded for him, had not his earldoms of Menteith, Fife, and Buchan, more powerfully pleaded against him. He was attainted, and suffered death in 1425; and thus the earldom of Buchan again devolved to the crown.

It has been already shown, that, in Scotland, peers were not always styled by their full titles of honour. This will account for John Stewart being sometimes called *Dominus de Buchan*, after he had obtained the charter of the earldom from his father. It may be accounted for still better from the Duke of Albany's rolls, which Sir Robert Gordon has had occasion to peruse. In charter 20th July 1408, roll 11. N^o 34. John Stewart is styled *Dominus de Buchan*. In another charter of the very same date, he is styled *Comes de Buchan*, Roll 11. N^o 32. After this he is in many charters styled *Dominus de Buchan*: 1409, Roll 11. N^o 37. 42. 43. 45. 46. 47. and 48. In 1413, Roll 12. N^o 21. and 22. he is styled *Comes de Buchan*.

According to Sir Robert's argument, the fact stands thus. John Stewart, on the 20th July 1408, was *Earl of Buchan and Laird of Buchan*. In 1409, he was always *Laird of Buchan*. In 1413, he was again *Earl of Buchan*. How many more *transmigrations* he may have underwent before the death of his father, in 1420, is uncertain; the records, from the 1413, till the return of James I. being lost. One more example shall be given of imperfect and careless appellations. It is that of Murdoch, the elder brother of John Stewart, afterwards Duke of Albany. This person has all the different appellations mentioned in the following catalogue.

1411. Murdacus Senescalli, Miles. *Rymer*, t. 8. p. 708.

1413. Mordan Stewart Magister de Fyfe. *Rymer*, t. 9. p. 48.

1414. Mordacus de Fyfe, Miles. *Rymer*, t. 9. p. 125.

1415. Murchowe de Fyfe, filius et hæres Ducis Albanix. *Rymer*, t. 9. p. 244.

1415. Comes de Fyfe. *Rymer*, t. 9. p. 280.

1415. Mordacus filius Ducis Albanix. *Rymer*, t. 9. p. 323.

1416. Mordacus de Fyfe. *Rymer*, t. 9. p. 405.

Reason I.
Presump. 9.

Sir Robert Gordon refers to a charter 25th February 1425-6, for proving that James I. gave the title of Earl of Buchan to John Stewart. It would have been of no consequence although he had; but the truth is, that the charter implies no such thing. About 1413, John Stewart married Elizabeth, the daughter of Archibald Earl of Douglas. He obtained charters of certain lands from the Duke of Albany and from the Earl of Douglas, devised to him, his wife, and their heirs. These charters were confirmed by James I. in 1425-6, after the death of the Earl of Buchan. As he was styled *Earl of Buchan* in the *charters confirmed*, he was of necessity styled *Earl of Buchan* in the *charters confirming*. The charters bear no relation to the *earldom of Buchan*; and indeed it is somewhat singular to speak of a charter granted to a man two years after his death.

What has been said, will, it is apprehended, afford a satisfactory answer to the *first* example of creations by regents.

2. C A T H C A R T.

James II.

“ Sir Allan Cathcart was created *Lord Cathcart* 1442. Nisbet, vol. 1. p. 246.”

A N S W E R.

1. Nisbet quoting no authority, is himself no authority.
2. Nisbet does not say, that “ Sir Allan Cathcart was created *Lord Cathcart* in 1442 :” his words are, “ He was dignified with the honour of Lord Cathcart by King James II. in 1447.” Douglas, in his Peerage, title *Cathcart*, quotes Nisbet, to prove that the year of this creation was 1442. Sir Robert’s counsel, without consulting even Nisbet, has relied on Douglas’s typographical error. A strange specimen of inattention!
3. In 1447, James II. reigned in person; for that the record of parliament 1443 runs thus: “ Concilium generale tentum et inchoatum apud Strivilen, per Excellentissimum Principem ac Dominum nostrum Regem Jacobum Secundum, in sua persona propria presiden. die 4to mensis Novembris, an. Dom. 1443.”
4. It is odd to talk of *creations by Regents* in the reign of James II. for that there was no regent during that reign.

Reason I.
Pref. mp. 9.

James II.

3. H U N T L Y.

“ Alexander Seaton of Tillibothy was a commoner 13th May 1440.
“ Evidence, book 3. N^o 176.; but betwixt this period and the 1449,
“ he was created Earl of Huntly. Charter, b. 4. N^o 106.”

A N S W E R.

1. This is another example of a *creation by a regent* when no regent existed.
2. James II. was fully possessed of the government long before 1449. Sir Robert's favourite historian Ferrerius places this creation in 1446; but *his* authority is nothing. Others, as Crawford and Douglas, place it in 1449. When the parliamentary record 1443 is considered, it matters not whether the creation was in the one year or in the other.

James II.

4. A B E R N E T H Y.

“ Laurence Abernethy of Salton was created *Lord Abernethy* of Salton by James II. an. 1445. *Fordun*, vol. 2. p. 542.”

A N S W E R.

1. Even the Continuator of Fordun goes no farther down than to the death of James I. What is here quoted, is neither from Fordun nor Bower; but from an imperfect scrap of a chronicle, in prose and verse, transcribed by one Robert Scot in 1510, and subjoined to the last edition of Fordun. It contains a memorandum in these words: “ Anno 1445, erecti sunt Domini de Creichton, “ *Abernethy*, Glamis, Seton, Lesly de Levin, Hamilton, Lindseyay de Byris, “ Gray de Foulis.” It will not be seriously asserted, that this list is genuine. Douglas ignorantly or inadvertently quoted it, title, *Abernethy of Salton*; and from him it has been transcribed to make bulk.
2. As James II. reigned in person from 1443, and as there was no regent in 1445, the example, were it vouched, would be nothing to the purpose.

James II.

5. C R I C H T O N.

“ William Crichton was a commoner 27th April 1442, Charter, “ b. 3. N^o 171.; but he was created a peer before 7th April 1450, Charter, b. 4. N^o 15. by James II. Willielmo Domino Crichton, nostro “ Cancellario.”

A N .

A N S W E R.

Reason 1.
Presump. 9.

That Chancellor Crichton was a Lord of parliament in April 1450, proves nothing ; for that James II. had assumed the government *seven* years before.

6. M O N E Y P E N N Y.

James II.

“ Moneypenny Lord Moneypenny. This peerage was created *about* 1450. Crawford’s Peerage, p. 345.”

A N S W E R.

1. The same answer is applicable to this case, as to the others in the reign of James II.

2. Crawford’s words are wide of Sir Robert’s purpose. They run thus : “ He was raised to the honour of Lord Monypenny, May 1. 1450, *Ch. in publ. arch.*; whereby several lands are erected into the barony, in favour of this Sir William ; *after which he is always designed in the records*, Willielmus Dominus Monypenny.” Sir Robert Gordon may make the most that he can of this example.

7. B U C H A N.

James III.

“ James Stewart, brother to King James II. was a commoner on the 1st March 1466, Charter, b. 7. N^o 114. ; but before May 1477, he had been created a peer, b. 8. N^o 35.”

A N S W E R.

James III. was born in 1453. This wonderful example proves James Stewart to have been a commoner when the King was thirteen years old, and *to have been a peer when the King was twenty-four years old.*

8. H O M E.

James III.

“ On the 2d August 1473, Alexander *Laird of Home* was created a Lord of Parliament, by the title of *Lord Home*. Record of parliament; b. 11. fol. 96.”

A N S W E R.

Reason I.
Presump. 9.

At that time there was no Regent. James III. had assumed the administration in July 1466, *seven years* before Lord Home became a Lord of Parliament. See *Buchanan*, lib. 12. p. 226. It will be remarked, in passing, that the expression, *Laird of Home*, is a translation adapted to an hypothesis. The record bears, "Mem. quod 2do die Augusti, in præsentia parliamenti, Dominus Alexander Home, de Eodem, Miles, effectus fuit Dominus Parliamenti." This memorandum, literally translated, runs thus: "Be it remembered, that on the 2d of August, in the presence of parliament, the Lord Sir Alexander Home of Home (*p*) was made a Lord of Parliament." The contemptible title of *Laird*, bestowed, in modern language, even on the lowest heritor holding of a subject, is wide of the meaning of the record.

James IV.

9. B O T H W E L L.

"Earl Bothwell was created in parliament 17th October 1488. Creation, b. 4. N^o 93."

A N S W E R.

At that time James IV. though not fully sixteen years old, had the administration of affairs; every thing was conducted in his name. *Buchanan*, lib. 13. p. 240. There was surely *no Regent* in October 1488, unless the whole parliament and community of Scotland were to be considered as *Regents*.

James V.

10. M E T H V E N.

"Henry Stewart was a commoner on the 17th July 1528, Charter, b. 22. N^o 126.; but he was created a peer before the 20th September 1529, Charter, b. 23. N^o 78."

A N S W E R.

This example is as foreign from the purpose as any of the others; for that James V. assumed the administration in 1526, *three years* before this creation. *Buchanan*, lib. 14. p. 265. and *Ruddiman's notes*.

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(*p*) The modern word *Knight* does not convey the idea of *Miles*.

11. O C H I L T R E E.

Q. Mary.

“ Lord Ochiltree was *created* in parliament on the 15th March 1543.
“ Record of parliament, b. 10. fol. 76.”

A N S W E R.

It was wrong to quote this example as a *creation* by a Regent. There was no creation at all, only an act of parliament, approving a change of title. Andrew, 3d Lord Avondale, had exchanged his lordship of Avondale with Sir James Hamilton, for the lordship of Ochiltree. In 1534, under the title of *Dominus Avondale*, he obtained a charter from James V. confirming the exchange. Being thus divested of the old estate, he quitted the old title, and assumed that of *Ochiltree*. In 1538 and 1542, he obtained royal charters, under the title of *Dominus Ochiltree*; and on the 13th March 1543, two days before the confirmation by parliament, he is marked on the roll as *Lord Ochiltree*. This instance, therefore, may serve to prove, that, so late as 1543, the idea of *title* was intimately connected with *territory*; but it can prove no more.

12. B O Y D.

Q. Mary.

“ Robert Boyd of Glins, in the fifth year of Queen Mary’s reign,
“ [1548], was a commoner. Charter of that date, *Roberto Boyd*. In
“ the intermediate time betwixt that and the 7th year of the Queen’s
“ reign, [1550], he had been created *Lord Boyd*. Charter of that
“ date, by Queen Mary, mentioning *Robertum Magistrum de Boyd*.”

A N S W E R.

This also is all error.— Robert Boyd, son of Lord Boyd, married the heiress of Colquhoun of Glins: hence he was called, in 1548, *Robert Boyd of Glins*. This surely does not imply, that his father was a commoner. Robert Boyd of Glins must needs have been a commoner in 1548: for his father was alive in 1549. The Robert Master of Boyd, in Queen Mary’s charter 1550, was, in all probability, not Robert Boyd of Glins, but his son.

13. M A R R.

Q. Mary.

“ James Stewart, afterwards Regent, was created Earl of Marr on the
“ 7th February 1561. Privy-seal records, b. 31. fol. 2.”

Reason I.
Presump. 9.

A N S W E R.

Queen Mary arrived in Scotland 19th August 1561. At that time she reigned in her own name. See all our historians, and especially *Robertson*. In February following, 1561-2, she bestowed the earldom of Marr on the Prior of St Andrew's: and yet *this* is given as an example of *creations by Regents*.

James VI.

14. B U C H A N.

“ Robert Douglas, brother-uterine to the Regent James Earl of Moray, was a commoner in 1563, Precept of apprising, Privy-seal records, b. 22. fol. 44.; but before December 1567, he sat in the Scots parliament as Earl of Buchan, *Anderson*, vol. 2. p. 268.” It is elsewhere expressly averred, “ That he got a patent from his *uncle*, [brother-uterine], Regent Moray.” *Supplemental Case*, p. 32.

A N S W E R.

The claimant has averred, from evidence and analogy, that Robert Douglas was Earl of Buchan in right of his wife Christian Countess of Buchan. Sir Robert Gordon avers, that he was created by Regent Moray, not only without evidence, but contrary to evidence.

1. Sir Robert's argument proves the Earl of Buchan to have sat in parliament 15th December 1567. And it shall here be *supposed*, though not *granted*, that it proves him to have been a commoner on the 26th December 1563. But surely this does not prove, what was necessary for Sir Robert's argument, that he continued a commoner from 26th December 1563 to 24th July 1567, when Queen Mary resigned the administration of government.

2. It is perfectly clear, that the Earl of Buchan was *not* created by Regent Moray. We know from the statute-book, that on the 24th July 1567, Queen Mary resigned the administration of government, and appointed the Earl of Moray Regent. Moray at that period was absent from Scotland, and did not accept of her nomination till 22d August 1567; *Anderson*, vol. 2. p. 251. His title was not ratified in parliament till the 25th December 1567; *Statute-book*. The Earl of Buchan was one of the Lords who ratified it.

Nevertheless Sir Robert Gordon, with the statute-book lying open before him, asserts, that the Earl of Buchan was created a peer by Regent Moray, by that very person whose authority he contributed to ratify. With more propriety it might have been said, that the Earl of Buchan made Moray Regent, than that Moray made him a peer. This has been already mentioned in a former part of the claimant's case; but it was thought better to repeat it, than to interrupt the argument by referring back to that passage.

15. L E N N O X.

James VI.

“ Robert Stewart was created Earl of Lennox, by a creation in a royal charter, 26th June 1578, b. 35. N^o 8.”

A N S W E R.

This proves nothing in favour of creations by Regents. On the 12th March 1577-8, the Earl of Morton resigned the office of Regent. In consequence of this event, James VI. assumed the government. Captain James Stewart, his favourite, beset the throne with *Stewarts*: offices of trust, and titles of honour, were successively bestowed on every branch of that stock, illegitimate as well as legitimate. It is true, that Captain James Stewart reigned; but still the government was in the King's name. This appears from the unprinted acts of parliament, 25th July 1578; where, ch. 2. is intitled, “ Ratification of the re-
giment *be the King's Majestie in his own person.*”

By it the demission of Regent Morton, and the King's *acceptation* of the government in March preceding, are ratified. The statute “ finds and declares, “ That the administration of his Hienes realm, government and authority thereof, *is in his Hienes own hands.*”

2. Indeed the very first words of the charter of creation itself confute Sir Robert's hypothesis. They run thus: “ *Sciatis, quia nunc post acceptationem regiminis in nostris propriis manibus.*”

16. L E N N O X.

James VI.

“ Charles Stewart, uncle to King James VI. was a commoner on the 18th April 1572; Charter, b. 33. N^o 107, to him, in which he is several times designed, *Patruus noster Dominus Carolus Stewart*: but, from the constitution of the dukedom of Lennox, it appears, that he had been created Earl some time between that period and the year 1581; *Evidence*, Constitution of the dukedom of Lennox, 5th August 1581.”

A N S W E R.

The claimant might take this example as she finds it, and answer, That as James VI. assumed the government in 1578, a creation before 1581 would prove nothing; for that it might have been by the King himself in 1578, 1579, 1580, or 1581. But as the claimant wishes rather to ascertain an historical fact, than to silence an adversary, she will observe, that if Charles Stewart was created

ted

Reason I. Prefump. 9. ted Earl at all, it must have been much earlier than 1581; for that he died in 1576. In 1571, the earldom of Lennox devolved on James VI. by the death of his grandfather, Matthew Earl of Lennox. During the King's nonage, a charter of the earldom was granted to Charles Stewart, his uncle; but the King *revoked that charter, because granted during his nonage*; *Record charters*, b. 35. N^o 8. 16th June 1578. It is believed, that Sir Robert Gordon will not derive much benefit from *this* example.

James VI. 17. *ARRAN*. 18. *LENNOX*. 19. *ORKNEY*. 20. *MARCH*.

The observation already made, "That James VI. having assumed the government, upon the demission of Regent Morton, 12th March 1577-8," affords a full and satisfactory answer to the examples of the Duke of Lennox, and Earls of Arran and Orkney, created in 1581, and of the Earl of March, created in 1582; and therefore nothing shall be said of the 17th, 18th, 19th, and 20th instances of creations by Regents.

After taking a survey of the *twenty examples of creations by Regents*, the claimant presumes, that her proposition, "That there is no evidence of any such creation," still remains unconfuted. It is difficult to say upon what principles Sir Robert Gordon composed his catalogue. One thing is plain, that he has laid it down as an axiom in the history of Scotland, "That a Regent always officiated until the King attained the age of twenty-five years complete;" than which a more extraordinary historical hypothesis cannot be devised.

Notwithstanding all that has been urged to the contrary, let it be supposed, for argument's sake, that either Earl John or Alexander resigned the earldom to Adam Gordon; or let it be supposed, that Alexander forfeited, and that Adam Gordon obtained a new creation from a Regent; there still remains a difficulty which Sir Robert Gordon ought to have solved, and yet has not attempted to solve.

Why did Adam Gordon obtain a creation limited to the *heirs-male of his body*, and not to *the heirs-general*?

Here it must be taken for granted, that the Earl of Huntly was all-powerful with the Regent; and that the Regent was desirous, at any rate, of conciliating the favour of the house of Gordon.

In such circumstances, if a resignation could be presumed, it would be a resignation to Adam Gordon, and to his heirs-general by Elisabeth his wife. *This* would have introduced Adam into the peerage, without changing the line of succession.

In like manner, if a creation could be presumed, it would be a creation of Adam Gordon, and his heirs-general by Elisabeth.

The reason is obvious: As the investitures then stood, the whole estate of the earldom of Sutherland must have passed to the *heirs-general* of Adam and Elisabeth, in like manner as it had recently passed to Elisabeth, the *heir-general* of her brother.

Supposing

Supposing then that Alexander the son of Adam and Elifabeth had died, leaving issue a daughter; and that Adam had had a son by a second marriage, the daughter of his eldest son would have inherited the whole estate of Sutherland, while his second son would, according to Sir Robert Gordon's hypothesis, have born the empty title of *Earl of Sutherland*. Reason I. Presump. 7.

Adam Gordon is represented by Sir Robert, as a crafty man, and of unbounded ambition. Would such a man have been ambitious of an instrument of creation so limited? or would he have consented, as he certainly did, to that deed of Elifabeth, whereby she put her son, and his *heirs-general*, in the fee of the whole estates of Sutherland?

These are questions which merit an answer. Hitherto they have received none, unless this should be held as an answer, That *heredes sui* implied *heirs-male*; or, in other words, that while the *heres suus* of Earl John was a female, Elifabeth, the *heres suus* of Elifabeth must have been a male, descended of males.

SECOND REASON for Sir ROBERT GORDON.

p. 22. "The principle wherein the claimant founds himself is supported by clear authorities, being that which governed the solemn determination in the two cases of the Earl of Cassilis and Lord Borthwick; the same which had before regulated those of the court of session in the case of Lovat, and in the question about precedency between the Earls of Crawford and Sutherland in this peerage; and that which directed the lawyers of the crown, in the case of an heir-male of the family of Mordington, who was indicted for high treason at Carlisle in 1746, and pleaded privilege of peerage."

A N S W E R.

It has been already shewn, that the cases of Cassilis, Borthwick, and Lovat, do not contradict the principles laid down by the heir-general claiming the honours of Sutherland; and that they are not applicable to the circumstances of her case.

As to the question concerning precedency agitated between the Earls of Sutherland and Crawford, it was fairly stated in the claimant's original case; and, to save trouble to the reader, shall be re-stated here.

In the question concerning precedency between the Earls of Sutherland and Crawford, the court of session, on the 25th January 1706, "Found the documents produced sufficient to instruct the propinquity of blood, and descent of the dignity, from William Earl of Sutherland, brother-in-law to King David Bruce, to John Earl of Sutherland, served heir to his father Earl John, anno 1512; and found it not instructed by the documents produced, that the dignity of John Earl of Sutherland was conveyed to Elifabeth his sister, served heir to him in the estate, in the year 1514."

Reason II.

In this question the counsel on either side argued the cause with more warmth than precision; in particular, the counsel for the Earl of *Crawford* laid down certain *principles*, as founded *in facts*, which a more accurate inquiry into history and records has evinced to be *absolutely and incontestably erroneous*.

They asserted, 1. That according to the construction of the law in 1347, *heirs of the marriage*, in respect to the dignity and jurisdiction, can only be understood of *heirs-male* (q).

2. That if the fee was provided (in 1455) *heredibus* simply, and not *heredibus quibuscunque*, then *heirs-male* only were understood (r).

3. That heirs-female were excluded from the succession of dignities with jurisdictions (s).

4. That no instance can be produced, and clearly instructed (authenticated), where ancient titles of dignity have fallen with the estate to heirs-female (t).

5. That if this ever happened, it was by a resignation; and in particular they said, that it cannot be instanced, that about that time (1514), and so far backward, ever any heiress did carry with her the dignity; but that afterwards, whether she came to marry, or was before married, it gave occasion to a new creation (u).

6. That *Adam Gordon* was designed, and called, *Earl of Sutherland*, which could never be but by a new creation; and that his being called *Earl* from an abuse, because married to a Countess, was such an abuse in titles of honour as never was admitted (x).

7. That if *Adam Gordon* was *Earl* by a new creation, *no man can doubt but the title was conferred upon him and his heirs-male* (y).

8. That as the *Earls of Sutherland* quitted their ancient name, and took *Adam's* name of *Gordon*, *it is a demonstration*, that they held and derived their title and dignity from him, as the first *Earl* (z).

These

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(q) Printed Memorial for the Earl of *Crawford*, p. 68.

(r) Ditto, p. 70.

(s) Ditto, p. 69.

(t) Ditto, p. 69.

(u) Ditto, p. 68.

(x) Ditto, p. 76.

(y) Ditto, p. 72.

(z) Ditto, p. 72. This argument, from the change of name, appears to have been abandoned by Sir *Robert Gordon* himself as untenible. And indeed it was exceedingly ridiculous, that persons pretending to be antiquaries should have gravely argued upon that circumstance as *singular*, which constantly occurred.

Of this assertion, which is so evident, and so universally known, there cannot be a stronger example than in the family of *Huntly* itself; whereof *Adam Gordon* was a son.

Elisabeth

These *eight* propositions may serve as a specimen of the manner in which the counsel for the Earl of Crawford thought fit to argue their cause. Reason II.

The propositions are represented as *certain*, as *undeniable*, nay, even as *demonstrative*; and yet they are all fundamentally erroneous, inconsistent with probability, and the faith of history and records.

The circumstances attending this first interlocutor are singular: There were fifteen judges present; five concurred in the interlocutor, two were against it, the rest did not vote. This circumstance is mentioned by Lord Fountainhall, (himself one of the judges at that time). He indeed says, five or six were *non liquet*, (did not vote); but it is plain, that seven did not vote, without including the president; who never votes, unless in the case of an equality of voices (a).

It is also to be observed, that the court did not expressly find, that the dignity was not conveyed to *Elisabeth*; but only that this *was not instructed from the documents produced* (b).

By this it appears, that they not only allowed to Lord Sutherland the common privilege of applying for a review of the interlocutor, but they also pointed out in what particular it was that they required more satisfactory information.

And by omitting the technical word *decern*, they prevented this interlocutor from becoming a decree of the court. The words "and decern," are the words which authorise the *extracting of a decree*. Hence, if Lord Crawford had proposed to have the cause put out of court, he must have applied of new for the interposition of the judges, in order to authorise an extract.

Lord Sutherland put in his reclaiming petition against the interlocutor above mentioned.

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

Elisabeth Gordon, the heiress of Gordon, married Alexander Seton, son of Sir William Seton; *Record Charters*, Roll 11. N^o 32. Her son is in 1421 called *Alexander de Seton*, *Dominus de Gordon*; *Rymer*, t. 10. p. 127. 154. 174. 266. 309. 677. 702. &c. &c. He obtained a charter of lands from the crown in 1439, under the description of "*Alexander de Seton, filius et hæres Elisabethæ de Gordon de Eodem*;" *Record Charters*, b. 3. N^o 176. It was not till 1449 that the family resumed the surname of Gordon. This Alexander was the grandfather of Adam Gordon, the husband of Countess Elisabeth.

From a like cause, the surname of the Earl of Angus became *Douglas* instead of *Stewart*; of the Earl of Marr, *Douglas* instead of *Marr*, and *Ereskine* instead of *Douglas*; of the Earl of Strathern, *Graham* instead of *Stewart*; of the Earl of Buchan, *Douglas* instead of *Stewart*; and so late as 1617, *Ereskine* instead of *Douglas*.

(a) Lord Fountainhall's words are, "There were five of the Lords clear in this last point, two voted against it, and five or six were *non liquet*, Whether the estate devolving on Elisabeth, made the dignity cease and expire, so that it began, as it were, a new family, having no claim to the precedence of the former Earls of Sutherland." *Found. Decisions*, vol. 2. p. 320.

(b) Among the many mistakes committed by Mr Forbes in his *Collection of the Decisions of the Court of Session*, it is not one of the least, that, in reporting this case, he says, that the court found, "That the dignity was not conveyed from John Earl of Sutherland, who succeeded in the year 1512, with the estate, to his sister *Elisabeth*."

This

Reason II.

This petition he introduced with these remarkable expressions. “Your Lordships will remember, that, before pronouncing the interlocutor, several of your number desired to be cleared; and that there were *but only a third part of the Lords* who gave their opinion in the terms of the interlocutor: and therefore, that the point may be in full light, both for satisfying such of your Lordships as did not find it instructed, that Elizabeth had the dignity conveyed as well as the estate, and also for clearing the question to the whole Lords, I beg leave, by way of petition, to inform as to that point only (c).”

If the facts here set forth had not been consistent with the knowledge of every one of the fifteen judges, it is not to be supposed that her Majesty's Advocate, who drew up the petition, would have thus averred them in open court.

In this petition the cause of Lord Sutherland was disengaged from much of the rubbish of the former informations, the old materials were arranged in more regular form, and new materials were employed.

The Earl of Crawford also petitioned against that part of the interlocutor which over-ruled his plea of prescription.

The court appointed each party to put in answers to the petition of the other.

Answers were accordingly put in for the Earl of Sutherland, but no answers were put in for the Earl of Crawford.

The union of the two kingdoms soon after took place; and from that time the authority under which the court of session had entered into the discussion of this question ceased.

As to the case of *Mordington* in 1746, it is natural for every one to wish to have in his favour the opinion of the great names in the law who were intrusted by the public at that period.

But this very reason ought to have made Sir Robert Gordon more cautious in his averments.

The case of *Mordington* was this. Charles Douglas was indicted as a commoner for treason; he pleaded privilege as Lord *Mordington*; he proved his descent; and his plea was either allowed, or supposed to be good. His descent was as heir-male, *in the direct line of succession*, from the person first ennobled. What relation this case can have with any of Sir Robert's numerous principles, is beyond all comprehension!

PROOFS, AUTHORITIES, and ILLUSTRATIONS.

(c) Petition for the Earl of Sutherland, printed, p. 1.

No presumption for the creation of Adam Gordon can arise from the circumstance of his assuming the title of *Earl of Sutherland*.

THE claimant, in the course of her argument, had urged, That Adam Gordon assumed the title of Earl of Sutherland, by courtesy only, in right of his wife, which was customary in Scotland; and hence, in a charter 1st December 1527, to Alexander Gordon, son of Adam and Elifabeth, the liferent is reserved, “dictis Elifabeth Comitissæ de Sutherland, et Adæ Gordon, sponsi sui, ratione curialitatis Scotiæ, et eorum alteri diutius viventi, pro toto tempore vitæ suæ.”

Sir Robert Gordon, after proving that Adam Gordon assumed the title of *Earl of Sutherland*, concludes, That Adam Gordon was Earl of Sutherland in his own right; and at the same time he produces many ingenious and subtle arguments to prove, that he could not take the title by courtesy.

It was unnecessary to prove, that Adam Gordon assumed the title of *Earl*; for it is what the claimant not only admits, but urges as evidence of the connection, in ancient times, between the possession of an *earldom*, and the title of *Earl*.

It is certain, and the claimant repeats it, “That in ancient times the husband of a peeress in her own right generally assumed the title of honour; and that it was allowed him by courtesy.”

Sir Robert Gordon is aware, that this proposition, if established, would overturn his argument; and therefore he has laboured to shew, that no such practice prevailed in Scotland.

The claimant will state the examples, Sir Robert’s Objections, and her Answers.

Much of this argument has been already anticipated in chapter 5. concerning the descent of titles of honour to heirs-general; and therefore the examples, objections, and answers, will be stated with the more brevity.

The following persons appear to have assumed titles of honour in right of their wives.

Angus.
Before 1242.

John Cumin, husband of Matildis Countess of Angus. "Obiit Johannes Comes de Angus in Francia," *Chr. de Melros*, ad an. 1242. From *Ch. Aberbr.* vol. 1. fol. 52. 53. 75. the names of the Earls of Angus, father, grandfather, and great-grandfather, of Matildis, are known. The person who died in France must have been the brother, the son, or the husband, of Countess Matildis. He could not have been her *brother*; for that the name of *Cumin* had not been established in Scotland during *four* generations: nor her *son*; for then her son, by a second marriage with a stranger, could not have been Earl of Angus. John Cumin therefore must have been her *husband*.

Countess Matildis next year married Gilbert de Umfraville. *Chr. Melros*, ad an. 1243. He died 1245, *Dugdale*, Baronage, tit. 2. p. 505. By reason of his early death, his name does not appear in the Scottish history. The *son* of Countess Matildis, Gilbert Earl of Angus, *Rymer*, tit. 2. p. 266. was, in the claimant's former Case, erroneously supposed to have been her *husband*. The sameness of the names occasioned the mistake. The passage in the accurate *Dugdale* has corrected it.

O B J E C T I O N.

Part of Sir Robert Gordon's objection is founded upon the evidence, that Gilbert de Umfraville, the second husband, bore the title of *Earl of Angus*. As this was an error in the claimant's Case, there is no occasion to examine the objection.

P. 32. 34. With respect to John Cumin, the first husband, Sir Robert supposes, that the peerage had failed in Matilda, and been revived in him: *A thing*, as Sir Robert says, *exceedingly common in Scotland when the peerage sunk in a female*.

A. N. S. W. E. R.

Of this *thing so exceedingly common*, Sir Robert has not produced, nor can produce, one single example while peerages continued territorial: and it has been shewn, that John Cumin could not have been created Earl of Angus; for that if the title did not belong to his wife, as *heir-general*, it belonged to a collateral descendent of the family of Angus, as *heir-male*.

Thomas de Gallovidia, husband of Isabel Countess of Athole; *Sir James Dalrymple*, p. 379.; *Charters*, Advocates library, N^o 60.; *Fordun*, lib. 9. c. 48.; *Ch. Dunfermline*. The examples marked with an asterisk were not in the original Case; the objections to them are not known.

* Athole.
Ante 1331.

David de Hastings, husband of Fernelith, aunt and heir of Patrick Earl of Athole, "acceptit ejus comitatum provenientem sibi ex parte uxoris." *Chr. Melros*, ad an. 1242.

Athole. 1242.

O B J E C T I O N.

- p. 34. "By *comitatus* the Chronicle of Melros means *land-estate*; in consequence of which, the crown, as in *fifty other instances*, conferred the peerage on David Hastings."

A. N. S. W. E. R.

Comitatus for a land-estate, unconnected with the title of *Comes*, was not the language of those days. None of the *fifty instances* can be produced.

John de Strathbolgie, the husband of Adda Countess of Athole. *Athole. 1269*. Confirmation by Johannes Comes Atholiæ; et "Adda Comitissa," to the abbacy of Coupar. *Sir James Balfour's MS. collections. Rymer*, T. 2. p. 266. an. 1283.

O B J E C T I O N.

- p. 34. "There is no proof *who* was the wife of John de Strathbolgie; nor how he became Earl."

A N S W E R.

The proof that his wife was the daughter of David Earl of Athole, is to be found in the confirmation of the grant which "David Comes Atholiæ, pater " *Addæ Comitissæ*," made to the abbacy of Coupar. Ferneleth was Countess of Athole; and so also must her daughter have been.

* Menteth.
Ante 1258.

Walter Cumin, the husband of N—— Countess of Menteth. *Chr. Melros, ad. an. 1258. Fordun, lib. 10. c. 11. 37.*

* Menteth.
1258.

Walter Stewart, the husband of N—— Countess of Menteth. *Fordun, ibid. Ch. Paisley, fol. 73. Rymer, t. 2. p. 266. 471. 552. 644.*

* Fyfe.
Ante 1359.

Sir William Ramsay, the husband of Isabel Countess of Fyfe. *Original Charter, David II. 20th August, an. reg. 29. i. e. 1359. Sibbald, History of Fyfe, p. 97.*

The claimant can say nothing as to Thomas Bisset, the second husband of Isabel Countess of Fyfe, because his name never appears, either on record, or in history, after the grant of the *comitatus* made to him by David II. upon the extorted resignation of Isabel; and had his name appeared after that grant, it must have been as *Earl of Fyfe* in his own right.

Carrick. 1270.

Robert Bruce, the husband of Margaret Countess of Carrick. *Fordun, lib. 10. c. 29. lib. 11. c. 13. A. Winton, MS Chronicle, Advocates library. Rymer, t. 2. p. 266.*

O B J E C T I O N.

p. 35. Sir Robert contends, "That by *comitatus*, Fordun only meant the " land-estate; and that the peerage was in the person of the husband " himself."

A N S W E R.

This is confuted, at great length, in chapter 5. *concerning the descent of titles of honour to heirs-general*, and shall not be here resumed. Upon the strictest scrutiny, the example will be found good.

Robert

Robert Stewart, second son of Robert II. married Margaret heiress of the earldom of Menteth, and in consequence of this marriage bore the title of *Earl of Menteth*. *Sir James Dalrymple's Collections*, p. 392. 393. *Lives of the Officers of State*, p. 301.

Menteth,
Ante 1371.

O B J E C T I O N.

p. 34. “ The authority quoted is that of *Sir James Dalrymple*, which makes directly against the Lady Elizabeth. The words are, p. 393. “ It seems, by marriage with Earl Murdach’s daughter, the earldom came to Robert Stewart, second son of King Robert, who was designed *Custos comitatús* before he was designed *Comes de Menteth*.” The passage proves two things: *first*, That after the husband had got the earldom, that is, the land-estate, he was called only *Custos comitatús*; and, *2dly*, That he was not till afterwards designed *Comes de Menteth*, which must have been upon creation.”

A N S W E R.

Sir James Dalrymple is a respectable authority. He was a learned person; of no genius indeed, but of great reading and integrity. Imagining that every antiquary understood the import of the phrase *custos comitatús*, he has not explained it. When it is once *understood*, Sir Robert’s objection vanishes.

Whenever a person having right to an earldom was, by nonage, or other incapacity, unfit to act, the Sovereign appointed a *custos comitatús*. Thus *Fordun* says, lib. 10. c. 28. an. 1270, “ Obiit Colbanus Comes de Fyfe, cujus *comitatus commendatus est* Alexandro filio Regis, *donec filius* Colbani, verus hæres, puer octo annorum, *legitime sit ætatis*.”

The like custom prevailed in England, as far back as the reign of the Conqueror: “ Capto postmodum Walthevo, *commissa est cura comitatús* Walchero Episcopo.” *Leland, Collectanea*, vol. 1. p. 126. *R. Hoveden*, p. 457. edit. Francof. 1601.

The form of the writ as it stood in the reign of Edward I. is preserved in *Rymer*, t. 2. p. 793. and runs thus: “ Rex, &c. Episcopis, abbatibus, prioribus, comitibus, baronibus, militibus, vicecomitibus, et omnibus aliis balivis et fidelibus suis, per totam terram nostram Galwedixæ, et comitatum de Are, constitutis, salutem.

“ Sciatis, quod constituimus dilectum et fidelem nostrum Johannem de Hodleston, *custodem* castrorum nostrorum de Are, Wiggeton, Cruggleton, et Botel, ac totius terræ prædictæ, necnon et *comitatús prædicti*, quamdiu nobis placuerit.

“ Ita quod vicecomites in quorum balivis castra prædicta existunt, de exitibus castrorum eorundem et vicecomitatum suorum tenerentur, et inde nobis respondeant ad scaccarium nostrum apud Berwycum.

“ Et ideo vobis mandamus, quod eidem Johanni, tanquam *custodi nostro* prædictorum castrorum, terræ, et *comitatûs*, in omnibus, quæ ad custodiam illam pertinent, intendentes sitis et respondentes, sicut prædictum est. In cujus, &c. teste Edwardo filio Regis, apud Tunbrigg, 28vo die Augusti [1297].”

It is irksome to produce evidence in support of historical facts which ought to be familiar to every one who ventures to treat of the antiquities of our law; here it is beyond measure irksome, because an error of a line may require a refutation of a page.

From what has been observed, it is obvious, that the *first* inference drawn by Sir Robert Gordon from the words of Sir James Dalrymple, is utterly erroneous. To say, that “after the husband got the earldom, he was called only *custos comitatûs*,” is a contradiction in terms; and indeed it is what neither Sir James Dalrymple, nor any one conversant in antiquity, either said, or could have said.

The fact appears to have been, that Robert II. appointed his son *custos comitatûs* during the nonage of Countess Margaret; and whenever she became marriageable, appointed him her husband.

The *second* inference, “That Robert Stewart was not till *afterwards* designated *Comes de Menteth*, which must have been from creation,” is but a corollary to the former. If *afterwards* means, “after he was called *custos comitatûs*,” it has been shewn, that this *must* have been the case; for that he could not at once be *custos comitatûs* and *Comes*. If *afterwards* means, “after his marriage with the Countess,” it is just what the claimant meant to shew from the authority of Sir James Dalrymple.

Rofs.
Circ. 1375.

Sir Walter Lesley, the husband of Euphame Countess of Rofs.
Rymer, t. 7. p. 215.

O B J E C T I O N.

p. 32. 35. “Sir Walter Lesley is styled, in 1375, *Dominus de Rofs*, i. e. *laird* or “proprietor of the estate of Rofs; but, in 1379, he is styled *Comes de Rofs*, having been created Earl of Rofs.”

A N S W E R.

It is not certain that Euphame's father was dead in 1375; so Walter Lesley may have been styled *Dominus de Rofs*, by reason of the right of expectancy which was in him by a charter in 1370. But further, it has been shewn by various examples, that the same person was called *Comes* at one period, and *Dominus* at a subsequent period. It has been also shewn, that he could not have been created Earl of Rofs; for that, if the title of honour was not in his wife, the *heir-general* of the last Earl of Rofs, it was certainly in the *heir-male*, then existing.

William

William Earl of Douglas, the husband of Margaret Countess of Marr. 1379. Marr. *Record* charters, Roll 5. N^o 91. &c.

O B J E C T I O N.

p. 35. "It is said, that William Earl of Douglas was the peer, not his wife."

A N S W E R.

This is most improbable, as has been shewn elsewhere. Had he been the peer, Archibald Earl of Douglas, his successor, after the death of Earl James in 1388, would also have been Earl of Marr; whereas the contrary is certain, and acknowledged.

Allan, son of Walter de Fafslane, married Margaret Countess of Lennox. *Chartulary of Lennox*, N^o 13. * Lennox. Ante 1384.

Alexander Stewart, the husband of Isabel Countess of Marr and Garrioch. *Rymer*, t. 8. p. 460. 461. 500. &c. *Winton. Chronicle passim*. Original charter, 20th April 1406, by "Alexander Comes de Marr." Marr. 1388.

O B J E C T I O N.

p. 35. The objection to this example seems to be, "That Isabel Countess of Marr conveyed the *comitatus* to Alexander; and therefore, according to the claimant's principles, Alexander was *Comes* by deed, not by courtesy."

A N S W E R.

If this is the sense of the objection, Sir Robert Gordon must admit, that Alexander Stewart was Earl of Marr, either by the *deed* of Isabel, or by *courtesy*. Both suppositions are equally destructive of his hypothesis.

Sir Patrick Graham, the husband of Euphame Countess of Strathern. *Charters*, 28th March 1414, 8th October 1414. *Sir James Dalrymple*, p. 377. *Rymer*, t. 8. p. 544. and 735. *Fordun*, l. 15. c. 23. Strathern. Ante 1414.

O B J E C T I O N.

p. 35. This example is so apposite, that Sir Robert Gordon cannot elude it in any other way than by supposing, "That Sir Patrick Graham was "created Earl of Strathern," while at the same time he holds, "that "Euphame, the wife of Sir Patrick, had not even a right to the estate "of Strathern."

A N S W E R.

There is an obvious contradiction here. The case of Strathern has been fully explained in chap. 5.

Buchan.
Ante 1574.

Robert Douglas, the husband of Christian Countess of Buchan.
Anderson, Historical Collections, vol. 2. p. 228.

O B J E C T I O N.

p. 32. 36. "Robert Douglas was created Earl of Buchan by his brother-uterine,
"Regent Moray."

A N S W E R.

This has been proved an impossibility; for that Robert Douglas sat as Earl of Buchan in that parliament which ratified Moray's title to the regency.

Buchan. 1617.

James Ereskine, the husband of Mary Countess of Buchan.
Royal charter, 23d March 1617.

O B J E C T I O N.

p. 36. "James Ereskine was created Earl of Buchan, by patent."

A N S W E R.

He bore that title before he got what Sir Robert considers as a new patent. It is a limitation of the succession, with the old precedency.

In the course of the argument, more examples of the same nature have been produced; and indeed the memory of this custom was not obliterated even at the restoration. This will appear from a remarkable passage in the *Memoirs of the Earl of Clarendon*, vol. 2. p. 25. octavo edition.

That Noble Author thus speaks of the marriage-contract of the Countess of Buccleugh. "Till this time this whole matter was treated in secret among the Scots, but now the King thought fit to consult it with others; and telling the Chancellor of all that had passed, shewed him the draught prepared by the Scots Advocate, and asked him, what he thought of it; and likewise implied, that he thought fit to give him some title of honour. After he had read it over, he told his Majesty, *That he need not give him any other title of honour than he would enjoy by his marriage, by which he would, by the law of Scotland, be called Earl of Buccleugh.*"

The guardians of the Lady Elisabeth have now finished their examination of the *Supplemental Case*. Whether that Case be as accurate as might have been expected from its title, or as learned as the profusion of quotations from history, treatises of law, and records, seemed to promise, or altogether as candid as became the dignity of the judicature to which it was addressed, is left with the impartial and intelligent reader to determine.

New matter of evidence may yet be discovered; unknown and unanswerable arguments may perhaps be produced, in support of the pretensions of the other claimants.

Meanwhile the Guardians will be bold to affirm, That if their ward is not found intitled to the honours of Sutherland, the judgment must proceed upon other evidence, and other arguments, than what are urged in the *Original or Supplemental Case of Sir Robert Gordon*.

Upon the whole, it is humbly hoped, that the foresaid dignity will be declared, of right, to belong to the claimant, and her heirs.

AL. WEDDERBURN.

AD. FERGUSSON.

A P P E N D I X I.

I.

IN Parlamento excellentissimi Principis, ac Domini nostri metuendissimi Domini B. 4. f. 93. Jacobi quarti, Dei Gratia Regis Scotorum illustrissimi, tento apud Edinburgh, in prætorio ejusdem, die veneris, decimo septimo die mensis Oëtobris Anno Domini millesimo quadringentesimo octuagesimo octavo Coram præfato supremo Domino nostro Rege, ibid personaliter seden.

Quò die idem supremus Dominus noster Rex in eodem Parlamenti præsentibus suis tribus statubus, et cum eorund consensu, favore, et consilio, sua regia Majestas Recognoscens, divino numine, se regni fastigia, et præminentias hæreditatis Jure suscepisse idque sui officii esse noscatur, viros nobiles qui suo honori et reipublicæ dignitate, plurimum affuerunt præmiis tollere, et ad altiores dignitates elevare, quo alij sui subditi unius virtutem imitantes, se ad similia præparent, et remunerationis officio disponant sua, ea propter sacra Majestas regia volens, virtutem viros regalis munificentiae & liberalitatis nobilitatis proprietates nitescere Dominium de Bothvile fecit, et erexit in unum liberum Comitatum pro perpetuo futuris temporibus, Comitatum de Bothvile nuncupand et dicto Comitatu Dominium de Creightown cum tenentibus Tenendriis, et libere tenentium Servitiis de Bothvile, et Creightown predicti, una cum advocacionibus, et præsentationibus præpositurarum præbendarum, et Cappellaniarum de Bothvile et Creightown, una cum piscationibus aque de Clyde et quadraginta mercatis terrarum ferrestæ de Bothvile cum omnibus aliis suis pertinen dependen. Juribus, et Annexis, univit et incorporavit, et eund Comitatum de Bothvile cum dependen, annexis et pertinen antedictis, suo dilecto familiari Consanguineo et Consuli, Patricio Domino Halis, pro suo fidei legalitate, obsequio et obedientia præstitis, et in Compensatione laboris et expensarum, dampnii vitæ, et Hereditatis periculi ob regium honorem Sumptorum pro regia Serenitate, et reformatione justiciæ, privorum Concilio oppressæ concessit, et donavit in suo parlamento prædicto eundemq Patricium Dominum Halis in Comitem Creavit et Comitatus Titulo decoravit, per præincinctionem Gladii, ut moris est ita quod ipse et sui hæredes pro perpetuo futuris temporibus, Comites de Bothvile vocentur, Comitisque dignitate fulgeant.

That what is wrote upon this and the preceeding page is copied from the Records of Parliament in his Majesty's General Register House at Edinburgh is attested by me Keeper of these Records, the same being examined collated or compared at the sight and by the assistance of Thomas Longland's Notary Publick.

(Signed)

ALEXANDER ROBERTSON.

THOMAS LONGLANDS, Not. Pub.

B

II.

II.

B. 44.
N^o. 136. } **J**ACOBUS, Dei gratia, Rex Scotorum, omnibus probis Hominibus totius terræ suæ, Clericis, et Laicis, Salutem; Cum delectus noster Consanguineus, Robertus Dominus Seytown, ex Clarissima et illustrissima stirpe, vetustaque de Seytown familia, descenderit, quæ, multis abhinc seculis, per nostros felicitis memoriæ prædecessores, optimo dominorum merito dignitatem, et honorem liberi baronis, et Domini parliamenti regni nostri Scotiæ consequuta est; cumque majores, dicti consanguinei nostri, in omni officio, et fidelitate versus nos, et prædecessores nostros, firmiter permanserint; idemque consanguineus noster, antecessorum suorum merita, non solum adæquaverit, sed etiam eximiis suis virtutibus, ita de nobis meritus sit, ut regalis nostri status, ac muneris dignitas, et munificentia postulent, ne patiamur eum, et successores suos, meritis honoribus, et claritudine destitui, sed potius ut egregie factis honor et claritas accedat; Noveritis igitur, nos de consilio procerum, et digni regni nostri primatum exigentibus præmissis, creasse, ordinasse, constituisse, et erexisse tenoreque præsentium, creare, ordinare, constituere, et erigere antedictum consanguineum nostrum, Robertum Dominum Seytown, et heredes suos masculos Comites de Wentown; eidemque Roberto, ac heredibus suis prædictis, nomen, statum, gradum, titulum, honorem, et dignitatem Comitis de Wentown, in omnibus et singulis præminentibus, dignitatibus, honoribus, et ceteris quibuscunque ejusmodi, statui Comitis de Wentown pertinere, seu spectare valentibus, damus et concedimus; ipsumque dictum Robertum, et hæredes suos prædictos, hujusmodi statum, gradu, titulo, honore, et dignitate Comitis de Wentown, per cincturam gladii, ac unius cappæ honoris et dignitatis, et circuli aurei circa caput positionem, insignivimus, investivimus, et realiter nobilitavimus. Tenend et Habend nomen, statum, titulum, gradum, honorem et dignitatem Comitis de Wentown prædicti, cum omnibus et singulis præminentibus, honoribus, et ejusmodi ceteris quibuscunque, statui Comitis de Wentown pertinentibus, seu spectantibus, præfato Roberto, Comiti de Wentown, et heredibus suis prædictis, in omnibus et singulis parliamentis nostris heredum, et successorum nostrorum, publicisque conventionibus, et comitiis, infra dictum nostrum regnum Scotiæ tenendis; necnon, ut habeant ejusmodi voces, præminentias, dignitates, status, honores, et loca in omnibus, quæ aliquis Comes dicti regni nostri ante hæc tempora, melius honorificentius, et quietius habuit, seu usus, et gavisus fuit, vel in præsentem gaudet, et utitur, et quod dictus Robertus, et hæredes sui præfati, successive vocitentur, et nuncupentur Comites de Wentown, perpetuo in futurum, et quilibet eorum vocitentur, et nuncupentur, ac ut Comites parliamenti, et regni nostri antedicti, tractentur, teneantur, et reputentur; ac quilibet eorum successive tractetur, teneatur, et reputetur; in cujus rei testimonium, præsentibus manu nostra subscriptis, magnum sigillum nostrum, appendi mandavimus; ex arce nostra Sancruciana, die decima sexto Novembris, Anno Domini Millefimo Sexcentesimo; coram his testibus, prædilectis nostris consanguineis, et consiliariis, Joanne Marchione de Hamilton, Comiti Arraniæ, Domino Evan, &c. Joanne Comite de Montrois, Domino Graham, &c. Cancellario nostro, Georgio Marescalli Comite Domino Keyt, &c. regni nostri Mariscallo, dilectis nostris, familiaribus, consiliariis,
Dominis

Dominis Jacobo Elphinston de Barntown Milite, nostro Secretario, Ricardo Cockburne juniore de Clerkingtoun, nostri secreti sigilli Custode, Militibus ; Magistro Joanne Skeene, nostrorum Rotulorum Registri, ac consilii Clerico Domino Joanne Cockburne de Ormestoun Milite, nostre Justiciariæ Clerico, Magistroque, Willielmo Scott de Ellie, nostræ Cancellariæ Directore. (Sic Subr.) Jacobus R.

That what is wrote on this, and the three preceeding pages is a just Copy of the Creation on record in his Majesty's General Register House at Edinburgh, is attested by me Keeper of these Records, the same being examined, collated, or compared in the fight, and by the assistance of Robert Jamieson, Notary Publick.

Signed

ALEXANDER ROBERTSON,

ROBERT JAMIESON, Not. Pub.

A P P E N D I X II.

I.

ACT of PARLIAMENT. 1587.

114. *The Commissioners of small Barronnes and Freeholder's, has vote in Parliament.*

OUR soveraigne Lorde, considering the Act of his hieneffe Parliament, hal-
den at Linlithgow, the tenth day of December, the zeir of God, ane thousand,
five hundreth, fourscore five zieres; Makand mention how necessar it is to his
Hieneffe and his Estates, to bee trewly informed of the needes and causes per-
taining to his loving subjectes in all estaites, specially the Commounes of the
Realme. And remembring of ane gude and loveable Act, made by his hieneffe
Progenitour, King James the first, of worthy memory, in the Parliament, hal-
den at Perth, the first day of March, the zeir of God ane thousand, four hun-
dreth, twenty seven zeirs; annent the Commissioners of small Barronnes in
Parliament, That his Majesty and his said Estaites would ratify and appreeve
the same, to have full effect, and to be putt to execution, in time cumming,
and of new statute and ordaine for the mair full explanation of the same Act
and certain execution thereof, that precepts suld be directed foorth of the Chan-
cellary, to ane Baron of Ilk schire first, to conveene the freeholders within the
same schire, for chusing of the Commissioners, as is contained in the same
Act. Quhilkis Commissioners being anis choien and send to parliament, the
precepts of parliament for conveening of freeholders, to the effect foresaid, to
be directed to the last Commissioners of Ilk schire, Quhilkis fall cause cheife
twa wise men, being the Kings freeholders, resident indwellers, of the schire, of
gude rent, and weil esteemed, as Commissioners of the same schire, to have
power, and to be autorised, as the Act proports, under the Commissioners seal,
in

in place of the schireffes; and that all freeholders of the King, under the degree of Prelates and Lords of parliament, be warned by proclamation, to be present at the chusing the saids Commissioners, and none to have voite in their election but sik as hes fortie shilling land in free tennendry, halden of the King, and has their actual dwelling and residence within the same schire; Quhilk matter being remitted, be the said estaites conveyened in the said parliament at Linlithcow, to the will and good consideration of our said souveraine Lorde, to doe and ordaine therein as his Hieneffe should think maist expedient and requisite, betwixt and his next parliament. And now his Majesty intending, God willing, to take ordour for the finall setting and establishing of that gude forme and ordour maist meet and expedient to stand in perpetuity in this behalf, according to the effect of the said Act of parliament, maid at Linlithcow, in consideration of the great decay of the Ecclesiastical Estait, and others maist necessair and weighty considerations moving his Hieneffe, Therefore his Majestie, now after his lawfull and perfite age of XXj zeirs compleit, sittand in plane parliament declares and decernis the said act, maid by King James the first, to take full effect and execution, and ratifies and apprieves the same be thir presents; and for the better execution thereof ordainis the Commissioners of all the Schieffedoms of this realme, according to the number prescribed in the said act of parliament to be elected, be the freeholders foresaid, at the first head court after Michealmas zierly; or failzing thereof at any other time, quhen the saids freeholders please conveene to that effect; or that his Majesty shall require them thereto. Quhilk conventions his Majesty declaris and decernis to be lauchfull: And the saids Commissioners being chosen as said is for ilk schieffdome, their names to be notified zierly in writte to the director of the Chancellary, be the Commissioners of the zeir preceeding, and thereafter quhen ony parliament or generall convention is to be halden, that the said Commissioners be warned at the first, be vertew of precepts furth of the Chancellary, or be his Hieneffe missive, letters or charges: And in all times hereafter be precepts of the Chancellary, as shall be directed to the uther estaites: And that all freeholders be taxt for the expenses of the Commissioners of the schires passing to parliament or generall councelles; and letters of poynding or horning to be direct for payment of the sums taxt to that effect, upon an simple charge of six days warning, allenarly: and the saids Commissioners, authorized with sufficient commissions of the scheriffedomes, fra quhilk they cum sealed and subscribed, with sex, at the least, of the Barronnes and freeholders thereof, shall be equall in number with the Commissioners of Burrows, on the articles, and have vote in parliament and generall councelles in time cumming: And that his Majestys missives, before generall councelles, shall be directed to the saids Commissioners, or certain of the maist ewest of them, as to the Commissioners of Burrows in time cumming: And that the Lords of Councill and Session shall zeirly direct letters, at the instance of the saids Commissioners, for conveyening of freeholders to chuse the Commissioners for the next zeir and making of taxations, to the effect above written: And that the compeirance of the saids Commissioners of the schires, in parliament or generall councelles, shall relieve the hail remanent small Barronnes and freeholders of the schires of their suits and presence aucht in the saids parliaments; providing alwayes that the small Barronnes observe there promises

ses and conditions, maid to his Majesty ; upon the quhilk declaration and ordinance maid and pronounced be our soveraine Lord, sittand in plaine parliament, as saidis John Murray, of Tullibardin, asked actes and instruments, and David-Earle of Crauford, Lord Lindsay, for himself and in name and behalf of uthers of the nobility, protesting in the contrair.

A P P E N D I X III.

I.

Precept of Clare Constat by George Earl of Huntly to John Gordon.

GEORGIUS Comes Huntly, Dominus Gordon, &c. dilectis nostris Alexandro Gordone Sauchin, ac eorum cuilibet, conjunctim et divisim, Ballivis nostris in hac parte irrevocabiliter constitutis, Salutem: Quia nobis per inquisitionem fidedignorum Baronum et libere tenentium, necnon evidentiary antiquarum, quondam Adami Gordon luculenter constabat quod quondam; Adamus Gordon, proavus Joannis Gordone, latoris presentium, obiit ultimo vestitus et factus ut de feodo ad pacem et fidem Supremi Domini nostri Regis de totis et Integris Terris de Culquhody molendino de Desfy, Drumgask Belivady cum Dimidio villæ de Torquhinlaquhy Formastoune molendino de Casteltoun Wralveen Farrer et Drumquhyn, cum pertinentiis jacen in Boronia de Aboyne, infra vicecomitatum de Abirdene, que de nobis tenentur in Capite, et nunc existunt in manibus nostris, Domini superioris earundem per decessum dicti quondam; Adami: vobis Igitur et vestrum Cuilibet, conjunctim et divisim, precipimus et mandamus quatenus dicto Joanni, vel suo certo Actornato latori, presentium factam et possessionem hereditariam omnium dictarum terrarum de Colquhody, molendino de Desfy, Drumgask, Belwady, cum dimidio ville de Torquhinlaquhy, Formastoune, molendino de Castletown Vratoun Farrer et Drumquhyn cum pertinentiis, tradatis, et Deliberatis, aut usui vestrum tradat, aut deliberet, visis presentibus, Indilate, secundum tenorem evidentiary suarum Antiquarum: ad Quod faciendum vobis et vestrum cuilibet, conjunctim et divisim, nostram plenariam et irrevocabiliter tenore presentium, committimus potestatem et in signum facte per vos tradit Sigillum vestrum, in secunda cauda post nostrum, presentibus appendatis aut unus vestrum appendat. Datum sub sigillo nostro, Apud Aberdine, Decimo Octavo die mensis Decembris, Anno Domini Millesimo quingentesimo trigesimo Octavo, coram testibus providis viris Willielmo Lesley, de Balquhene, Joannæ Lesley, de Wards Joanne Lesley, de Syd, Sic Subscribitur.

GEORGE EARL of HUNTLY.

II.

IN Dei nomine Amen. Per hoc presens publicum Instrumentum Cunctis pateat evidenter, et sit notum, Quod Anno Incarnationis Dominici Millesimo Quingentissimo trigesimo nono, mensis vero Maij, die quinto, Indictione duodecima, Pontificatus Sanctissimi in Christo Patris ac Domini nostri, Dni Pauli, Divina Providentia, Pape tertii, Anno quinto : In mei notarii publici, et Testium Sub Scriptorum presentia, personaliter constitutus, honorabilis vir Alexander Gordon, de Sawchin ac Ballivus nobilis et potentis Domini Georgii Comitis de Huntlie, habens et tenens, in manibus suis, quoddam preceptum dicti Comitis, sub ejus Sigillo Sigillat ; ac Subscriptione manuali, quod mihi, notario Subscripto, tradidit, perlegend cuius tenor sequitur et est talis. Georgius Comes Huntly, Dominus Gordon, &c. Dilectis nostris Alexandro Gordon, de Sauchin et eorum, Cuilibet, Conjunctim et Divisim, Balivis nostris, in hac parte Irrevocabiliter Constitut ; Salutem. Quia nobis per inquisitionem fide dignorum Baronum et libere tenentium, nec non Evidentiaram quond ; Adami Gordon luculenter constabat, Quod Quondam Adamus Gordone proavus Johannis Gordone, latoris presentium, obiit ultimo, vestitus et Satus ut de feodo ad pacem et fidem Supremi Domini nostri regis, de totis et integris terris de Tulquhody, molendino de Dese Drumgask Balwyd, cum dimidio ville de Tarquhinlaquhy, Formestoun, Castletoun, et molendino ejusd ; Wratoun Farrar et Dalquhyn, cum pertinen : jacen ; in Baronia de Aboyne, infra vicecomitatum de Aberdene, que de nobis tenentur in Capite, et nunc existunt in manibus nostris Domini Superioris, earundem per decessum dicti quond ; Adami : vobis igitur et vestrum Cuiliet, Conjunctim et divisim, precipimus et mandamus, quatenus dicto Johanni vel suo certo Actornato, latori presentium, sasinam et possessionem hereditarium omnium dictarum terrarum de Tulquhody molendino de dese, Drumgask, Balwyd, cum Dimidio ville de Torquillaquhy, Formestoun, Castletoun et molendino ejusd ; Wratoun, Farrar et Dulquhyng, cum pertinentijs, tractatis, et deliberatis, aut unus vestrum tradat aut deliberet, visis presentibus, indilate secundum tenorem evidentiaram suarum Antiquarum ; ad quod faciendum vobis et vestrum cuilibet, Conjunctim et Divisim, nostram plenariam et irrevocabiliter, tenore presentium Commitimus potestatem. Et in signum Sagine, per vos tradit Sigillum vestrum in Secundâ Caudâ post nostrum presentibus appendatis aut unus vestrum appendas. Datum sub sigillo nostro Apud Aberdien, decimo Octavo die mensis Decembris, Anno Domini Millesimo quingentesimo X. X. X. mo Octavo, Coram Testibus providis viris Willielmo Lesly, de Balquhain, Johanne Leslie de Wards, Johanne Leslie de Syd, Quibus vero perlectis sufficient que repertis, dictus Ballivus Omnibus melior modo via et forma, jure pariter et effectu, quibus melius et efficacius Scivit, debuit, aut de jure potuit, discreto viro Alexandro Murray, Actornato supra script Johannes Gordon Statum possessionem et Sasinam pereditarium omnium terrarum dictarem (de) de Culquhody molendino, de Dese, Drumgask, Balwyd, cum dimidio velle de Terquillaquhy Formestoun, Castletoun et molendino ejusd ; Wratoun Farrar et Dalquhyng cum partinen juxta modum

dum et formam in hujusmodi, precepto seu Content dedit et deliberavit, ac eundem Alexandrum Actornatum in hujusmodi, terris prenominate per terre et lapidis traditionem ut moris est debite et realiter investivit, ac in signum possessionis sic tradit eundem Alexandrum, in Domibus. inclusit et unum bovem de Communi Campo ville de Formestoun elegit appretiat ad quin quaginta solidos, monete Scotie, super Omnibus quibus et singulis superscript Alexander Gordone, a me notario publico subscripto, sibi fieri petijt Instrumentum, seu Instrumenta, publicum seu publica, unum ac plura. Acta erant hoc Apud loca dictarum terrarum nominat, horas Octavas, nonas, decimas, undecimas, duodecimas, ante meridiem; et horas primam ^{2m}; ^{3m}; Quartam, et Quintam, post Meridiem, sub die, mense, anno, Indictione, et pontificatu quibus supra, presentibus ibidem Johanne Chapman, Johanne Glenesk, Johanne Wauch Thoma Wauch, Willielmo Hugh, Domino Roberto Schewis, Rectore de Cussing, Johanne Rofs, Willielmo Piper, Alexandro Davidfone, Jacobo Ezed, et Jacobo Richy, Testiteus, ad premisa vocatis, pariter et Rogatus.

Et Ego Dominus Jasperus Hay Presbyter St. Andreæ, dioecesis publicus, Sacerâ Auctoritate Apostolicâ notarius quia premissis Omnibus et singulis, dum sic ut premittitur, agerenter dice renter et surent, una cum pronominatis testibus presens, personaliter interfui, eaque omnia et singula sic fieri Scivi vidi, et Audivi, ac in notam Cepi Ideoque hoc presens publicum Instrumentum, manu mea fideliter scriptum, exindè Confeci, et in hanc publicam formam, Instrumenti redigi, signoque, nomine et subscriptione, meis solitis, et Consuetis, Signavi, rogatus et requisitus. In fidem et testimonium omnium et singulorum et premissorum veritatis.

What is contained on this and the four preceding pages, marked with the initials is a just copy of the precept of Clare Constat, by George Earl of Huntly to John Gordon, and sasine of John Gordon; taken by me from the principal charter, and compared therewith.

Signed

JAMES ALISON.

A P P E N D I X IV.

I.

TO all and sundry whom these presents do or may concern, John Campbell-Hooke, of Bangeston, Esquire; Lyon, King of Arms, doth hereby certify and declare, that there are two entries of the Arms of the deceased John Earl of Sutherland, Lord Strathnaver, recorded in the Publick Register of Arms for Scotland, in the Lyon-office at Edinburgh; of the first of which entries the Tenor follows: The Right Honourable John Earl of Sutherland, Lord Strathnaver, bears, quarterly quartered, as follows: First, Gules, three Stars Or, as the paternal Coat of the Name of Sutherland. Second and Third, the Arms of Huntlie quartered, viz. First, Azure, three Boar's Heads coup'd Or, be the Name of Gordon: Second, Or, three Lyon's Heads erased Gules, be the Name of Badzenoch: Third, Azure, three Crescents within a double Tressure; counterflowered Gules be the Name of Seton: Fourth, Azure, three Fraes Argent be the Name of Frazer—the last—as the first—above the shield his crown—Over the same an Helmet befitting his quality—A mantle Gules, doubled Ermine—Next on an Torse for his Crest—a Cat-a-mountain—Saliant argent—armed Gules, supported by two Savages, wreathed about the Head and Middle with Laurel, holding in their Hands a Batton, all proper standing upon an Compartment placed underneath, the Motto in an Escroll above, *Without Fear*. Extracted upon this and the preceding page, at Edinburgh, the 29th of December, 1769 Years, by

Signed

THOMAS BRODIE, Lyon Depute.

II.

TO all and sundry whom these presents do or may concern, John Campbell-Hooke, of Bangeston, Esquire; Lyon, King of Arms, doth hereby certify and declare, that there are two entries of the Arms of the deceased John Earl of Sutherland, Lord Strathnaver, recorded in the Publick Register of

of Arms for Scotland, in the Lyon-office at Edinburgh; of the second of which entries the Tenor follows: The Right Honourable John Earl of Sutherland, one of the Knights Companions of the most ancient and most noble Order of the Thistle, by virtue of his Majesty's Royal signed Warrant, bears Gules, three Mollets Or, on a bordure of the second, a double Treffure, flower'd and counterflower'd with flower-de-Lis of the first, all within the Order of St. Andrew—Crest—a Catt-a-mounting Salient—Supporters—two Savages, wreathed about the Head and Loins with Laurel, holding Battons in their hands proper, standing upon a Copartment—Motto, *Sans Peur*. Extracted at Edinburgh, the 29th of December, 1769 Years, by

Signed

THOMAS BRODIE, Lion Depute.

A P P E N D I X V.

I.

RECORDS of PARLIAMENT.

In Parlamento tento Apud Edinburgh, 15mo. Martii, Anno Domini, 1542.

B10.f.76. **T**HE quhilk day my Lord Governour, with avise and consent of the thre estaitis of Parliament, has criate, maid, and ordainit ane nobill and mighty man, Andro, fumetyme Lord Avindale, Baroun and Barounrent, and Lord of our foveraine Ladyes parliament; and to be called, he and his succeffouris, in tyme to cum, Lord Stewart of Ochiltre, and to haif vote and place in the parliament, as uyeris Lordis of the realme aucht and fould haif in the samyn haifand all honours and dignitys offerand yrto.

II.

Carta Andree Domini Avendale.

B. 25. } **J**ACOBUS, &c. Sciatis nos quandam Cartam Donationis, factam per Jacobum
 No. 220. } Hamiltoun, de Finnart Militem, Consanguineo nostro Andree Domino Avendale Heredibus suis et assignatis hereditarie de totis et integris dicti Jacobi Castro et Fortalicio de Uchiltree, ac de omnibus et singulis terris suis antiqui extentus subscript, viz. quinque librat. Terrarum Dominicalium de le Manys vulgo nuncupat, &c. In excambium pro omnibus et singulis Terris antiqui extentus subscript, viz. Terris dominicalibus le over et nether Manis de Avendale nuncupat. extenden ad octo mercat. Terrarum cum Castro Fertalicio, &c. Ultimo Augusti 1534. Quamquid Cartam Confirmamus Apud Striveling 2do. die Mensis Septembris, Anno Domini 1534, et regni nostri 21mo.

III.

Carta Andree Domine Avendale.

JACOBUS, &c. Sciatis nos quandam Cartam Donationis fact. per Jacobum } B. 25.
 Hamiltoun de Fynnart Militem consanguineo nostro Andree Domino Avendale in } No. 153.
 libero Tenemento, sive vitali reditu, pro toto tempore vite sue et Andree
 Stewart ejus filio et Heredi apparenti in feodo heredibus suis et assignatis he-
 reditarie de omnibus et singulis dicti Jacobi Terris et Baronia de Uchiltree cum
 partibus, &c. except. Castro et Fortalicio de Uchiltree, ac omnibus et singulis
 Terris antiqui extentus subscript, viz. quinque libratibus Terrarum dominicalium le
 Manys vulgo nuncupat. &c. In excambium pro omnibus & singulis Terris
 antiqui extentus subscript, viz. quatuor mercatis Terrarum de Cauldstreme, &c. et
 Baronie de Avendale, &c. Ultimo Augusti 1534. Quamquid. cartam, &c.
 Confirmamus, &c. Apud Striveling 2do. die Mensis Septembris, Anno Do-
 mini 1534, et regni nostro 21mo.

IV.

*In Parlamento tento apud Edinbugh 12mo die Mensis Decembris, Anno
 Domini, 1543.*

ANENT the summondis raisit at the instance of James Hamiltoun, son } B. 10.
 and appearand air of Umql. James Hamiltoun of Fynnart, Knight, against } fol. 108.
 James Erle of Arrane, Tutor to the Queenis Grace, Protectour and Governour
 of this Realme; Mr. Henry Lawder, her Grace Advocate, and Thomas Men-
 zies of Pittfoddellis, her Comptroller, and all and sundry uthers haifand interest
 in the said maeter, That is to say, the saids personis to produce the pretendit
 Act of adjournale, sentence and proces of forfaltour given the 16th day of the
 month of August, the yeir of God 1540 yeires, fyndand and decernand That
 all the said Umql. James Hamiltoun of Fynnart, Knight, committit art and
 part of the treasonable imagination, inventioun and consultatioun, schutting
 and emission of Gunnis furth of the Palice of Linlithgow and Stepill of the
 samyn at the proper person of Umql. our most serene fader, and personis
 being in cumpany with him for the tyme, baith the tyme yat he came to the town
 of Lynlithgow and the tyme yat he passit fra the samyn; and that he com-
 mittit art and part of the tresonable imaginatioun, inventioun and consulta-
 tion of slaughter of the samyn our Umql. fader, the tyme yat he spake with
 Archibald Douglace and James Douglas of Parkhede, at the chapell of sanct
 Leonard, beseyde Edinburgh, efter the forfaltour of Archibald, sometyme Earle
 of Anguiss, George Douglas, his broder, and the said Archibald Douglas, his
 fader,

fader, bruyr. and yarfor decernand be laude and be decret that the said Umql. James of Fynnart, Knight, had forfaltit to our said Umql. serene fader, his life landis, rentis, possessionis and all and sundry his gudis, moveable and immoveable as in the proces of forfaltour, act of adjornale and sentence, led and given yrupon, mair fulllellie is contenit, and to heir and see the said pretendit proces, act of adjornale and sentente of forfaltour be senfement of the three estaites of our realme in our said parliament, to be decernit of the law, to have been fra the beginning and for to be in all tyme for to cum, in the self, null and of na strength; and be nulite led and deducit, and the samyn, in sa far as yai may of the law appear of valour and strength: And to heir and see rhe samyn be retreitit, cassit and annullit, in the foresaid manner, togidder with the annexation of the landis of the said Umql. James, Knight, to our crown, be the act of Umql. our derrest fader, in his parliament, halden at Edinburgh, the tenth day of December, in the year of God 1540 yeiris; with all that followis yrupon, And alsua to heir and see the said James, as air and sone to the said Umql. James, Knight, to be restorit and reponit in integrum againis, the said act of adjournale, proces and dome of forfaltour, and he as sone and lauchfull air to the said Umql. James, his fader, decernit to succeid to his landis, offices, lordchipp's, gudis, moveable and immoveable, als lauchfullie: As the said pretendit sentence of forfaltour had never been lede and promulgate against the said Umql. James, his fader, for divers ressonis and causes, like as at mair length is contenit in the said summondis, &c. My Lord Governour, with avise of the three estaites of parliament, and be senfement of the samyn, retretis, rescindis, cassis and annullis the said pretendit act of adjornale, sentence and proces of forfaltour, led and given agains the said Umql. Sir James, in manner foresaid; and decernis and declaris the samyn be senfement of this present parliament, to have bene fra the beginning, and to be in all tyme cumming, in the self, null and of na strength, togedder with the act of annexation of parliament, of the landis of the said Umql. Sir James, to the crown with all that followit yrupon, &c.

V.

P A R L I A M E N T R E C O R D S.

THAT Sir James Hamiltoun stands on the Rolls of Parliament, holden at Edinburgh upon the tenth and twelfth days of June, one thousand five hundred and thirty-five years, is attested by me, Keeper of the Records in his Majesty's General Register-House at Edinburgh.

Signed

ALEX. ROBERTSON.

VI.

VI.

Carta Jacobi Hamiltoun.

MARIA, &c, Dediffe, &c. dilecto nostro Jacobo Hamiltoun de Craw-^{B. 32.}
furd Johnne Militi et Domini Helene Cunnyngame ejus sponſæ, &c. Omnes ^{No. 420.}
et ſingulas Terras et Baronias ſubtus ſpecificat, viz. omnes et ſingulas Terras
Dominium et Baroniam de Avendale, cum Caſtro fortalicio, &c. Terras de
Haſſelden in Milmurelands, &c. Omnes et ſingulas Terras de Sandholm et
Brumelands cum pertinen. Totas et integras Terras & Baroniam de Crawfurd
Johnne, &c. Apud Strivelling 20mo. die Menſis Aprilis, Anno Domini 1565,
et regni noſtri 23tio.

A P P E N D I X VI.

I.

JACOBUS, &c. quandoquidem nos intelligentes, tam honorem Titulum et dignitatem, quam predia demortui Roberti domini Sempile Deficien. heredibus masculis de Suo Corpore, Domine Anne Sempile filie sue legitime natu maxime, nunc Sponse Francisci Abercrombie de Fetternier, et heredibus de ejus corpore legitime procreand cognomen de Sempill Assumentibus, atque nomen et Insignia Armorea de Sempill familiæ ejusdem, absque ulla immutatione gerentibus, per Ipsum quondam Robertum Dominum Sempill provisã fuisse; dictumque Robertum, et Franciscum Dominum Sempill ejus filium nunc Demortuos esse, nullis heredibus masculis de eorum Corporibus existen. Atque etiam Robertum Sempill heredem masculum, dict demortui Roberti Domini Sempile, et Francisci Domini Sempile ejus filius, Omnem Omnino titulum jus seu juris pretextum, que ad titulum Domini Sempile habebat, seu pretendere poterat, in manibus nostris Resignasse, in favorem prefatæ Dominæ Annæ Sempile dicti Sui mariti, Eorumque prescript. Nosque pariter, a quo tanquam primevo fonte et Scaturigine, Honores Omnes in Dominijs hisce nostris unice promanent serio perpendentes, per plurimum Corone nostre interesse, tam dignitatem et honorem, quam predia et possessiones antiquarum et fidelium familiarum preservare, atque serenissimum nostrum fratrem, Illustrissimum nostrum patrem, aliosq; Augustissimos nostros antecessores solitos fuisse Nobilissimas et Antiquissimas familias Regni nostre Scotiæ Continuare, in Successione filiæ generoso Cuidam et benemerito nubentis, (quiquidem ejusq; heredes Cognomen et Insignia Armoria familie gerit, et assumit) Eorumq; maritos, Eodem titulo in liberos suos Continuande honorari. Nosque fidem certiores facti, de servitus eximijs per plurimis per familiam de Sempile Coronæ nostræ prestitis, deq; eorum fidelitate et perfeccionibus, ob firman suam Juribus Regijs adhesionem duran nuperimis Commotionibus propter, quæ Franciscus et Robertus Dominus Sempile ejus Frater prescripti et mulctate fuere, eorum Domus direpte, et Tenentes sui et predia militibus perpeffa, perque Rebellionem et seditionem prevalentem Tyrannidem, Omnino devastata; nosque etiam benigne Cupidi, quod possessiones et dignitas familiæ de Sempile in persona dicte dominæ Annæ Sempile, mariti sui, Eorumque heredum Masculolorum Confirmentur et Stabilientur. Noveritis Igitur nos Ratificasse Confirmasse et Approbasse, tenoreq; presertim Ratificare Confirmare et approbare, Obligacionem talliæ et provisionis per dictum demortuum Robertum Dominum Sempile

Sempile Concess. per quam possessiones Honor et dignitas ejus, deficientibus heredibus masculis, de ejus Corpore, (quiquidem Casus nunc existit) In favorem predictæ dominæ Annæ Sempile filiæ sue legitime natu maxime provisâ fuere, atque etiam Jus perdidit; heredem Masculum in ejus favorem concess. omniaq; alia Jura que ad possessiones et predia aut dignitatem familiæ de Sempile ipsa habet, perq; presentis dictam dominam Annam Sempile ejusque heredes masculos in presenti hoc, seu subsequenti suo matrimonio successive, Titulo, Dignitate, Gradu et honore Antecessoribus suis temporibus retroactis debet, per ipsos possess, tam plene adeoque Libere ejusdem datæ et antiquitates prout eodem possidere, aut possidere potuere frui aut gaudere Ordinamus; nosque etiam plenissime certorati, non solum de fidelitate et zelo prenominati Francisci Abercromby de Fetternier erga servitium nostrum, verum etiam demeritis et perpeffionibus eximijs demortue Alexri Abercromby de Fetternier sui patris, Tempore nuperrimarum Infelicissimarum Commotionum Regionum nostrorum, Jurium propugnatoris serenissimi, quique in prelio illo Apud Alford cum montis Rosarum Marchione personaliter interfuit, cumque Gordonij Domino adderat Tempore sui Trucidationis; Igitur nominasse creasse et inaugurasse, tenoreque presentium ex prerogativa nostra Regale, proprie nostre motu ac certa scientia, creare constituere, et inaugurare prefatum Franciscum Abercromby de Fetternier, (omnimodo affumentem Cognomen de Sempile ac Insignia Gentilitia ejusdem Gerentem) Liberum Dominum Dominum Glasford Denominand; duran; omnibus sue vite diebus, Cum universis privilegijs et præeminentiis tam in parlamentiis quam alijs conventibus predictæ dignitati Competen. Cum Sciz. Libiri sui dicti matrimonij, tanquam heredes suæ matris successuri sint in Antiqua dignitate et precedentia familiæ de Sempile et Antiquorum Dominorum ejusdem (exclusis Omnimodo liberis in ullo alio Matrimonio) cum Omnibus privilegijs et Immunitatibus, ad Dignitatem gradum et Ordinem Domini in Dicto Regno Pertinen. et Spectan. In cujus rei Testimonium. Apud Whythall, July 25, 1685.

II.

Diploma Walteri Comitis de Tarras.

CAROLUS, &c. Sciatis Cumq; nobis Consterit dilectum nostrum Walterum Scott Junioem de Haychesten nunc vero maritum dilectæ nostræ Constance Marix Comitissæ de Buccleugh opibus satis instructum esse pro obeunda dignitate et titulo Comitis Quem in Eum conferre Decrevimus ut animus ei ad datur ad persistendum fideliter in nostro servitio Qua propter, &c. fecimus, &c. prenominatum Walterum Comitem de Tarras et Dominum Almoor et Campcastill ad dies vite ejus naturalis ut ita designetur et Denominetur, &c. Apud Aulam nostram de Whythall 4to. Septembris 1660mo.

III.

Diploma Jacobi Ducis Hamiltonii, &c.

B. 57. }
fol. 309. } CAROLUS, &c. Fecimus, &c. prefatum Jacobum Hamiltonii Marchionem Ducem Hamiltonii Marchionem Clidisdalie Comitem Arranie & Catabrigie, Dominum Avennie & Innerdalie, Dan. Conceden. & Commiten. quemmadmodum, Nos, pro nobis, et successoribus nostris, Damus Concedimus et Committimus illi ejusq; heredibus masculis de corpore suo legitime procreandis; Quibus deficientibus fidelissimo nostro Consanguineo et Consiliario Willielmo Comiti de Lanerk, &c. nostro secretario, ejus patri, et heredibus masculiis de Corpore dicti Willielmi Comitis de Lanerk legitime procreatis vel procreandis; quibus etiam deficientibus, heredi femelle natu maxime absq; divisione de corpore dicti Jacobi Marchionis de Hamiltoun jam procreate feu procreande & heredibus masculis de corpore dicti heredis femelle natu maxime legitime procreandis, Cognomen de Hamiltoun, et insignia familie, de Hamiltoun geren. (que sibi semper assumere et Omni tempore futuro Gestare tenebuntur & Astringentur) Quibus omnibus deficientibus, prefato Jacobo Hamiltonii Marchioni Suisq; propinquioribus legitimis heredibus quibuscunque, Titulum Gradum ac Dignitatem Ducis cum omnibus & singulis prerogativis præementiis privilegiis Dignitatibus et immunitatibus eo pertinen. et Spectan. quibus honore ordine et Gradu Dignitatis investivimus et nobilitavimus, tenoreque presentium investimus et nobilitamus dictum Jacobum Hamiltonii Marchionem ejusq; heredes masculos, aliosq; Tallie predict. ut, Omni tempore futuro, Duces Hamiltonii Clidisdalie Marchiones Arranie et Cantabrigie Comites Avennie et Innerdalie Domini, nuncupentur et Designentur, &c. Apud Oxfoird, 12mo. Aprilis, 1643,

A P P E N D I X VII.

Carta Johannis Domini Kennedy.

JACOBUS, Dei Gratia Rex Scotorum, Omnibus probis hominibus suis ad } B. 13.
 quos presentes litere pervenerint, salutem; sciatis nos dedisse concessisse, et hac } No. 249.
 presenti Carta nostra, confirmasse, delecto consanguineo nostro David Kennedy
 filio et heredi apparenti, delecti consanguinei nostri Joannis Domini Kennedy,
 Omnes et singulas Terras et Baronias de Cassills et Dunure, cum Castris for-
 taliciis annexis dependentiis tenentibus tenandris libere tenentium servitiis earun-
 dem; una cum jure patronatus advocacione et donatione prepositure Ecclesiæ
 Collegiate de Maybole et prebendarum ejusdem; nec non terras de Gervane et
 Glenop, cum suis pertinen. Jacen. in Comitatu de Carric, infra vicecomitatum
 nostrum de Are; Quæquidem terræ baroniæ de Cassills et Dunure, cum castris
 fortaliciis annexis dependentiis tenentibus tenandriis ac libere tenentium servitiis
 earundem, una cum jure patronatus advocacione et donatione præposituræ Ec-
 clesiæ Collegiate de Maybole et prebendarum ejusd; nec non terræ de Girvane
 et Glennop cum suis pertinen. fuerunt dicti Johannis Domini Kennedy heredi-
 tarie; et quas et que idem Johannes Dominus Kennedy non vi aut metu ductus,
 nec errore lapsus sed sua mera et spontanea voluntate, in manibus nostris tanqm.
 in manibus Comitum de Carrick, apud Striveling per fustim et baculum, et suos
 procuratores ad hoc legitime constitutos, sursum reddidit, pureque simpliciter
 resignavit, ac totum jus et clameum que in dictis terris baroniis castris fortaliciis
 annexis dependentiis tenentibus tenandriis libere tenentium servitiis jure patro-
 natus advocacione et donatione prepositure prebendarum predict. cum suis perti-
 nen. habuit, seu habere potuit, pro se et heredibus suis omnino quiete clamavit
 imperpetuum. Tenend. et habend. omnes et singulas predictas terras et Baro-
 nias de Cassills et Dunure, cum castris fortaliciis annexis dependentiis tenenti-
 bus tenandriis libere tenentium servitiis earund. una cum jure patronatus advo-
 cacione et donatione prepositure Ecclesiæ Collegiate de Maybole et prebendarum
 ejusd. nec non terras de Girvane et Glennop, cum suis pertinen. dicto David
 Kennedy, et heredibus suis, de nobis et successoribus nostris tanquam Comitibus
 de Carrick, in feodo et hereditate imperpetuum: Per omnes rectas metas suas
 antiquas et divisas prout jacent in longitudine et latitudine in boscis, planis, moris,
 marefisiis viis semitis aquis stagnis rivulis pratis pascuis et pasturis molendinis
 multuris et eorum sequelis aucupationibus venationibus piscationibus petariis
 turbariis carbonariis lapicidiis lapide et calce fabrilibus brasinis brueriis et ge-
 nestis, cum curiis et earum exitibus hærezeldis bludewitis et merchetis muli-
 erum cum furca fossa fok sak tholl theme infangthief outfangthief pit et
 gallows,

gallows, ac cum omnibus aliis et singulis libertatibus commoditatibus et aſſi-
 amentis ac juſtis pertinen. ſuis quibuſcunq; tam non nominatis, quam nominatis,
 tam ſubtus terra, quam ſupra terram, procul et prope ad prædict. terras baronias
 caſtra fortalicia, cum annexis dependentiis tenentibus tenandriis libere tenen-
 tium ſervitiis jure patronatus una cum advocacione et donatione præpoſituræ
 Eccleſiæ Collegiate præbendarum prædict. cum ſuis pertinen. ſpectan. ſeu juſte
 ſpectare valen. quomodolibet in futurum, adeo libere quiete plenarie integre
 honorifice bene et in pace, in omnibus et per omnia, ſicut dictus Johannes Do-
 minus Kennedy aut predeceſſores ſui prædict. terras baronias, caſtra fortalicia,
 cum annexis dependentiis tenentibus tenandriis libere tenentium ſervitiis jure
 patronatus, una cum advocacione et donatione præpoſituræ Eccleſiæ Collegiate
 præbendarum prædict. cum ſuis pertinen. de nobis aut predeceſſoribus noſtris
 comitibus de Carrick, ante dictam reſignationem, nobis inde factam liberius te-
 nuit ſeu poſſedit tenuerunt ſeu poſſederunt *Ac ſecundum tenorem antiquarum infeodationum eis deſuper conſect.* Reddendo inde annuatim dictus David et heredes
 ſui nobis et ſucceſſoribus noſtris Comitibus de Carrick, jura et ſervitia de
 dictis terris, baroniis, caſtris fortaliciis, cum annexis dependentiis tenentibus te-
 nandriis libere tenentium ſervitiis jure patronatus advocacione et donatione præ-
 poſiture præbendarum prædict. cum ſuis pertinen. ante dictam reſignationem
 nobis debita et conſueta: Reſervato tamen libero tenemento omnium et ſingula-
 rum prædictarum terrarum de Caſſills et Dunnure, cum caſtris fortaliciis an-
 nexis dependentiis tenentibus tenandriis libere tenentium ſervitiis earund. una
 cum jure patronatus advocacione et donatione præpoſiture Eccleſiæ Collegiate
 de Maybole et præbendarum ejuſd. Ac etiam terrarum de Girvane de Glennop,
 cum ſuis pertinen. præfato Johanni Domino Kennedy, pro toto tempore vitæ
 ſuæ. In cujus rei teſtimonium præſenti cartæ noſtri magnum figillum noſtrum
 apponi præcepimus; teſtibus Reverendiſſimo in Chriſto patre, noſtroq; cariſſimo
 fratre, Jacobo Sancti Andrea Archiepiſcopo, &c. reverendo in Chriſto patre
 Willielmo Epifcopo Aberdonen. noſtri ſecreti figilli cuſtode, dilectis conſangui-
 neis noſtris, Archibaldo Comite de Ergyle, Domino Campbell et Lorne ma-
 giſtro hoſpitii noſtri, Alexandro Domino Hume magno Camerario noſtro, An-
 drea Domino Gray juſticiario noſtro, venerabilibus in Chriſto patribus, Georgio
 Abbate Sanctæ Crucis prope Edinburgh, Jacobo Abbate de Scona, et dilectis
 Clericis noſtris Mris Ricardo Murhead Decano Glaſguen; Secretario noſtro, et Ga-
 vino Dunbar Decano Moravien noſtrorum Rotulorum et Regiſtri ac Concilii Cle-
 rico; Apud Striveling, decimo Septimo die menſis Februarii, Anno Domini
 milleſimo quingentefimo primo, et Regni noſtri Decimo quarto.

That what is contained on this and the four preceding pages is a juſt copy
 taken from the Records in his Majeſty's general Register Houſe, is atteſted by
 me, Keeper of theſe Records, at Edinburgh, the ſame being examined, collated,
 or compared at the Sight, and by the Aſſiſtance of Thomas Longland's Notary
 Publick.

(Signed)

ALEXANDER ROBERTSON.

THOMAS LONGLANDS, Not. Pub.

A P P E N D I X

A P P E N D I X VIII.

At Edinburgh, the Sixteenth Day of January, One Thousand, Seven Hundred and Sixty Seven Years—

THE which day, in presence of me, Notary Public and witnesses after designed and subscribing, appeared John Davidson, writer to the signet as procurator for, and in the name of, Sir Robert Gordon, of Gordonston, Premier Knight, Baronet of Scotland, and undoubted heir male of the last Earl of Sutherland, whose power of procuratory was well known to me, the said Notary Public, and passed with us to the personal presence of Mr. John Mackenzie, writer to the signet, the known agent and doer of the late William Earl of Sutherland, and one of the Tutors of Lady Elizabeth Gordon, alias Sutherland, only child of the said late Earl, and as agent for her other Tutors—and represented to him, That, soon after the said late Earle's death, the said Mr. John Mackenzie had been acquainted, by the said John Davidson, that he was employed by the said Sir Robert Gordon, the undoubted heir male of the late Earl of Sutherland, to enquire into the matter of the peerage and title of dignity of Earl of Sutherland, so as it might be known, whether Lady Elizabeth had any claim to that title, or, if the same, agreeable to the decisions of the court of Session, in this case, in the year 1706; and in the case of Lovat, and the decision of the House of Peers, in the case of Cassils, came to the said Sir Robert Gordon, as heir male aforesaid; and that Sir Robert hoped the Tutors would be so obliging as to shew him and his doers the writings, in the custody of the family of Sutherland, which might tend to clear up that matter; and that this, in the end, was really for the interest of their pupil, because, if her claim appeared good to the counsel of Sir Robert Gordon, after their seeing these whole writings then Sir Robert would acquiesce in it; and if these writings vouched the right to be in Sir Robert, it was a matter of justice to show the same to him; he had a right to see them, and that right would, at last, be enforced with the proper remedy; but for which, Sir Robert hoped, the Tutors of the Lady would save him, her cousin and presumptive heir male, the trouble of an application, by giving him a full and fair inspection of all the writings they had concerning that matter. That the said John Davidson

had afterwards, on the fourteenth of November last, by advice of Sir Robert Gordon's counsel, wrote a letter to the said Mr. John Mackenzie, desiring him to call a meeting of the said Tutors, and to lay before them Sir Robert's request of inspection of the papers which were produced in the court of Session, in the process of precedence with the Earl of Crawford, and all the papers which were in the late Earl's or his doers possession, on which the proof of the descent of the title to heirs female is grounded, or which ascertain the right to the title to have been in Adam Gordon, Earl of Sutherland; also the retours of the heirs, and the writings which show the settlements of the family estate, preceding the year 1636, or the times of the births, deaths or marriages, and state of the possessors thereof, or their issue, all which may tend to clear up the question of the right to that title, and to give him their answer; and acquainted him that copies of that letter were sent to other four of the tutors named to the said lady; that soon thereafter some meetings of the tutors were held, and afterwards some of the writings which were produced in the process 1706, were shewn by Mr. Alexander Mackenzie, writer to the signet, to the said John Davidson. However, one paper, viz. the copy of the decret or ratification in counsel, in the year 1617, of the decret of ranking the nobility, which shews a new title in the family, viz. Lord Gordon, of Dornock, was not shewn; that thereafter the said John Davidson delivered to the said Alexander Mackenzie a schedule, or list of sundry papers, of which Sir Robert desired to have inspection, and of which the said John Davidson, on the day and date hereof, also gave a copy to the said Mr. John Mackenzie, and of which a copy, as relative hereto, is annexed, of which Mr. Alexander Mackenzie had also shewed him some, but declined to shew him the rest, and particularly Alexander's service to Earl Adam, dated in the year 1590, and writes of Tilliehoudie, and many others: and yet that he could obtain no other answer to his letter, nor notice whether he was to see the said other writings in the custody of the said tutors; but only that the tutors were to look at the papers and were to give no answer. That the counsel of Sir Robert Gordon had thereupon advised the said John Davidson to represent these things to the said Mr. John Mackenzie under form of Instrument which he now did accordingly, and protested against the said Mr. John Mackenzie for himself, and as Agent for all the accepting tutors of the said Lady, for not giving inspection to the said Sir Robert Gordon, of the said writings, and that they should not presume to assume or use the title of dignity or peerage of Sutherland, as belonging to their said pupil, contrary to the said decisions, until it was ascertained in the proper form and manner, whether she had any right to it; and that the said Lady and her acting tutors should be liable to all damage and expences which the said Sir Robert Gordon might be put to by their doing in the contrary; whereupon, and upon all and sundry the premisses, the said John Davidson asked, and took instruments in the hands of me, Notary Public, subscribing and delivered to the said Mr. John Mackenzie, a schedule of protest of the tenor above written: These things were done, place, day, month and year of God, before written, within the parliament or new session house, betwixt the hours of one and two of the clock in the afternoon, before, and in the presence of Alexander Pierie, writer in Edinburgh, and Alexander Gray, apprentice

prentice to the said John Davidson, witnesses specially called and required to the premisses.

Praemissa Attestor,

HU CORRIE, N. P.

ALEX. PIERIE, witness.

ALEX. GRAY, witness.

Note of Papers to be seen in the Matter of the Title of Earl of Sutherland, referred to in the before-written Instrument of Protest.

- C**HARTER. Hew Friskin, Earl of Sutherland, to U. Gilbert, archdean of Murray, of the lands of Shelbo, &c.
 Confirmation thereof, by William the Lyon, dated April 29, at Slichheffes.
 Earl William's Charter of Confirmation of Hews, said Charter.
 Charter of Confirmation by King Alexander at St. Andrews, 22d December, 1235.
 22do. Regni.
 Charter by King David to William Earl of Sutherland and Margaret Bruce of Penult, Mar. Dunnotar, dated at Edinburgh. 1347.
 Charter by King David, after his Sister's Death, to Earl William and Son John, of Barony of Urquhart.
 Infestment to John, Earl John's eldest Son, of Pulrosie and Spanzie-Deal. 1467.
 Service of Elizabeth, as Heir to her Father.
 Judicial Renunciation of all pretence of Right to the Earldom, by Alexander, the Bastard of Sutherland, in Earl John and his Sister's favour. May 22, 1509.
 Procefs of Idiorty, Earl Adam and Countess Elizabeth against Earl John, before the Magistrates of Perth. July 25, 1514.
 Gift of the Chaplainry of Golspickirk Town, by Earl Adam, as Patron thereof, 1515.
 on Resignation of Malcolm Ratter, to Robert Mackrieth, directed to Andrew, Bishop of Caithness, and Commendator of Kelfo and Fern.
 Grant, by Earl Adam, to John Earl of Caithness, of Ten Daucks of Land, 1516.
 on East Side of Water Uly; called Sahthully, to return when Sutherland gave Caithness a Twenty Pound in Caithness.
 Bond of Service to Earl Adam, by Roy Macky.
 Bond of Service, by John Macky, to Earl Adam. 1518.
 Do. by John Macky, to Alexander Master of Sutherland. 1522.
 Decreet Arbitral, by Bishop Gavin Dunbar, of all Differences between the Earls Sutherland and Caithness, signed at Edinburgh. March 11, 1524.
 Few Charter. Robert, Bishop of Caithness, to John Earl of Sutherland. 1544.
 Confirmation thereof to Alexander.
 Dispensation, by Queen Mary, to John, to Serve lieu the Minor. 1545.
 Dos. Service to his Father.

Infestment

1577. Infestment of John, Son to Earl Alexander.
 1583. Excambion of Aboyne, with Superiority of Strathnaver and Sheriffship of Sutherland.
 Jan. 1590. Alexander's Service to Earl Adam.
 Alexander's Taillie of the Earldom of Sutherland, to the Heirs Male of his Body, and then to the Heirs of Huntly.
 Contract of Marriage of William Lord Strathnaver, 1720.
 The Writes of the Lands of Tilliehoudie, or any others which show that Adam Gordon was or was not Earl of Sutherland.

Signed

HU CORRIE, N. P.

ALEX. PIERIE, witness.

ALEX. GRAY, witness.

Copy of a Letter to Mr. William Gordon, the Claimant's Son, in relation to the Ratification of the Decree of ranking, 1617.

Dear Sir,

YOU know that since the beginning of the enquiries about the title of dignity of Earl of Sutherland, I thought it was of consequence to find out the ratification past in council of the decree 1606; ranking the nobility, and by which ratification, as appears from what is said on both sides, pages 72 and 94, of the precedency papers, the Earl of Sutherland had the title of Lord Gordon, of Dornock, ascribed to him. In this view I often applied to the other party for the paper, but was uniformly told they had it not, and I am sure they never said otherwise to me, nor never shewed it to me. I see they have in the appendix 2d, or additional, printed a copy of a proclamation, 1617, ratifying the decree of ranking, 1606; but it is impossible that could be the paper referred to in the precedency process, for it has not one word about the title of Lord Gordon, of Darnock, which the aforesaid evidence proves to have been mentioned in that paper referred to. I am,

Dear Sir,

Your most humble Servant,

JOHN DAVIDSON.

Edinburgh Dec.
30, 1769.

To William Gordon, Esq;

A P P E N D I X IX.

I.

King Robert's Charter to Ranulph Earl of Murray.

ROBERTUS, Dei Gratia Rex Scotorum, omnibus probis hominibus totius terræ suæ salutem. Sciatis nos dedisse concessisse, et hac præsentī carta nostra confirmasse Thomæ Ranulphy, Militi dilecto, nepoti nostro, pro homagio et servitio suo omnes terras nostras in Moravia sicut fuerunt in manu Domini, Alexandri Regis, Scotiæ, prædecessoris nostri ultimo defuncti, una cum omnibus aliis terris adjacentibus infra metas et divisas subscriptas contentas, incipiendo videlicet, ad aquam de Spee sicut cadit in mare et sicut ascendendo per eandem aquam, includendo terras de Fouchabre, Kother nayks, Rothays & Bocharine per suas rectas metas & divisas cum suis pertinentiis; et sic ascendendo per dictam aquam de Spee usque ad marchias de Badenach & sic includendo omnes terras de Badenach et Kyncardyn et de Glencarin, cum pertinentiis per suas rectas metas & divisas; et sic sequendo marchiam de Badenach usque ad marchiam de Louchabre; et sic includendo terras de Louchabre, de Mayinez, del Locharketh, de Glengarech, et de Glenely, cum pertinentiis, per suas rectas metas et divisas; et sic sequendo marchiam de Glenelg usque ad mare versus occidentem; et sic per mare usque ad marchias boreales Ergadiæ quæ est Comitum de Ros; et sic per marchias illas usque ad marchias Rossæ; et sic per Marchias Rossæ quosque perveniatur ad aquam de Forne; et sic per aquam de Forne quosque perveniatur ad mare orientale. Tenendas et habendas dicto Thomæ, et heredibus suis masculis de corpore suo legitime procreatis seu procreandis de nobis, et heredibus nostris in feodo et hereditate ac in libero comitatu ac in libera regalitate cum quatuor querelis ad coronam nostram regiam spectantibus; et cum omnibus placitis et querelis tam in communibus indictamentis quam in brevibus placitabilibus; & cum omnibus aliis loquelis quibuscunque ad liberam regalitatem pertinentibus ut aliquo modo pertinere valentibus adeo libere quiete plenarie et honorifice sicut aliqua terra infra regnum nostrum in regalitate liberius plenius quietius aut honorificentius dari poterit aut teneri, una cum magna custuma nostra burgi de Invernīs, et coketo ejusdem et libertatibus suis in omnibus except. tantummodo parva custuma dicti burgi, cum plenaria potestate attachiandi, accusandi, et in omnibus ministrandi ac judicandi, omnes illos dicti vicecomitatus

Adv.
Library
A. 1. 40.
f. 91, 92.

vicecomitatus injurias dampna seu præjudicia facientes indebite cultumæ prædictæ edeo libere in omnibus sicut nos seu aliquis ministrorum nostrorum ipsos at-
 tachiare, accusare ministrare seu judicare potuimus, seu poterit in præmissis; et
 quod dictus comes, et heredes sui Amerciamenta excaetas et forisfacturas inde
 contingentes edeo libere et quietè habeant et possideant in futurum, sicut nos seu
 aliquis prædecessorum nostrorum dicta amerciamenta, excaetas seu forisfacturas
 aliquo tempore habuimus. Quare vicecomiti nostro de Invernîs, et balivis suis
 ac præpositis, et balivis dicti burgi qui pro tempore fuerint ac ceteris quorum
 inereest firmiter præcipimus et mandamus quatenus præfato Comite et heredibus
 suis prædictis ac suis ministris in præmissis sint intendentes et respondentes consu-
 lentes et auxiliantes super hoc, si necesse fuerit, nostra regali potentia invocata, sine
 aliquo alio mandato nostro speciali interveniente. Volumusque et concedimus
 quod dictus Thomas et heredes sui prædicti habeant teneant et possideant dictum,
 comitatum cum manerio de Elgyn quod pro capitali mansione comitatus Moraviæ
 de cetero teneri volumus et vocari, et cum aliis omnibus manerijs, burgis,
 villis, thanagijs, & omnibus terris nostris dominicis, firmis, et exitibus infra
 prædictas metas contentis, cum advocationibus ecclesiarum cum feodis et foris-
 facturis, cum silvis et forestis, moris et maresiis, cum viis, et semitis, cum
 aquis, stagnis, lacubus, vivariis, et molendinis, cum piscationibus tam maris,
 quam aquæ dulcis, cum venationibus, aucupationibus, et avium aëriis, cum
 omnibus aliis libertatibus, commoditatibus, ayfiamenti et justis pertinentiis suis,
 in omnibus, et per omnia, tam non nominatis quam uominatis: quibus here-
 dibus dicti Thomæ masculis deficientibus, quod absit, volumus quod dictus
 comitatus ad nos, et heredes nostros, libere, et integre ac sine aliqua contra-
 dictione, revertatur. Volumus etiam et concedimus pro nobis et heredibus
 nostris, quod omnes barones et libere tenentes dicti comitatus, qui de nobis et
 prædecessoribus nostris in capite tenuerunt, et eorum heredes, dicto Thomæ, et
 heredibus suis prædictis, homagia, fidelitates, sectas curiæ, et omnia alia servitia
 faciant, et baronias et tenementa sua de ipso, et heredibus suis prædictis de ce-
 tero teneant: salvis tamen baronibus & libere tenentibus prædictis ac eorum he-
 redibus juribus et libertatibus, easdem libertates, curiarum suarum hæcenus
 juste usitatis. Volumus insuper et concedimus quod burgi, et burgenfes, sui de
 Elgyn de Fores, et de Inwyrnarne, easdem libertates habeant, et exercent quas
 tempore Domini Alexandri Regis Scotiæ, prædicti, et nostro habuerunt; hoc
 solum salvo, quod de nobis tenebant sine medio, & nunc de eodem Comite tene-
 bant, cum issdem libertatibus. Salvo etiam nobis, et heredibus nostris, in hac
 donatione nostra, burgo nostro, de Inwyrnes, cum loco castelli, et terris ad dictum
 burgum pertinentibus, cum piscatione aque de Nîs, et cum molendinis burgi
 ejusdem cum sequela dicti burgi, et terrarum ad ipsum burgum tantummodo per-
 tinentium: et salvis nobis, et heredibus nostris fidelitatibus episcoporum, abbatum,
 priorum, et aliorum prelatorum ecclesiæ Moraviensis, et advocatione seu jure pa-
 tronatus ecclesiarum earundem, et eorum statu, in omnibus quem habuerunt tem-
 pore regis Alexandri prædicti, et aliorum prædecessorum nostrorum Regum Scotiæ:
 excepto quod homines eorundem citati per nos ad defensionem regni nostri in-
 tendant vexillo, et sequi teneantur vexillum dicti Thomæ Comitis, et heredum
 suorum prædictorum, una cum aliis qui vexillum Moraviæ sequi solebant an-
 tiquitus: faciendo nobis, et heredibus nostris, dictus Thomas, et heredes sui
 prædicti

prædicti pro dicto comitatu, servitium octo militum in exercitu nostro, et Scoticanum servitium, et auxilium de singulis davacis debitum, et consuetum tantummodo, sine secta curiæ, ad quamcunque curiam nostram facienda. In cujus rei testimonium, præsentis cartæ nostræ sigillum nostrum præcepimus apponi. Testibus venerabilibus Patribus Willielmo Sancti Andræ, Willielmo Dunkel-densi, Henrico Aberdinenfi, Dei gratia, Episcopis; Bernardo Abbate de Aberbrothock, Cancellario nostro, Malcolmo Comite Levenax, Gilberto de Haya, Roberto de Keth, Marefcallo Scotiæ, Alexandro Margus, et Henrico de Sancto Claro, militibus.

II.

Carta comitis de Stratherne.

REX, &c. Omnibus, &c. Sciatis quod Concessimus David Senescallo, Mi-^{B. 4.}
liti Comiti de Stratherne filio nostro Carissimo, Comitatum de Stratherne, cum ^{No. 4.}
pertinen; Tenend; et Habend; Sibi & heredibus suis, in omnibus et per Om-
nia juxteo form; & tenorem carte, sibi exinde Confecte, Cum additione sub-
scripta, quod ipse, et heredes sui, ipsum Comitatum habeant, et teneant, et pos-
sideant, perpetuo, in libera Regalitate, cum feodis et forisfacturis, & cum omnibus
aliis libertatibus, Commoditatibus astamentis et Justis pertinen; quibuscunque
ad liberam Regalitatem pertinen; seu debent, secundum Regni leges et Con-
suetudines pertinere; et adeo libere, et quiete, plenarie, integre, & honorifice in
omnibus et per Omnia sicut, quondam Malissus, Comes de Stratherne, vela liquis
alius Comes ejusd; ipsum Comitatum, Cum pertinen; aliquo tempore, liberius,
quietius plenarius, integrius et honorificentius juste tenend; & possedit. Quare
omnibus et singulis Comitatus prædicti, ac aliis quorum interest, vel interesse
poterit, Damus pro nobis et heredibus nostris, tenore presentium, in mandatis;
quod dicto Comiti, et heredibus suis, in hiis que ad liberam Regalitatem perti-
nent, Respondeant prout ad ipsos, et ad ipsorum quem libet pertinet, faciant
ab aliis futuris temporibus respondere. In Cujus Rei, &c. Testibus, &c. Apud
Edinburgh decimo-nono die, mensis Junii, Anno Regni nostri primo.

That what is contained on this and the preceding page is a full copy of the Charter on Record in his Majesty's general Register House, at Edinburgh, is attested by me, Keeper of these Records, the same being examined, collated, or compared at the Sight, and by the Assistance of Thomas Longland's Notary Publick.

(Signed)

ALEXANDER ROBERTSON.

THOMAS LONGLANDS, Not. Pub.

III.

Carta David Senescalli comitis de Straherne.

B. J. } **R**OBERTUS, Dei Gratia Rex Scotorum, Omnibus probis hominibus,
 No. 304. } totius terre sue, Clericis et Laicis, salutem : Sciatis quod Concessimus David Senescalli, Militi, filio nostro, Carissimo Comitatum de Strathern cum pertinentiis; et Habend; sibi et heredibus suis, in Omnibus et per Omnia, juxta formam et tenorem Carte Sibi exinde Confecte, et adeo libere, quiete, plenarie, integre et honorifice, in omnibus, et per Omnia sicut quondam Malifius, Comes de strathern vel aliquis alius Comes Ejusdem ipsum Comitatum, Cum pertinentiis; aliquo tempore liberius, quietius, plenius, integrius, et honorificentius, juste tenuit, seu possedit, Cum additione subscripta, Quod ipse & heredes sui dictum Comitatum, ac omnes alias et singulas Terras, Tenendas et Tenementa, cum pertinentiis; que tenentur & tenebantur, antiquitus, de ipso Comitatu ubicunq; infra regnum nostrum habeant, teneant et possideant, perpetuo in libera Regalitate, cum feodis et forisfactoris et cum placitis, quatuor punctorum Corone nostre, et cum omnibus et singulis honoribus, libertatibus, Commoditatibus, auxiliamentis, et Justis pertinentiis; quibuscunq; que ad veram Regalitatem pertinent; seu debent, secundum Regni Nostri leges et Consuetudines pertinere. Reddendo ipse David, & heredes sui, nobis et heredibus nostris, de dicto Comitatu, Cum pertinentiis; unum par calcarium deauratorum, nomine albe firme, apud Dulye ad festum nativitatis beati Joannis Bapt; annuatim, si petatur tantum, pro warda relevio maritagio, ac omnibus aliis et Singulis Servitiis, Secularibus, exactionibus, seu demanda que de dicto Comitatu exigi poterint aut requiri, Quare omnibus et singulis Comitatus predicti, ac aliis & singulis, quorum interest, vel interesse poterit, Damus pro nobis, et heredibus nostris, tenore presentium, in mandatis quod dicto Comiti, et heredibus suis, in hijs que ad liberam regalitatem pertinent, Respondeant, et prout ad ipsos & ipsorum quemlibet pertinet, faciant ab aliis futuris temporibus Respondere: In Cujus rei testimonium, presenti Carte nostre sigillum nostrum apponi precipimus. Testibus ven. ut sibi Ecclesiarum Episcopis Joanne, primogenito nostro, Comite de Carryk Sen. Scotie, Roberto Comite de Fiff, et de Meneteth, Alexandro Senescalli, filiis nostris Carissimis Willielmo, Comite de Douglas, Joanne de Carryk, Cannonico Glasguen. Cancellario nostro, Roberto de Erkyne, et Hugone de Elgyntoun, militibus Consanguineis nostris. Apud Methuen decimo nono die mensis Octobris, Anno Regni nostri secundo.

That what is wrote on this and the two preceding pages, is a full copy of the Charter on Record in his Majesty's general Register House, at Edinburgh, is attested by me, Keeper of these Records, the same being examined, collated or compared at the Sight, and by the Assistance of John Seton, Notary Publick.

Signed

ALEX. ROBERTSON.

JOHN SETON, Not. Pub.

A P P E N D I X X.

Band, be James Earle of Douglas, to Rob. 3, 1402.

I James Earle of Douglas, obliges me be thir my letters written with my hand and by the faith of my body yt forasmikle as my soveragnie lord hes promittit to me, be his lettres written with his hand, to give me lawfull entrie and possessione unto the earldome of Wigtone and the lands of Stewartowne with the pertinents betwixt this and peace nixt to come in the nixt gnall councell, as his said letter more fullie propoerts: I bind me to my said soviragnie Lord be the faith of my body, as afor said, the holy evangili tawcht that I fall als sone as thir thing forsaide, contained in my said soviragnie Lord's letter, not fullfilled to me, that I shall incontinent in the saide nixt gnall councell be myself, or my procurators, having full and plaine power yrto, of me, under my seale and subscriptione of my body, bound to my said soviragnie Lord, my manrent and my service, in the best and most sure forme that can be seen to my said soviragnie Lord, but inconvenient for all the days of my life, before and againe all them, yt tofore do me, and that I shall now wyttin privie na inport, be na manner of way harme, deed nor evil to my said soviragnie Lord's personne, but that I fall lett that and keep him tharfrae, and warne him thereof incontinent, and that I shall give over all ligis and bands made betwixt me and any persone; **L** of what estate or nation, that ever they be for evermor, if any be made conterar to my soviragnie Lord, na, I fall never make nane in tyme to come; the which fall be conterar to his highness or his realme, be no manner of way; and that I shall be with him at all my power, and take part with him formally against all his enemies and rebels, being within his realme, at all tymes, and in tyme of peace keep his treuces within his bounds belonging to me, and in tyme of wear defend them as effeirs: And that I shall assist, to my saide soviragnie Lord, with all my power, in the resigning of his heritage, rents and possessiones disponit. or analiat. fra the croune in all places, saving sick gifts and sickernes given be him to my brother, whom God assolze and me in ony thing by gone at all their conditions beforewritten, fall be lelie and troulie kept, but fraud and guile: I having given the bodily oath the evangell taucht, and to the mair witnessing, I have sett my seale, at Lanerk, the 16th day of Janry, in the year of our Lord, jai iiij and twa.

A P P E N D I X XI.

I.

Carta Domini Thomi Biffet.

Great seal
B. 1.
No. 62.

DAVID, Dei Gratia Rex Scotorum, omnibus probis hominibus totius Terre sue Clericis, et laicis, salutem; Sciatis nos dedisse, &c. dilecto et fideli nostro Thome Biffet Militi, *totum comitatum nostrum de Fif*, cum pertinen. Tenend. et Habend. eid. Thome et Heredibus suis Masculis, inter ipsum et Yfabellam de Fif legitime procreand. de nobis et heredibus nostris in feodo & hereditate, per omnes rectas metas et divisas suas, cum omnibus libertatibus commoditatibus, &c. Quibus heredibus masculis interdict. Thomam et Yfabellam forte deficientibus, volumus quod totus predictus Comitatus, cum pertinen. ad nos et heredes nostros libere revertatur, Faciendo inde servitium debitum et consuetum; in cujus Rei, &c. Testibus, &c. Apud Edinburgh, 8vo. Junii, Anno Regni nostri 34to.

That the above is a full and correct copy of a Charter on Record in his Majesty's general Register House, at Edinburgh, is attested by me, Keeper of these Records, the same being examined, collated, or compared at the Sight, and by the Assistance of Thomas Longlands Notary Publick.

(Signed)

ALEXANDER ROBERTSON.

THOMAS LONGLANDS, Not. Pub.

II.

Great seal
B. 1.
No. 125.

DAVID, Dei Gratia, Rex Scotorum, &c. omnibus, &c. Seiatis nos quoddam scriptum Thome Byffet Militis, non rasum, non abolutum, nec in aliqua sui parte viciatum, vidisse diligenter et intellexisse, tenorem qui sequitur continentum, omnibus hoc scriptum visuris vel auditoris, Thomas Byffet Dominus de Upschynnton salutem in Domino sempiternam, noveritis, nos dotasse Yfabellam de

de Fif Dominana ejusd; ante Matrimonium inter me, et ipsam, in faciæ Ecclesiæ Celebrat. in tota Baronia mea de Glasclune, cum pertinentiis infra vicecomitatum de Perth, et in tota parte mea de Terris de et Slamanane infra vice, &c. de Sriveelyne et intra mea de Enchylldrayre, cum pertinen. infra vice, &c. de Fyf, Tenend. et Habend. dicte Yfabelle pro tempore vite sue, adeo libere et quiete plene et pacifice et honorifice de me et heredibus meis, sicut alica Terra in dotatione de aliquo Barone infra Regnum Scotie liberius quietius plenius et honorificentius tenetur aut possidetur, Faciendo inde Domino nostro Regi servitium debitum et Consuetum, Ego vero Thomas predictus et heredes mei dictas Terras predictæ Yfabelle sicut in dote factas et concessas contra omnes homines pro toto tempore vite dicte Yfabelle warrantizabimus et defendemus; In cujus rei Testimonium, presenti scripto sigillum meum est appensum; apud sanctum Andream, decimo die mensis Januarii, Anno Domini 1362; Hiis Testibus venerabilibus in Christo patribus, Dominis Willielmo Johanne et patricio permissione Divina Sancti Andree Dunkeldens; et Brichenen. Episcopis, Domino R. Senescallo Scotie et Comite de Stratherne, P. Comite de Marchia et de Moravia, Dominis R. de Erskyne, W. de Dischyngtoun, Andrea de Valonis, & Johanne de Kyndelock Militibus, Michaëlle de Belfour, David de Berclay, et multis aliis, Quodquid scriptum, &c. approbamus ratificamus, et predictæ Yfabelle, pro toto tempore vite sue, confirmamus, salvo servitio nostro: In cujus rei, &c. Testibus, &c. Apud Perth, Septimo decimo die Aprillis, Anno Regni nostri 36to.

That what is wrote on this and the preceding page, is a full and correct copy of the Charter on Record in his Majesty's general Register House, at Edinburgh, is attested by me, Keeper of these Records, the same being examined, collated or compared at the Sight, and by the Assistance of Thomas Longlands, Notary Publick.

Signed

ALEX. ROBERTSON.

THOMAS LONGLANDS, N. .

A P P E N D I X XII.

Litera Jacobi Arranie Comitis.

B. 35.
No. 454. } **J**ACOBUS, Dei Gratia Rex Scotorum, Omnibus probis hominibus suis ad quos presentes litere pervenerint, salutem; sciatis, Quia, cum avifamento Dominorum nostri Secreti Consilii, pro bono fideli & Gratuito Servitio nobis per predilectum nostrum Consanguineum & Consiliarum, Jacobum Stewart de Bothwellmure nostrique secreti Concilii Dominum impense, proque aliis magnis & Gravibus Considerationibus nos moventibus, Raticavimus approbavimus, et pro nobis & nostris successoribus, pro perpetuo, Confirmavimus Cartam & Infeofamentum fact. prefato predilecto nostro Consanguineo & Consiliario, et heredibus Suis masculis de Corpore suo legitime procreatis, seu procreandis; Quibus deficien. nobis et nostris successoribus libere reversur. De toto et integro Comitatu de Arrane, Et de Omnibus et Singulis Aliis Baronis et Terris Specificatis in antedicto infeofamento, de data vicesimo Secundo Aprilis, Anno Domini millesimo quingentesimo octuagesimo primo, Volentes Autem, et Serio cupientes, quod honos prefati nostri Consanguinei et Consilarii in sui gratuiti servitii memoriam nostro merito interresset et augebitur, non tantum ad Contentationem et Commodum prescripti nostri Consanguinei et Consilarii, qui tam bene a nobis eundem meritis est, sed ut aliis hujusmodi conditionis temporibus futuris fideliter serviendi occasionem prebemus; Et Quemadmodum Comitatus Terre Dominia antedicta in prefato Infeofamento Contenta alias Suprascripto predilecto nostro Consanguineo et Consiliario per prefatas Cartam et Infeodationem disposita Sunt, Sic volumus, quod ille eisd. gaudeat, cum Omnibus honoribus dignitatibus et preeminentiis, quibus sui predecessores dictorum Comitatus Dominorum Terrarum et Barroniarum perprieus gavisi erant; Et ideo, cum Consensu et assensu predict. de novo Raticavimus et approbavimus, tenoreque presentium Raticamus, et approbamus antiquam Ereptionem et Creationem dicti Comitatus de Arrane, Dominiorum de Avane, et Hamiltoun, cum Omnibus Terris et Baronis eisdem petinen. prout per presentes de novo erigimus et Creamus dictas terras in Comitatum et Dominia antedict. Et Creavimus et Constituimus quemadmodum nunc Creamus et Constituimus memoratum predilectum nostrum Consanguineum et Consiliarium, et ejus heredes masculos de Suo Corpore legitime procreatos, seu procreandos, Comites de Arrane, Dominos de Avane et Hamiltoun, Et Ordinamus prefatum predilectum nostrum Consanguineum et Consiliarium, et ejus heredes masculos de Corpore Suo legitime procreatos,

procreatos, seu procreandos, intitulari vocari et nuncupari Comites de Arrane, Dominos de Avane et Hamiltoun, ac Judicare et Censuram habere in Parliamentis generalibus Consiliis Conventionibus aliisque Synodis, Ita ut quilibet alius Comes, seu Parliamenti Dominus habuit, seu habere protest infra nostrum Regnum, Et Sigilanter eundem locum feriem ordinem et gradus, quos Comites de Arrane, et Domini de Hamiltoun, quovis tempore preterito habuerint; Et quod dictus noster predilectus Consanguineus et Consiliarius et ejus heredes masculi de Corpore Suo legitime procreati, seu procreandi, omnibus temporibus futuris, ~~guadebunt, habebunt, et possidebunt omnes Dignitates Honores et preeminencias ad Comitem et Parliamenti Dominum pertinen. et Specialiter in loco et gradu quem Comes de Arrane, perprius occupavit, non obstante quod nunc in Comitum creatus est, ac etiam in verbo regio promittimus, quod hec presens Creatio et Constitutio in persona dicti predilecti nostri Consanguinei et Consiliarii, cum Omnibus Solemnitatibus requisitis erit, Sine mora perfecta et Completa, Quare Ordinamur ejus nomen stilum titulum insignia et disterium in Insigniorum libro inseri, et Registrari in ea Serie et loco in quo Comes de Arrane perprius locutus erat; Preterea declaramus quod hujusmodi Comitatus Dominia et Barronie antedicta in prescripta Carta et Infeofamento fact. prefato predilecto nostro Consanguineo et Consiliario content. dibite in manibus nostris fuerint, per Resignationem factam Ante prescripte Carte et Infeofamenti datam; Et Quod nos potestatem desuper Despondendi habuimus; Et quod eadem antedicto predilecto nostro Consanguineo et Consiliario, ob rationabilissimas causas, nos ad id moventes, disposuimus premissa omniaque et Singula Puncta et Capita eorund. Nos cum avifamento et Consensu antedict. in verbo regio ratificari approbari, et in presenti nostro Parlamento de novo concedi, cum extensione Omnium clausularum ~~necessariarum promittimus; In Cujus rei Testimonium, presentibus Magnum Sigillum nostrum apponi precepimus; Apud Palatium nostrum de Halyrudehouse, vicesimo octavo die mensis Octobris, Anno Domini Millesimo quingentesimo Octuagesimo Primo, ac Regni nostri decimo quinto.~~~~

That what is wrote on this and the three preceeding pages, is a full and correct copy of a Charter on Record in his Majesties General Register House, at Edinburgh, is attested by me, Keeper of these Records, the same being examined, collated, or compared at the Sight, and by the Assistance of Thomas Longlands Notary Publick

(Signed)

ALEXANDER ROBERTSON.

THOMAS LONGLANDS, Not. Pub.

A P P E N D I X XIII.

I.

Carta Joannis Domini Maxwell.

B. 35.

No. 398.

JACOBUS, &c. Dedit &c. nostro Consanguineo Joanni, Domino Maxwell, heredibus Suis Masculis, et Assignatis quibuscunque, Omnes, et Singulas Terras, Baronias, Comitatum Regalitem, annuos redditus et alias rexive Subscript. viz. Omnes et singulas Terras Comitatum, Baroniam, et Regalitem de Mortoun, cum Castra, &c. Apud Halyruidhouse 5to. die mensis Junii anno Domini 1581mo. et Anno Regni nostri 14to.

II.

Carta, Con Joannis Comitis de Morton Domini Maxwell.

B. 35.

No. 461.

JACOBUS, &c. Sciatis &c. nos, cum avifamento et Consensu trium nostri regni Statuum, in Parlamento nostro convenientium, quandam Cartam per nos cum Consensu Dominorum nostri Secreti Consilii factam, predilecto nostro Consanguineo et Consiliario, Joanni Comiti de Mortoun, Domino Maxwell &c, heredibus suis Masculis et Assignatis quibuscunq; De Omnibus et singulis Terris, Barronia, Comitatu et Regalitate, et aliis rexive Subtus Specificat. viz. De Totis et integris Terris, Baronia, Comitatu et Regalitate de Mortoun &c. 5to. Junii 1581mo. Quamquid Cartam &c. Confirmamus &c. Apud Halierudhouse 9no. die Mensis Novembris Anno Domini 1581mo. et Regni nostri 15to.

III.

Litera con. Roberti Domini Maxwell Comitem de Nithisdail.

JACOBUS, Dei Gratia, Magne Brittanie, Francie, et Hybernie Rex } B. 49.
 &c. fideique Defensor, Omnibus, probis hominibus Suis, ad quos presentes Litere } No. 290.
 pervenerint, Salutem: Sciatis quando quidem, ex nostrâ Regiâ Clementiâ nobis placuit, vigesimo nono die mensis Octobris, Anno Domini Millesimo quingentesimo Octuagesimo primo, Quondam predilectum nostrum, Consanguineum et Consiliarium, Joannem Dominum Maxwell, patrem predilecti nostri Consanguinei Roberti, nunc Domini Maxwell, Comitem De Mortoun, Creare: ac Considerantes restitutionem Comitis de Mortoun Douglass, in pristinam Suam dignitatem nullo modo prejuditio esse dicto Domino Maxwell, de illa dignitate, dicto quond. suo patri, per nos Largita una alteram, nullo modo impediendo: ea ratione quod dictus Dominus Maxwell Suam dignitatem Creatione, et non Crimine Lese Majestatis obrinuit, Nobis igitur, ex nostra Regia benignitate, placet eandem dignitatem, a data dicte creationis, quam dicto quondam predilecto nostro Consanguineo Joanni Domino Maxwell, die Annoq; predict. Largiti sumus, pro nunc, et imperpetuum, in prefatum predilectum nostrum Consanguin. Robertum nunc Dominum Maxwell, ejus filium Suosque heredes masculos, continuare: Et quum nobis Semper Cure fuit dissidia inter nostros subdites amovere, ac in memoriam recolentes Diuturnum odium inter familias de Mortoun et Maxwell habitum, nec etiam nobis in nostris Regnis consuetum esse Duos Comites unò eodemq; titulo ornare, Nos igitur ex autoritate nostra Regali illum titulum quem in dictum quondam Dominum Maxwell Contulimus, nunc mutamus. In quantum titulum Comitis de Mortoun, tantummodo gessit, sic quod ubi dictus quondam Dominus Maxwell, Dominus Joannes Maxwell de Moirnis Dominus Maxwell Eskdail et Cairleill et Comes de Mortoun designabatur: nunc Decernimus et Ordinamus quod titulus dicti predilecti nostri Consanguinei Roberti, nunc Domini Maxwell, erit Robertus Dominus Maxwell Dominus Eskdail et Cairleill ac Comes de Neithisdail, Absq; tamen prejudicio dicto Domino Maxwell, nunc Comiti de Nithisdail de antiquitate dignitatis dicto quondam Suo Patri Concess. quam tenore presentium in eum Suosq. heredes masculos ut dictum est Continuamus et Confirmamus, neq; putabitur, aut supponetur quod mutatio dicti tituli, ullam novam Creationem efficiat, Sed e Contrario dignitatem prius concess. Corroboravit, et confirmavit; volumus etiam, et mandamus, Quod datum Creationis dicti Domini Maxwell, in Comitem Dicto Vigesimo nono die mensis Octobris Anno Domini Millesimo quingentesimo Octuagesimo primo, Computabitur, et Sic Omni Tempore affuturo, durabit Hasq. nostras Literas in amplissima forma (si opus fuerit) publicari Ordinamus. In Cujus rei Testimonium, presentibus Magnum Sigillum nostrum apponi precepimus, Apud Fernchame vigesimo nono die Mensis Augusti Anno Domini Millesimo Sexcentesimo vigesimo Regnorumq; nostrorum annis quinquaginta-

quinquagesimo quarto, et Decimo Octavo, Per Signaturum Manu S. D. N. Regis
Supra Scriptam ac Manibus.

That what is wrote on this and the two preceding pages, is a full copy taken from the Records in his Majesty's general Register House, at Edinburgh, is attested by me, Keeper of these Records, the same being examined, collated or compared at the Sight, and by the Assistance of Thomas Longlands, Notary Publick.

(Signed)

ALEX. ROBERTSON.

THOMAS LONGLANDS, N. Pub.

A P P E N D I X XIV.

Carta Edwardi de Brus.

ROBERTUS, &c. Sciatis nos dedisse, Concessisse, et hac presenti Carta B. 1. No. 45. nostra Confirmasse, Edwardo de Bruyes, Militi, dilecto fratri nostro, pro hominibus et Servitio Suo, Totum Comitatum de Carrick, per Omnes rectas metas et divisas Suas, Tenend. et habend. dicto Edwardo, et heredibus Suis masculis, de Corpore Suo, et heredum Suorum Masculorum exeuntibus, et tantummodo per lineam directam et masculinam descendentibus, nisi in Casu in quo plures fuerint fratres Germani Superstites; in quo Casu, decedente primogenito, vel deficiente sine heredibus masculis, de corpore suo procreatis, secundus genitus, in dictum Comitatum, hereditarie eidem succedat et sic de aliis, et eorum heredibus, de nobis et heredibus nostris, in feodo et hereditate, *Cum Nomine Jure et Dignitate Comitatus*, et Cum Omnibus aliis libertatibus, Commodatibus, ayflamentis et Justis pertinentiis, ad dictum Comitatum Spectantibus, vel quoquommodo Spectare valentibus adeo libere, et quiete, plenarie, et honorifice sicut dictus Comitatus tempore bone memorie Domini Alexri, Regis Scotie, predecessoris nostri, ultimo defuncti, liberius, quietius, plenius, et honorificentius, teneri solebat per quemcunque. Faciendo nobis et heredibus nostris ipse Edwardus, et heredes sui predicti servitium tempore dicti Domini Alexri, Regis, de dicto Comitatu debitum et consuetum. Et si in successione heredum predictorum, modo supra declarato, quod absit, Contingat deficere volumus, quod dictus Comitatus, ad nos et heredes nostros, libere et integre, ac sine aliqua diminutione, revertatur in Cujus rei, &c.

That what is wrote on this and the preceding page is a full and correct copy of a Charter on Record in his Majesty's General Register House at Edinburgh, is attested by me, Keeper of these Records, the same being examined, collated, or compared, at the Sight, and by the Assistance of Thomas Longlands Notary Public.

Signed

ALEX. ROBERTSON.

THOMAS LONGLANDS, Not. Pub.

A P P E N D I X X V.

I.

Adv.
Library
W. 4, 5.

OMNIBUS Christi, fidelibus hoc presens Scriptum visuris vel auditoris
Walterus Senescallus Comes de Menthet salutem in dno Sempiternam Noverit
universitas vestra me, &c.

Hiis testibus dnis Fynleio de Stragrif, Johanne de Irschyn militibus; Dufgallo filio Sewen; Murchardo filio Malcmur; Johanne Portar, Dunslene fratre Murchardi, Reginaldo clerico, & aliis multis. Dat. apud parcum de Irschyn, die Jovis proxima post festum Sancti Illaree, Anno gratie Millesimo ducentesimo, sexagesimo secundo.

II.

Sir Robert Sibbalds Collections concerning Scotland, Part second; entitled, History ancient and modern of the Sheriffdoms of Fyfe and Kinrofs, &c. Edinburgh Edition, 1739, p. 97, has the following passage.

THERE is an Indenture (the copy of which I have) betwixt Robert Sinescall, Earl of Menteeth, and Izabell Countess of Fyfe, of the date of the penult day of March 1371; by which it appears that the said Countess Izabell, doth acknowledge the said Earl to be her lawful heir apparent, as well by the Tailzie made by Umquhill Duncan, Earl of Fyfe, her rather to Allan Earl of Menteith, the Grandfather of the Lady Margaret, the Spouse of the said Robert, now Earl, as by the Tailzie, made by the Lady Isabell, herself, and her Umquhill husband Walter Sinescall, the son of the said Robert, Earl of Menteeth, to the foresaid Earl, by which, upon the said Earl's assisting her in the recovery of her earldom, which she by force and fear had otherwise resigned; and that when the said earldom is recovered, and the Countess has got possession of it, she shall presently resign it in the King's hand, to invest the earl himself in it, who shall presently receive sasine of the Feud of the said earldom, with the leading and dominion of these of the said earldom, their wards, reliefs, marriages, and escheats, and all else belonging to the Earl of Fyfe, or that should pertain to him when they happen. The courts of the said earldome, shall be holden by the Senescall, with the exits and contingents of the men dwelling in the lands, and shall receive from the Countess herself Farms, and receive the Farms from all the other tenants, and the said Countess is to have all the days of her life, the free tenement of the lands of the said earldom, except the third part, allotted to Mary, Countess of Fife, the mother of the said Lady Isobell, all the time of her life in assedation, and the raising of Farms, with the harriages, and carriages, and other lesser services, due and customary, and the said Earl

Earl, upon the death of Mary the Countess, shall have her whole third part. And it is agreed the said earl shall have in his keeping the castle of Falkland, with the forest of it, and a constable shall be placed there by him, as he pleaseth, and that the said Countess may stay within the tower when she pleaseth, and the whole village of Falkland, over against the said tower, shall be sett in tack for such a ferm to the same Earl, the day of the making the present indenture, so as when he comes he may have lodging and accommodation there, for him and his horses, and not wrong the other lands of the Countess. To the performance of all which they, on both sides, bound themselves by their oath corporally, and for testimony of it, put to it the seals of the foresaid Earl and Countess, with the seal and subscription of the notary subscribing, dated the said place, day and year aforesaid.

III.

OMNIBUS haec cartam visuris vel auditoris, Robertus Senescallus Scocie, { Adv. Library, W. 4, 5. }
 Salutem: Sciatis nos, ob reverenciam dni nostri Ihn. Xi. beatissime Virginis Marie beati Jacobi, Sancti Mirini ac omnium Sanctorum & pro salute anime nostre antecessorum et successorum nostrorum, Ratificasse approbasse et imperpetuum confirmasse Religiosis viris Abbati et conventui Monasterii de Passeito ibidem Deo servientibus, et imperpetuum servituris in inviolabilem puram et perpetuam elemosinam, omnes donationes concessiones, confirmationes, et infeodationes quas antecessores nostri eidem Religiosis viris caritative contulerunt; Et ut voluntatis nostre lucidius illucescat intentio ac brachii violenti secularis in persequendo ac cartas eorundem virorum Religiosorum sinistre eventu exponendo tempora non distinguendo desistat et talescat prenominationis viris Religiosis in puram et perpetuam elemosinam iterando concedimus et donamus videlicet totales terras de Aldhus, de Arcston, de Insula Monachorum, inter Kert & Crief de Fulton, de Drumgrane, de Graynis de Achingown Monachorum terram inter Aldpatrick et Espedire, sicut Aldpatrik descendit in Kertlochwynok et Espedire descendit in terram monachorum jacentem inter le Blaklyn et Kert, de passeito, terram de Dalmulyn, Kyrklandholme et terram de Munkton, una cum duabus celdris farrine de tenemento de Ingleston. dimidiam marcam argenti de Porterfelde juxta Rynfru, liberum servitium Wardam et relevium de Ingleston, tres marcas annui redditus de Adanton, cum omnibus libertatibus, commoditatibus, ayfiamentis, et justis pertinenciis, tam non nominatis, quam nominatis, tam sub terra quam supra terram, in omnibus et per omnia ad dictas terras cum pertinenciis spectantibus, et annuos redditus infra videlicet Baronias nostras de Reynfru et de Kyle, cum libertate libere Baronie absque retinemento pacifice possidendas eisdem etiam viros religiosos ex gratie nostre ferventis habundantia ab omnibus serviciis secularibus auxiliis exercitiis captionibus impositionibus fictis curie exactionibus consuetudinibus ac demandis quibuscunque exemimus eruimus liberamus. In cujus rei testimonium sigillum nostrum presentibus est appensum. Apud Cluny vigesimo die mensis Julii; Anno Domini Millesimo trecentesimo sexagesimo primo, Testibus Johanne Senescallo dno de Kyle, primogenito nostro Waltero Senescallo dilecto filio nostro dno de Fyff, Johanne de Rofs, Stephano de Rofs, Willielmo de Lindfay, Johanne de Balcastry, et multis aliis.

IV.

Joannis de Fordun Scotichronicon Lib. 14. Cap. 27.

CUNCTIS pateat evidenter, quod ego Robertus, Senescallus Scotie, comes de Strathern decimo quarto die mensis Maii, A. D. Millesimo trecentesimo sexagesimo tertio, apud Inchemurdach, in presentia venerabilium in Christo patrum, dominorum dei Gratia Willelmi episcopi S. Andræ, Patricii Episcopii Brenchenensis Cancellarii Scotiæ, Johannis abbatis de Dunfermelyn, Magistr Walteri de Wardlaw, archidiaconi Laudonicæ domini nostri regis Secretarii, Magistri Gilberti Armesfrang prepositi Sancti Andræ Dominorum Roberti de Eskyn, Camerarii Scotiæ, Archibaldi de Douglas, Roberte de Ramsay Thomæ de Fauside militum Normanni de Leslie Alexandri de Lindsay et plurium aliorum, Corporale super sancta dei evangelia prestiti Juramentum, quod fidelis ero, pro toto tempore vitæ meæ, domino meo Domino David, Dei Gratia regi Scotorum illustri, in omnibus causis motis, seu movendis; ipsum Dominum meum et suos Ministros ac fideles, quoscunque viz quos ipse dominus meus rexfuos fideles dicere voluerit et vocare pro totis omnibus meis Contra omnes viventes Cujuscunque Conditionis seu status exstiterint Juvabo defendam manutenebo et sustinebo; non obstantibus quibuscunque obligationibus, ligamentis, vel Juramentis per me factis, et exhibitis patricio Comiti Marchiæ et Moraviæ, Willelmo comiti de Douglas, Johanni Senescallo de Kyle et Roberto Senescallo de Menoteth, filiis meis, seu quibuscunque aliis expresse et omnino Renunciavi, et imperpetuum renuncio; per presentes Obligans me, et promittens per Juramentum meum predictum, quod de cetero nullum obligationem legamentum vel Juramentum cum ipsis, vel ipsorum aliquo, aut cum quocunque aut quibuscunque faciam nisi prius scire fecero dictum Dominum meum regem, et ipsius licentiam et voluntatem super hæc petiero et obtinuero Specialem; nec contra dictum dominum meum regem vel ipsius ministrorum, seu fidelium, aliquem Consilium, auxilium, favorem, vel defensionem, clam vel palam, cuicunque, vel quibuscunque impendam; sed quandocunque et quotiescunque scivero, vel audeiro, aliquos contra dictum Dominum meum Regem Rebelles existere, aut sibi Obtemperare, nolle ipsos pro totis viribus meis et potentia compefcam puniam refrenabo et usque ad condignam Satisfactionem ad voluntatem dicti domini mei regis distringam et Compellam. Et ad hoc Omnia et singula premissa firmiter et inviolabiliter facienda perimplenda ac observanda obligavi me, et obligo per presentes sub pena exheredationis omnium terrarum mearum reddituum et possessionum ac subpena amissionis omnis juris Successionis Regni Scotiæ et quorumcunque aliorum Dominiorum, seu terrarum que mihi Competit quocunque Jure, titulo, vel ordinatione, vel Contingere poterit in futurum, sine ulla Spe Gratia, vel favoris obtinandæ; et sub pæna perjuri dehonorationi Reprobationis, et defactionis militis et armorum. In cujus rei Testimonium præsentibus sigillum meum est appensum, Anno, die, et loco Supradictis.

V.

Carta Regis Roberti concess. Roberto de Arskin militi.

ROBERTUS Dei gracia Rex Scotorum Omaibus probis hominibus totius terre sue Salutem. Cum dudum tempore clare memorie dni Avunculi et Predecessoris nri Domini, David Illustris regis Scocie, Nos adtunc Senescallus Scotie et comites Stratherne, dederimus, & concessimus hereditarie, Roberto de Erskin militi dilecto consanguineo nro terras nras de Nesbitt & de Edinham cum pertinen. per cartam nram tenoris et continencie qui sequuntur. Omnibus hanc cartam visuris vel auditoris, Robertus Senescallus Scocie, et Comes de Statherne, salutem in dno sempiternam noverit Universitas vra, nos dedisse concessisse et hac presenti carta nra confirmasse dilecto & fideli nro. Domino Roberto de Erskin militi, & dne Cristiane de Ketht, Sponse sue, & eorum diucius viventi omnes terras nostras de Nesbitt, et de Edinham cum pertinen. infra vicecomitatum, de Roxburgh. Tenendas & habendas predictis Dno Roberto et dne Cristiane Sponse sue et eorum diucius viventi ac heredibus masculis inter ipsos procreatis seu procreandis quibus forsitan dibus ltmis et propinquioribus ipius dne Cristiane de nobis et heredibus nris in feodo et hereditate per omnes rectas, metas et divisas suas libere et quiete, plenarie et honorifice bene & in pace in boscis, & planis, vils & semitis, moris, maresiis et petariis, pratis pascuis, et pasturis, aquis, stagnis & vivariis, molendinis, brasinis et aliis officiis cum eorum multuris et sequelis, cum advocacionibus Ecclesiarum et Hospitalium, si que fuerint cum tenandis et serviciis liberetenencium cum bondis, bondagiis et nativis, ac eorum sequelis, cum aucupacionibus, venatis et piscat. et cum omnimodis aliis libertatibus, commoditatibus, et aiamentis tam non nominatis quam nominatis tam procul quam prope tam sub terra quam supra terram ad predictas terras cum pertinen. spectan. seu Juste spectare valentibus in futurum faciendo inde predictis dns. Robertus et dna Christiana et eorum diucius vivens ac heredes sui predicti forinsecum servicium dni. nri. Regis quantum pertinet ad predictas terras, et reddendo nobis et heredibus nris. annuatim unum denarium Argenti apud Nesbitt ad finem pontis si petatur nomine Albe firme tantum pro omnimodis aliis serviciis exactionibus consuetudinibus, seu demandis, que per nos, vel heredes nros, de predictis terris cum pertinen. exigi poterant aliquantiter vel requiri: Et nos predict. Robertus Senescallus Scocie, et heredes nri. predictas terras de Nesbitt et de Edinham cum pertinen. predict. dno. Roberto et domine Christiane sponse sue et eorum diucius viventi et suis heredibus prenotatis contra omnes homines et feminas warrantizabimus ac quietabimus et imperpetuum defendemus. In cujus rei testimonium presenti carte nre. sigillum nostrum est appensum. Testibus venerabilibus in Christo Patribus Dominis Willielmo et Patricio Cancellario Scocie ecclesiarum Sanctiandr. & Brechinen. Dei Gratia Episcopis Reverendis et Religiosis viris. dnis Johanne Willielmo et Johanne de ling de Scona et Insule misarum eadem gracia, Abbatibus Nobilibus viris Johanne Senescalli dno. de Kileprimogenito nostro, *Roberto Senescalli filio nro. dno. de Menteith* dnis. Thoma Biffate, David de Graham, Archibaldo de Douglas, Hugone de Eglintoun, Johanne Senescalle fratre nro, David Fleming et Thoma de Fawfyde militibus Johanne de Erth, Johanne de Ros Armigeris, Johanne Marcier & Johanne Gille burgen. de Perth, et multis aliis. Noveritis non super hoc diligenti tractatu prehabito

Adv.
Library,
A. 1. 38.

eum predictis Roberto et Christiana nriq. in hac majori utilitate pensata dedisse concessisse, & hac presenti carta nra. confirmasse, eisdem Roberto de Erskin et Christiana sponse sue centum libras Sterlingorum, de firmis burgi de Abirdene nobis debitis annuatim, In excambium pro dicte Baronie de Edinham cum pertinent. quam in manibus nris. dictus Robertus sursum reddidit ac pure et simpliciter resignavit ac totum Jus, et clameum que in dicta Baronia de Edinham habuit, seu habere poterit, in futurum pro se, et pro dicta Christiana, sponsa sua, et pro eorum heredibus, omnino quiete clamavitim perpetuum. Tenendas habendas et percipiendas dictas centum libras annuatim eisd. Roberto et Christianæ et eorum, diucius viventi heredibusque inter ipsos procreatis seu procreandis et ipsis forte deficientibus, veris et ltmis. heredibus prefate Christiane in feodo et hereditate libere quiete, plenarie, et honorifice quousque nos vel heredes nri, dictos Robertum et Christianam et eorum heredes predictos de centum libratis terre infra partes inferiores Vicecomitatum de Abirdene de Kincardin de Forfare, de Perth de Fisse, de Clakmannan, de Striveling, vel de Edinburgh, infeodavimus vel infeodaverunt hereditarie, ut supra in loco competenti sub eisdem forma effectu et conditione, ac per easdem libertatem, et warrontizationem, quibus idem Robertus et Christiana et heredes sui infeodati fuerunt in Baronia de Edinham supra dicta ut pr. per tenorem carte superscript Reddendo nobis et heredibus nris. annuatim prefati Robertus et Christiana, et eorum diucius vivens et heredes sui supradicte de prefatis, centum libris annuis de firmis dicti Burgi de Abi

percipiendis unum denarium argenti tantum, apud Aberdine ad finem pon. nomine Albe firme prout solummodo secundum tenorem carte predictæ pro Baronia de Edinham reddere tenebantur: Et nos eciam exhabundanti et heredes nri. prefatas centum libras annuas percipiendas ut supra prefatis Roberto et Christiane, et eorum diucius viventi, ac eorum heredibus supradictis warrantizabimus acquietabimus, & imperpetuum defendemus, secundum quod prefatam Baroniam de Edinham, per eandem, priorem cartam nram, supradictam facere tenebamur; Concessimus eciam. eisdem Roberto et Christiane et heredibus suis, in casu quo ballivi dicti burgi nri. de Abirdine ipsis Roberto et Christiane aut suis heredibus predictis promptam solucionem, annuatim de dictis centum libris ad terminos supradictos non fecerunt, ut licitum sit ipsis Roberto et Christiane, et heredibus suis predictis ipse vel ipsis, viz. cujus vel quorum tunc intererit, distringere et namare dictum burgum, pro ipsa pecunia tunc deficiente eodem modo quo distringerent seu namarent terram suam propriam pro firma sua sine licentia nri. cujuscunque ministri. In cujus rei testimonium presenti carte nre. nrm. precimus apponi sigillum, Testibus venerabilibus patribus Willielmo Sanctiandr. Michaele Dunkelden. Alexandro Abirdonen. Alexandro Moravien, Patricio Brechinen. Alexandro Rossen Malcolmo Cathanen. Dei gracia Ecclesiarum Episcopis; primogenito nro. Johanne Comite de Carrik Senescallo Scocie *Roberto Comite de Fisse & de Menteth Alexandro dno. de Badzenach* David Comite de Strathern filius nris. charissimis Willmo. de Douglas Georgio de Dunbar Matthio Johanne de Dunbar Moravie Comitibus; dilectis consanguineis nris. Johanne de Carrik Canonico Glasgauen. Cancellario nro. Waltero de Bigar, Rectore Ecclesie de Erolli. Camerario nro, Jacobo de Lindesay nepote nro, Archibaldo de Douglas Willmo. de Keith Mariscallis nro. Scocie, Hugone de Eglintoun, et Duncano Walais militibus
parlamento nro. Tenta apud Sconam die tercio Mensis Aprilis
Anno Regni nri. tercio.

A P P E N D I X XVI.

I.

UNIVERSIS Sanctæ Matris Ecclesiæ filiis, ad quos præsentis literæ pervenerint, Alexander, permissione Divina, Ecclesiæ Morav. minister humilis salutem sempiternam, noverit universitas vestra, nos de consilio et assensu, Decani, et Capituli Ecclesiæ nostræ predictæ, utilitate communi pensata, et habito, super hoc prius diligenti tractatu, dedisse, concessisse, et ad feodam firmam dimisse, magnifico, nobili, et potenti Domino, Alexandro Senescalli, Comiti Buchan, Domino de Rofs, et de Badenach, locum tenenti Domini nostri Regis, ac Justiciario, ex parte Borcali aquæ de Forth, pro suis multiplicibus beneficiis, &c. Dimidiam davacam terræ, &c.

Advocates
Library, A.
1. 40. fol.
98.

II.

CHристи nomine invocato, nos Alexander, et Alexander Dei Gracia Morav. et Rossen. Ecclesiæ Episc. Dyocefani partium subscriptarum giudiceque ordinarii sedantes, pro tribunale, et habentes præ oculis zelum Dei de peritorum consilio, quibus hæc omnia communicavimus, auditis et intellectis, que utraque pars contra aliam proponere voluit, et attendo modo agendi, pronunciamus, decernimus, et declaramus, in hiis scriptis, Dominam Eufamiam Commissam Rossæ restituendam esse, Domino Alexandro Senescalli Comiti Buchanie, et Domino de Rofs, tanquam viro suo et marito; una cum possessionibus suis, et quantum de jure possumus, restituimus, tractandum maritali affectione, honeste in lecto, et in mensa, in vestitu, et vestitu, et aliis universis, secundam decentiam sui Status maritalis, &c.

Advocates
Library, A. 1.
40. fol. 101.

III.

Original Charter in the Laigh Parliament Houfe.

ROBERTUS, Dux Albanïæ, Comes de Fife, et de Menteth, ac Regni Scotiæ Gubernator; omnibus probis hominibus, totus regni predicti, Clericis, et Laicis, salutem, Sciatis, nos dedisse, concessisse, et hac præfenti carta nostra confirmasse, carissime nepti nostre Eufamie de Lesley, filie et heredi quond. Alexandri de Lesley Comitis de Rosse, Totum et integrum, Comitatum de Rosse, Totas et integras de Straglasche Totas et integras terras ville de Narne, cum castro ejusdem jacent. infra Vicecomitatum de Invernys, Totas et integras terras Baronie de Kincardin, cum pertinentiis, jacentes infra Vicecomitatum ejusdem, ac totum jus et clameum Baronie de Fythkill, cum pertinentiis, infra Vicecomitatum de Fyfe. Qui que et quod fuerunt dicte Euphamie hereditarie; Et quem quas et quod eadem Eufamia non vi, aut metu, ducta nec errore lapsa, sed mera et spontanea voluntate sua, in sua pura et integra virginitate, in præfentia venerabilium in Christo patrum, Domini Finlai Episcopi Dumblaneh. et Patricii Abbatis de Cambuskyneth, Joanne Steuart de Dundonalde, fratris nostri naturalis, Willielmi de Erth, et Willielmi de Hamiltoun militum, Patricii de Abernethie nepotis nostri, Joannes de Busby Cancellarii Glasgüensis, Joannis de Corntoun Vicarii de Strivelyne, et Archibaldi de Conyngham, ac multorum aliorum, in Castro de Strivelyne, die Mercurii duodecimo, die Mensis Junii ultima, preterit. in manus nostras per fustum et baculum personaliter fursum reddidit, puraque simpliciter resignavit, ac totum jus et clameum, que in dictis comitatu, terris, et castro, cum pertinentiis habuit, seu habere poterit, pro se, et heredibus suis omnino quiet. clamavit, imperpetuum Tenend. et Habend. totum et integrum predictum comitatum de Ross, una cum omnibus et singulis prenominatis terris, cum pertinentiis, predictæ Eufamie, et heredibus suis, de corpore suo legitime procreandis; quibus forte deficientibus, Joanni Steuart Comiti Buchaniæ, filio nostro carissimo, et heredibus suis masculis, de corpore suo legitime procreatis, seu procreandis; quibus forsan deficientibus, Roberto Steuart, fratri suo germano, et heredibus suis masculis, de corpore suo legitime procreatis seu procreandis: Quibus forsitan deficientibus, Domino nostro Regi, et heredibus suis Regibus Scotiæ, de Domino nostro Rege, et heredibus suis, in feodo et hereditate, imperpetuum per omnes rectas metas suas, antiquas et diversas in boscis, planis, moris, mareis, viis, semitis, aquis, stagnis, pratis, pascuis, et pasturis, molendinis, multuris, et eorum sequelis, aucupationibus, venationibus, et piscariis, petariis, turbariis, et carbonariis, cum curiis, eschætis et curiarum exitibus, cum tenendiis et liberè tenentium servitiis, cum feodis et foris facturis, et ecclesiarum et capellaniarum advocacionibus, cum bondis, bondagiis nativis et eorum sequelis, cum furca et fossa, sok, sake, thole, theme, in sang and thief, & out sang and thief; Et cum omnibus aliis, et singulis libertatibus, commoditatibus, et avisiamentis, ac justis pertinentiis quibuscunque, ad predict. Comitatum, terras et castrum, cum pertinentiis spectantibus, seu juste spectare valentibus, quomodo libet in futurum, adeo libere et quiete, plenarie, integre honorifice bene

et in pace, et in omnibus et per omnia, sicut dicta Eufamia, aut predecessores sui predicti. Comitatum, terras et castram, cum pertinentiis, de Domino nostro Rege, aut predecessoribus suis, ante dictam resignationem, nobis inde factam liberius, tenuit, seu possedit, tenuerunt, seu possederunt; Faciendo inde Domino nostro Regi, et heredibus suis, predicta Eufamia, et heredes sui predicti: Quibus forte deficientibus, dictus Joannes Comes Buchanie, et heredes sui predicti, quibus forsitan de fecientibus dictus Robertus et hæridis sui supra dicti de dictis Comitatu, terris, et castro, cum pertinentiis, servitia, debita, et consueta. In cujus rei testimonium, presentii carte nostre, magnum sigillum officii nostri apponi precepimus. Testibus reverendis in Christo patribus, Gilberto Episcopo Aberdonen. Cancellario Scotorum, et Waltero Episcopo Brechinen. venerabile patre Johanne Abbate Monasterii Sanctæ Crucis de Edinburgh, Willielmo Domino de Graham, Johanne de Setoun, Waltero Steuart de Railstoun, Johanne Forstarae de Corstorphine Militibus, Johanne Steuart de Dundonalde fratre nostro naturali, Alexandro de Setoun de Gordoun, Patricio de Ogilvile, et Andrea de Hawick, rectore de Listoun Secretario nostro apud Perth, quinto decimo die mensis Junii, Anno Domini 1415, et nostro gubernationis anno decimo.

That what is contained on this, and the preceding page, is a full copy of the original Charter, lying in his Majesty's General Register-house, at Edinburgh, is attested by me, Keeper of the Records there, the same being examined, collated, or compared at the sight, and by the assistance of Robert Jamieson, Notary Publick.

(Signed)

ALEXANDER ROBERTSON,

ROBERT JAMIESON, Not. Pub.

A P P E N D I X XVII.

I.

ROBERTUS, &c. Sciatis nos dedisse, &c. dilecto filio nostro, Jacobo de Douglas de Lydalisdale militi, filio karissimi Consanguinei nostri Willielmi Comitis de Douglas & de Marr, ducentas marcas Sterling. &c. testibus ven. in Christo patribus, Willielmo et Johanne Canc. nostro Sancti Andreae & Dunkel. Ecclesiarum: Roll 5. No. 91.

rum Episcopis, Johanne premogenito nostro de Carrik sen. Scotiæ Roberto de Fyf & de Menteth, filio nostro dilecto, Willielmo de Douglas & de Mari, Confanguineo nostro comitibus; Jacobo de Lendefay Nepote nostro karissimo, & Alexandro de Lyndefay Confanguineo nostro militibus. Apud Edin. 15 die mensis Maii, anno Regni nostri 10.

II.

Roll 7. No.
34.

ROBERTUS, &c. Sciatis nos dedisse, &c. dilecto confanguineo nostro, Henrico de Douglas militi, annuos redditus subscriptos, &c. Testibus ven. in Christo Patribus, Willielmo & Johanne Canc. nostro Sancti Andree & Dunkelden. Ecclesiarum Episcopis, Joanne primogenito nostro de Carrik, Roberto de Fyf & de Menteth, filio nostro dilecto, Willielmo de Douglas et de Marr, confanguineo nostro comitibus, Archibaldo de Douglas & Roberto de Erskine confanguineis nostris, militibus. Apud Edinburgh tertio die Januarii anno regni nostri tertio decimo.

A P P E N D I X XVIII.

I.

CHARTULARY OF LENNOX, No. 39.

OMNIBUS hanc Cartam visuris, vel auditoris, Valterus, filius Alani, Dominus de Levinafe, salutem in Domino sempiternam; Noveritis nos Dedisse, Conceiffisse, et hac presenti Carta nostra, Confirmasse, Duncano Naper, Domino Kylmahew, pro homagio, et servitio, quond. Johannis Naper, patris ipsius Dunca-
ni,

ni, Malcolmo Comiti de Levinax, tempore quo vixerat, Decem Mercatas terræ, atque quartaream terræ de Bullulis, &c. Et nos Valterus, et heredes nostri, predicatas decem Mercatas terræ, &c. prædicto Duncano, heredibus suis, et assignatis, contra omnes homines, et feminas, Warrantizabimus, &c. In cujus rei Testimonium, presenti Carte, sigillum fecimus apponi, his Testibus, Domino Roberto Danyelstone militi, Domino Willielmo, filio Ade Rectore Ecclesiæ de Lusse, Valtero de Buchquhanane, Malcolmo, filio Murdaci, Johanne de Park, cum multis aliis.

II.

CHARTULARY OF LENNOX, No. 41.

OMNIBUS hanc Cartam visuris, vel audientis, Valterus de Fossilane, Dominus de Levinax, salutem in Domino sempiternam; Noveritis nos Dedisse, Concessisse, et hac presenti Carta nostra, Confirmasse, dilecto, et fideli nostro Valtero Domino de Buchanane, Terram de Auchmarr, cum pertinen. &c. In cujus rei Testimonium, presenti Carte nostre, nostrum precipimus apponi sigillum; Testibus, nobilibus viris, Domino Johanne de Danyelstone milite, tunc Vicecomite de Dumbartane, Willielmo de Galbraith, Roberto de Culchone, Murdaco de Levinax, Malcolmo, filio Duncani, et Convallo de Aikenhead; apud Bellach, viceesimo die, Mensis Augusti, Anno Domini Millefimo tricentesimo septuagesimo tertio.

20 August,
1373.

III.

CHARTULARY OF LENNOX. No. 13.

Continued from where it breaks off, in the Case for Lady Elizabeth Sutherland, Chap. 5. p. 40.

RETROACTIS.—Et præcipuefi contingat, aliquem hominem suum, de comitatu prædicto, per quoscunque Vicecomites nostros, aut eorum ministros, ad Curiam nostram vicecomitis arrestari, pro actione, viz. que in Curia dicti Comitis poterit,

1 June,
1384.

poterit, et debeat terminari, ipse vicomes, que contigerit aliquem hujusmodi arrestare, incontinenti dictum arrestatum liberabit, ad Curiam ipsius Comitis, ad subeundem ibidem super actione eadem complementum justitie, cum per ipsum Comitem, aut suum Balivum, debite fuerit requisitus; Quare, universis Vicecomitibus, ceterisque ministris nostris, quorum interest, vel interesse poterit, firmiter Damus in mandatum, quatenus prædictam Concessionem nostram præfat. Waltero, et suis dictis Hæredibus observet, et faciat inviolabiliter observari, et hoc sub pena que incumbit nullatenus omitatis; in cujus rei Testimonium, sigillum nostrum, præsentis Carte nostro, est appensum; apud Castrum nostrum de Rothsay, primo die Junii, anno regni nostri, quarto decimo; Testibus, Venerabilibus in Christo Patre, Johanne Episcopo de Dunkelden. Cancellario nostro, Jacobo de Lindsay nepote nostro Milite, Celsitino Campball, Andrea Merfar, et Celestino filio Johannis, cum multis aliis.

IV.

CHARTULARY OF LENNOX, No. 113.

ROBERTUS, Dei Gratia Rex Scotorum, omnibus probis hominibus, totius terre sue, Clericis et Laicis, salutem; sciatis, nos Dedisse, Concessisse, et hac presenti Carta nostro, Confirmasse, Dilecto, et fideli nostro Duncano Comiti de Levinax, totum Comitatum de Levinax, et Dominium ejusdem, cum pertinentiis. Quicquid Comitatus, cum Dominio ejusdem, fuit dicti Comitis, &c. proceeds on his own resignation, and contains the following substitution, in the Tenen. Clause. &c. Tenend. et Habend. Dictum Comitatum, et Dominium ejusdem, cum tenentibus, &c. Dicto Duncano, et Heredibus suis masculis, de corpore suo legitime procreatis, seu procreandis; quibus forte deficientibus Murdaco Senescall, consanguineo nostro Carissimo, et Isabelle filie dicti Comitis, et eorum diutius viventi, et heredibus inter ipsos legitime procreandis; quibus forte deficientibus, veris legitimis, et propinquioribus heredibus, dicti Duncani quibuscunque, de nobis, et Heredibus nostris in feodo, et hereditate, in perpetuum, per omnes rectas metas, &c. In cujus rei Testimonium, presenti Carte, nostrum precipimus apponi sigillum; Testibus venerabilibus in Christo Patribus, Valtero et Matheo St. Andreæ et Glasguen. ecclesiarum Episcopis, Roberto de Fyfe et de Menteith fratre nostro Carissimo, Archibaldo de Douglas Domino de Galaydie consanguineo nostro dilecto Comitibus, Jacobo de Douglas, Domino de Dalkeith, Thoma de Erskyn Consanguineis nostris dilectis Militibus, et Alexander de Cokeburne de Langtoun Custode magni sigilli nostri; apud Dumfermling, Octavo die Novembris, Anno Regni nostri tertio

A P P E N D I X XIX.

I.

HÆC Inquifitio facta fuit in Curia Vicecomitatus de Edinburgh, tenta in prætorio Burgi ejuſdem, coram Domino Ludovico Lawder de Overgogar militi vicecomiti principali dict. vicecomitatus, ſpecialiter conſtitut. Magiſtris Lawrentio M'Gill, Joanne Oliphant, Joanne Sandilands Advocatis, et Thoma Young, ſcriba ſigneto regio, vicecomitibus deputatis dict. vicecomitatus, etiam ſpecialiter conſtitut. vigeſimo quinto die menſis Maii, Anno Domini milleſimo ſexcenteſſimo trigefimo, virtute diſpenſationis, ex deliberatione Dominorum concilii, penes præſens vaccantiarum tempus conſeſſ. per hos probos et fideles patriæ viros ſubſcript. viz. Alexandrum Comitem de Eglintoun, Georgium Comitem de Wintoun, Joannem Comitem de Wigton, Joannem Comitem de Carrik, Willielmum Vicecomitem de Air, Willielmum Vicecomitem de Drumlangrig, Joannem Dominum Erſkine, Willielmum Dominum de Kilmaurs, Joannem Dominum Roſs de Melvile, Archibaldum Dominum Naper de Merchieftoun, Joannem Dominum Weymis de eodem, Dominum Jacobum Stewart, militem, Dominum Georgium Towris de Innerleith militem, Dominum Georgium Forreſter de Corſtorphine, Dominum Jacobum Kerr de Creleughall, qui Jurati, dicunt quod quondam David Comes de Stratherne, abavus attavi nobilis comitis Willielmi nunc comitis de Monteith, præſidis concilii, S. D. N. Regis, Latoris præſentium, obiit, ad fidem et pacem S. D. N. Regis pro tempore exiſten. Et quod dictus Willielmus nunc comes de Monteith, eſt legitimus, et propenquior hæres ejuſdem quond. Davidis comitis de Stratherne, abavi attavi fui; et quod eſt legitime etatis; In cujus rei teſtimonium, ſigilla quorund. eorum, qui dict. Inquifitione intererant faciend. una cum brevi regio incluſo, nec non ſigillo officii dict. vicecomitis, et ſigno, et ſubſcriptione manuali, Mri Johannis Oliphant, clerici dict. curiæ, præſentibus ſunt appenſa, anno die menſe et loco præſcript.

Book 10. fol.
364.

Alia inquifitio facta fuit dict. die, et loco, coram dicto iudice, et per eaſdem inquifitionis perſonas, qui jurati dicunt, quod quond. Meliſius Comes de Monteith, proavus abavi Nobilis Comitis Willielmi nunc Comitis de Monteith, in omnibus cum precedente retornatu conveniend. excepto nomine.

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364.

Idem jurati dicunt, quod quond. Patricius Graham, comes de Stratherne, proavus atavi nobilis comitis Willielmi comitis de Monteith, ut in precedente excepto nomine.

What

What is above written, is copied from the record of Retours in Chancery, and is a full copy of all that is contained in said record, having a reference to the preceding one, which is copied on the other side hereof fully, which is attested by me, Keeper of these Records, the same being examined, collated, and compared at the sight, and by the assistance of Robert Jameison, Notary Publick.

(Signed)

JOHN IRVINE,

ROBERT JAMEISON, Not. Pub.

II.

B. 53. No.
48.

CAROLUS, Dei Gratia Magnæ Britanniaë, Franciaë, et Hiberniaë Rex, fideique defensor, Omnibus probis hominibus suis, ad quos presentes litere pervenerint, Salutem; Sciatis, Quia nos animo nostro recolens, quod predictus noster Confanguineus et Consiliarius Willielmus Comes Iaichiaë lie Menteth, Præses nostræ Secreti Concilii, de servitus, et retornatus existit, indubitatus hæres Sanguinius quond. Davidis Comitis de Stratherne, sui proavi, proavia patris filii legitimi quond. Roberti Regis Secundi nostri predecessoris, felicitis memoriaë, Cui quidem, quond. Davidi Comiti de Stratherne, et heredibus suis, dictus quond. Rex Robertus secundus ejus Pater, per duas diversas Cartas, unum earund. de data, apud Edinburgum, decimo nono die mensis Junii, et alterum earund. de data, apud Perthum, tertio die mensis Julii, dictoque anno regni sui primo, disposuit Comitatum de Stratherne, cum omnibus annexis, et pertinen. ejusdem; *Et quamvis præfatus Willielmus Comes Iaichiaë, tanquam heres prædictus, ad prædictum Comitatum de Stratherne jus bonum haberet, memoratus tamen Comes, ex humili respectu, quam erga sacro sanctam nostram personam gerit, per literas suas Renunciationis, de data vigesimo——die mensis Januarii, Anno Domini Millesimo Sexcentesimo trigesimo, ac registrat. in generali Registro, Secundo die mensis Martii, proxime sequent. Renunciavit omne jus, et titulum, quem ad dictum Comitatum de Stratherne, habere potuit, In favorem nostrum, et successorum nostrorum, Reservat. dicto Willielmo Comiti Iaichiaë, terris, et Baronia de Killbryde, aliisque, in dicta Renunciatione mentionat. Cum hac expressa provisione, quod dicta Renunciatio, non sit præjudicio dicto Comiti, suisque prædictis, de eorum Jure, et dignitate Sanguinis, ad ipsum tanquam heredem liniaë, præfati quond. Davidis Comitis de Stratherne pertinen. prout dicta Renunciatio, in se latius Proporrat. Et nos Magnopere volens, quatenus præfatus Willielmus Comes Iaichiaë, heredes*

redes sui masculi, et successores, in Jure et titulo Comitatus Ierniæ lie Stratherne, gaudeant, succedant, et fruantur, prædicto titulo, loco, et dignitate, iis debet. per dict. cartas, et infeofmenta, per dict. quond. Regem Robertum Secundum concess: memorato quond Davidi Comiti de Stratherne, ejus filio, suisque heredibus, ejus. Comitatus de Stratherne, in quantum ad titulum, locum, et præcedentiam iis tanquam Comitibus Debit. artint. Igitur, Raticavimus, approbavimus, tenoreque præsentium pro nobis, et Successoribus nostris, Raticamus, et approbamus præfatum titulum, honorem, dignitatem et locum Comitum, præfato Willielmo Comiti Iaichiz, suisque prædict. debet. virtute dict. Cartarum, per dict. quond. Regem Robertum Secundum, concess. præfato quond. Davidi Comiti de Stratherne, suisque hæredibus, Ac volumus, et concedimus quod, præfatus Willielmus Comes Iaichiz, hæredesque sui masculi et talliz dicti Comitatus Taichiz, Comites Ierniæ et Iaichiz lie Stratherne et Menteth, omni tempore affuturo, appellentur et vocentur; et quod gaudeant fruantur, et possideant præfat. titulum et dignitatem, Comitum Ierniæ et Iaichiz in omnibus publicis Comitibus, Conventibus, et Parliamentis, omnibusque aliis Conventionum locis, cum iisdem privilegiiis, libertatibus, gradibus, et locis, præfato quond. Davidi Comiti de Stratherne, suisque hæredibus, per dict. quond. regem Robertum Secundum ejus patrem concess. et cum præcedentia, et prioritate ante quascunque alias personas fact. et Creat. Comites, post datam dict. Cartarum, et earum alterius, omnesque alios qui antiquiora infeofmenta, literas paten. et documenta, pro eorum titulo et dignitate Comitatus anteriora dict. cartis, per dict. quond. Regem Robertum, Secundum, prædicto quond. Davidi Comiti de Stratherne concess. producere nequeunt; In cujus rei testimonium, præsentibus, magnum Sigillum nostrum apponi præcepimus; apud Aulam nostram de Oatlandis, ultimo die mensis Julii, Anno Domini millesimo sexcentesimo trigesimo primo, et anno regni nostri septimo; Per Signaturam S. D. N. Regis superscriptam, nec non, manibus quorund. Dominorum Scaccarii Commissionariorum subscript.

A P P E N D I X XX.

I.

CARTA JACOBI STEWART.

JACOBUS, &c. Sciatis nos dedisse, &c. dilecto avunculo nostro Jacobo Book 7. No. 114. Stewart Militi, & Margarete Ogilvie Sponse sue, filie delecte nostri Alexandri 114. Ogilvie de Uchterhouse, & eorum alteri diutius viventi, Totas & integras Ter-

ras Barroniarum de Strathalva & Downe; uno cum Castro de Banff, &c. necnon, Terras Domini de Grandoun Fodirlettir & Alachane, &c. Tenend. & Habend. dictis Jacobo & Margarete Sponse, sue & eorum alteri diutius viven. & heredibus inter ipsos legitime procreatis, seu procreandis: Quibus forte deficientibus legitimis et propinquioribus heredibus dicti Alexandri de Ogilvie quibuscunque; &c. Apud Edinburgh, 1. die mensis Martii, anno Domini 1466, & Regni nostre 7mo.

II.

Book 8. No.
35.

JACOBUS, Dei Gratia Rex Scotorum, Omnibus probis hominibus totius terre sue, Clericis, et Laicis, Salutem; Noveritis, quia Alias nostri tenera in etate, pro vero affectione, quam habuimus, et prout ad presens habemus, erga dilectum avunculum nostrum Jacobum Comitem de Buchane. et Dominum de Ochterhouse, Dedimus et Concessimus eid. hereditarie, totas et integras terras comitatus Buchanie et Comitatum hujusmodi jacen. infra vicecomitatum nostrum de Aberdonen, cum tenentibus tenandriis ac ecclesiarum advocacionibus dicti Comitatus, et ceteris pertinentiis ejusdem, Quem Comitatum de Buchan cum Omnibus suis pertinentiis predictis, prefatus Jacobus nunc in nostri etate perfecta, et post nostram ultimam Generalem revocationem Omnium Donationum, per nos in nostri minore etate factarum, non vi aut metu ductus, nec errore lapsus, set sua mera et spontanea voluntate, in manus nostras per fustem et baculum, Apud Edinburgh personaliter sursum reddidit pureque simpliciter resignavit, ac totum Jus et Clameum que in dicto Comitatu tenentibus tenandriis et ecclesiarum advocacionibus habuit, seu habere potuit, pro se et heredibus suis Omnino quiete Clamavit imperpetuum, super eisd. ad nostre libitum voluntatis disponend. nos igitur post resignationem hujusmodi et post dictam nostram generalem revocationem, ut premittitur, factam, Considerantes gratuita et fidelia servitia nobis a longo tempore per dictum avunculum nostrum impensa, et suam fidelem ac Continuum perseverantiam in eisdem, ac pro suis servitiis nobis impendendis Dedicimus, Concessimus et Confirmavimus hereditarie, ac tenore presentis Carte Damus, Concedimus et hereditarie Confirmamus nunc in nostri perfecta etate existentes, eidem Jacobo totum et integrum dictum Comitatum, ac omnes et singulas terras, cum tenentibus Tenandriis Ecclesiarum Advocacionibus et ceteris pertinentiis ejusdem. tenend. et habend. totum et integrum predictum Comitatum de Buchane, ac omnes et singulas terras, cum tenentibus tenandriis et Ecclesiarum Advocacionibus et ceteris pertinentiis dicti Comitatus, dicto Jacobo et heredibus suis masculis de Corpore suo legitime procreatis, seu procreandis; quibus forte deficientibus, nobis.

nobis heredibus et successoribus nostris in feodo et hereditate imperpetuum, per omnes rectas metas suas antiquas et divisas, pro ut jacent in longitudine, et latitudine, in boscis planis moris marefiiis viis semitis aquis stagnis revolis pratis pascuis et pasturis molendinis multuris et eorum sequelis aucupationibus venationibus piscationibus petariis turbariis Carbonariis Lapidiciis lapide et Calce fabrilibus brassinis brueriis et genessis cum Curiis et earum exitibus herezeldis bludewetis et merchetis Mulierum cum furca et fossa sok sak thol therne infang thief et outfang thief cum Tenentibus Tenandriis et libere tenentium Servitiis, ac cum Ecclesiarum et Capellarum Advocationibus, ac cum Omnibus aliis et Singulis libertatibus Commoditatibus et assamentis ac justis pertinentiis quibuscunque, tam nominatis, quam non nominatis, ad dict. Terras et Comitatum, cum tenentibus tenandriis et Ecclesiarum Advocationibus Spectantibus, seu quovismodo juste spectare valentibus in futurum: et adeo libere quete plenarie integre honorifice bene et in pace In Omnibus, et per Omnia, sicut aliquis comes vel comites quicunque de Buchane ipsum comitatum, cum pertinen. Retroactis temporibus tenuit, seu possedit, tenuerunt seu possiderunt; In Cujus rei Testimonium, presenti Carte nostre magnum Sigillum nostrum apponi precepimus; Testibus Reverendis in Christo Patribus, Joanni Episcopo Glasguen. Willielmo Episcopo Moravien. nostri secreti Sigilli Custode, Thoma Episcopo Aberdonen. Dilectis Consanguineis nostris Andraza Domino Avendale Cancellario nostro, Colino Comiti de Ergile, Domino Compbell et Lorne Magistro Hospitii nostre, David Comiti de Crawford, Domino Lindsay, Jacobo Domino Hamilton, Johanne de Colquhoun de eodem Militi, Magistris Archibaldo Whytlaw Archidiacono Laudone Secretario nostro, et Alexandro Inglis Cancellario Aberdonen. Clerico nostrorum Rotulorum et Registri; Apud Edinburgh ~~Re~~ decimo die mensis Octobris, Anno Domini Millesimo quadrigensimo septuagesimo septimo, et Regni nostri Decimo Octavo.

III.

CARTA JOANNIS COMITIS DE BUCHAN, 1547.

MARIA, Dei Gratia, Regina Scotorum, Omnibus probis hominibus totius terre, sue Clericis, et Laicis, Salutem; Sciatis nos, cum avisamento consensu et Auctoritate nostri Consanguinei et tutoris Jacobi Aranie Comitis Domini Hamilton Regni nostri protectoris et gubernatoris, Deditisse, Concessisse, et hac presenti Carta nostra, Confirmasse hereditarie, dilecto nostro Johanne Stewart filio et heredi apparenti predilecti nostri consanguinei Johannis Comitis de Buchane Domini de Ouchterhouse, et heredibus suis subscript. et assignatis Omnes et Singulas terras baroniam et Dominium de Glendowequhy, ac Castrum de Banff, cum suis annexis subscript. viz. Terras Baroniam et Dominium de Ouchterhouse, cum castro fortaliis molendinis annexis et pendiculis earund. terras et baroniam de Esse, viz. Castletown Ailhouse et terram

terram Brasnariam de Esse, novum molendinum Balkery, cum molendino Glenguhariteis Balgrugo et Direland de Esse, Terras et baroniam de Nevay, terras de Petdynny jacent. in baronia de Cathans, cum omnibus suis pertinent. jacent. infra Vicecomitatum nostrum de Forfar, Terras et Baroniam de Montblary, cum Piscariis, Silvis et Molendinis earund. viz. Terras vocat. Westrynn, terras de Newtoun, cum Molendinis et Silvis earund. Terras de Todlaw, cum parca lie park, Terras de Quihitefield, Terras de Smeddytoun de Montblary, tertiam partem et quartam partem terrarum de Haltoun de Montblary, cum tribus quartariis, et bina parti alterius quarte partes dict. terrarum de Haltoun de Montblary, Terras Dominicales de Auchinbady, cum molendino et piscaria earund. Terras de Stanelie Auchinbady Terras de Ryland cum silvis et molendino earund. Terras de Tullo cum molendino earund. Terras et Baroniam de Glendowequhy alias Down, viz. Terras Dominicales de Down, cum molendino piscariis in aguis recentibus et falsis, et Terra brasnaria earund. Terras de Mackies, cum lie outset Molendino et piscaria earund. Terras de Fortre, cum Molendino et outset earund. Terras de Mountblatoun, et lie outsetis earund. Salmonum piscariam de Kains net affiss. laxam in aqua de Dovern Cragshot in mare prope villam de Banff, dictum castrum de Banff, cum lie Castlehill et ortis ejusd. officia vicecomitis et Coronatoris vicecomitatus nostri de Banff, Terras de Petgar, cum molendino earund. Terras Mynone et Cartrylzie, Terras de Colane, cum omnibus suis pertinen. jacent. infra dict. vicecomitatum nostrum de Banff, terras at Baroniam de Glencuthill, viz. villam et molendinum de Glencuthill, Terras de Auchtmedden, cum piscaria earundem, Terras de Irichbreck, Terras de Salt Cottis, Terras de Towy et Petinacalder, Molendinum de Grandoun infra Baroniam ejusd. acram terrarum jacent. in baronia de Cartlyzer, Terras de Balmadours jacent. in Baronia de Grandoun, Terras de Glascofores, terras et baroniam de Cartrylzer, cum omnibus suis pertinen. jacent. infra vicecomitatum nostrum de Aberdine, prenominitis Terris Dominio et baronie de Glendowequhy perprie unit. et annexat. Cum turribus fortaliciis maneriis molendinis piscariis silvis nemoribus eschaetis feodis privilegiis ortis pomeriis advocacione donatione et Jure patronatus ecclesiarum et Capellaniarum tenentibus tenandriis et libere tenen. servitiis, Omnium et Singulorum terrarum baroniarum officiorum et piscariarum supra script. et suis pertinen. terras et baroniam de Kynzawty, cum molendinis tenen. tenan. et libere tenen. servitiis earund. et suis pertin. jacent. infra vicecomitatum nostrum de Forfar antedict. et monticulum nuncupat. *Erlisbill*, cum tenen. tenan. et libere tenan. servitiis earund. et suis pertinen. jacent. in Comitatu de Buchane, infra vicecomitatum nostrum de Aberdene antedict. Quequidem terre baronie et Dominium de Glendowequhy, cum suis annexis et connexis particulariter superius expressat. baronia de Hynzawty et monticulum nuncupat. *Erlisbill*, cum Castris Turribus Fortalyciis molendinis piscariis assis officiis silvis partibus pendiculis ortis pomeriis advocacione donatione et Jure patronatus Ecclesiarum et Capellaniarum annexis connexis tenen. tenan. et libere tenen. servitiis earund. et omnibus suis pertinen. fuerunt dict. nostri Consanguinei Johannis Comitum de Buchane perprie hereditarie, et quas eidem per Fustum et baculum procuratores suos legitimos et literas suos paten. in manibus dict. nostri gubernatoris, tanquam in manibus nostris, nostras potestatem et auctoritatem virtute officii sui tutorie habend. resignationes terrarum de nobis imme-

diatē recipien. Apud Sanctum Andream sursum reddidit pureque et simpliciter resignavit, ac totum jus et Clameum, que in eis d. habuit, seu habere potuit, pro se et heredibus suis omnino quiete clamavit imperpetuum; In super cum avilamento Consensu et Auctoritate nostri gubernatoris predict. pro bono fidei et Gratuito Servitio per prefat. Consanguineum nostrum Johannem Comitem de Buchane quond. charissimo patri nostro, cujus anime proprietur Deus, nobis et dict. nostro Gubernatori nostro nomine impens. et per dict. Joannem ejus filium et heredes suos nobis impenden. et pro nonnullis pecuniarum summis et Compositione thesaurario nostro nomine nostro per dict. Consanguineum nostrum Johannem Comitem de Buchane solut. et deliberat, ac pro diversis aliis Causis et Considerationibus rationalibus dict. nostrum gubernatorum moven. de novo infeodamus damus concedimus, ac pro nobis et successoribus nostris pro perpetuo disponimus et confirmamus, dicto Johanni Stewart, suis heredibus et assignatis, Omnes et Singulas pre-nominat. terras Baroniam et Dominium de Glendowequhy, ac *castrum de Banff*, cum suis annexis et connexis subscript. viz. terras Baroniam et Dominium de Ouchterhouse, cum castro fortalicio molendinis annexis et pendiculis earund. Terras et Baroniam de Esse, viz. Castletoun Ailhous et terram brasinariam de Esse, novum molendinum Balkery, cum molendino Glenquharites Balrugo et Dereland de Esse, Terras et Baroniam de Navay, terras de Petdyn, terras et baroniam de Montblary, cum Piscariis, Silvis, et Molendinis earund. viz. terras vocat Westryn, terras de Newtoun, cum Molendine et Silvis earund. Terras de Todlaw, cum parca lie park, terras de Quhitefield, terras de Smeddetoun de Montblary, tertiam partem et quartam partem terrarum de Haltoun de Montblary, cum tribus quarterius et bina parte alterius quarte partis dict. Terrarum de Holtoun de Montblary, terras Dominicales de Achinbady, cum Molendino et Piscaria earund. terras de Stonlie de Achinbady, terras de Ryland, cum silvis et molendino earund. terras de Fullo, cum molendino earund. terras et baroniam de Glendowaqhy, alias Down, viz. Terras Dominicales de Down, cum molendino piscariis in aquis recentibus et falsis et terra brasinaria earund. terras de Mekeis, cum lie outset molendino et piscaria earundem, terras de Fortre, cum molendino et lie outset earund. terras de Montblatoun, et lie outset earundem, salmonum piscarium de Kaims, net assif. laxam in aqua de Dovern Cragshot in mare prope villam de Banff, dict. castrum de Banff, cum lie Castlehill, et ortis ejusd. officia Vicecomitis et Coronatoris dict. Vicecomitatus nostri de Banff, terras de Petgar, cum molendino earund. terras de Mynone et Carrylzer terras de Colane, terras et baroniam de Glencuthill, viz. villam et molendinum de Glencuthill, terras de Achmaddin, cum piscaria earund. terras de Inchebrek, terras de Sallcottis, terras de Towy et Petinacalder, molendinum de Grandoun infra baroniam ejusd. acram terrarum jacen. in baronia de Carrylzer terras de Balmadies jacen. in Baronia de Grandoun, terras de Glastaforres, terras et baroniam de Cartylzer prefat. terris baronie et Dominio de Glendewequhy per prius unit. et annexat. cum turribus fortaliciis maneriis molendinis pescariis silvis eschætis feodis privilegiis ortis pomeriis advocacione donatione et jure patronatus ecclesiarum et capellaniarum tenentibus tenandriis et libere tenen. servitiis omnium et singularum terrarum baroniarum et officiorum supra script. ac omnibus suis pertinen. terras et baroniam de Kenrawly, cum molendino tenen. tenan. et libere tenen. servitiis earund. et Monticulum nuncu-

pat. Erlisshill, cum tenen. tenan. et libere tenen. servitiis earund. et suis pertinen. ac totum justitulum interesse et Juris clameum tam petitorum, quam possessorum, que nos predecessores aut successores nostri habuerunt, habuimus, habemus seu quovismodo ad easd. habere vel clamare poterimus, aut ipsarum aliquam partem firmas proficua et devorias earund. elapff. et future, ratione escheate forisfacture heredum aut tenentium non introitus recognitionis alienationis majoris partes bastardie purpresture disclamationis ultime heredis seu alias quovismodo, ob quam quamcunque actionem causam vel occasionem preteritam, aut quocunque alio Jure titulo vel juris clameo renunciando et exonerando eisd. pro nobis et successoribus nostris prefat. Johanni suis heredibus et assignatis imperpetuum, cum suplemento omnium defectuum, tam non nominatorum, quam nominatorum, quos tanquam pro expressat. in hac presenti carta nostra habere volumus. Tenendas et habendas omnes et singulas prenominat. terras baroniam & dominium de Glendowcquhy ac castrum de Banff, cum suis annexis et connexis subscript. viz. terras baroniam et dominium de Ouchterhouse, cum castro fortalicio molendinis annexis et pendiculis earund. terras et baroniam de Esse, viz. Castellum Ailhouse, et terram brafinariam de Esse, novum molendinum Balkery, cum molendino Glenquherities Balgrugo et Direland de Esse, terras et baroniam de Nevay, terras de Petdyny, terras et baroniam de Montblary, cum piscariis silvis et molendinis earund. viz. terras vocat. Westryn, terras de Newtoun, cum molendino et silvis earund. terras de Todlaw cum parca lie park, terras de Quhitefield, terras de Smiddetoun de Montblary, tertiam partem et quartam partem terrarum de Haltoun de Montblary, cum tribus quarteriis, et bina parte alterius quarte partis dict. terrarum de Haltoun de Montblary, terras dominicales de Achinbady, cum molendino et piscaria earund. terras de Stanelie de Achinbadie, terras de Ryland, cum silvis et molendino earund. terras de Tullo cum molendino earund. terras et baroniam de Glendewoquhy alias Down, viz. terras dominicales de Down, cum molendino piscariis in aquis recentibus et falsis, et terra brafinaria earund. terras de Makies, cum lie outfet molendino et piscaria earund. terras de Fortre cum molendino et lie outfet earund. terras de Montblatoun, et lie outfet earund. salmonium piscariam de lie Thainiis, net affeff. laxam in aqua de Dowerne Cragshot in mare, prope villam de Banff, dict. castrum de Banff, cum lie Castlehill et ortis ejusd. officia vicecomitis et coronatoris d. ct. vicecomitatus nostri de Banff, terras de Petgar, cum molendino earund. terras de Mynone et Cartrylzer, terras de Colane, terras et baroniam de Glencuthill, viz. villam et molendinum de Glencuthill, terras de Aithmeddin, cum piscaria earund. terras de Inchebrek, terras de Saltcottis, terras de Towy et Petmacalder, molendinum de Grandoun infra baroniam ejusd. acram terrarum jacen. in baronia de Cartrylzer, terras de Belmadies jacen. in baronia de Grandoun, terras de Glastofores, terras et baroniam de Cartrylzer, prenominat. terris baronie et domine de Glendowequhy perprius unit. et annexat. cum turribus fortalicii maneriis molendinis piscariis silvis eschætis feodis privilegiis ortis pomeriis advocacione donatione et jure patronatus ecclesiarum et capellaniorum tenen. et libere tenen. servitiis omnium et singularum terrarum baroniarum officiorum et piscariarum supra script. ac omnibus suis pertinen. terras et baroniam de Kynzawly, cum molendinis tenen. tenan. et libere tenen. servitiis earund. et Monticulum nuncupat. Erlisshill, cum

tenen. tenan. et libere tenentium servitiis earund. ac suis pertinen. prefat. Johanni Stewart SUI HEREDIBUS ET ASSIGNATIS QUIBUSCUNQUE, de nobis et successoribus nostris in feodo et hereditate imperpetuum, per omnes rectas metas suas antiquas et divisas prout jacent. in longitudine, et latitudine in bovcis planis moris marefis viis semitis aquis stagnis rivulis pratis pascuis et pasturis molendinis multuris et earum sequelis aucupationibus venationibus piscationibus petariis turbariis carbonariis lignis lapicidiis lapide et calce fabrilibus brasinis braveriis et genessis, cum furca fossa sok sak thol theme infang thief outfang thief pit et gallows wrak waith wair vert et veniffoun ac cum privilegio liberarum forestarum ubi silve et foreste super prefat. terris et baroniis fuerint aut fore contigerint cum forestarum curiis et hujusmodi curiarum amerciamentis, cum curiis et earum exitibus herezeldis bludewitis et mulierum merchetis, cum communi pastura libero introitu et exitu, ac cum omnibus aliis et singulis libertatibus commoditatibus proficiis et asiamentis ac justis suis pertinen. quibuscunque, tam non nominatis, quam nominatis, tam sub terra, quam supra terram, prout et prope ad predict. terras Domina baronias et officia supra script. cum turribus fortaliciis maneriis molendinis piscariis silvis lie outsettis partibus pendiculis eschætis feodis privilegiis ortis pomeriis advocacione donacione et jure patronatus ecclesiarum et cappellaniarum tenen. tenan. et libere tenen. servitiis earund. et omnibus suis pertinen. spectan. seu juste spectare valen. quomodolibet in futurum libere quiete plenarie integre honorifice bene et in pace sine aliqua revocatione contradictione aut obstaculo aliquo, reddendo inde annuatim, prefat. Johannes Stewart sui heredes et assignati nobis et successoribus nostris, jura et servitia prenominat. terrarum Domini baroniam et officiorum supra script. cum turribus fortaliciis maneriis molendinis piscariis silvis lie outsettis partibus pendiculis eschætis feodis privilegiis ortis pomeriis advocacione donacione et jure patronatus et ecclesiarum et cappellaniarum tenen. tenan. et libere tenen. servitiis earund. ac omnibus suis pertinen. ante prefat. resignacionem nobis debita et consueta, salvo nichilominus et reservat. prefat. consanguineo nostro Johanni Comiti de Buchane, libere tenemento omnium et singularum terrarum baroniarum Domini et officiorum supra script. cum turribus fortaliciis maneriis molendinis piscariis silvis partibus pendiculis eschætis feodis privilegiis ortis pomeriis advocacione donacione et jure patronatus ecclesiarum et cappellaniarum tenentibus tenandriis et libere tenen. servitiis earund. ac omnibus suis pertinen. except. prenominat. terras de Down, cum molendino piscariis et pendiculis earund. dicto Johanni Stewart, et Margarete Ogilvie ejus sponse in conjuncta infeodacione pertinen. pro omnibus vite diebus prefat. Comitibus, una cum rationabili parte Tertia earund. except. prius except. sponse sue que pro tempore fuerit cum contigerit; In Cujus rei Testimonium, huic presente Carte nostre Magnum Sigillum nostrum apponi precepimus; Testibus ut in aliis Cartis Consimilis, date preceden. Apud Sanctum Andream, quarto die mensis Augusti, Anno Domini Milleesimo Quingentesimo Quadragesimo Septimo, Et Regni Nostri Quinto.

That what is wrote on this and the eleven preceding pages is a just copy of a Charter on record in his Majesty's General Register-House at Edinburgh, is attested by me, keeper of these Records, the same being examined, collated, or compared at the sight and by the assistance of Robert Jamieson, Notary Publick.

(Signed)

ALEXANDER ROBERTSON,
ROBERT JAMIESON, Not. Pub.

IV.

Book 48.
No. 390.

JACOBUS, Dei Gratia, Magne Britannie, Francie, & Hibernie, Rex, &c. fideique Defensor, Omnibus probis hominibus totius terre sue Clericis, et Laicis, salutem; Sciatis, nos, cum avifamento consilio et consensu fidelessimi ac predilectissimi nostri Consanguinei et Consiliarii Johannis Comitis Marrie Domine Erskien, &c. Gareoche Magni nostri thesaurarii regni Scotie, dilectique nostri Consiliarii Domini Gideonis Murray de Elibank Militis Thesaurarii nostri Deputati, et reliquorum Dominorum nostri Secrete Concilii, dedisse concessisse desposuisse, et hæc presenti Carta nostra confirmasse, prout tenore ejusdem, dare concedere, et pro nobis et Successoribus nostris pro perpetuo disponere, et hac presenti Carta nostra Confirmare, predilecte nostre Consanguinee Domine Marie Douglas Comitisse Buchanie, et predilectissimo nostro Consanguineo Jacobo Comiti Buchanie, ejus qui filius legitimus ac natus maximus est dict. Comitis Marrie inter ipsum et propinquissimam et fidelissimam Consanguineam Dominam Mariam Stewart Comitissam Marrie ejus conjugem legitimi procreat. Alterique eorum dict. Comitisse ac Comitis Buchaniæ diutius viventi in Conjuncta infeodatione pro Omnibus ipsorum vite diebus, et heredibus Masculis inter ipsos legitime procreat. seu procreand. Quibus deficientibus, legitimis & propinquieribus heredibus Masculis ac assignatis dict. Jacobi Comitis Buchanie quibuscunque hereditarie, Omnes et singulas Terras Baroniam aliaque particulariter subscript. Domini et Comitatus Buchanie, viz. Terras Baroniam [et Baroniam] de Auchterhous, &c. Quequidem Omnes & Singule prenominate terre barronie aliaque particulariter supra specificat. cum Omnibus suis pertinen. ad dict. Dominam Mariam Douglas Comitissam Buchanie per prius hereditarie pertinuerunt, et nunc per ipsam ejusque Conjugem, cum Consensu suorum Curatorum pro ipsorum interesse suosque legitimos procuratores eorum nominibus per patentes eorum literas procuratorias specialiter Constitut. In manibus nostris, tanquam in manibus Dominorum suorum Superiorum earundem saltem in manibus Dominorum Secreti Concilii in absentia nostra Resignationes terrarum recipient. et accepta. Ac infeodamenta de super conceden. potestatem et commissionem haben. Apud Edinburgh, cum Omnibus Jure titulo interesse proprietate et possessione, que et quas in eisdem habuerunt, habent, seu quovismodo infuturum habere, patuerunt, Resignate per fustum et baculum fuerunt. In favorem specialem ac pro nova in feodatione pefat. Domine Mariæ Douglas Comitissi Buchanie, et dict. Jacobo Comiti Buchanie ejus Conjugi, eorumque alteri diutius vivente, in Conjuncta in feodatione, et heredibus masculis inter ipsos legitime procreat. seu procreand. Quibus deficientibus, heredibus masculis et Assignatis dict. Jacobi Comitis Buchanie quibuscunque hereditarie, iterum dein. et conceden. hocque pro Certis

ris magnis et onerosis causis in Contractu Matrimoniale, inter ipsos de super confect. prout in eodem, de data decimo quinto die mensis Junii, Anno Domini Millesimo sexcentesimo decimo dict. literas procuratorias in se continen. latius continetur; In super nos, pro bono fidele et Gratuito Servitio, nobis per dictum nostrum predilectissimum nostrum consanguineum ac Consiliarium, Joannem Comitem Marrie, et pref. Jacobum Comitem Buchanie ejus filium prestitum et impensum, ac pro diversis aliis Rationabilibus Causis et Considerationibus, nos moven. ex nostris proprio motu de novo dedimus concessimus ac disposuimus, prout tenore presentis Carte nostre do novo damus concedimus ac pro nobis et successoribus nostris pro perpetuo disponimus prefat. Domine Marie Douglas Comitisse Buchanie, et Jacobo Comiti Buchanie ejus Conjugi, eorumq. alteri diutius viventi in Conjuncta Infeodatione pro Omnibus Ipsorum vite Diebus, et heredibus Masculis inter ipsos legitime procreat. seu procreand. Quibus deficientibus, legitimis et propinquieribus heredibus Masculis et Assignatis dicti Jacobi Comitis Buchanie quibuscunque hereditarie, Omnes et singulas terras Barronias aliaque particulariter subtus et supra content. dict. Domini et Comitatus Buchanie, scilicet, Totas et integras terras Barroniam et Dominium de Auchterhouse, &c. Nova damus unit. &c. In unum Integrum et liberum Dominium et Baroniam, Baroniam et Dominium de Glendowaquhy omni tempore affuturo, nuncupand. et *Castrum de Banff* principale Messuagium fore *antedict.* Domini et Baronie, ac volumus &c. ac Decernimus et Ordinamus, et pro nobis ac successoribus nostris declaramus quod prefatus Jacobus comes Buchanie, et heredes sui masculi predict. exerceant et possideant in Omnibus nostris parliamentis statuum Conventionibus aliisque nostris publicis serviciis, Omnes honores et dignitates et preeminencias, quas Comites Buchanie exantiquo exercent, seu possiderunt ullo tempore preterito; In Cujus rei Testimonium, huic presente Carte nostre; Magnum sigillum nostrum appone precipimus; Testibus &c. Apud Burleyhill, Vigesimo secundo die mensis Martii, Anno Domini Millesimo sexcentesimo decimo septimo, et Regni nostri Annis quinquagesimo et decimo quarto.

A P P E N D I X XXI.

I.

Act in favours of the Lord Fraser, for the title of Lord Fraser.

THE estates of Parliament being informed, that notwithstanding that the Lord Fraser, be his Majesty's Patent under the Great Seale of the twenty-ninth day of June, 1633 years, is creat Lord Fraser, and appointed to be called so in

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all

Records of
Parliament,
24 June,
1662.
Book 26 f.
12.

all time coming; yet some persones do presume so far to shift and contemne his Majestie's Patent and royal pleasure therein expresst, as by their discourfes and writings to give other names and designations than what are contained in the Patent; and considering that his Majesty is the fountane and spring of all honor within his dominions, and that such doings are hie neglects and contempts of his Majesties royal prerogative, Therefore the estates of Parliament do declare, that the Lord Frafer is, according to his Patent, to have and enjoy the title of Lord Frafer; and discharges all his Majesties subjects that none of them presume in discourfes, writings, or otherwise, to give him any other title or designation, as they will be answerable at their heist perrel.

II.

CHARTER to LORD RUTHVEN.

Book 25.
No. 261.

JACOBUS, Dei Gratia Rex Scotorum, Omnibus probis hominibus Totius terre sue, clericis, et laicis, Salutem; Sciatis nos, quandam Cartam Alienationis et venditionis factam peo Willielmum Ruthven de Peill, dilecto Confanguineo nostro Willielmo Domino Ruthven, et Jonete Halyburtøn sue sponse, et ipsorum alteri diutius viventi, in vitali redditu, pro toto tempore vite eorum, et Jacobo Ruthven eorum filio, et heredibus suis masculis, de Corpore suo legitime procreandis; Quibus deficientibus, legitimis et propinquioribus heredibus dicti nostri Confanguinei quibuscunque, super tota et integra dicti Willielmi dimedietate terrarum de Forteviot, cum suo dimedietate molendini et terrarum molendinariarum ejusdem, cum tenentibus tenandriis libere tenen. Servitiis earundem, et suis pertinen. jacen. infra vicecomitatum nostrum de Perth, de nobis et successoribus nostris tenen. de mandato nostro visam lectam inspectam et diligenter examinatum sanam integram, non rasam, non cancellatam, nec in aliqua sui parte suspectam, ad plenum intellexisse, sub hac forma. Omnibus hanc cartam visuris vel audituris, Willielmus Ruthven de Piell salutem in Domino sempiternam, noveritis, me vendidisse tituloq. pure venditionis alienasse, ac presenti Carta mea pro perpetuo confirmasse, noc non, vendere alienare, et hac presenti Carta mea pro perpetuo confirmare, nobili et potenti *Domino Willielmo Domino Ruthven, et Jonete Halyburtone sue sponse, et eorum alteri diutius viventi, in vitali redditu, ac Jacobo Ruthven eorum filio;* et heredibus suis subscriptis hereditarie, Totam et integram meam dimidietatem Terrarum de Forteviot, cum mea dimidietate molendini, et terrarum molendinariarum ejusd. cum tenentibus tenan-

nandriis libere tenen. servitiis earundem, et suis pertinen. jacen. infra vicecomitatum de Perth, pro quad. certa summa pecunie, mihi per prefatum nobilem Dominum pre manibus Gratanter et integre persoluta in pecunia numerata, et in usum meum totaliter conversa, De quaquidem summa pecunie teneo me bene contentum, ac plenarie et integre persolutum, prefatumq. nobilem Dominum suos heredes executores et assignatos pro me meis heredibus executoribus et assignatis de ead. quietos inde clamo imperpetuum presentis carte mee por torem Tenen. et haben. totam et integram dictam dimidietatem terrarum de Forteviot, cum prefata dimidietate molendini, et terrarum molendinariarum ejusdem, cum tenentibus tenandriis et libere tenen. servitiis earum, et suis pertinen. prefatis Williemo Domino Ruthven, et Jonete Halyburton sue sponse, et eorum alteri diutius viventi in vitale redditu, ac Jacobo Ruthven eorum filio, heredibusq. suis masculis, de corpore suo legitime procreandis; Quibus forte deficient. legitimis et propinquiorebus heredibus. dicti nobilis domini quibuscunq. a me et heredibus meis de supremo Domino nostro Rege, et suis successoribus in feodo et hereditate imperpetuum, per omnes rectas metas suas antiquas et divisas, prout jacent. in longitudine et latitudine, in Domibus edificiis bocis planis moris marciis viis semitis aquis stagnis rivolis pratis pascuis et pasturis molendinis mul-turis, et eorum sequelis aucupationibus venationibus piscationibus petariis turbariis carbonariis cuniculariis columbus columbariis fabrilibus brassi-niis breweriis & genestis silvis nemoribus et vergultis lignis lapacidiis lapide et calce, Cum Curiis et earum exitibus amerchiamentis herezeldis bludewitis et merchetis mulierum, Cum Communi pastura libero introitu et exitu, ac cum Omnibus aliis et singulis libertatibus Commodatibus proficuis et asiamentis, ac justis suis pertinen. quibuscunq. tam non nominatis, quam nominatis, tam sub terra, quam supra terram, prout et prope ad predictam dimidietate terrarum de Forteviot, cum dicta Dimidietate molendini superscript. Cum pertinentiis spectan. seu juste spectare valen. quomodolibet in futurum libere quiete plenarie Integre honorifice bene et in pace sine aliquo Impedimento, revocatione Contradictione aut obstaculo aliquoli, Reddendo inde annuatim dict. Willielmus Dominus Ruthven, et *Joneta Haliburtoun ejus sponsa*, aut eorum alter diutius vivens, pro toto tempore vite earund. et post eorum decessum, prefatus Jacobus Ruthven eorum filius heredesq. sui supra script. prefato supremo Domino nostro Regi, vel suis successoribus unum Denarium usualis monete Regni Scotiæ in festo Penthecostes, super solum dictarum terrarum, nomine albesfirme, si petatur tantum, pro omni alio onere exactione questione Demanda seu servitio seculari, que de predictis terris et molendino superscript. cum pertinen. per quoscunq. juste exigi poterunt, quomodolibet vel requiri; et Ego vero prefatus Willielmus Ruthven heredes mei et assignati totam et integram dictam dimidietatem Terrarum de Forteviot, Cum prefata dimidietate molendine et terrarum molendinariarum ejusdem, Cum tenentibus tenandriis et libere tenen. servitiis earundem, Cum pertinen. prefatis *Willielmo Domino Ruthven, Jonete Haliburton ejus sponse*; et eorum alteri diutius viven. in vitali redditu, ac dicto Jacobo Ruthven eorum filio, heredibusque suis supra scriptis, adeo libere et quiete in Omnibus, et per Omnia forma pariter et effectu ut premissum est, Contra omnes mortales

varantizabimus acquietabimus et imperpetuum defendemus; In cujus rei testimonium, sigillum meum unacum mea subscriptione manuali huic presenti carte mee est appensum; Apud Edinburgum, vicesimo quarto die mensis Januarii, Anno Domini Millesimo quingentesimo trigesimo quinto, quoram hiis testibus David Pittscotty de Loncardy, Andrea Henryson burgen. de Edinburgh, Georgio Haliburton, Willielmo Strange, Thoma Bryson, et Johanne Kirk, cum diversis aliis; quamquidem cartam ac venditionem, et alienationem in eadem content. in omnibus suis punctis et articulis conditionibus et modis, ac circumstantiis suis quibuscunque, in omnibus et per omnia forma pariter et effectu ut premissum est, approbamus, ratificamus, ac pro nobis et successoribus nostris pro perpetuo confirmamus, salvis nobis, et nostris successoribus, Juribus et servitiis de dictis terris, et molendino, cum pertinen. ante presentem nostram confirmationem prius debitis et consuetis, In cujus rei testimonium, huic presenti carte nostre confirmationis, magnum sigillum nostrum apponi precepimus; testibus ut in aliis cartis precedentibus ejusd. date Apud Sanctum Andream, primo die mensis Martii, Anno Domini Millesimo quingentesimo trigesimo quinto, et Regni nostri vicesimo tertio.

That what is wrote on this, and the four preceding pages, is a just copy of a Charter, or Record in his Majesty's General Register-house, at Edinburgh, is attested by me, Keeper of these Records, the same being examined, collated, or compared at the sight, and by the assistance of Robert Jamieson, Notary Publick.

(Signed)

ALEXANDER ROBERTSON,
ROBERT JAMIESON, Not. Pub.

III.

CARTA GEORGII DOMINI HUME.

Book 26.
No. 173.

JACOBUS, &c. sciatis, nos etatis perfecte viginti trium annorum existen. pro bono fidei, & gratuito servitio, nobis per predilectum consanguineum & consiliarium nostrum Georgium Dominum Hume suos antecessores amicos & participes impenso nostros rebelles & veteres anglie inimicos, tempore guerre resisten. et in considerationem habentes, quod quondam Alexander Dominus Hume, ultimo defunctus frater dicti nostri consanguinei, pro parvis exiguisq. causis and criminibus per ipsum commissis foris factus erat, nec non pro certis aliis causis & considerationibus, nos ad hoc moventibus, dedisse, &c. dicto nostro consanguineo Georgeo Domino Hume, & *Domine Mariote Haliburton sue conjug.* & ipsorum alteri diutius viventi, in vitali reddito, pro omnibus diebus ipsorum vite, & Alexandro Hume eorum filio et heredi apparen. in feodo et hereditate, totas et integras tertias partes omnium et singularum terrarum et baroniarum subscript. viz. terrarum et baronie de Dirletoun, &c. tertiam terrarum et baronie de West Fenton, &c. tertiam terrarum de Boltoun, &c. *tertiam terrarum & Domini de Haliburton et baronie de Lambdene, &c.*

A P P E N D I X XXII.

I.

CARTA ANDREE HERYSS DE TERREGLIS.

JACOBUS, &c. Sciatis nos dedisse, &c. dilecto nostro Andree Herys, filio et heredi apparen. Harberti Herys de Terreglis omnes et singulas terras et baronias de Terreglis, &c. Quequid terre et barronie cum tenen. &c. fuerunt dicti Harberti Herys hereditarie, et quas idem Harbertus, &c. resignavit &c. 1 Junii, 1486.

Book 10.
No. 151.

A P P E N D I X XXIII.

I.

E A R L O F M U R R A Y.

MARIA, &c. quia pro specialibus favore et amore quos erga naturalem nostrum fratrem Jacobum Commendatarium Sancti Andree et Pettinweme habemus et gerimus, dedimus et concessimus hereditarie predilecto nostro fratri et heredibus suis subscriptis, omnes et singulas terras nostras et Comitatum Moravie nec non Castrum nostrum de Dornway, totas et integras terras nostras et Dominium de

Privy Seal,
B. 31, f. 45.

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Abernethy, totas et integras terras nostras et Dominium de Stratherne, &c. tenend. et habend. &c. dicto Jacobo, et heredibus suis masculis de corpore suo legitime procreandis, de nobis et nostris successoribus Regibus et Regina Scotia in feodo et hereditate feudi firma et libera forresta imperpetuum, quibus heredibus masculis deficient. nobis et successoribus nostris Regibus et Regina Scotia reversur. &c. Apud Edin. penultimo die mensis Januarii, Anno Domini 1561, et regni nostri 20.

II.

CARTA JACOBO COMMENDATORIO STI. ANDREE.

Privy Seal
Records.
B. 31. fol. 2.

MARIA, Dei Gratia Regina Scotorum, &c. Quia dedimus et concessimus hereditarie predilecto fratri nostro naturali Jacobo Commendatorio Prioratum Monasteriorum Sancti Andree et Pittenweem, et heredibus suis masculis infra script. Totas et Integras Terras nostras et Comitatum de Marr, viz. Terras de Strathdee, Bramar, et Cromar, cum molendino, piscationibus, silvis, forrestis, partibus et pendiculis, ac pertinentiis earundem, jacen. infra Vicecomitatum nostrum de Abirdene, insuper nos pro nobis, et successoribus nostris, unimus, annectimus, creamus et incorporamus, Totas et Integras prenominatas Terras de Strathdee, Bramar, et Cromar, cum molendinis, piscationibus, silvis, forrestis, partibus, pendiculis et pertinentiis earundem, in unum integrum, et liberum Comitatum omni tempore a futuro Comitatum de Mar nuncupand. ac similiter facimus et creamus dictum Jacobum fratrem nostrum, et heredes suos masculos, inferius scriptos in Comites omnibus temporibus a futuris tali modo Comites de Mar vocand. ac dando eis honorem, dignitatem, locum, et votum in Parlamento, cum omnibus aliis privilegiis et facultatibus, simili modo sicuti aliqui Comites de Mar de predecessoribus nostris aliquibus temporibus retroactis habuerunt et gavisi fuerunt, &c. Tenend. et habend. dicto Jacobo fratri nostro, et heredibus suis masculis de corpore suo legitime procreandis. Quibus deficient. nobis et successoribus nostris, successoribus Regibus et Regina Scotia iterum reversur. &c. apud Edinburgh 7mo Februarii, Anno Domini 1561, et Regni nostri 20.

III.

CARTA JACOBI MORAVIE COMITIS.

JACOBUS, &c. dedisse, &c. predilecto nostro consanguineo et consiliario Jacobo Moravie Comiti, Domino Abernethy et Down, &c. et heredibus masculis de corpore suo legitime procreatis seu procreandis. Quibus deficient. Domino Francisc

Francisco Stewart, suo fratri germano, et heredibus masculis de corpore suo legitime procreandis. Quibus deficientibus legitimis et propinquieribus heredibus et assignatis dicti Jacobi Murravie Comitis quibuscunque hereditarie, Omnes et Singulas terras Comitatum, Dominia, Baronias, Castra, Turres, Fortalicia, Molendina, Silvas, Piscarias, aliaque particulariter subscripta, viz. Totas et Integras terras Dominium et Comitatum de Murray, &c. Quequidem omnes et singule Terre, Comitatus, Dominia, Baronia aliaque particulariter prescripta, cum earundem partibus pendiculis et pertinent. quibuscunque supra specificat. per prius hereditarie pertinerunt ad prefatum Jacobum Murravie Comitem, et per ipsum per legitimos suo procuratores suo nomine ad hunc affectum specialiter constitutos, et patentes literas in manibus nostris tanquam in manibus immediati indubitati legitimi superioris omnium et singularum Terrarum aliarumque supra specificat. cum earund. pertinent. pure et simpliciter per fustum et bacculum, ut moris est apud Curiam nostram de Roystoun resignate fuerunt, &c. Apud Aulam nostram de Roystoun, 17mo die mensis Aprilis, Anno Domini 1611, Regnorumque nostrorum annis 44to, et gno rexive.

A P P E N D I X XXIV.

I.

CARTA JOANNIS COMITIS ATHOLIE.

B. 8. No. 51.

JACOBUS, &c. Noveritis quod nos alias nostra tenera in ætate, et ante nostram ultimam generalem revocationem recipimus unum, purum ac simplicem resignationem carissimi avunculi nostri Johannis Comitis Atholie et Domine de Balvany, de omnibus et singulis terris suis Dominii de Balvany, cum pertinent. &c. Apud Edin. 7mo Novembris, 1477mo.

II.

B. 10. No. 7.

JACOBUS, &c. Dei Gratia Rex Scotorum, omnibus probis hominibus totius terræ suæ, Clericis et Laicis, Salutem. Sciatis nos in perfecta et legitima ætate constitit.

fit. pro propinquitate sanguinis et cordiali dilectione quam gerimus erga carissimum avunculum nostrum Dominum Joannem Stewart, Dominum de Balvany militem, fratrem carnalem quond progenitoris nostri serenissimi Jacobi Secundi, Scotorum Regis illustrissimi, cujus animæ propitiatur Deus, dedisse concessisse et hac præsentî carta nostra confermasse dicto carissimo avunculo nostro totum et integrum Comitatum Atholiæ et terras ejusdem Comitatus cum pertinent. jacent. infra Vicecomitatum nostrum de Perth, terris de Drumquhail, et Drumcastle duntaxat exceptis. Tenend. et Habend. totum et integrum dictum comitatum et terris Atholiæ, &c. Apud Edinburgh decimo octavo die mensis Martii, Anno Domini 1481, et regni nostri, 22.

A P P E N D I X XXV.

I.

CARTA CON. QUOND. PATRICII DOMINI GRAY.

Book 28.
No. 136.

JACOBUS, &c. Sciatis nos post nostras legitimam & perfectam etatem viginti quinque annorum completam pro certis ingentibus pecuniarum Summis et Compositione nobis et nostro Thesaurario nostro in nomine per Consanguineum nostrum Patricium nunc Dominum Gray persolutis; quandam Cartam Tallie & Donationis fact. per nos, cum avisamento auctoritate et consensu carissimi Consanguinei & Tutoris nostri Joannis Albanix Ducis Regni nostri pro tempore Protectoris et Gubernatoris quond. Patricio Domino Gray ultime defuncto et heredibus suis masculis de corpore suo legitime procreatis seu procreandis. Quibus deficient. Gilberto Gray de Buttergask ejus fratri, et hæredibus suis masculis de corpore suo legitime procreatis seu procreandis. Quibus deficient. legitimis et propinquioribus heredibus masculis dict. quondam Patricii Arma et Cognomen de Gray gerentibus quibuscunque de omnibus et singulis Terris, Baroniis, & Officiis subscript. viz. Terris et Baronia de Forgund, &c. Terris et Baronia de Foulis, &c. Terris Kingislane nuncupat. &c. Terris et Baronia de Dundee, &c. Terris de Balgillo, &c. Terris de Gotharstown, &c. Una cum Officio Vicecomitis de Forfar, &c. ac cum Officio Constabularie de Forfar, &c. ac Officio Constabularie de Montrose, &c. Quequid Terre et Baronia, &c. fuerunt dicti Patricii Domini Gray hereditarie. Et quas et que
idem

idem per fustum et bacculum in manibus prefate Carissime Consanguinei nostri tanquam Tutoris et Gubernatoris nostro nomine. Apud Edinburgh personaliter sursum reddidit pureque et simpliciter resignavit, &c. 16to. Aprilis 1524to. & Regni nostri 11mo. Quamquid Cartam, &c. Confirmamus, &c. Apud Falkland, 14to. die Mensis Sept. Anno Domini, 1542do. & Regni nostri 29no.

II.

CARTA CON. JONETE GRAY.

JACOBUS, &c. Sciatis nos quandam Cartam donationis vitalis redditus fact. per Patricium Ogilvie de Inchmartyne, dilecte nostre Jonete Gray, filie dilecte Consanguinei nostri Patricii Domini Gray, De totis et integris decem libratis Terrarum inferioris partis de Balgany, alias nuncupat. Terris Domini Heris, &c. Tenend. et habend, &c. prefate Jonete Gray in vitali redditu pro ^{Book 7.} ^{No. 218.} tote tempore vite sue, & post ejus decessum mihi et heredibus meis plenarie reverten. &c. 6to. die Mensis Aprilis, Anno Domini 1541mo. Quamquid Cartam, &c. confirmamus, &c. Apud Strivilling, 13to. die Mensis Aprilis, Anno Domini 1541mo. Et regni nostri 28vo.

A P P E N D I X XXVI.

I.

HÆC Inquisitio facta fuit in Curia Vicecomitatus de Edinburgh, tenta in prætorio Burgi ejusdem, coram honorabilibus viris Domino Alexandro Drummond de Meedhop, milite, et Mro. Roberto Leirmouth, Advocato, Vicecomitibus deputatis dict. Vicecomitatus specialiter constitut, Octavo die Mensis Decembris, Anno Domini Millesimo sexcentesimo nono, per hos nobiles et potentes Comites Dominos et Barones subscriptos, viz. Davidem Craufurdia Comitem, Alexandrum Comitem de Humé, Alexandrum Moravia Comitem, Willielmum Comitem de Mortoun, Robertum Lothania Comitem, Jacobum Dominum Erskine, Willielmum Magistrum de Tullibardin, Joannem Dominum ^{Book 4. fol.} ^{462.} Saltoun,

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Saltoun, Walterum Dominum Scott de Balcleugh, Robertum Dominum Creighton de Sanquhair, Davidem Dominum de Scoone, Dominum Patricium Hepburne de Wauchtoun, Militem, Dominum Davidem Carnegy de Kinard, militem, Dominum Jacobum Scrymgour de Dudhope Militem Seniore, et Dominum Jacobum Scrymgour de Dudop Juniore, Militem, Qui Jurati dicunt quod quondam Joannes Dominus Lindsay, frater Roberti nunc Domini Lindsay, Latoris presentium obiit ad fidem et pacem S. D. N. Regis et quod dictus Robertus est legitimus et propinquior hæres masculus ejusd. quond. Joannis sui fratris, et quod est legitime ætatis. In Cujus rei Testimonium Sigilla quorund. eorum qui dicti. Inquisitione intererant faciend. cum appensione Brevis Regii incluso, nec non Sigillo officii dicti. Vicecomitatus una cum Signo & subscriptione manualibus Joannis Young, scribæ, et Clerice Principalis dicti. Curie præsentibus sunt appensa, Anno, die, mense, et loco præscriptis, &c.

Edin. 26 Jan. 1771. I, the within-mentioned John Irvine, hereby certify, That I have carefully search'd the Record of Retours in his Majesty's Chancery for the year 1609, and can find no special Retour in favours of Robert Lord Lindsay.

(Signed)

JOHN IRVINE.

II.

HÆC Inquisitio facta fuit in prætorio Burgi de Edinburgh, per Dispensationem virtute Commissionis subscript. coram discretis viris Davide Bryson, Alexro. Douglas, Jacobo Chalmer, et Mro. Willielmo Stewart, Clavigeris ordinariis coram Dominis Concilii Vicecomitibus in hac parte, vice. &c. &c. de Fyfe, per Commissionem S. D. N. Regis, sub Testimonio Magni Sigilli, ad instantiam nobilis et potentis Domini Roberti Dni. Lindsay obten. pro deservitione suorum Brevium specialiter constitut. Decimo quinto die Mensis Februarii, Anno Domini Millesimo sexcentesimo decimo, per hos probos et fideles viros patriæ subscript. viz. (*here the Inquest are inserted.*) Qui Jurati dicunt quod quondam nobilis et potens Dominus Joannes Dominus Lindsay, Frater germanus præfate Roberti, nunc Dni. Lindsay, obiit ultimo visitit et scit ut de feodo ad fidem et pacem dicti. S. D. N. Regis moderni, in omnibus et singulis Terris aliisque subscript. viz. In totis et Integris Terris et Baronia de Piteruvie, cum castro, turre, et fortalicio ejusdem, Terris de Moutschiek, in omnibus et singulis Terris de Merkinsellie, cum molendinis granorum et fullorum earundem, Terris de Pyestoun, in bina parte terrarum de Endowny, in bina parte terrarum de Casundillie, ac in terris et Baronia de Pitlessie, cum Molendinis ejusdem, Terris de Hiltoun de Bunzeoun, Terris de Dunnyhagglis, cum singulis suis pertinent. jacen. infra Vic. &c. de Fyfe unit. et annexat. in unam Baroniam, Baroniam de Pittcruvie nuncupat. Et unica Sasina capiend. apud principale Mesuagium

suagium de Pitcuvie &c. ac etiam in advocacione donatione et jure patronatus ecclesiæ parochialis de Syres, tam rectoriæ quam vicariæ ejusd. nec non in totis et integris Terris de Orky, cum molendino, terris, molendinariis, mukturis, et fequelis ejusd. in tota et integra quarta parte terrarum de Easter Lawthriisk, vocat. Langflat, et in omnibus et singulis terris, ecclesiasticis, vicariis de Lawthriisk, vocat. Bantuscale, cum manerei loco domibus edificiis, hortis, pomariis, toftis, croftis, partibus pendiculis annexis lie outsetts tenen. tenan. libere tenen. servitiis Omnium et singularum præfat. terrarum molendini, terrarum molendinarum, multurarum, et earundum pertinen. nec non in tota et integra illa marisia, vulgo lie Myre nuncupat. Pitcutie myre, quæ est specialis pars et pendiculum dict. terrarum de Orky, cum omnibus et singulis pendiculis, et earundem jacen. infra parochiam de Lawthriisk, et dict. vic. &c. de Fyfe, quæquidem Terræ, Maneris, Molendina, aliaque supra script. cum suis pertinen. sunt unit. annexat. et incorporat. in unam integram et liberam Tenandriam, Tenandriam de Orky nuncupat. et unica Safina capiend. nunc et omni tempore futuro apud januam messuagii de Orky sufficiens esse Safina, &c. et quod dict. Robertus, nunc Dominus Lindsay est legitimus et propinquior hæres masculus præfato quondam Joanni Domini Lindsay, &c.

I hereby certify, that what is written on this and the preceding page, is copied verbatim from the Record of Retours in his Majesty's Chancery, and comprehends the whole lands recited in the said Retour, and have carefully searched the said Record for the year 1610, I do not find the said Robert Lord Lindsay retoured in the Dominium or Barony of Byres.

(Signed)

JOHN IRVINE,
Keeper of the said Record.

That the Retour wrote upon this and the preceding page, is copied from the Record of Retours in his Majesty's Chancery at Edinburgh, is attested by me, the same being examined, collated, or compared at my sight,

JOHN SETON, Not. Pub.

III.

GENERAL RETOUR OF ANNE LINDSAY.

HÆC Inquisitio facta fuit in Curia capitali Vicecomitatus de Fyfe, tenta in prætorio Burgi de Cupro, coram Magistro Patricio Balfour de Pittillo, et Alexandro Jamieson, Vicecomitibus deputat. dict. vicecomitatus decimo septimo die mensis Aprilis, anno Domini Millesimo sexcentesimo decimo, per hos probos et fideles Patriæ viros subscript. viz, Henricum Dominum Sanctæ Columbæ, Robertum

Book 4.
f. 306.

bertum Dominum Moneymute, Dominum Davidem Carnegy de Kinnaird, M^r. litem, Robertum Durrie de eodem Jacobem Weymis de Bogie, M^rm. Davidem Barclay de Cullerne, Davidem Betown Feoditarium de Crieche, Andream Aytown de Dunure, Andream Wood Feoditarium de Largo, Robertam Forbes Feoditarium de Rives, Davidem Betown Feoditarium de Balfour, Robertum Colville Feoditarium de Cleishe, Joannem Kennier Feoditarium de eodem Jacobum, M^r. Gill de Rankeilour Nether, et Davidem Balfour de Balledmouthe, qui Jurati dicunt Quod quond. Joannes Dominus Lindsay, pater Dominæ Annæ Lindsay Latricis Presentium obiit ad fidem et pacem S. D. N. Regis et quod dict. Domina Anna præsentium Latrix est legitima et propinquier hæres ejusd. quond. Joannis Domini Lindsay sui Patris, et quod est legitimæ ætatis. In cujus rei Testimonium sigilla quorund. earum qui dict. Inquisitioni intererant præsentibus clausis cum inclusione Brevis signito officii dict. Vicecomitatus, ac cum subscriptione manuali Joannis Paterfone, Clerici ejusdem, anno, die, mense supra dict. sunt appensa.

A P P E N D I X XXVII.

I.

CARTA ROBERTI BOYD DE GLEN.

Book 30.
No. 131.

MARIA, &c. dedisse, &c. delectis nostris Roberto Boyd de Glen, & Margarete Colquhoun, ejus sponse ac eorum alteri diutius viven. in conjuncta infeodatione & heredibus suis subscript. Totam & integram orientalem dimidietatem omnium & singularum Terrarum de Wester Ballinderane, cum suis pertinent. &c. Quequid Terrarum Demidietas & annui redditus cum pertinent. Matheo olim Comiti de Levinaxe, de ipso tanquam Tenandria tunc perprius hereditarie pertinebant, et nunc nobis pertinent. & in manibus nostris ratione. Eschaete devenerint ob forisfacturam contra eum in Parlamento nostro rite deduct. pro nonnullis proditorie traditionis & Lesæ Majestatis criminibus per eum commiss. veluti in decreto dicti nostri Parlamenti desuper deduct & lato plenius continetur Tenend. & habend. dictis Roberto & Margarete ejus sponse, ac eorum alteri diutius viven. in conjuncta infeodatione, & heredibus inter ipsos legitime procreat. seu procreand. Quibus deficien. legitimis & propinquieribus heredibus seu assignatis dicti Roberti quibuscunq. &c. Apud Edin. 18vo die mens. Febuarii, anno Regni nostri 5to.

H.

CARTA CON. MARIOTE COLQUHOUN.

MARIA, &c. Sciatis nos, &c. quandam cartam vitalis redditus fact. per consanguineum nostrum Robertum Magistrum de Boyd, & feodatarium quinque mercat. Terrarum antique extentus de Law, dilecte nostre Mariote Colquhoun, sponse nostri consanguinei Roberti Domini Boyd (ejus patris) de totis et integris prefatis quinque mercat. Terrarum de Law antiqui extentus cum suis pertinen. &c. 10mo Februarii, 1548vo quamquid Cartam ac vitalem redditum in ead. content. &c. confirmamus, &c. Apud Edin. 11mo die mensis Februarii, Anno Domini 1548vo, & Regni nostri 7mo. Book 30.
No. 426.

A P P E N D I X XXVIII.

I.

GENERAL RETOUR OF MRS. MARY ROSS.

HÆC inquisitio facta fuit in novo domo sessionis burgi de Edinburgh, sexto die mensis Februarii, Anno Domini millesimo sexcentesimo quadragesimo nono coram Roberto Hamilton, &c. tribus ex quatuor clavigeris ordinariis coram Dominis concilii et sessionis tanquam vicecomitibus, &c. qui jurati dicunt magno sacramento interveniente quod quondam Willielmus Dominus Ross, frater germanus Magistræ Mariæ Ross, Dominæ Wauchtoun, sponsæ Joannis Hepburne de Wauchtoun Latricis præsentium obiit ad pacem et fidem dict. quond. S. D. N. Caroli, Dei Gratia Magnæ Britaniæ, Franciæ, et Hiberniæ Regis, fideique defensoris, et quod præfata magistra Maria Ross est una duarum sororum germanarum legitimarum & propinquiorum heredum portionariorum lineæ dict. quondam Willielmi Domini Ross, sui fratris germani, et quod est legitimæ ætatis. In cujus rei testimonium, &c. Book 19.
f. 316.

A P P E N D I X XXIX.

I.

CARTA DAVID COMITIS DE CRAWFURD.

B. 7. No. 92,

JACOBUS, &c. Sciatis nos dedisse, &c. dilecto consanguineo nostro David Comiti de Crawford, & Domino Lindsay officium vicecomitis de Forfar, &c. tenend. & habend, &c. dicto David Comiti de Crawford, & heredibus suis, &c. Apud Striveling 19no die mensis Octobris, Anno Domini 1476to, & Regni nostri 7mo.

II.

CARTA JOANNIS COMITIS CRAWFURDIE.

Book 14.
No. 394.

JACOBUS, &c. Sciatis nos dedisse, &c. dilecto consanguineo & consiliario nostro Joanni Comiti Crawfordie, Omnes & singulas Terras & Barroniam de Uchteralloun, &c. tenend & habend. &c. dicto Joanni Comiti Crawfordie consanguineo nostro, heredibus suis, & assignatis, &c. apud Edinburgh, penultimo die mensis Julii, Anno Domini 1507mo, & Regni nostri 20mo.

III.

CARTA JOANNIS COMITIS CRAWFURDIE.

Book 15.
No. 192.

JACOBUS, &c. damus dicto Joanni Comiti Crawford, et heredibus suis, &c. Omnes et singulas predictas terras de Petfour, Potconok, & Drumgrane, &c. Apud Striveling, 24to die mensis Maii, Anno Domini 1510mo, & Regni nostri 22da.

IV.

IV.

CARTA JOANNIS COMITIS CRAWFURDIE.

JACOBUS, &c. Sciatis nos dedisse, &c. dilecto consanguineo & consiliario nostro Book 18.
 Joanni Comiti Crawfordie, totas & integras Terras de Newhall, &c. tenend & No. 144.
 habend. &c. dicto Joanni Comiti Crawfordie, & heredibus suis, &c. Apud Edin-
 burgh, 4to die Mensis Decembris, Anno Domini 1512mo, & Regni nostri 25to.

V.

CARTA ALEXANDRI LINDSAY.

JACOBUS, Sciatis nos dedisse, &c. dilecto consanguineo nostro Alexandro Book 22.
 Lindsay Magistro Crawfordie, filio et heredi apparenti dilecti consanguinei et concili- No. 10.
 arii nostri David Comitis Crawfordie, Omnes et singulas Terras, annuos reddi-
 tus, tenementa, baronias, superioritates, custumas, advocaciones, jura, patronatus et
 donationes ecclesiarum, cappellaniarum, et beneficiorum totius Comitatus Craw-
 furdie subscript. viz. Terras et Baroniam de Finnevin, &c. quequid terre, &c. fu-
 erunt dicti David Comitis Crawfordie, perprie hereditarie; Et quas, et que idem
 non vi aut metu, ductus, &c. resignavit &c. Tenend. et habend. &c. dicto Alex-
 andro Lindsay, et heredibus suis, &c. Apud Edinburgh, 2do die mensis Septem-
 bris, Anno Domini 1527mo, et Regni nostri 14to.

A P P E N D I X X X X .

I.

CONSTITUTION of the Earldom of LENNOX in a Dukerie,
5 August 1581, copied from the Earl of HADDINGTON'S
Collections in the Advocates Library, at Edinburgh.

Advocates
Library, A 4.
20. fol. 46o.

THE Kingis Majestie calling to remembrance how the Earldom of Lennox, Lordschipe of Darnly, and Barrony of Torboltoun, being the heritage of the Erles of Lennox, of quhome his Majestie is descendit, succedit unto his hienes be the death of umquhile his hienes deirest fader, and his Majesties guidfir, Matthew Erle of Lennox, Regent to his hienes his realme, and liegis for the tyme, and *after dispozticoune maid be his hienes of new, of the saids Erledome, Lordschipe and Barrony, to his Majesty's faderis brother Charles, lykewis Erle of Lennox, throw default of airs maill in his persoune, and, be virtew of his Magesties revocatioune, the same Erledome, Lordschipe and Barronie returning agane to his hienes,* his dearest and only great uncle Robert Erle of Marche, who was also inest in the saids Erledome, Lordschipe and Barronie, yielding his place; his Majestie haing still ane earnest desyre of the standing of the said hous of Lennox, in the possessioun of his next *cousingis meall of the same* hous and blud; theirfore gave and disponit heretablie to his dearest cousing Eismie Erle of Lennox, Lord Darnley, Aubigny, and Dalkeith, greit chamerlane of this realme, *and his airs,* the saids Erledome of Lennox, Lordschipe of Darnly, and Baronie of Torboltoun, with the honours, rights, and privileges pertaining thair-to quha moveit, of great and singular affectioun towards his Majestie, came furth of the realme of France, his native countrie, to serve and attend upone his Majestie, and to bruike the tide, and oöcupy the hous, and leving quhairof, he is descendit, and quhairunto it hes pleassit his Majestie to advance and promote him, having spairit na paves, perrèil, nor charges, in that quhilk might further his Majesties auctoritie and service; and now his Majestie having zit ane desyre to honour and advance the hous quhairof his Majestie, on the ane pairt of his said dearest fader, is descendit fra the memorie of his noble and worthie progenitoris of that stok and familie,

milie, and for the guid and worthy deserving of the said present Earle of Lennox, his dearest coufing, towards his Magestie, and for uthers reasonable causes and considerations moving his heines thereto; He, therefore, mad, creat, erectit, and incorporate the said Earldome of Lennox, in an haile and frie Dukerie, to be callit the Dukerie of Lennox in time coming, and the said Lordshipe of Darnley in an haile and free Earledome of Darnley in time coming, and the said Barrony of Torboltone in ane haile and free lordship to be callit the Lordschipe of Torboltoun, in time coming, without prejudice of the unioune, annexatioune, and uthoris privileges grantit in the infestment maid thereupone of befoir, and als hes maid, constitut, and nameit, and ordainit in tyme cuming, his said dereft coufing Esme Duik of Lennox, Erle of Darnely, Lord Aubigney, Torboltoun, and Dalkeith, with all honouris, dignities, prerogatives, rightis, priviledges, profeittis, commodities, and dewties belangand thereto, to be bruiket, joifit, useit, occupit, and possessit be him sicklyke, and als freely in all respects and conditions as ony uthers hes bruikit the tittle, right, and possessioun of quhatomever Dukrie, Earledome, Lordschipe, or Barronie within this realme, in time bygane; and that letters be direct to make publication heirof, be open proclamatioune at the Mercate Crose of Edinburgh, and uthers places neidfull; charging all and fundrie Earles, Lordis, Barronis, and uthers, his heins subjects, to acknowledge and reverance his said dearest coufing, according to the stile, titile, place befoir specified; ordaining him to be investit thairin, with all solemnities requisite.

II.

CARTA E S M I DUCIS DE L E V I N A X .

J A C O B U S , &c: Sciatis, dedimus, &c. prefato nostro charissimo consanguineo, et fidelissimo consiliario, Esmo Duci de Levinax, Comiti Darnlie, Domino Torboltoun, Dalkeith, et Aubigny, &c. et suis heredibus subscriptis hereditarie, omnes et singulas terras, comitatum, dominia, baronias, officia, regalitates, et privilegia earundem subtus specificat. viz. totas et integras terras, et comitatum et dominum de Levinax, cum castris, turribus, fortaliciis, &c. Quequidem Omnes et Singule terre comitatus, dominia, baronie, ville et burgi in baronia, regalitates, castra, turre, fortalicia, maneries, silve, parce, molendina, piscationes, lie outsetts, partes, pendiculi, columbarii, cunicularii, tenentes tenandrei, libere tenentium, servitia, advocaciones, donationes, et jura patronatum, prepositurarum, prebendariorum, ecclesiarum

Book 35.
No. 508.

ecclesiarum, et capellaniarum, ac omnium aliarum particulariter supra script. cum omnibus suis pertinen. prius hereditarie pertinuerunt dicto nostro charissimo consanguineo Esme Duci de Lavinax, Comiti Darnlie, Domino Tarbatoun, Dalkeith, et Aubigny, &c. Et per ipsum personaliter pure et simpliciter, per fustim et baculum in manibus nostris resignate fuerint, &c. Tenend. et habend. &c. prefato nostro charissimo consanguineo et consiliario, Esme Duci de Levinax, Comiti Darnlie, Domino Torboltoun, Dalkeith et Aubigny, &c. et heredibus suis masculis, &c. de corpore suo legitime procreatis seu procreandis. Quibus deficiant. nobis et successoribus nostris reversur. &c. Apud Halierudhouse, 13tio die mensis Decembris, Anno Domini 1581mo, et Anno Regni nostri 15to.

A P P E N D I X XXXI.

I.

Book 6.
No. 120.

JACOBUS, Dei Gratia Rex Scotorum, universis et singulis legiis et subditis nostris ad quorum noticias presentes litere pervenerint salutem. Cum enim Georgius Comes de Rothes, Dominus Leslie alias summonitus fuit per literas nostras sub cera alba personaliter et respondens nobis pro proditoria fictione cujusdam litere quittancie sub signeto quondam progenitoris nostri super summa ducentarum mercarum, ut in litera summonitionis predictae ad plenum continetur, &c. 15 Octobris, 1464.

A P P E N D I X X X X I I .

IN Dei nomine Amen. Per hoc præsens publicum instrumentum cunctis pateat evidenter quod anno incarnationis Dominicæ 1514to, mensis vero Octobris die tertia, indictione secunda pontificatus sanctissimi in Christo patris et Domini nostri Domini Leonis, divina providentia Papæ decimi, anno secundo in mei notarii publici et testium subscriptorum, præsentia, personaliter constitutus in curia Vicecomitis de Inverness, die datæ presentis publici instrumenti, in prætorio de Inverness, per providum virum Andream Auchleck, burgen. de Inverness et Vicecomitem deputatum pro deservitione unius brevis inquisitionis capellæ regiæ impetrat. per ELIZABETH SUTHERLAND, SOROREM QUOND. JOHANNIS COMITIS DE SUTHERLAND, de et super terris et comitatu de Sutherland, comparuit venerabilis vir Magister Joannes Calder, precentor Rossen. actornatus et eo nomine dictæ Elizabeth, cujus mandato lecto et admisso hujusmodi breve legitime, ut apperuit proclamatum executum et indorsatum produxit et executionem ejusdem probari fecit; et hoc in præsentia cujusd. Magistri Roberti Munro, fratris et procuratoris Alexandri Sutherland, ad quantum dictum breve excipien. prætenden. et interesse habere allegan. et quia prefatus Magister Robertus procurator pro dicto Alexandro admissus nihil tunc quantum dictum breve proclamationem et executionem ejusdem aut quantum membra curiæ opposuit, aut in specie allegavit dictus Vicecomes deputatus ad electionem assisæ pro deservitione dicti brevis processit. et eandem assisam jurari fecit tactis sacris Dei evangeliiis: et quia dictus procurator prefati Alexandri, per quandam cedula in scriptis porrect. allegabat; quod non patebat tutus accessus dicto Alexandro ad burgum de Inverness, ad defenden quantum dictum breve propter SEVITIAM ALEXANDRI COMITIS DE HUNTLIE, et amicorum suorum dictæ Elizabeth faven. idem *Dominus Comes* et Adam Gordon de Aboyne ejus frater sponsusque dictæ Elizabeth pro se et suis compluribus obtulerunt dare cautionem dicto Alexandro legitimam et sub magnis pœnis ad eund. et redeund. ad burgum de Inverness, pro sua legitima defensione utenda. Post hæc quia pefat. procurator per hujusmodi cedula in scriptis porrectam allegavit terras et comitatum Sutherlandiæ per cartam Domini Regis talliatis seu talliatum esse, unde per assisam electam et juratam et vicecomes deputat. ad hujusmodi cartam talliæ producen. postulat. fuit; qui procurator post hujusmodi cautionem oblatam nullam tunc talliæ cartam produxit et sic assisa ad retornationem dicti brevis processit. De et super quibus omnibus et singulis, &c.

