JOHN INGLIS.

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LORD JUSTICE-GENERAL OF SCOTLAND.

A MEMOIR.

By JAMES CRABB WATT,
ADVOCATE.

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1893.

To the

Lawyers of Scotland during fifty years

is respectfully dedicated

this attempt to perpetuate the memory

of their great Chief.

PREFACE.

THIS book, which had its origin in some contributions to the daily and periodical press, pretends to be nothing higher than a record of facts and opinions concerning the subject of it, and of the legal incidents and changes occurring in the half century during which Inglis was at the head of Scots Law.

It also aims at an intelligent estimate of his character, the estimate being formed partly upon those opinions, and also in great measure from the writer's own observation.

Inglis's life was devoid of what are known as popular elements, and the difficulty of obtaining biographical material has been increased by the fact that some time before his death, by his own hand he destroyed any letters and papers which might have imparted living interest to a memoir.

But of available material the writer has endeavoured to make the most. That material has been selected from a great variety of sources. The chief printed sources are acknowledged in the course of the book; but great assistance has also been derived from many contemporary journals and magazines, such as the "Journal of Jurisprudence," the "Scotsman," and the "Edinburgh Evening Courant."

Lord M'Laren in the "Juridical Review" for 1892; Sheriff Mackay in "Blackwood" for October, 1891, and in the "Proceedings of the Royal Society" for 1892; and Sheriff Campbell Smith in a periodical of which only a few numbers were issued have written about John Inglis. The writer desires to acknowledge in the fullest way the aid he has derived from these gentlemen and their compositions.

His thanks are also due to Mr. A. Wood Inglis, Mr. Christopher Douglas, W.S., Mr. John Ord Mackenzie, W.S., Mr. J. T. Clark, Keeper of the Advocates' Library, and other gentlemen, for information, assistance, and suggestions.

The portrait of Inglis is, by permission of Mr. Irvine Smith, from the original sketch for the painting known as "The Bench and Bar," by Skeoch-Cumming.

The Justiciary Mace on the back of the book is copied from a drawing belonging to the Society of Antiquaries.

EDINBURGH, *March*, 1893.

CONTENTS.

JOHN INGLIS.

I.—Introductory.

THERE are few in the judicial hierarchy who leave a deep impress on the history of their time. The high vocation of a judge lies aside from the tumult and applause of public life. He has no opportunities for display and he cares for none. In Scotland he administers justice within a jurisdiction of fixed and inexpansive limits. Constitutional or international questions are rarely forced upon his attention—colonial questions never. His jurisdiction is purely domestic and attracts little notice from beyond its geographical and professional boundaries. In the general case he is known by head-mark to the men only whose business calls them before him. His repute, if he acquire repute, cannot be appreciated by more than a small and cultured class, and when he dies he is remembered by that class because of some outstanding excellence or eccentricity rather than as a distinct personality.

The death of John Inglis, however, marks the close of a distinct era in our history and our law. He was the chief legal figure in Scotland during the half-century which posterity will call the Victorian age; and from a singular union of rare qualities which they found in him, his con-

temporaries have unanimously placed him in the narrow circle of great judges alongside of Stair, Duncan Forbes of Culloden, Ilay Campbell of Succoth, and Robert Blair of Avonton. It is believed that posterity will ratify this judgment.

In Scotland no occurrence of a similar kind had attracted equal notice since his immediate predecessor, Lord Justice-Clerk Hope, in the summer of 1858, was struck down with a suddenness sadly in keeping with the rapidity of his success and fame. The Lord President's death was an event that had impended for many months. The going down of such a luminary was bound to throw law and lawyers into gloom. Its shadow had clouded the juristic life of the country for several years, and during that time it was matter of constant inquiry in the Parliament House where one was to be found fit to fill his place. Inglis's fine spirit and resolute frame yielded slowly to the encroachments of age. For many years he had defied the menace of decay. Nature had endowed him with a firm and well-knit frame. Only once had its soundness been put to the test. More than forty years ago he had the first warning of the hepatic disorder that ultimately carried him off. About the same time he was sorely distressed by illness other than his own. His hand burned as if with fever, and for a considerable time his health was uncertain and delicate, and he had to retire for some months from the Courts. With care, however, his constitution was, as it were, renewed, and he was enabled seemingly to cast off his ailment, though he required to treat himself with great care during the remainder of his life.[1]

[1] The specific complaint from which he suffered at the time here mentioned is understood to have been Bright's disease, and his was the first known case of recovery from it. Many years afterwards Bright called upon Inglis and talked over his symptoms with him.

Thenceforth, while it could not be said that he possessed robust health, he was distinguished by unflagging energy. His vigour remained unimpaired until he reached a patriarchal age. In his eighth decade the ravages of time at last began to tell upon him. His handsome figure became less erect, his step less elastic, his eye less clear. There were indications also that his old enemy had not left him, and it was latterly noticed on the bench that his hearing was less acute. He became a victim to severe and torturing rheumatism, as he called it, and it was a visitation of these pains that compelled him to decline the request that he should preside at the opening of the Public Library in Edinburgh in June, 1890. Yet his spirit remained unsubdued and invincible, often impelling him to tasks which, at the same age, would have surpassed the power of ordinary men. An excess of feebleness generally supervened upon the periodic vacations of the Court. One of these intermittent attacks prostrated him about a year before he died. During the night he had fallen insensible on the floor of his house at Loganbank, and he lay exposed to the cold for some hours. It was a powerful testimony to the strength of his constitution that he survived the severe chill then received.

From about this time there was a gradual, painless, and in its literal sense a pensive decline. The light burned down to the very socket with a radiance undimmed almost to the end. He continued to preside in the First Division, guiding its deliberations with his wonted learning, foresight, and firmness. It is said he even desired to take the jury trials at the summer sittings of 1891,[1] and was prevented

[1] One of the cases set down for jury trial at these sittings was a libel action at the instance of Thomas Sexton, an Irish M.P., against the proprietors of the "Scotsman" newspaper. The Lord President was reported to have been most anxious to preside over the trial of this case, which had been before the House of Lords, and from its political importance was publicly regarded as a *cause célèbre*.

doing so only by the kind importunity of his brethren. One of the last trials, if not the very last, at which he presided was that of an action for slander at the instance of a Highland parson, and Inglis's own clergyman dropped in to hear his summing up, and was astounded at its force and clearness and power. As late as the 11th of August he attended a meeting of the Board of Manufactures, of which his eldest son, Mr. Alexander Inglis, is secretary, and in the work of which naturally his lordship took a warm interest. On his return to Loganbank his weakness became complicated with dropsical symptoms, and after a week's contest between a mortal disease and a constitution enfeebled chiefly by age, he slept quietly away at twenty minutes past five o'clock on the morning of the 20th of August, 1891, a day before the completion of his eighty-first year.

What may be called the productive life of John Inglis began about 1835. The period this sketch covers is therefore fifty odd years. Neither few nor unimportant were the changes wrought in that half-century, and one may best paint the scene upon which Inglis came by presenting contrasts in political aspects, in social conditions, and in forensic modes.

By 1835 many ameliorations and reforms had been effected. Scotland was no longer governed by a single man. She had attained a political constitution and popular representation. By 1835 the Duke of Wellington's government had resigned and Lord Grey had formed his administration. After twenty-four years of exile the Whigs were placed in power, and the circumstance that excited greatest horror in the minds of their opponents was the spectacle of Brougham sitting on the woolsack! What was of greater moment, by 1835 the press was free, and public meetings were of daily occurrence.

Yet, notwithstanding these advances, toleration in politics and religion was practically unknown in the 'thirties, and there was not very much of it even in the 'forties. Rancorous dogmatism was characteristic of conversation at the fireside and of debate in the State. The people had emerged from lethargic acquiescence and despair, and entered upon a wilderness of constitutional conflict. A cruel tyranny had closed the avenues of promotion to all save the docile followers of the dominant party. Education, science, philanthropy were in their first youth. Popular literature was yet in its childhood. Soldiers and sailors were flogged. A Draconian code, merciless to the weaknesses of human nature, whether of body or of mind, was administered in the criminal Courts. The principle observed was that "the smallest crime deserved the punishment of death, and the greatest could deserve no more." Prisoners were flung into holes to endure punishments from which they were delivered only to lead lives of shame and disease. Victims of innocent misfortune were pent along with the guilty in those dungeons until friends, poverty-stricken themselves, scraped together their little all to relieve them.[1] Between 1820 and 1830 there were 797 executions in England alone.

Fifteen years before, Europe had been relieved of its tyrant. Undisturbed by the sound of drum or the sight of parade, Britain now had leisure to free herself from lingering prejudice and dominant abuse. Volunteering and uniforms, Napoleon and war, were but memories. The military enthusiasm that had marked the beginning of the century began to be diverted to the promulgation of courageous and enlightened opinions. The hold of the ruling faction on society and on the people was relaxed.

[1] For fuller details of this period, see Cockburn's "Memorials and Life of Jeffrey."

The public mind was filled with a distaste of the archaic Toryism of the time, and became enamoured of the bold aspirations of emancipated Whigs.[1] The Tory and the Whig were atoms in the social world, fiercely inharmonious and uncompromising. The constant contact and friction of these warring elements was about to kindle the flame of reform in all directions. The Whigs had at last attained a taste of power, and William Ritchie, one of the first proprietors of the "Scotsman," and a pioneer of Liberalism, raised himself on his death-bed to welcome the dawn of that power with a feeble cheer.[2] There had already been years of contest and collision between old and new opinions. "Blackwood's Magazine" had entered upon its brilliant career in championing steady, cautious advance —had already, indeed, acquired distinction by the fierceness of its attacks upon revolutionary movements and upon the "Edinburgh Review." But the Whigs no longer buried their heads in obscurity. Jacobinism was no longer the emblem of incurable social taint. The espousal of popular

[1] For particulars of this enthusiasm, in which the Parliament House took its part, see Cockburn's "Memorials." The age of volunteering amongst lawyers has, fortunately, not yet passed, although the movement is not nearly so popular among them now as it was twenty years ago when the advocates, the writers, and the S.S.C.'s all had companies of their own. The present Lord Justice-Clerk (Macdonald) is a military authority, and was for many years the head of the movement in Scotland. There is also a Scotch as well as an English corps called the "Devil's Own." It is composed mostly of lawyers and wears a black uniform. — It may be noted that advocates have had more to do with the conception and fulmination of State plots than with their active prosecution or execution. But sometimes, like the bishops, they had to take a hand in offence and defence for the benefit of the country. It is but a little over two centuries since Hope of Rankeillour, who was made a Lord Ordinary in 1689, was impeached before the Privy Council for absence from the king's host at Bothwell Brig. He pleaded his privilege as an advocate, but that availed him not, and it was remitted to a committee to determine how far the sending of a man and a horse in his stead should modify his punishment.

[2] Cockburn's "Memorials," p. 267. I also refer, as the reader desirous of forming a complete picture of this period may well do, to Cockburn's "Journal and Life of Jeffrey"; the "Memoirs of Sydney Smith"; the biographies of Mackintosh and Horner; Lockhart's "Life of Scott"; and reviews commenting on the period in question in "Fraser's Magazine," vol. 54; "Edinburgh Review," 9, 140; "N.B. Review," 26; and "Quarterly Review," 148.

opinions was no longer attended with risk to social position or to promotion. Written tests were no longer presented to the Faculty intrants by the whips of faction. Henry Erskine, who had been turned out of the Deanship for presiding at an obnoxious meeting, Adam Gillies—appointed in 1811, singularly enough by a Government opposed to his principles—John Clerk, and David Cathcart, had handed down the torch they had kindled to Jeffrey and Cockburn and the Moncreiffs.

These remarks apply to the period before 1830. By that year, or soon thereafter, philosophers who had raised Scotland to the highest rank in the world of learning had taken leave of the scene of their speculations. A bench comprising the learned Boyle, Cranstoun, Moncreiff, Cockburn, Fullerton, Jeffrey—saved in 1801 by political antagonism from the drudgery of law reporting—had succeeded the contemporaries of tyrannical men, of whom Braxfield and Eskgrove and Hermand and Clerk were the types. The drinking customs and coarse manners of gentlemen familiar to Cockburn's youth had become impossible. Though the ancient institutions and laws of the country were untouched, yet there had begun that process of fusion in habits, language, and interests which, accelerated by railways in the middle of the century, threatens at the close of it to sink Scotland in the common mass of British society.

The changes effected in half a century are perhaps best illustrated by the elevation of the masses, and by industrial and commercial development. Power to oppress has been transferred from the oppressor to the oppressed. The order of the industrial world has been well nigh inverted in politics, in the workshop, and in the family. By organisation and its thousand ruthless weapons the noble and the aristocrat are now at the mercy of the mob. The principle of collaborateur in the wide branch of law known

as that of Reparation has undergone extinction and resurrection and second burial within this eventful period. During the half century it in truth has been the shuttlecock of judicial and legislative battledores. Quite lately the stroke has gone against the masters.[1] Half a century of the economists who borrowed the doctrines of Adam Smith had taught politicians to regard workmen merely as so many instruments of production. The condition of the lower classes was entirely unknown to those who dwelt alongside of them. Hardly a cry of pity had yet escaped them at the sight of hospitals and prisons crowded with the victims of social inequalities. Only here and there a far-seeing economist or philanthropist stooped to look at the mortar which, moistened with human tears, had cemented the fabric.[2] Now well-nigh every domain of lower social life has been irradiated by the sunshine of reform.[3] Whereas, at the beginning of this period, the poor lived in hatred of the rich, the rich

[1] *Johnston* v. *Lindsay*, decided in House of Lords, July 28, 1891. The important judgment in this English appeal has destroyed the Scotch precedent of *Woodhead* v. *Gartness Mineral Company*, February 10, 1877. Now no master can plead common employment unless the servant suing him for reparation was in his employment, and was injured by a fellow-servant also in his employment. Fellow-servant and not fellow-workman is the test of the master's exemption from liability.

[2] See Blanqui's "Histoire de l'Economie Politique."

[3] A great apostle of the workman, Mr. John Morley, admirably describes this altered condition of affairs when he writes, "We have to-day a complete, minute, and voluminous code for the protection of labour. Buildings must be kept pure; dangerous machinery must be fenced, children and young persons must not clean it when in motion; their hours are not only limited but fixed; continuous employment must not exceed a given number of hours. A statuteable number of holidays is imposed; the children must go to school, and the employer must, every week, have a certificate to that effect. If an accident happens notice must be sent to the proper authorities. Special provisions are made for bakehouses, for lace-making, and for collieries, and for a whole schedule of other callings. For the due enforcement and vigilant supervision of this immense host of minute prescriptions there is an immense host of inspectors, certifying surgeons, and other authorities, whose business it is 'to speed and post o'er land and ocean' in restless guardianship of every kind of labour, from that of the woman who pleats straw at her cottage door to the miner who descends into the bowels of the earth, and the seaman who conveys the fruits and materials of universal industry to and fro between the remotest parts of the globe."

in dread of the poor—the harmony of industry being frequently broken by the tumult of riot—a code now exists having the protection of labour as its special care. Lastly, sixty years ago there was no telegraph, no railway, no penny post, no telephone, and no daily paper.

Possibly there is less general interest in the life of Parliament House now than there was sixty years ago. Scotland was then issuing from what has been called its political bondage, and was beginning to breathe a purer atmosphere. Parliament House was the scene, the chief scene in Scotland, of political as well as of literary activity. Old suns were going down, or at their zenith were being chased by luminaries of equal refulgence. The influence of the young bloods in the Outer House—they were men of astonishing intellectual vitality—was reflected more or less in, as it reacted on, the life of the whole country. The country did not then require, as, to its shame, it often does in these days, to borrow political lustre from London. It would have spurned the pretensions of raw youths and self-seeking lawyers from Fleet Street and the Inns. There was then at its call at least the semblance of an aristocracy of wealth and rank whom, first, the Continental wars and, secondly, the restrictions of locomotion still kept at home with us in the North. Before the introduction of railways Scottish society was confined to its own northern diversions,—its hospitality, its intrigues, its native characters—some odd, some interesting, all patriotic and most intellectual,—diversified elements which some regard as the relics of a dead or of an absorbed nationality.

What a change, too, is observable in the manners and morals of bench and bar. Contrast the aspect of the sober-eyed judges of to-day, walking to the Session by the back of the Castle or driving up the Mound, with the portly mien and amethystine noses of their predecessors

a hundred years ago, as they tottered across the High Street after a night's debauch. Sixty years ago Cockburn bewailed the curtailment of the Court holidays. "Our vacation," said he, "is encroached upon—our two months in spring and the long glories of the four months in summer and autumn are no more secure." Why, even thirty years ago, the senators tenaciously clung to nine o'clock as the hour for beginning the work of the day, and toilsomely laboured up the Mound to the Outer House boxes.[1] The Inner House met at eleven. Compare also the formal business-like Circuits of last Christmas, say, with the dreary, be-torched, be-trumpeted processions of sixty years ago,—with the slow and solemn entry into awe-struck country towns, the tolling of bells and the glitter of bayonets. Compare the railway train sweeping over half the country in an afternoon, with the weary, plodding coaches that used to start from George Street or Moray Place with the judges, and from Northumberland Street with the deputes. Think of the revolution in forensic methods—of interminable harangues on relevancy and the defects of written verdicts of juries selected by the judge until 1822[2]—of the political and theological blasts of judges on the very bench. Those things, those men, those abuses have all of them been swept away by remorseless time. Where are the "Toon Rottens" that sat, "abdominous and wan, like fat squabs upon Chinese fans," on either side of prisoners in the dock, too drunk or too sleepy to sustain the weight

[1] The year 1868 witnessed more startling changes than the insertion of Herr von Kaulbach's new window. The boxes called the Courts of the Lords Ordinary, except one, were vacant on three days of each week, their occupants being engaged in a new Court constituted for hearing appeals from the Sheriff Courts, and called the Court of the Lords Ordinary.

[2] Prisoners were then entrusted with a few challenges, a privilege supplemented by Kennedy's Act of 1824, when the ballot was introduced.

of their Lochaber axes? "Gone to Rhadamanthus!" as Cockburn says—to guard, it may be, Braxfield and the like, at whose very nod they shivered, even though, it is true, in their presence they sometimes snored! Gone!—like the bottles of port and Madeira that regaled the judges as they scribbled wearily, and made them glum or glib according to their capacity as drinkers! Gone!—like the hangings at the Cross and their brutal spectators, and the processions of judges, deputes, counsel, and clerks, as these old-fashioned terrors waddled up Market Street of Aberdeen or the Sandgate of Ayr! There is no worship of the ermine now. The coming of "the Lords" is but an everyday affair. Railways and other things have shorn it of its glory.

Nor is the change less remarkable in the tribunals of the country. The Jury Court had ceased to exist in 1830, after an experiment extending over sixteen years. It owed even this brief existence to the patience and persistency of Lord Chief Commissioner Adam—the dear, kind, polite old gentleman of the Blairadam family who debated with Pitt, and who delivered his judicial dicta with such sonorous unction that Glenlee used to say he spoke like an Act of Parliament.[1] He did his best to accommodate this English favourite to Scottish prejudices. In 1836 he astonished his friends by a contribution to law literature as turgid as his charges. He called it "On Trial by Jury," and dedicated it to the several branches of the profession by name. He there gives a full and interesting account of the life of the Jury Court and of its pathetic extinction.

[1] Cockburn's "Memorials," p. 256. It was to Adam that Thomas Erskine, riding with him over a heath between Lewes and Guildford in the early part of their lives, said—"Willie, the time will come when I shall be invested with the robes of Lord Chancellor, and the star of the Thistle shall blaze on my bosom." Campbell's "Lives," 4th edition, vol. 8, p. 254. It would be interesting to know how much of Adam's love of jury trial was derived from its greatest advocate.

Francis Jeffrey, being Dean at the time, pronounced the eulogium at its obsequies. Adam showed intense reluctance to abandon his favourite theme, for in his book he indulges in "Additional Observations," "A Postscript," and an appendix. When perpetuated under improved conditions, the Jury Court won an increased amount of public favour; but even at this distance of time, fifty years after the Jury Court came to an end, jury trial cannot be said to be regarded with the same veneration here as in the sister country. Considerable improvements have taken place in the way trials are gone about. Changes in the mode of taking evidence have contributed to these improvements. Lord Mure, in 1868, was occupied for eight days in trying a case where the question was whether the engineer of the Solway Bridge was rightly dismissed because the piles for that viaduct were said to have been wrongly driven. Trials take less time now; but even yet some of our best lawyers accept jury trial as a necessary evil, fit only for the commonest affairs of civil life, and on the smallest pretext appeal to judges who entertain scant respect for it.[1] It is just a century since its introduction

[1] The chronology of early century reform may be thus briefly summed up. In 1807 the "auld fifteen" were cut into two divisions. In 1815 juries were introduced, the first trial taking place on 22nd January, 1816. In 1823 sixteen Royal Commissioners reported in favour of earlier finality of judgments, the maintenance of juries, and the extension of oral pleading, the draftsman of the report being Geo. Joseph Bell. These proposals encountered a hubbub of opposition from inexorable conservatives — not necessarily Tories — who, by bulky pamphlet and public meeting, besought the Government to continue impracticable absurdities under which the country absolutely groaned. The Jury Court was established in 1815 by 55 Geo. III. c. 42. It was composed of a Lord Chief Commissioner, with two judges of the Court of Session, Lords Meadowbank and Pitmilly, as assistant Commissioners. It had no original jurisdiction. It simply elicited facts with the aid of a jury on remit from the Court of Session, to whom the verdict was reported. Jury trial achieved a measure of success, and this led to the ordinary functions of the Court of Session being extended to trial with the aid of juries of the cases enumerated in 6 Geo. IV. c. 120. The Court of Special Commission was abolished in 1831 by 1 Will. IV. c. 69. The Lord President attended the Jury Court at its last sittings in July, 1830, in order to become acquainted with the procedure.

into Scotland was anticipated by Lord Swinton, one of the senators, in a pamphlet published in 1789, but barely anybody then shared his views.

Complaints with reference to the Court of Session resolve themselves into two categories—complaints about its procedure, and complaints about the amount of business done in it or by it. From time to time this intermittent whine has varied the monotony of legal literature. The history of the law reveals an outburst of this kind near the end of each decade. Old practitioners, for example, are reminiscent of the days of boundary disputes between Highland lairds, who, down to the 'forties, renewed on the floor of the Outer House the deadly feuds in which their fierce and implacable ancestors burned mansions and drove off cattle. The day of those disputes passed, and was followed by the unspotted sunshine of a prosperous railroad epoch. By the time the country was overrun with rails, the Court of Session Act of 1868 made things lively for a space with the worries of technicalities and construction, to be followed ten years later by the litigation incident to the ruin of the City of Glasgow Bank.

Fluctuations occur, no doubt, in legal as in other business. Economists have been in use to draw therefrom conclusions which do not seem to have much foundation. There appears to be reason to anticipate an increase of legal business as well from the arrest of prosperity as from its flow.[1] And while the amount of work in the Court has fluctuated at certain periods, as a mass it has remained almost stationary for fifty years, notwithstanding that litigation has grown enormously in mercantile and industrial

[1] By the Law Agents' Act of 1873 the profession has been advanced in public favour. Much still remains to be done for legal education and professional integrity. It is satisfactory to find these important objects receiving the attention of the Incorporated Society of Law Agents, a critical body, distinct from the Edinburgh corporations, founded in 1884.

transactions. For the despatch of this business the means have been multiplied and improved. The jurisdiction of the Sheriff Courts has been extended.[1] The intelligence and activity of Sheriff Court practitioners are now able to cope with questions which fifty years ago no one would have dreamt of raising in any other tribunal than the Court of Session. That jurisdiction, now fully operative, has naturally diverted a large volume of work from the metropolitan forum.

The question of extending the Sheriff's jurisdiction was complicated by the difficulty of harmonising general and particular jurisdictions, for it was obviously inexpedient that similar questions should be raised in two adjoining counties, and that the Sheriff in one should decide one way and the Sheriff in the other should do the reverse. It was an anomaly that a judge who could dispose of £10,000 of moveables should be held incapable of dealing with a farmer's midden! But there was undoubtedly urgent call for extension, since small proprietors in country villages could not possibly risk the expense of going to Edinburgh for the vindication of their kail-yairds. A bill promoted by Mr. Caird and Mr. M'Kie, which was discussed and in the main approved by the legal corporations and county meetings in 1861, was designed to afford this relief.

[1] The extension of their civil jurisdiction commences with the series of Acts beginning in 1837. The Acts of 1853 and 1876 made improvements upon procedure. The leading Act in widening powers was that of 1877. By it the Sheriff now entertains actions of declarator and other peculiar forms of action relating to heritage where the capital value of the land does not exceed £1000 or its annual value is under £50. Further, the Act of 1877 contains a provision of great utility in regard to maritime cases arising in seaboard towns by which, subject to the arrestment of the vessel, the owner or master may be sued before the Sheriff. The Small Debt Act of 1837 has been improved by the recent Act of 1889. There used to be and still is a great deal of dissatisfied talk about the impossibility of appeal from the Small Debt Court. Cay (1813), who was 46 years Sheriff of Linlithgow, having succeeded the first Lord Mackenzie, and a friend of J. G. Lockhart, spoke contemptuously of small debt decisions as 200 snap-shot decisions in a day. Mr. Cay died in 1868.

The extension of the Sheriff's jurisdiction has affected Glasgow more than any other part of Scotland, because the greater part of the mercantile business of the country is done in that city. The number of cases in its Sheriff Court has always been large and has afforded occupation to a considerable judicial staff there—a staff which, like the Scotch equipment generally, is ridiculously inadequate and underpaid. The Glasgow writers have been vigorous and incessant in proclaiming their wants both to Government and to the public. They have been an aggressive and reforming body of men. There has among them grown up a school, I shall not say of jurists, but of practitioners distinct from the van of Scottish lawyers. It is neither unkind nor unjust to say that their main object has been the transference of the Supreme Courts of the country from Edinburgh to Glasgow.[1]

But it is beyond the scope of this sketch to enter upon smaller details of change in procedure, and I shall have to resume this thread in speaking of Inglis as a legal reformer. So thorough, however, has been the reformation or alteration that has been carried out that in pleading it is hardly possible nowadays to refer with effect to any decision pronounced earlier than the later years of Dunlop.

[1] How far the majority are serious in the pursuit of this chimera it is difficult to say; but every now and then this fever of reform has recurred since Mr. Burns, a writer, thirty or forty years ago propounded these propositions: "(1) That the duties of the Sheriff of Lanarkshire are 'far more onerous and far more important than the duties of a Lord Ordinary;' (2) that the salary of the Sheriff should be augmented in proportion to such increased responsibility; (3) that the present Court should be replaced by two (or, as elsewhere stated, *three*) judges, superior in position and in point of emolument to a Lord Ordinary of the Court of Session; (4) that these judges are to hold sittings jointly for the purpose of reviewing the judgments of the Sheriff-Substitutes, whose salaries are to be increased in a corresponding ratio; and (5) that the decision of the Appeal Court is to be final."

II.—Parentage.

In bringing about a new day, the late Lord President was a chief factor at the bar and on the bench. John Inglis emerged into public view in the middle of the transition period of which I have been speaking. He was duly impressed by it. He had watched the career of Jeffrey, who had recently taken his seat upon the bench. He remembered when that renowned critic and respectable lawyer propounded the Reform Bills that enfranchised the country in 1831 and 1832. He had not been an unmoved spectator of the months of restless and tragic uncertainty, of vague and portentous prospect, by which those measures had been heralded—the fears of public fury, of fire and of bloodshed, the warnings of the thoughtful, the maledictions of the fierce, and the anticipations of bitter struggle betwixt favoured sections of the community and a defiant, jubilant populace, whose emancipation the sun of freedom had begun to cheer.[1] If I say it was an heroic age, the expression is doubtless figurative, but that great period of great change will be found to endure the application of almost any metaphor.

[1] See Cockburn's "Memorials."

Born on 21st August, 1810, the fourth son of his father, John Inglis, like so many of our best lawyers,[1] sprang from the manse, being the son of the Rev. Dr. John Inglis, one of the ministers of Old Greyfriars, Edinburgh. He was born in George Square in that city, when George Square had no rivals on the banks of the Water of Leith. His mother, Maria Moxham Passmore, the daughter of a Devonshire gentleman, Abraham Passmore, Esq., of Rolle Farm, brought English blood into a family the name of which is said to indicate a remote English origin. This lady contributed to her son's power by imparting to his accent a purity scarcely attainable in his own country at that time, and she experienced the rarest and purest of felicities in witnessing the greatness of his triumphs. She lived to rejoice as only a mother can at the distinctions that were heaped upon him. Mrs. Inglis died in 1864, at the age of eighty-seven years.

The Rev. Harry Inglis, Inglis's grandfather, was minister of Forteviot in Perthshire.[2] He was ordained minister of Forteviot in 1752, and died in 1799, aged seventy-five years, in the forty-eighth year of his ministry. The Rev. Dr. John Inglis, the Lord President's father, was ordained minister of Tibbermore in Perthshire in 1788. In 1799, a year after his marriage, he was translated to Edinburgh, succeeding Principal Robertson as colleague of the celebrated Dr. Erskine in Old Greyfriars. From him Dr. Inglis had the misfortune to differ in church politics, but for all that these two men preserved a warm and sincere admiration for each other till the end.

[1] Lord President Robertson, Lord Watson, Lord Rutherfurd Clark, Lord Advocate Balfour, and the Solicitor (Asher) are notable instances in this generation. They are respectively the sons of former ministers of Forteviot in Perth, Covington in Lanark, St. Andrew's in Edinburgh, Clackmannan in Clackmannan, and Inveravon in Banffshires.

[2] It is a singular coincidence that the son of a successor in the incumbency of this parish should also have attained the dignity of Lord Justice-General of Scotland.

As to Dr. Inglis some details may be allowed. He was a Dean of the Chapel Royal, and leader of the Moderate Party in a disturbed era of ecclesiastical history. He had a great reputation in his day, more even as a man of wise counsel than as a preacher, and that at a time when the country was emerging from bigotry and intolerance. His characteristics are graphically hit off by Lockhart. "In the arrangement of his subject," he says, "and the whole strain of his language he is very little different from the best of our own High Church preachers in England. Dr. Inglis might preach the sermon I heard in any cathedral in England, and would not only impress his audience with admiration of his talents, but carry along with him in the whole turn of his thoughts the perfect intelligence of their sympathies."

But whatever his personal merits as a man and a homilist—and he is said to have been one of the three best preachers of his day, when pulpit eloquence was more fiery than it is now—it is certain that he was a model pastor. He was beloved by the poor, with many of whom, in Edinburgh and in the neighbourhood of his country residences, he was delightfully intimate. His manner to them never lost that charm of country homeliness and affability which was partly natural and partly acquired—acquired amid the rusticity of Tibbermore. Nor was the old man less beloved in the higher circles where he moved. His demeanour was always easy, courteous, and amiable, and he was a great favourite amongst the laity on account of his sound sense and enlightened conversation.

When Dr. Inglis came to Edinburgh, like many men in the first flush of metropolitan activity, he thought it part of his duty, as indeed it was, to visit every family in his parish. The parishes in the Old Town, it is well known, furnished but a small proportion of the seatholders in the

parish churches, and in Old Greyfriars particularly not more than from ten to twenty families resident in the parish were in the habit of attending on Dr. Inglis's ministrations. The Cowgate, in an earlier age inhabited by the nobility, was beginning to be peopled by Irish labourers and paupers. It formed a considerable section of his parish, and Dr. Inglis's reception in the noxious closes and loathsome garrets of that thoroughfare on his first parochial visitation was not such as to induce him to repeat the experiment. Thenceforward he confined his visits to his own flock, scattered within the then workable radius of the city, and this duty—so necessary to the cohesion and prosperity of a congregation—he performed down to the last year of his life. He visited every family before the sacrament of May, 1833, when he was 70 years of age, and was welcomed by young and old, rich and poor. The pernicious notion had not yet sprung up that the members of wealthy or fashionable congregations do not wish or require individual pastoral attention.

While unconnected with the mass of the local population as their weekly instructor, he was nevertheless sedulous in investigating their requirements, and in supplying them as far as he could. He perceived that a parish church for the well-to-do was a mockery—that an Established Church, in order to justify its official existence, must reach the hungry and the degraded. He deemed it a scandal that the industrious poor should be excluded from social devotion because they were ill-clad or unable to pay for seats, and in 1830 he obtained the consent of the magistrates to allocate sittings in his own church for their accommodation, at the same time framing an encouraging address to the parishioners, a copy of which he left in every house. Three years later he instituted a corps of six probationers who worked six divisions of the parish. The

work thus begun had commenced to bear a little fruit when Dr. Inglis was cut off.

He was besides an active worker in other departments of Christian activity. It was he who devised and inaugurated the Church's scheme for an Indian mission. Dr. Brunton said of him in this connection, "Let this one fact show how little he was a slave to the manners of party as he has sometimes been most ungenerously misrepresented to have been. Is this the thought of a man careless for the glory of God and anxious only for his worldly interests? Of this scheme he was not anxious to express even the credit to himself; and in its management I rejoice that I was myself a member of that little band, selected from those whom the world thought to be at variance, but in which I witnessed nothing but the utmost confidence and equal zeal for the great end in view. In that band his master mind, by its perspicuity, rejected every needless detail; while his habits of business left his associates nothing to do but to acquiesce in his suggestions. What better memorial could we desire of his truly Christian mind than to desire that that scheme should ever remain associated with his name, and that India through its means should be brought to the knowledge and love of the gospel?" I fear few missionaries or churchmen who speak of or for India think of good old Dr. Inglis.

But his contemporary fame rested chiefly on his policy and power as a churchman. He engaged prominently in many of the stirring debates of that time. Amongst his most memorable performances was the part he took, unfortunately on the wrong side, in what Cockburn calls the most important Scotch debate he had ever known—the debate in the year 1806, two years after Dr. Inglis had been Moderator, concerning the appointment of John Leslie to the chair of Mathematics, wherein were re-

vealed all the worst passions and prejudices of that narrow time. Several legal spears were put in rest for the joust. Regarding it Cockburn writes[1]: "It must have given the Lord President Campbell, who was a liberal man, some pain to quibble, and with little of his usual acuteness, in defence of a prosecution for which he could have had no taste. He suffered severely for his imprudence from Lauderdale, whose appetite was evidently whetted by catching a judge rash enough to expose himself on equal terms in public debate. Adam Gillies and Henry Erskine were strong and useful on the just side, but neither of them equal to James Moncreiff, who on this occasion displayed for the first time the vigorous argumentative powers which made him afterwards the most habitually useful layman in the Assembly Dr. John Inglis, one of the deepest in the plot, was as good as ingenious metaphysics can ever be in a popular assembly."

It will be remembered that there was a conspiracy between the parsons and certain bigots to oust Leslie from the chair, and to install in it the Rev. Dr. Thomas MacKnight, whose very name, save that it was his father's, must have sunk into oblivion. Leslie's only fault was that he had inserted a note in a book to the effect that David Hume[2] was the first who had treated Causation in a truly philosophical manner, and that his essay on Necessary Connection seemed a model of clear and accurate reasoning. The reverend wiseacres deemed this reference to Hume sufficient to taint Leslie's book, and the book the man. Cockburn adds in regard to Inglis that he was a most sagacious person, whose only great blunder—"but to be

[1] "Memorials," ii., 174.

[2] Not he, of course, who was a law professor from 1786 to 1822, Baron of Exchequer, and author of an able and luminous opinion on the Act of Ratification of 1621, which figured conspicuously in the first stage of university reform, as to which see page 172.

sure that *was* one"—was Leslie's case. "A powerful "debater," he adds, "and the only leader, so far as I know, of his party whose opinions were enlarging with the times."

Lockhart also tells us a little about the father which may be interesting to the admirers of the son. He says, in "Peter's Letters to his Kinsfolk," "The doctor is an ungainly figure of a man at first sight, but on looking a little, one easily observes in him the marks of good breeding and strong intellect. He does not appear to speak under the same violent impulses of personal will which characterise the baronet's (Sir Henry Moncreiff's) eloquence, but he is quite as logical in his reasoning, and perhaps still more dexterous in the way in which he brings his arguments to bear upon the conclusion to which he would conduct his hearers. Even his voice, when he touches upon any topic of feeling, reveals something totally unexpected, its harshest notes being, as it were, softened and deepened into a mysterious sort of tremor which is irresistibly impressive." As regards his learning it may be enough to say that he wrote deeply and logically upon the evidences of Christianity, upon establishments, and upon other kindred themes.

The loss of such a consistent and redoubtable champion of the Church was regarded as well nigh irreparable. He had indeed displayed constant attention to her general concerns. In all important proceedings he was a leader and counsellor to those with whom he acted. He had a profound acquaintance with Church history and ecclesiastical law, and by a calm temper, business talents, and practical sense, and particularly by his habitual self-possession, which distinguished him as much as his lawyer son, he was enabled to guide and control the deliberative assemblies in which he engaged. He was a fluent and argumentative speaker. His eloquence

was precisely of the type developed to such perfection in his son. His only object was to convince by the most simple and direct means. Reason was his only weapon, and so well satisfied was he with it that he sought no aid from ingenuity or fancy. Rhetorical device, wit, jocularity, raillery, sarcasm, were all alike alien to the cast of his mind. His argument being invariably vigorous, and his language truly eloquent—because fitting, simple, and nervous—he always commanded attention. It ought also to be added that, although he spoke and wrote, and probably plotted, against Leslie, yet, unlike the majority of contemporary ecclesiastics, his blood and charity did not seem to dry up at maturity, or even with age, and that he showed himself in every respect a worthy successor of the historian Robertson, and an equally worthy predecessor of the innovator Lee, in the temple where David Hume was a regular hearer. Cockburn notes this peculiarity in clerical experience, and says Dr. Inglis grew more liberal in theology as he advanced in years.

Lastly, Dr. Inglis was deemed sufficiently great in his day to have his portrait painted by Syme, and engraved and circulated throughout the country as that of one of the best of her sons. An oil painting of him presented by his son, the subject of this memoir, hangs in the Scottish National Portrait Gallery in Edinburgh. The painter's name is unknown. Whoever looks upon that picture may trace a certain resemblance between the old divine and his lawyer son, and the likeness is even closer in the case of the engraving.

Dr. Inglis died of a gastric disorder on Thursday, 2nd January, 1834, in the seventy-second year of his age, and in the forty-eighth of his ministry. His death called forth lavish tokens of esteem and veneration from numerous opposite quarters. For instance, the Church

preachers and probationers, a body of young men, met in the College on the Monday after his death, and passed a resolution stating that they regarded as a public calamity the death of a man so eminent by his talents and integrity, more especially at a time when the Church stood so much in need of his valuable services. His funeral presented nearly as imposing a spectacle as did that of the President. It was attended by members of the College of Justice and of the Town Council, and by the elders as well as ministers of the city churches. From the gate of the burying-ground, where Calton Hill slopes down to Holyrood, as far as the grave, the coffin was carried between lines of solemn students and preachers. Funeral sermons were preached on the following day in Old Greyfriars in presence of the Magistrates and Council, by two eminent ministers of the day, Dr. Brunton[1] and Dr. Gordon. In 1836 Dr. Brunton had the satisfaction of intimating to the Presbytery of Edinburgh that forty licentiates of the Church had procured a bust of Dr. Inglis which they begged the Presbytery to accept as that of a truly catholic Christian and champion of the Church in its evil days.

By the lady before mentioned, whom he married in 1798, Dr. Inglis had four sons and a daughter. The daughter was married to a son of Sir Hector Mackenzie of Gairloch, Bart., and is still alive. Of his sons, Harry Maxwell, born in 1800, became a Writer to the Signet, and acted as agent in his brother's memorable campaign in Orkney in 1852, and by his influence was appointed Crown agent, and then Principal Clerk of Session in the Second Division, which latter post he held until his death in the year 1883.[2] He was a man with a fair share

[1] Brunton was Professor of Hebrew and joint-librarian of the University along with Dr. Duncan, and was superannuated in 1847.

[2] I may be allowed one note about the clerks, whose number and emoluments are being steadily diminished by the centralising

of the family talent, but of too retiring a disposition to give much evidence of it, and by the present and past generations is only remembered as a lethargic old gentleman who filled his place in the Second Division with becoming regularity. He was a director of the Bank of Scotland for many years. Between him and John the fraternal bond was strengthened by mutual good offices and by a close intimacy which subsisted until death parted them. Dr. Inglis's second son was an officer in the Black Watch, and he died in 1878 in his seventy-fifth year. The third son, William Bryce Inglis, died young.

parsimony of the Exchequer. In Mr. Harry Inglis's day the clerks' tables in the Divisions, sanctified, it will be remembered, by Sir Walter Scott, who once sat there, were occupied by four of the most characteristic featured men the public may ever see. They were Mr. Inglis, Mr. Archie Broun, Mr. Macritchie, and Mr. Ramsay. The strong Gorgon faces of the latter brace were just perceptible behind ramparts of linen after the old style. Mr. Ramsay, Mr. Inglis's assistant, used to sleep habitually, but he did it most respectfully—with his head bolt upright, and his eyes closed as if studying the argument. In 1856, Mr. Broun, whose principal achievement was a collection of Justiciary reports, succeeded Mr. Alexander Currie, who had been Sheriff of Banff and a great writer of pleadings. Mr. Broun, who was called in 1838, retired in 1885.

III.—School and College.

As I have said, John was the fourth son. "Young John Inglis," says a recent writer, "was thus born and bred in a home in which the past history and present politics of the Church were probably the main subjects of conversation."[1] I think this is a fair conjecture. While he had the inestimable advantage of hearing other and less insular themes discussed by intelligent and distinguished men at his father's table, it is probable that the struggles and conflicts, the strength and the feebleness of the Church bulked largely in the family conversation, and coloured the subsequent conduct of one of her most devoted sons. I have mentioned the traits Inglis derived from his mother. To his father[2] we trace his patriotism, his devotion to Presbyterianism, his powers of reasoning, and his apt and lucid style, no less than the massive features which as clearly bespoke his intellectuality.

The salient features of Inglis's academic career may be traced in brief compass. He seems to have done a reasonable amount of work at school and at college, and in such manner that in after life he was able

[1] Sheriff Mackay.

[2] See Inglis's testimony to the excellence of his father's example, *post*, p. 51.

to cite an apt maxim from the classics or a line of Theognis as occasion required. He was educated at the High School of Edinburgh, which had then barely passed the heyday of its fame. Probably no other national school in Scotland possesses such a brilliant record as that academy. It has supplied the Scottish bench with judges innumerable. Neaves, Cockburn, Rutherfurd, and Jeffrey; Lord Justice-Clerks Hope and Moncreiff; Wedderburn, the Erskines, and Brougham are typical of the greatness of its alumni in the past. Carson, an excellent classical scholar, was rector.[1] One of Inglis's schoolfellows was Dr. John Brown, the genial biographer of "Rab," and in one of his classes he sat on the same form with Lord Moncreiff, and also with Sir Douglas Maclagan, now a vigorous octogenarian, and author of many racy speeches and songs, one of which latter is named "Chancellor Inglis." He went to the High School in October, 1819.

The minute-book of the class club containing the songs

[1] I here quote from one of the High School poems, by George M'Crie, referred to on p. 32:—

And now in noisy hubbub we are set—
Mackay* has blown the whistle—all is still;
He strides the floor (methinks I see him yet),
Active and fresh as from some Highland hill;
No pale-faced pedagogue in deshabille
But brusque as some fox-hunting squire of grace;
Well did he put us through our classic drill:
And woe to him—down went he to the *base*—
Who dared to trip in gender, number, or in case!

Thrice hail!—all hail to Carson, heavenly man!
Beloved, revered, more dear than all the dead!
Plain Socrates, with visage of Japan,
The deep authoritative voice of dread;
And when he placed his hand upon our head,
The loving smile that spoke a father's heart;
The solemn-pacing and reflective tread—
This is thy image which can ne'er depart,
O loved where once thou wert, and blest where now thou art!

* Mackay began life early. At fifteen he was entrusted with a parish school in his native county; he was assistant schoolmaster at Dalmeny for three years; superintended his Classical Academy in the New Town for fourteen years; was a High School master for twenty-three years—a teaching life of forty years. His own classical master, Bryce, in 1854, when nearly ninety years of age, saw one of his sons Principal of Belfast Institution, and other two sons teachers in the High Schools of Edinburgh and Glasgow.

and speeches, and the album with the portraits of the class, are precious relics to the few survivors of the 280 whom Mackay taught, and preserve some items of interest to lawyers and High School boys. The club was founded in 1833, and was a convivial one in the sense that its chief object was to keep up school recollections. This purpose was served, for the most part, at the annual dinner. A company varying in number from a score to four or five—(the membership has shrunk alarmingly in recent years)—met around the festive board and revived old memories and sang old songs. Inglis became a member of this club—the meetings of which were at that time occasionally held in Parliament House—on 24th January, 1835, soon after his return from Oxford, and on the same day as Thomas Constable. He continued a member down to the last, but, through pressure of business engagements, was present at only three of its fifty-five dinners, namely, in 1835, 1836, and 1839. On the initiative of Lord Moncreiff he was specially asked to be present at the 1881 dinner and to preside at it, but he felt constrained to decline owing to a temporary uncertainty of health. He was preses of the club in 1836 and 1842, but at the dinner of the latter year he found it impossible to gratify his class-mates by attending, "being under promise to go on with some heavy work in Court to-morrow, for which I am not yet prepared." At the dinner of 1836 he passed a eulogium on the character of Mackay as a successful champion of classical education.

In short, while Inglis never lost his keen interest in the fate of his schoolfellows, circumstances prevented him from joining them at these annual gatherings after 1839. There was one reunion which he was very much disappointed at being unable to attend. This was a meeting in June, 1886, of the surviving members of the Class Club at Dolphinton, the residence of John Ord Mackenzie, one of these inte-

resting ancients. Lord Moncreiff was there, but the Lord President was not allowed at that time to spend a night from home. "The weather has been fine since we arrived and promises to be so to-morrow, and this high country could not have been seen to better advantage by those who first met as schoolboys together at the old High School of Edinburgh in 1819. June 27." The following is the entry by Sir Douglas Maclagan:—"The day was magnificent—the sun warm, the air cool. The party in the early day were variously distributed at church and chapel, a Presbyterian party being at communion in the parish church. In the afternoon a party of twelve ascended the Black Hill and enjoyed the lovely view."[1]

A word as to the "gytes'" or "gaits'" class of Inglis's year. The gytes were freshmen, or fresh boys, and solicitous fathers fixed upon the master they approved most in selecting the year when the school life of their sons was to begin, it being the duty of that master, according to the system then followed, to carry his boys through the first four years of the curriculum. Carson was the master selected for Inglis, but he was almost immediately promoted to the rectorship through Pillans becoming Professor of Humanity, and Benjamin Mackay came in his place and took Inglis up as a second year's boy. Inglis again came into the hands of Carson as rector.

Mackay's class was a large one, and, despite the severity and monotony of the educational methods of those days, was loyal and affectionate to Benjie. Besides those already named, it included some who were afterwards men of exceptional vigour and longevity. There are still a good half-dozen "boys" of the age of eighty who quaff an annual bumper to Mackay's memory at the dinner of the Class

[1] From the Dolphinton "Omnibus," kept by the genial host, the entry being signed by the whole party.

Club. Mackay himself was present at many of these meetings until 1885, when failing health compelled him to refrain. The last time they sat down the company comprised Christopher Douglas—whose frame, made vigorous by handball and "clackin," still, at fourscore and some years, disdains the superfluity of an overcoat—John Ord Mackenzie of Dolphinton, Dr. Andrew Bonar, and "Provident Jamie"—James Watson of the Scottish Provident, a comparatively late addition to the list of members. Other class-mates were James Jobson Dickson, a son of the minister of St. Cuthbert's before the days of Dr. Paul; Alexander Dunsmure of Glenbruach, a Leith merchant; James Duncan, the father of Dr. John, the surgeon; William Duncan of Danevale Park; William Henderson, Professor of Pathology; Blackwood, a mercer; Dean of Guild Lorimer, who was killed in the performance of a public duty when the Theatre Royal was burnt some years ago; and Dr. Alexander Peddie, a physician, whom Mackay brought with him from his private academy. A very fair representative body of men; and, says Sir Douglas, not the least distinguished and kindly of the number, it was always a thought that consoled their declining years that none of them had been hanged!

As regards Inglis's school work, we have no record of brilliant performances. He was not dux of the whole school, like his successor Lord President Robertson, but only of a class, as we shall see. An old clergyman who said he sat on the same form with him, and who died a week after his school-mate, declared "there was nothing at all remarkable about the laddie."[1] But later

[1] The Rev. Mr. Kidd, parish minister of Alexandria, who was very proud when he told his co-presbyters that he had been visiting his friend the Lord President. Mr. Kidd may have been a schoolfellow, but he was not a member of Mackay's class from 1819 to 1823.

days often show how little trust need be placed in a school record as the index of a successful career. Many things, it is known, may incapacitate a brilliant boy for business; his nature may change, or instead of continuing his upward flight he may in despair sink among the keen, the shrewd, the unscrupulous, and the vulgar. Cockburn tells us that only two notable boys at the High School in his time attained eminence in after life—the gentle Horner and the powerful Brougham. Cockburn himself was a kind of booby, and (possibly owing to that fact) until his last day had a distrust of duxes. And it may, by the way, be remarked that the mental phenomena which struck Cockburn so forcibly in the beginning of this century are not less remarkable now, especially in the congested ranks and luxuriant intellect of the bar. The brightest luminaries of the schools are often relegated to the oak benches of the Hall; and that, too, when misfortune is none of their own making or deserving.

Be that as it may, it seems that at the High School Inglis was neither a prodigy nor a drag. Latin was the principal subject studied. In Gordon of Rothiemay's Bird's-eye View the school is called "The Latin Schoole." Lord Rutherfurd, who was Latin dux in 1805, said, "We had nothing but Latin, such as we had it." They had no Greek, and it was considered a great thing to be able to construe one or two of Æsop's Fables, and perhaps a few lines of Theocritus or Tyrtæus. Nor had they mathematics or modern languages. The curriculum had expanded somewhat by Inglis's time, and he learned both Greek and mathematics, but Latin was still the staple subject of study. At the dinner of Mackay's Class Club in 1865, the Lord Advocate (Moncreiff), in proposing "Prosperity to the Club," mentioned that Colquhoun — Colquhoun of

Clathick, dux the first year, who did not attend the High School any longer, and afterwards entered the diplomatic service—George Moffat (who died in America in 1860), John Inglis, and Andrew Bonar were the four duxes of Carson's and Mackay's classes from 1819 to 1823. Inglis therefore figured pretty high in a class which was large, and did his work well, although as a pupil he was not to be compared with Bonar, the contemporaneous dux of the Rector's class, who ultimately attained the dignity of Moderator of the Free Church. Bonar died a year and a-half after Inglis. Inglis was dux of his class in his third year, that is in 1822, the year of King George's visit; and when the school broke up a fortnight earlier on account of that event (for which, by the way, Hope, then President, drilled his company of volunteers on a muddy parade now forming the central gardens in Queen Street) the presiding magistrate, Bailie Blackwood, who had a son of his own on the same benches, presented Inglis with one of the silk scarves which the boys were expected to wear in honour of the king. In short, Inglis appears to have been an ordinary well-doing boy, not conspicuous either in the class or on the field, and he remained at the school until the autumn of 1824. Athletics, as we know them, were ignored by the boys of that day. There was little or no scope for distinction in chasing each other about the closes of the old town; but I am told by one of them that Lord Moncreiff and Sir Douglas Maclagan were swift as deer when they played hounds and hares![1]

[1] The spirit of their pastimes is very well caught in a poem by George M'Crie, Original Secession minister at Clola, Aberdeenshire, who died in 1878, read at a meeting of the club in February, 1866:—

> Oh, sacred building! and thrice sacred Yards!
> Where dreaming boyhood spent the happiest years,
> And Age, though wise, shall bend its last regards,
> With lingering love and unavailing tears;

Inglis was in 1825 transferred from Edinburgh High School to Glasgow University, to which a succession of brilliant philosophers had, it is said, attracted students from all parts of the country. The western University was also, it seems, distinguished for devotion to classics.

Time, as it flies, your very gates endears,
Where Brown of old displayed his jib and tarts.
His placid form before our eye appears—
Presiding in white apron at his marts—
And lives, immortal pieman, in our hearts!

Yes; and his den mysterious in the Wynd,
Down which our feet, as to a darksome mine
Of pastries, by your perilous stairs declined,
Is sacred—sacred as a sea-god's shrine!
Dear old High School, for thou art all divine!
Hail to the Pillars! where we jinked of old—
Our latest refuge when pursued was thine:
Now, when near half a century has been told,
We come to you again, and in our arms enfold.

What sound was that which thundered in mine ear?
I heard, and boyhood rushed through every vein;
I saw the football flying to the sphere,
I hear it bounding on the yards again:
Now comes the rush, the shouting, and the strain,
The shin's disaster, and the answering wail.
Blest he who caught the ball from all the train,
Led off the van, pursued its muddy trail,
And, victor, drove the bladder thundering to the Hale!

But woe the day when some adventurous kick
Sent it careering o'er the southern wall;
Need then for those who knew the bolder trick
To climb the rampart at the general call.
Perched on the parapet, huzza'd by all,
With balanced care, their perilous way they steer;
But, disappearing, soon the glorious ball
Mounts once again—to many a deafening cheer—
Up from that chaos dread which lay beyond the sphere!

Great was the din, and dense the crowd on wing,
At pastimes various as the tastes incline;
Some chuck the marbles at a tempting ring,
Or litigations hold at holie mine;
Some range their taller comrades in a line,
And, frog-like, clear the heads of all the crew;
The champion hand at Goosie (held divine)
Through all his central troop like lightning flew.—
So with the major part; and yet there were a few

Reflective, wise, who walked in studious pairs,
Arms over shoulders in affection slung;
Our judges now, or occupants of chairs,
Or mighty bards whose harps have since been strung:

Inglis, addressing the students as Lord Rector in 1866, bore testimony to its pre-eminence in this department. "I can never forget," he said, "with what delight I listened to the prelections of Sandford (Sir Daniel Sandford), whose reading of Greek poetry conveyed to the hearers the highest intellectual pleasure." I do not think it can be accurately said that the living voice of his teachers in Glasgow wakened his intellect or his taste for study, but that it kindled his appreciative power in the matter of taste is, I think, very likely. Sandford had a great reputation, and when he died in 1838 he was honoured with a public funeral to the island of Bute. Inglis probably studied at Glasgow for the purpose of gaining the Snell Exhibition, which was of the annual value of £130, and tenable at the holder's option for ten years. While in Glasgow he lived with Professor Macfarlane. No prize-lists were issued prior to 1829, so that I have been unable to ascertain what position he took in the classes he attended.[1]

Having after four sessions' work gained the Snell Exhi-

For men the greatest who have writ or sung,
Whose brows have worn or wear the immortal wreath,
Trod the old High School yards when they were young—
Living, they bless them with their latest breath,
Or dead, have made them now illustrious by their death.

In another poem, read at the dinner of 1873, when Lord Moncreiff was present, the same gentleman, in apostrophising the shade of Carson, says:—

How hadst thou smiled to see the very same
Who sat as Duxes on thy wooden forms
Lord President near thee, and Lord Justice-Clerk;
Yet wept to gaze upon their heads, now crowned
With venerable wigs, recalling days
When these were bright with thee, with radiant hair!

For full text of the poem, see Appendix A.

[1] The entry in the Matriculation Book of Glasgow University for session 1825 under the heading, "Nomina discipulorum in Classe Græca qui sub præsidio Danielis K. Sandford, Arm., A.M. Oxon., Professoris, hoc anno vel Academiam intrârunt, vel quorum nomina nondum inscripta sunt," is as follows:—"Joannes Inglis, fil. nat. min. viri Reverendi Joannis, D.D., in com. de Edinburgh." The name of the student is written by himself.

bition,[1] the benefit of which was also at different times enjoyed by Adam Smith, Sir William Hamilton, John Gibson Lockhart, Archbishop Tait, and Principal Shairp of St. Andrews, Inglis passed from Glasgow to Oxford. It has been very well said that "it would have gratified that pious founder (Mr. Snell) could he have known that amongst the young Scots who were to profit by his bounty was to be one of the successors of Lord Stair, gratitude for whose instruction as a professor led to the institution of his bursaries."[2]

Inglis matriculated in 1830 and studied at Balliol. He did not obtain high honours there, but his ability in argument is said to have been acknowledged amongst his contemporaries. He was placed in the third class in the final classical school in 1833, two years after Gladstone and the same year as Lord Selborne. As he probably entered with more zest into the social than the learned life of Oxford, he had an average experience alike of its activity and frivolity. His appearance at this period is said to have been awkward for a Scotsman of that day. Just let loose from his own plain, honest country, he was by no means the type of man to attract any of the academic cliques which were dominated to even a greater extent than they are now by finery in clothes or escutcheons. Tall and slender, he was characterised by a certain scholarly deliberateness of gait, and his solid features, somewhat sallow in hue, were redeemed from plainness by the bright glance of an observant, intellectual eye. There was then, as there always had been, a colony of Scottish

[1] Excerpt from minute of Faculty of Glasgow College, of date 6th Nov., 1828:—"This being the meeting appointed for the election of a Balliol College Exhibitioner in room of John Campbell, A.M., whose time has expired, the question was put, 'Who shall be nominated to the said exhibition?' when John Inglis, son of the Rev. John Inglis, one of the ministers of Edinburgh, was duly elected."

[2] Sheriff Mackay, in "Blackwood" for October, 1891.

students at Oxford, but it was a small and scattered colony and little intercourse obtained amongst its members, except at what may be called weekly symposia organised by the more jovial spirits. Of intercourse with the gold tufts and silk gowns, whose habits were anything but studious, he had none. Of his acquaintances at Oxford one had been a High School pupil, namely, a Francis John Gardner, who died at Balliol in 1831.

The general tone of Oxford at that time was not specially elevating to a young man newly liberated from the narrow customs and narrower theology of Scotland—from parental control and scholastic restraint. And it is believed that Inglis, in his hours of idleness amid the glades and groves of Berks, and the architecture and history of Oxford, extended his acquaintance with the characters and contradictions, the weaknesses and the aspirations of men—that he received much good, and perhaps a little ill, from contact with the varied elements he found in this classic spot; and withal equipping his understanding with new experience and new knowledge.

At Oxford also Inglis is said to have acquired an eclectic knowledge of ancient and modern literature which, by the aid of a retentive memory, linked him with the intellectual masterpieces of the past, especially the historical, metaphysical, and dramatic.[1] He had not a natural turn for strict mathematics; and although in after life he was ready, comprehensive, and ingenious in accumulating proofs and analogies, his college days were devoted more to the charms of history and literature than to mathematical pursuits. An inquisitive mind led him into repeated walks in the fields of philosophy and metaphysics, and in these departments, for which he had a singular aptitude, he knew well what he knew at all. But, all the

[1] Sheriff Campbell Smith.

same, he does not seem to have carried into his future life any great taste either for intellectual work other than was involved in his ordinary duties or for intellectual companionship.

In the pursuits I have thus generally adverted to, and in the society of a few friends, Inglis spent his time at the English University. His sojourn there produced no very distinct or perceptible effect upon him. More especially one looks in vain—chiefly, perhaps, because nearly all his contemporaries have left us, and there is no other source of information—for the indications of that settled purpose and unshaken determination which often mark the college career of our first minds. It is satisfactory, however, to note that he was unimpressionable to what has been called the English veneer. Like Jeffrey, most of the Scotch youths of that day who had gone to England for education came back metamorphosed. Before leaving their hills and glens and quaint towns they had been content with their native speech. They returned from Oxford quite changed.[1] In this particular, what a contrast Jeffrey presented to his patron—for fear of whom he abstained from voting in favour of Erskine when Erskine was turned out of their chair by the Faculty—old Glenlee, the first lawyer-mathematician in a philosophic time, who acquired German in his old age, who knew Spanish, French, and Italian, and who yet never used an English word when a Scots one served his turn. How neatly could he hammer a spark from his own peculiar anvil![2]

[1] Lord Holland declared, after Jeffrey's sojourn in Oxford, that, although he had lost the broad Scotch, he had only gained the narrow English. Cockburn's "Life of Jeffrey," p. 44.

[2] Cockburn was partial to broad Scotch, or rather the Court Scotch of Sir Walter Scott and his contemporaries. One day he was in an old book shop and found himself without change, but seeing a Clerk of Court at the window, he went out and asked, "Can ye lend

Inglis was one of the few men Oxford did not alter in this respect.[1] He retained, not the broad Scotch accent, for, thanks to his mother, he never had it, but a certain richness of enunciation, unrestrained by assumed smartness or foreign twist of any kind. No man could have made more of peculiarity than he, but, while he avoided the Doric of John Clerk and Sir George Deas, and even the milder mixture of some of their successors or contemporaries — Rutherfurd, Ormidale, or Fraser — he never minced, or walked on tiptoe so to speak, but in argument went forth in the strength and simplicity of his mother tongue, placing his whole foot upon the ground.

His Oxford record was of the stereotyped kind. He graduated B.A. in 1834, and M.A. in 1836. Meanwhile he had been "bringing up" his legal knowledge and furnishing himself with some dialectic weapons for the battle of life. Some at least of the law classes were then taught by able men. One suspects that Inglis, if not at the very outset, at least very soon thereafter, despised the equipment of our University, and mentally resolved that, should the opportunity ever be his, he would endeavour to fit it to modern requirements. What he did in this direction we all know, and I shall have to refer to it in the sequel. In the meantime I have to refer, and in a word, to the contrast which is thrust upon us between the ways of his day and of ours and of a century before either with regard to legal education.

me a bawbee, Mr. M.?" The copper was advanced. Then at a whole Court hearing, which took place a week or so afterwards, in the long corridor — there being no other accommodation at the time — Cockburn scrambled from his seat past the chairs of his brethren and said, "There's your bawbee, Maister M., and mony thanks."

[1] Manor, the friend of Fullerton, Rutherfurd, and Thomas Erskine of Linlathen his cousin-german, and who also was educated at Glasgow and Oxford, refused at the latter to give up the broad sound of the vowels, and he used to repeat with satisfaction the remark of a Norwegian bishop whom he met in Norway when in pursuit of his favourite pastime of fishing, "Te primum Anglorum penitus intellexi." Manor was associated with Rutherfurd in the preparation of "Gawain Douglas his Virgil" for the Bannatyne Club.

Members of the Scots bar in the time of Craig, and for almost two centuries thereafter, repaired for the higher branches of philosophy and the elements of the Roman Law to Paris, where Turnebus—according to J. Scaliger, unicum ornamentum Galliæ nostræ atque adeo totius Europæ—Auratus Lambinus, Ramus, Passerat, Cujacius, margarita jurisconsultorum, and other great men flourished; to Poictiers, to Bruges, to Leyden, and other places in France and the Low Countries. It was an admirable training for the insular minds of our fathers. Few men of any promise or subsequent eminence but in those classic retreats beguiled their severer studies by the cultivation of letters. To this fact is probably due the refined Latinity and rich classical illustration of the older writers in our law. Young Scotch lawyers of their day devoted as many as seven or nine years to foreign travel and study.[1] Sir Robert Spottiswood, for example, spent nine years abroad before he began practice at the Scottish bar.[2] The circumstances of the country did not seem to require a resident faculty of teachers, and as matter of fact our Faculty of Law is of comparatively recent origin. There were no materials for the formation of a Faculty until 1707 and 1709, when the chairs of Public Law and Civil Law were established, the chair of Scots Law following in 1722.

It was the custom, as has been said, to bestow some attention on philosophy and classics during this period of exile. But the main efforts of such students were devoted

[1] The difficulties by which law students were embarrassed at that date are aptly illustrated by the case of Sir Lewis Stuart of Kirkhill, who, after studying civil law in France for four years, found himself so overwhelmed in trying to master the Scotch procedure that he was on the point of leaving the northern bar when he found the aid he wanted in Craig's Treatise. It is remarkable how his experience is repeated in modern times. The successful student often goes into the forum only to see how profound are the depths of his own ignorance.

[2] Life prefixed to Practicks.

to the acquisition of the canon and the civil law from the lips of their great exponents in the Universities and in the Courts. On their return to Scotland these men haunted the "forum" for a year or two. Nowadays a year is considered enough, despite a procedure complicated by a couple of centuries of additional precedents. Then they were admitted advocates upon bills bearing that, after accomplishing certain studies "in literis humanioribus," and "finito cursu philosophiæ" in their domestic college, they had "studyed lawes seven years in France," and "mynded to be profitable instruments in the Common-"wealth."[1]

In Inglis's youth legal education had made a step or two in advance. His views of life, as we have seen, had been broadened by residence at no foreign seat of learning except Oxford, but he must have resided there for more years than were necessary for his degree; and, having studied there and in Glasgow for so long a period, he must have come back to Edinburgh very well qualified at least to note for future use as a reformer the differences and advantages existing in the educational systems of the two countries.

Even if in youth he had been a diligent student of law—which, however, there is little reason to suppose is the fact—he must still have experienced considerable difficulties. The literature of the law was then a mere rivulet compared with the many wide and branching streams into which it has since grown. There were six law chairs, the lectures from which might have been attended, just as at the present time. But attendance upon them, or any of them, involved a laborious winter of note-taking, unaided by a single helpful text-writer except Erskine. Horner's Journal is filled with entries of his attempts to master Scots law and of his failures. The only way to master the law was to get

[1] Pitmeddan MSS.

one of the numerous copies of lecturers' notes in circulation among the profession, or to "bury one's nose in Erskine," as Matthew Ross, Dean of the Faculty, 1808-1823, and whom tradition has dubbed the greatest "doubter" ever at the Scots bar, confesses he did for three years after he passed as advocate. Besides, the academic Faculty of Law was deficient in equipment and in discipline. The chair of Public Law, afterwards so successfully held by James Lorimer, was a mere sinecure in the hands of Robert Hamilton, a Principal Clerk of Session, who was the incumbent from 1796 to 1831. When he died the Crown made no new appointment to the chair—(the Commissioners of 1826 had indeed recommended the abolition of it and of the chair of Civil History and the substitution of a chair of Criminal Law)—which accordingly dropped out of existence until it was revived, at the instigation of Inglis among others, by the Commissioners of 1858-62, who ordained that a course of forty lectures at least should be delivered each winter session. Mr. Lorimer was thereafter appointed.[1]

A word or two as to Inglis's teachers in law. The information available about his work in the Law Faculty

[1] Mr. James Lorimer, who died in March, 1890, was born in 1818 at Aberdalgie, in Perthshire, where his father was factor. He was educated at the Grammar School of Perth, and afterwards at the Universities of Edinburgh, Geneva, Berlin, and Rome. He was called to the bar in 1845, but soon after, owing to physical weakness, he had to discontinue what practice he had. In 1848 he was appointed Lyon Clerk, and this appointment along with literary work allowed him to devote himself to the scholarship of law. He was chosen in 1862 to fill the chair of the Law of Nature and Nations in Edinburgh University, partly through the influence of Sir George Cornewall Lewis, who, with John Stuart Mill, had been impressed by his article entitled "Political Progress not necessarily Democratic." He thenceforth discharged the functions of his chair with unwavering fidelity, often when beset with bodily infirmity, which never quite got the mastery over his brave spirit. In all he said and did he tried to show that "law was not a mere shuffling of dry forms, but a living reality, instinct with life and meaning and soul." He received the honorary degree of Doctor of Laws from the University of Glasgow, and the Doctor's degree of the University of Bologna at its octocentenary in 1888.

is meagre, owing to the slovenly way in which the records of that time were kept. He seems to have attended there during the sessions of 1832 and 1833, and he had amongst his class fellows the late John Clerk Brodie, W.S., who more than any other man aided Lord Advocate Moncreiff in promoting the legislation of nearly twenty years. Douglas Cheape, Professor of Civil Law, 1827-42, succeeded Irving, promoted to the bench as Lord Newton in 1826. Irving had given two courses annually—one on the Institutes and one on the Pandects; but Cheape abolished the latter, and also dispensed with Latin examinations—that is, with conducting his examinations on the civil law in Latin. Up to the middle of the last century our civilians lectured in Latin, and there was a hubbub in the Faculty when they (Millar in Glasgow and Dick in Edinburgh) resorted to English. Macvey Napier, a literary and philosophical lawyer, better known as the successor of Jeffrey in the editorship of the "Edinburgh Review" than as the first Professor of Conveyancing, 1825-47, had been appointed lecturer on that subject by the Writers to the Signet as early as 1816, and on Dr. Thomas Brown's death he would have become a candidate for the chair of Moral Philosophy, but, being a Whig, he knew he had no chance of receiving this appointment. He died in 1847, in the 71st year of his age.[1]

There were other two men of distinct power and individuality under whom Inglis studied. The one was Sir William Hamilton, the great metaphysician, who in 1821 obtained the chair of Civil History and Greek and Roman Antiquities as a sort of compensation for not getting that of Moral Philosophy the year before. His course comprised "A Historical Survey of the Relations of the Political System of Modern Europe and its

[1] The curious may pursue this inquiry in Grant's "Story," ii. pp. 364-378.

Dependencies; with a view of the progress of Literature in the different Nations." The course thus indicated was an entirely different thing from the lectures on Constitutional Law now delivered from the same chair. But from the character of the man for ardour and profoundness one cannot doubt that he would imbue his disciples with a love of the subject; nor can one but surmise that, to some extent at least, he is responsible for the historic bent which characterised the intellectual affinities of the Lord President in after life.

The other was an equally able and distinguished man. George Joseph Bell, professor of Scots Law from 1822 to 1843, son of an Episcopal minister in Perthshire, was born in 1770, admitted advocate in 1791, and was made a Principal Clerk of Session in 1832 by Jeffrey. It is impossible to estimate how much Inglis must have gleaned from the learning, the sagacity, and logical power of this great jurist, whose merit has been acknowledged throughout the world. When Inglis, as Dean, intimated the gift to the Faculty of a portrait of Bell from Bell's family, he spoke of him as one of the most distinguished members of the bar, whose services to the law of Scotland, as a writer, it was impossible to overrate. Cockburn said, "No man ever had a stronger claim, so far as such claims depend on eminent fitness, than Mr. Bell had for a seat on that bench which his great legal work had been instructing and directing for above thirty years"; while Jeffrey, in 1830, declared to Bell himself, "I love and esteem you beyond any man upon earth, and I look forward with pleasure, altogether unmingled with envy, to the time when your exertions shall have placed you in the situation in which your friendship for me will have something of the air of condescension." It was fitting that Jeffrey's organ, when writing of him in 1872, should give this powerful testimony to Bell's great

worth: "Bell's work on the Laws of Bankruptcy, which was afterwards expanded into the profound commentary on Mercantile Law, was the first attempt which had been made, with the exception of some desultory although ingenious essays of Lord Kames, to harmonise and elucidate the principles of the law merchant as practically applied in the Courts of the two kingdoms. Its authority and reputation have grown rather than diminished since his death, not only in Scotland, but in England and in America —[his work is quoted in the American case before the Geneva Court of Arbitration]—and every resort to it in order to solve emerging questions only tends to illustrate more strongly the perspicacity and breadth of his legal knowledge. The present Bankruptcy Law of Scotland, with which traders seem fairly satisfied, has been built entirely on the foundations which he laid, and conduces not less to the substantial benefit of the nation, than many more ostentatious, although not more solid reforms."[1]

[1] "Edinburgh Review" for April, 1872, p. 429. More for the sake of reference than for anything else, one may trace the succession to the law chairs:—

PROFESSORS OF PUBLIC LAW.

1796. Robert Hamilton.
1832. * * *
1862. James Lorimer.
1890. Sir Ludovic Grant, Bart.

PROFESSORS OF CIVIL LAW.

1827-42. Douglas Cheape.
1842. A. Campbell Swinton.
1862. James Muirhead.
1889. Henry Goudy.

PROFESSORS OF HISTORY.

1821-37. Sir William Hamilton.
1837. George Skene.
1842. James Frederick Ferrier.
1846. Cosmo Innes.
1874. Æneas J. G. Mackay.
1881. John Kirkpatrick.

PROFESSORS OF THE LAW OF SCOTLAND.

1822-43. George Joseph Bell.
1843. John Schank More.
1861. George Ross.
1864. George Moir.
1865. Norman Macpherson.
1888. John Rankine.

PROFESSORS OF MEDICAL JURISPRUDENCE.

1822-32. Robert Christison.
1832-62. Thomas Stewart Trail.
1862. Sir Douglas Maclagan.

PROFESSORS OF CONVEYANCING.

1825-47. Macvey Napier.
1847. Allan Menzies.
1856. A. Montgomerie Bell.
1866. James Stuart Fraser Tytler.
1892. John Philip Wood.

What influence these teachers—especially Hamilton, Napier, and Bell[1]—had on Inglis, it is vain to conjecture, He has left no record of his impressions of them, nor has anyone written what in conversation he said regarding them. But that, as in the case of every teacher, good or bad, they made their mark upon him, may be taken for granted, especially when one remembers that he remained fond of metaphysics to the end of his life, and that in his judicial career he was as partial to appealing to Bell as to the great fountain-head, Stair.

[1] Of a different calibre from that of Bell was Professor More. He was the son of the Rev. George More, for sometime a minister in South Shields, and he passed to the bar in the year 1806. He was what was known as a plodding lawyer, and never attempted to pose as anything else. His acquaintance with case law was prodigious, as all students of his editions of Erskine's Principles and Stair's Institutes must know. It was remarked of him that he knew so many cases, and had studied so many decisions, that he could not tell what the law really was, and lost the power or had not the presumption to take the matter into his own hands and boldly declare it. His great erudition pointed him out as the most fit successor to George Joseph Bell, and he succeeded him in 1843 after he had been nearly forty years at the bar. Promotion was slow then! A most encouraging example to young men conscious of power and content to labour and to wait! More was not so successful as a writer. He had no consecution; that is, his remarks were so copiously interlarded with cases that one could follow his meaning only with great difficulty. His mind when too full became chaotic. He had not keenness enough to master what he read. In this respect he was like Story, who is said by some one to have bought a pile of continental jurists for little purpose other than quotation. Kind, modest, and unassuming, More died in the year 1861, when he had almost attained the dignity of father of the Faculty.

Professor More was succeeded by George Ross, who held the chair until the 21st November, 1863, when he died suddenly from diphtheria at his house in Forres Street. Mr. Ross passed in 1835, the year after John Inglis joined the bar, and became respectably eminent in conveyancing work. In his life he was known as a stiff counsel and a bad pleader, with a profound knowledge of case law. His fame rests upon his "Leading Cases" and an edition of "Bell's Dictionary." Mr. George Moir, of the "Notes on Stair," succeeded Mr. Ross.

IV.—At the Bar.

John Inglis, thus equipped, began to haunt the Parliament House, with its bustle and its memories, just after the first Reform Bill had given that fillip to Radical opinion which has ever since prevented Scotland from regaining her political equilibrium. I have said that the patronage, the prizes, the influence of the country had all been concentrated in a certain Tory focus, and that any individual beyond its range had been doomed to decades of despair. With the advent of Reform began a reaction so strong that throughout the country the very name of Tory became detested. It is only of late years, and concurrently with the birth of a Tory democracy in Scotland, that this bitter and ignorant prejudice has begun to subside. The Reform Bill, prepared by Cockburn and piloted by Jeffrey, had widened, for a time at least, the breach between the two parties of the bar; and when the Tory monopoly got broken, its scattered fragments did not, either in their individual or collective movements, tend or seek to alleviate or remove social and forensic asperities. The Whigs suddenly found themselves transferred from the cold shades of opposition to the sunshine of office, or at any

rate of certain hope, and they returned with interest the disdain and bitterness with which their struggles had been regarded by the party hitherto in power. By the removal of certain barriers, the silencing of old watchwords, and the softening of distinctions, the bar has in these respects undergone considerable change in the past half century.

Inglis had the possibilities and the hindrances of the situation fully before him. He had been imbued with the orthodox principles of his father. His religious and political opinions were traditional. He accepted them as hereditary entities with which he need not quarrel, and his mind was thus left open and clear for the solution of mysteries other than theological dogmas or political creeds; and he had the comfort of seeing that, whatever literary brightness had illumined the opposite faction, the weight of mature legal knowledge and power had followed the lead of Melville in the shrewd Campbell and the dignified Blair.

Indeed, when Inglis was called, the career of an advocate, especially a Tory advocate, was the most brilliant to which any Scotsman could aspire. Apart from personal qualifications for the pursuit of a responsible and strictly intellectual calling, in which the power of mind obliterates or outdistances fortuitous advantages, it was surrounded by political and literary amenities of a high order. Parliament House was the reflection of the political thought and aspiration of Scotland, and the centre of its mental activity in law, literature, and politics. It was the element in which Scotsmen of high ability breathed most freely. It may since have become more technical and scientific in its men and its modes, but it is certainly not more accomplished in the amenities of an intellectual society. It cannot be denied—even if it were desired or were useful to do so—that its best and most compact phalanx

of daring spirits was on the side of Reform. The most prominent men on the Tory side, who had impressed the living and overpowered the influence of the dead, were Campbell, Blair, Hope, Hume, Dundas, but in no sense except as lawyers could they be compared with the leviathans of the Whigs. I purposely omit Sir Walter Scott as a peerless soul who belongs to all men and all times. Cockburn mentions that among those who assembled at the north end of the Outer House was a knot of hardy intellects, with plenty of mirth and friendship, study and hope, ambition and dreams, to soothe and inspire them, but unfortunately proscribed because of their politics. The names of Jeffrey, Cockburn, Moncreiff, Brougham, Cranstoun, Horner, John Macfarlane, Archibald Fletcher, George Graham Bell, Thomson, George Joseph Bell, and others had invested the place with an undying lustre. These and kindred souls made but one of several constellations that had illumined our northern sky.

Called to the bar in 1835,[1] a year after his father died, and when he was in his twenty-sixth year—a very fit time — Inglis was wholly dependent upon his own exertions. He had but a slender patrimony, and what he had, he had made free use of at Oxford in the sociable life he preferred while there. It is commonly supposed that a sufficiency of means to make a man indifferent to practice is a condition of success at the bar. Inglis lacked this guarantee. While he had reason to believe that for him the torture of a hopeless political opposition might not exist, still he had no immunity from the customary tussle with fortune.

[1] The entry in the Faculty minutes of the public examination is:— "3rd July, 1835. In the absence of the Dean, Mr. L'Amy took the chair. Mr. Inglis, son of the Rev. Dr. Inglis, was examined upon Lib. vii. Tit iii. Digest, *Quando dies usufructus legati cedat.*" Mr. Neil James Fergusson Blair, eldest son of Adam Fergusson, Esq., advocate, was on the same day examined upon Lib. vii. Tit. iv. Digest, *Quibus modis usufructus vel usus admittitur.*

This is always a severe trial for the friendless junior. It is impossible for the public now as then—it is difficult even for agents who revel in executries and factories, and whose eve is as unclouded as their dawn—to realise the pangs of uncertainty, regret, and even despair of which the vaunted call is often the harbinger!

There is, indeed, a short-lived ecstasy when the barrister or advocate finds himself moving about historic precincts in the glory of wig and gown. Those who have passed the first flush of youth can remember how proud and thankful they felt upon their entrance into this arena, amid surroundings so sacred and memoried. The world seemed to have put on its most smiling aspect. The charm of freshness and of novelty suffused even the prospect of drudgery—the years of technical inculcation, shall I call them?—with the colours of the rose. Hope, illusion, ambition, like the sweetness and haze of summer morn, obscured and distorted the view, which was that of a fair inviting land with many curious things to investigate and not much to impede the flowery way.[1]

But the scene soon changes. When familiarity has rubbed off the novelty, the sweet sensations vanish that are born of the evanescent optimism of youth. Then does the young man, no longer a youth, begin to perceive the grim reality of daily parades in halls of vain hopes, and in learned costumes which for years denote neither experience nor expectancy. With what a sinking heart, moreover, does he resign himself to long dreary waiting! For how can he expect to escape this weary time when equally promising men who have become judges and peers had to go through it? To the barrister lost time

[1] *Vide* Sears, a Swedenborgian writer.

never returns. A sniff of tar or of the dissecting room sends back repentant the men who mistake the sea or medicine for their vocation. There is but one locus pœnitentiæ in Parliament House, and it is not a concrete reality, but an abstract proposition in law.

In the matter of practice Inglis endured this uncertainty, for a time at least. In the First Division, by Charles Hope, Cranstoun, Jeffrey, and Fullerton, he was received with kindness for his father's sake, and for the same reason his youthful eloquence was encouraged by David Boyle, Moncreiff, Medwyn, and Cockburn in the Second. Cockburn had already written about old Inglis.[1] Hope, Boyle, and Medwyn were High Tories, and Moncreiff had the gentlemanly instincts of his race. With the advantages springing out of this coveted judicial predilection, it has been thought that Inglis's success was immediate. It was not so. It cannot be said of him that his "pinions bore him at once into upper air." Indeed, he did not spring at once into fame either as an advocate or as a judge. For one thing, he had formed few connections likely to result in business. With professional men he had little personal interest or acquaintance, and these are essentials for obtaining a start in this most fickle and factitious of occupations. Therefore he had little of what is really the only backing worth having—the backing that will not fail a junior until he has failed it—that is, failed to take advantage of it. Secondly, the ranks of the bar were at that time well filled with men of renown and of ripe ability—at least, they contained many good lawyers. There was Hope, the young Dean of the Faculty;

[1] It is curious that although Cockburn wrote a great deal about many men and things during many years after Inglis had ceased to be obscure, he never once mentions Inglis. Their tastes and sympathies were no doubt dissimilar in regard to several, perhaps most, matters, but this fact does not explain the studious silence with which Cockburn treats Inglis.

Rutherfurd, Keay,[1] a feudalist and conveyancer, and Cuninghame were also seniors. M'Neill and Ivory, with whom Inglis was soon to grapple on level terms, were about to take the plunge, frequently as disastrous as the original call, into senior practice. The leading juniors were the Robertsons—"Lord Peter," and the quiet Hercules; the brilliant Neaves; Marshall, the prince of feudalists; Penney, Cowan, Deas, afterwards judges; Lord Justice-Clerk Patton; Lord of Appeal Gordon; and James Moncreiff. John Inglis walked the boards among them, severely independent and alone. Regarding himself and his practice, he said this at the Orkney election in 1852—

Let me say a word of myself, and it shall be short. You will not, I apprehend, think the worse of me that I tell you, what perhaps you know already, that I have been the architect of my own fortune. I have followed a most laborious profession, but a profession, let me tell the learned professor on the other side,[2] that is the most honourable of all professions to him who desires to make it honourable, and that it is only the scum of the profession, with whom we are unfortunately too familiar in these days, that bring disgrace on what ought to be the profession of a gentleman. (Applause.) I was a little astonished that the learned professor, standing by the side of one of my learned brethren at the Scottish bar—Mr. Baikie of Tankerness—ventured to indulge in such observations as he did, but I suppose he reflected that his friend Mr. Baikie[3] was but a "stickit" lawyer, while I was something better. (Laughter, cheers, and hisses.) I embarked in the profession without family influence or hereditary wealth. I embarked on my own resources, and, thank God, I have succeeded hitherto. But even on such an occasion as this I must not forget that my father left me a legacy which

[1] James Keay, eldest son of James Keay of Snaigow, a writer in Edinburgh, and admitted 1799; died, 1837.

[2] Thomas Stewart Traill, Professor of Medical Jurisprudence in Edinburgh, from 1832 to 1862, when he was succeeded by Sir Douglas Maclagan. See *supra*, p. 44.

[3] Mr. Baikie was called 1811, and died at Tankerness, 24th February, 1869. He was a man of mark and influence in Orkney.

I have ever held to be a jewel of great price; he left me his name —a name which he had taught the world to respect as that of a thoroughly honest and honourable man, and I may truly say it has been the great object of my life to maintain that name pure and unsullied and as I received it. (Cheering.) Led by that pole-star, I have hitherto gone on to fortune, and, please God, I shall follow its guidance still. (Cheers.)

I have incorporated the journalistic parentheses in order to show the kind of reception these manly sentences met with at the hands of the Orcadians. The Sheriff was Aytoun.[1]

There are many legends as to how Inglis did get into practice at first—some of them reminding one of the tale of how Bathurst came to find the Douglas cause, which made that luminary a bencher seven years after his call. Some of Inglis's work came through friends he had made in England; some of it, but not much, through his family connections, particularly his brother Harry. Inglis attended the circuits regularly, at least for a time, but not altogether for the purposes of business. Quaint, curious, forgotten things, typical assize courts, they were—terrible in their majesty and cruel in their punishments! There, the young advocate first learned to think upon his feet, and in the intervals between trials for murders, robberies, and rapes could—and very well did—enjoy himself, as his successors may still do, amongst a crowd of equally joyous, ambitious, anxious rivals. It was from one

[1] In his death, on 5th August, 1865, the bar lost one of its most eminent literary men. Born in 1813, he first joined his father as a W.S., and was called to the bar in 1840. At his death he was Professor of Rhetoric and Belles Lettres in the University of Edinburgh, and also Sheriff of Orkney and Shetland. It was a curious fact that the professional repute of a man of such taste should have been confined mainly to the Criminal Courts. Few men ever attained as much success as he did in the Justiciary Court. He had a high sense of personal honour, and was jealous of the character of his profession. He had keen perception, a ready power of cross, quick humour, and an easy expression. His humour was highly appreciated at the fireplace.

of those half-business, half-pleasure journeys that Inglis was brought almost forcibly back to tackle the largest claim in a big multiplepoinding. His brother Harry was supposed to be at the bottom of that bit of work. Inglis valiantly set himself to do it, and did it well, and thereafter, in the matter of employment, he never looked over his shoulder. For a couple of years his practice had been meagre. When it did begin to come it came in torrents, and his rise was almost as rapid as that of Erskine, or Mansfield, or Hardwicke, and much more quick and certain than that of Thurlow, Eldon, Kenyon, or Camden—men with whom he may very properly be compared. His mind then became interested and his powers aroused. The law, which till then had only excited in him a half-hearted interest, now absorbed him by its subtlety, its metaphysics, its ethics. Increasing power as a dialectician made him glory in forensic display—although his eloquence was absolutely free from tinsel. From the year 1838 onwards he had one of the greatest practices that ever fell to the lot of a pleader. It was a leading one in all departments, and so rapidly did he rise that after ten years at the bar he felt himself secure enough to become a senior. His practice never diminished. There was never any ebb, as in the case of Bell or Henry Erskine.[1] Themis, though occasionally fickle, never deserted him; he was never out-distanced by younger men. He became the centre of an able if not brilliant circle of

[1] Work and fees in those days were on a large scale—especially in the case of proofs "taped" before commissioners. If one looks into those reports which may be called senescent, Charles Hope, or mayhap Jeffrey, is found upbraiding counsel for the length and irrelevancy of the proof. The explanation is that counsel were at liberty to prolong proofs to the last trump if they liked, the commissioner, a son or son's friend of the judge who appointed him, never interfering. Fortunately the present generation can know nothing of the scandalous waste of time and money and health and temper which such procedure encouraged.

lawyers, and maintained that position until his elevation to the bench.

To the lawyer it is interesting to follow the different phases of Inglis's career as an advocate. He had, in the first place, a wide experience in writing papers. During the first half of the century, minutes of debate were the order of the day. There were few oral debates worthy of the name, except in famous cases, and on these occasions "the Court was filled with ladies to see Cranstoun attitudinize, or to hear John Clerk abuse his opponents or the judges" with characteristic froth and splutter and broad Doric.[1] At the risk of anticipating, let me here say that the 14th section of the Court of Session Act of 1850 wrought greater havoc in the habits of lawyers than anything had done for a hundred years. From the institution of the College of Justice until the passing of that Act, lawyers had conducted litigation by written pleadings. Great learning and keen logic were displayed in them in language terse and vigorous, or quaint and turgid. The Lords Ordinary in the Outer House rushed into "cases" to relieve themselves of difficulties, small and great, occurring before them. Many tomes of recondite lore, classified and ranged along the gallery of the Law Room, are accordingly monumental of the erudition, the patience, and the industry of three centuries of the Scottish bar. These minutes of debate gave employment to scores of men who could not address a judge without blushing or stammering—honest, able worms that burrowed away their lives amid the parch-

[1] Cranstoun was raised to the bench as Lord Corehouse in 1826, and John Clerk as Lord Eldin in 1823. Of Corehouse, Cockburn (Memorials, i., 221) says he was more of a legal oracle than any man of his time, and he gives the reason: "His abstinence from all vulgar contention, all political discussion, and all public turmoils, in the midst of which he sat like a pale image, silent and still, trembling in ambitious fastidiousness, kept up the popular delusion of his mysteriousness and abstraction to the very last." His successors have all allowed that he was a great lawyer.

ment, the print, and the moths of Voet and Heinecceius, of Stair and Erskine, of the Jus Feudale and the Pandects. The race was extinguished in a day by a few lines of print —"And be it enacted that it shall not be competent to the Lord Ordinary to direct cases or minutes of debate or other written argument to be prepared by the parties, whether for the use of himself or of the Inner House." It was the composition of these papers that sickened the gentle Horner.

It was somewhat ruthless of Inglis and Moncreiff—first, as they were, both in written and oral styles—thus to arrest the flow of classic pleading with its accompaniment of fat fees. But their doing it mainly was, and from 1850 forward Vinnius and the Corpus Juris vanished into obscurity. When dragged by the erudite from their hiding-places they are now greeted with a sneer! It was a remarkable change, and, like all radical measures, at first it encountered determined opposition. The largest committee of the Faculty of Advocates ever appointed unanimously condemned the proposal. Lawyers would now as soon dream of trying to revive a mummy as of reverting to such archaic models of pleading. They are looked upon "with as much curiosity as the fossil remains of the pre-Adamite ages." "When I came to the bar," said Lord Moncreiff in 1867,[1] "the judges who had been trained in that school of written pleadings were impatient of oral debate in the Inner House. Whether they are impatient of it now or not, the outward indication is suppressed; but if they are, they have much more reason." On another occasion[2] the same great authority signalises this period as the termination of our classical school, for he says, "The termination of the classical school of Scottish jurisprudence,

[1] Address to Scots Law Society.

[2] Address to Juridical Society in 1870.

I think, has been witnessed in our own day; and it was terminated by a very simple alteration in our forms—a very necessary and useful alteration—but it carried with it some drawbacks—I mean the abolition of written pleadings in the Court. There is no doubt it was absolutely essential, for time was too short for these written pleadings in the rapid movement of society in the present day. Transactions go on so much faster than they did; things are carried out so much more quickly; communication between one part of the country and another is so much more constant, that we could not afford to wait for the lengthened pleadings which our forefathers had."

In countenancing the abolition of written pleadings, Inglis was influenced by the opinion of his hero, Stair, who described the pleadings of his day, or some of them, as documents "wherein such indigested stuff is multiplied as none would have impudence to offer at the bar; wherein fact and law are jumbled together without distinct proposal of points of fact instructed or to be proved as they behoved to propone at the bar; so that the Lords are necessitat to gather the matter out of that mass where they fall mixed—long narrations and alledgeances, neither true nor competent to be proved."

The abolition of these pleadings, and the concentration of business into the hands of a few forensic disputants, had one excellent result. It caused many mediocre men to seek all the seats of the saddle in order to ride in the race; and, coincident with reforms in the constitution of universities and the revival of scholarship in the halls, the attention of many of these gentlemen was fixed upon the prizes which learning offered. More time came thus to be given to the cultivation of law as a science, by scholars who were not tied to an exacting business. Practising counsel could not spare even an hour a day for lecturing, and by common

consent they now hold themselves excluded from academic preferment.

Those written pleadings, it may be readily conceived, evidenced a charming variety of style. They were similar in only one particular, namely, the obstinacy with which every writer denied the facts of his antagonist. The irrelevancy of a speaker or of a record may be checked, but it was the oppressive privilege of every judge every session to wade through thousands of quarto pages of prolixity, unrelieved by anything save citations from Papinian or Horace or Shakespeare or Walter Scott or Patrick Robertson. But there were undoubtedly some masters in the work, and by general consent John Inglis was one of them. Indeed, it may safely be said that it was to his practice in these minutes that Inglis owed his institutional erudition and Latinity. He was an adept in this, as in all other forms of severe composition. His practice in it was large and continuous, and, in the literal sense, voluminous, more particularly at the critical juncture already noticed,[1] when the state of his health withdrew him for a time from his more congenial and distinguished sphere. There is thus a small library of his papers on the upper shelves of the Law Room. What John Inglis could do in the way of dialectical subtlety may be learned by reference to those catacombs of the law.

[1] Chap. 1, p. 2.

V.—Civil and Ecclesiastical Practice.

It was, however, in what we know as forensic practice that Inglis chiefly shone. His practice rapidly extended in every direction and to every Court. I propose to say a word or two about him in each of his provinces as an ecclesiastical, a civil, and a criminal pleader. His ecclesiastical practice was voluminous in extent owing to the epic occurrences in which it was his lot to figure, and it extended to the Church Courts, the Court of Session, and the Justiciary Court. These divisions may be taken up in their order.

Inglis was often in the Church Courts. Before these tribunals the son of the old Tory Moderate leader, but lately gone from them, might count upon attention and sympathy, though his success was not so conspicuous here as elsewhere. Strangely enough, clergymen divide with criminals the distinction or reproach of paying their lawyers worst, and expecting most from them. The field is a small one. In Inglis's day, as now, the General Assembly was open for but a fortnight in the year, and the ecclesiastical work done by it could only be extended by remote Presbyteries sitting in judgment upon some hapless member. Besides, the Assembly demanded, as it still demands, a style of speech

of which Inglis was not quite a master. Jeffrey, with fecundity of phrase and strictly jury manner, was the greatest exponent of that style. Could he but have woven his web on a woof of logic, Lord Westbury also might have captivated the Assembly with his glittering sentences; for it is a common belief that if a man be but capable of saying sparkling things — with pleasing illustration or commonplace sentiment — this audience is not coy or fastidious.

It would be unfair to reveal the arts, sure or precarious, simple or complex, whereby clergymen may be converted to the cause of any brother, church, or scheme. One has an obvious repugnance to disclosing the tricks of any trade, and it would scarcely be cogent to attempt it here. But Inglis had too deep a contempt for meretricious device in court or conduct to stoop to it. He was not given to flowers of speech, for instance. He spoke to a Church court as to an assembly of logicians, which perhaps no Church court can ever well be. His eloquence—clear, lucid, logical—was consequently rather lost upon all in those conclaves, except, of course, the Procurator[1] and the ecclesiastics. The latter may be called an apostolic succession of spoiled lawyers. They have figured in every Assembly of the Scots Kirk since the Reformation, and have usually been called the leaders of it. In the old days they would probably have attained the Roman College; in these days their destiny is less dazzling, though they still dominate the factions and coteries of

[1] There is a good deal of misconception or mystery about this official. He is simply the legal adviser of the Church, and in processes before the General Assembly usually moves its judgment, and commands a majority. Good lawyers are glad to fill the post. In recent years it has been occupied by such men as Lord Lee, Lord Kyllachy, and Sir Charles Pearson. Sometimes the Procurator gets more work to do than he bargained for, because many innocent souls consider that he is paid £300 a year for mending the cracks of every kirk in the land.

Scottish ecclesiasticism. Some of them have been able men; there are some able men amongst them now; there is perhaps a generation of even abler men rising up. But be that as it may, this section shapes, or thinks it shapes, the policy, morals, and philosophy of the Kirk, sometimes forgetting that the affairs of churches have their springs deep in the nature of men, and that changes in observance and doctrine are rendered possible, efficient, and lasting by the arbiter called circumstance alone.

His connection with the Church and his acknowledged ability brought Inglis into the thick of the cases produced by the controversy which culminated in the Disruption. That controversy was caused by the legal use of a heritable right—the right of patronage. A great deal has been written about this drama in which the national temple was rent, and endless strife and bitterness produced, notably in the pages of Henry Cockburn's "Journal," which derives its historical importance from the vivid, though somewhat partial, pictures it gives of that disturbed era. But as the subject of this sketch played an important part in that struggle, not, it is true, on the public stage so much as in the chamber where popular movements had their origin, one may be allowed lightly to outline in these pages the salient features of this product of sectarian genius and dissident zeal inherited from the Covenanters.

The Reformation in Scotland was a thorough piece of work, transferring the conscience of the people, so to speak, from an ecclesiastical oligarchy to a pure democracy consisting of presbyteries, synods, and assemblies, in which the lay element in the shape of representatives was almost equal to the clerical—the only flaw in its democratic character and unparalleled symmetry being that the sessions from which those representatives could alone be

chosen might be, and in point of fact to this day sometimes are, self-elected, and in no manner dependent upon the choice of the people. While the limits between the civil and spiritual jurisdictions were not clearly defined until the middle of the nineteenth century, there was, on the inauguration of the Reformed Church, an understanding that in matters spiritual the Church courts were not to be controlled by the magistrate. The statutes ratifying the new establishment unfortunately presented a debateable territory.[1]

The Act 1567, cap. 7, which abolished Popery and established the Reformed religion, reserved "the presentation of laick patronages" by "the just and auncient patrones," and the Act 1592, cap. 116, adjusted by Melville and his contemporaries, provided that the presbyteries, to whom all presentations were thereby appointed to be directed, "be bound and astricted to receive and admit quhatsumever qualified minister presented be his majesty or laick patronis." The Church had thus to ordain to the cure and the civil power to confer the benefice. Cap. 117 of the same year declared that if the presbytery refused a minister so presented, the latter should nevertheless be entitled to the fruits of the benefice. On the establishment of Episcopacy in 1621, the principle of these Acts was adopted in cap. 1 of that year. On the re-establishment of Presbytery, patronage was abolished by 1649, cap. 23, but at the Restoration that statute fell under the Rescissory Act. By 1690, cap. 23, patronage was again abolished, and the right of election given to the elders and heritors. Only three parishes, Calder and Old and New Monkland, had obtained effectual renunciations under this Act, when the right of patrons to present was perniciously, it is thought, restored by the government of Harley and Bolingbroke, and the

[1] For all essential details of our ecclesiastical history reference may be made to Mr. C. N. Johnston's "Handbook of Church Defence."

statute 10 Anne, cap. 12, continued in force down to the Disruption.

Under the restored right of patronage, the clergy during the last century began to fall away from the strict tenets of the Genevese Reformer, to which the people of Scotland have been loyally attached since the days of Knox; and the twofold consequence of supineness and doctrinal laxity was the secession from the Kirk of several bodies of sectaries who were dissatisfied with the teaching within her pale, and the ranging of her adherents into two hostile parties, one called the Moderate or Broad, and the other the Evangelical. The Moderates had been organised and disciplined successively by Principal Robertson, Alexander Carlyle, Principal Hill, and Dr. Inglis, their aim being to rid Scotland of its fatal genius for sectarianism, and to give the Kirk a broad, dignified, and independent basis, which would fix her in the interest and regard of a mixed society as the ally of the State against vice and anarchy. The revolutionary doctrines and the domination of France augmented the ranks of the party which contained the more earnest and fanatical men within the Kirk; and this fact, combined with the remarkable growth of popular principles, which they aided, placed the Evangelicals on a level with the Moderates in the church, coincidently with the triumph of these principles in the State, in the year 1832. The Evangelical party without and within the Kirk was the ecclesiastical analogue of democracy as then constituted, but it attained political influence only when under its zealous leaders—the legitimate successors of iconoclastic reformers, types of Scotch Hildebrandism as Hallam calls them—it made the machinations of dissent thereafter the guiding influence in Scotch politics.

Strangely enough, the weapon was to destroy its maker.

Those earnest men had been selected by the patrons of the Church in their alarm at the reign of disorder and atheism abroad. Some of them, notably Chalmers, rose to worldwide distinction. There were two main planks in the platform they maintained. They desired increased endowments and a popular ministry. In 1790, under a Tory Government, a portion of the funds which the landed aristocracy had appropriated were restored to the Church. This increased provision did not by any means satisfy the party of whom the most rabid of modern voluntaries are sprung, and they accordingly bent their efforts towards an objective of which enlarged temporal possessions formed no insignificant part. But the other part of their scheme enlisted as much of their zeal though it met with less unanimity. It was their strongest wish to prevent the antagonistic party from ever regaining its former ascendency. They therefore redoubled the attacks they had made on patronage, which in their view had been the original and effective cause of that ascendency. Thence arose the claim for the repeal of the Act of 1712; but even such ecclesiastical tribunes as Andrew Thomson, Candlish, and Guthrie were afraid to risk the experiment of popular election to which we have since descended, and as the safer plan—approved, it was thought, by the wisest heads of their party—Chalmers unsuccessfully propounded the Veto Act in 1833 in a great speech which Cockburn says raised him above all modern orators.

By this Act the dissent of congregations was to be held sufficient to exclude a presentee from his cure, and the patron to be left free to present again. This proposal was renewed by Lord Moncreiff in 1834. Upon it a battle was waged with fierceness on the floor of the Assembly. Our beloved country has been distinguished

among the nations of the world for nothing more than for theological controversy. At this juncture the majority of the Assembly, notwithstanding that proneness to logic which has also characterised us, seemed enamoured of the epic glory of another persecution. The Veto Act became the law of the Church in 1835, and it must be confessed introduced a period, deplorably terminated in 1843, which has been described as unexampled theretofore in point of vitality in the Church of Scotland. It will, however, hardly be disputed by any lawyer that in this enactment the Church usurped the prerogatives of Parliament. The minority, sensible of that fact, and writhing under defeat, determined to test its validity in the Courts of Law, and in 1838, in the Auchterarder case, "a too logical Court of Session, in the majority of whom the unction of the spirit had not deadened their sense of law and justice, decided adversely to the claims of fanaticism."

The House of Lords confirmed this judgment; but as difficulties occurred in the execution of the judicial decrees, this combat betwixt the magistrate and the Church courts raged over a period of several years, and that with as much pertinacity as our forefathers manifested in their tribal feuds. Parliament and Government were often unsuccessfully invoked to solve the difficulties, and one or other ought certainly to have intervened. But the Whig Government had been alienated through Chalmers and the bulk of his followers joining the Tory party as a reprisal for the coldness of the support they had received from responsible Whigs, and, indeed, the Whig Government was influenced chiefly, as some succeeding Governments have been, by voluntary dissent. When the Whig Government was dissolved in 1841, and Sir Robert Peel came into power, the Tories preferred not to jeopardise the allegiance of their allies, the Moderates, in a conflict to which they knew there

could be but one issue in the civil courts. There was an attempt on the part of constitutional lawyers as well as evangelical ministers to obscure the real issue by raising a collateral question, namely, whether the civil courts, in order to vindicate a patrimonial right, could prohibit the exercise of spiritual functions. But, of course, it was incumbent upon the civil court to enforce its own decrees, and in subsequent cases the court had, as it ought to have had, little compunction in so doing.

In order to illustrate the active part Inglis took in those great events, it may not be amiss to run over the principal cases. So far as the Court of Session is concerned, the tocsin may be said to have been sounded in the Lethendy[1] case, in which Hope appeared for Clark, the presentee; R. Bell, the Procurator,[2] and Speirs[3] for the presbytery; and Maitland for the rest. A preacher presented to a presbytery a writ under the sign manual, appointing him assistant and successor to the minister of the parish, of which the Crown was patron, which was sustained; but he was rejected on the Veto Act, whereupon he raised an action of declarator to have it found that the presbytery was bound to take him on trials, and, on being found qualified, to admit him; and the minister having died, another preacher got a royal presentation to the parish. It was held (1) that the first presentee had a title to apply for an interdict against the presbytery taking the second on trials, or inducting him, and against that presentee presenting himself for induction; and (2) that the Court of

[1] *Clark* v. *Stirling*, 14 June, 1839, 1 D. 955; 14 F. 1049.

[2] Robert Bell, second son of Benjamin Bell, surgeon, was Procurator from 1831 to 1856. He died in 1861.

[3] Graham Speirs, second son of Peter Speirs, Esq. of Culcreuch, was born in 1797, and entered the navy in 1811, but left that service and passed advocate in 1820. Made an Advocate-Depute in 1830, he was appointed Sheriff of Elgin in 1835, and was transferred to Midlothian in 1840, where he continued Sheriff until he died on 24th Dec., 1847.

Session had jurisdiction to grant such interdicts, and to punish the members of presbytery and the presentee for a violation of them. In the subsequent stages of the Lethendy case in 1841, Robertson spoke for Clark. Inglis was his junior. The Procurator, Bell, M'Neill, and Moncreiff were on the other side.

This case was the prelude to the great cause around which the warriors of that generation waged a prolonged contest—the Strathbogie or Marnoch case. At first Whigham[1] and M'Neill were for the presentee Edwards, and Hope and Pyper[2] for the presbytery, and these four carried on the conflict in the four phases it assumed in 1839.

The majority of the presbytery having resolved to obey the decree of the Court of Session ordering the presbytery to take on trial a presentee who had been rejected under the Veto Act, and if found qualified, to admit him, and to act in opposition to the order of the Commission of the General Assembly prohibiting them from taking any such steps *in hoc statu*, the Commission thereon pronounced a sentence whereby they suspended for a time the majority from their offices, instructing the minority to supply ministerial services in the parishes of the majority, and granted warrant to all presbytery and session officers to

[1] Robert Whigham, son of Robert Whigham of Hallidayhill, Dumfries (1816), was made an Advocate-Depute in 1840, and Sheriff of Perth in 1840. He died in 1849.

[2] Hamilton Pyper (1818) was born February 9, 1796. He was the eldest son of the Rev. David Pyper, minister of Pencaitland, who took a deep interest in all ecclesiastical proceedings and a prominent part in the Assembly debates in the early part of the century. From his father's connections Pyper derived the ecclesiastical practice he enjoyed. His practice otherwise was for many years considerable, but it declined in his later years. He competed for the Professorship of Scots Law when Mr. Ross was appointed, and by Lord Colonsay was offered the same chair in Glasgow, but being a popular man and having a wide circle of friends in Edinburgh he declined to remove to the western city. On the death of Sheriff Cay, Pyper was made Treasurer of the Faculty. He cherished some literary sympathies and wrote a tragedy which was submitted to Mr. William Erskine (Lord Kineddar), but never published. He died a bachelor on 13th March, 1868.

intimate the deliverance to them, and appointed persons to preach in their parishes, and intimate the sentence. Interim interdict was *ex parte* granted in the first instance against the service and intimation of the sentence, and against preaching in or intruding into the churches or churchyards or schoolhouses, and from using the church bells; thereafter, the interim interdict was *ex parte* extended to the whole sentence; and on the expede letters, the interdict was declared in absence perpetual by the Lord Ordinary; and a similar interim interdict was granted as to a similar sentence and order by the General Assembly.[1]

That was the first stage or stages of the case. Then the presentee obtained decree in absence against the presbytery, declaring that they were bound to receive and admit him as minister of the parish, if on trial found duly qualified; he was found qualified by the presbytery, and the majority of it were suspended by the General Assembly for acting in violation of the Veto Law, the effect of which suspension was interdicted by the Court of Session. The majority having, from the position in which they were placed, delayed, the minority refused to admit him. Here Inglis appeared along with Whigham for the presentee, and fought the case against Hope, M'Neill, Robertson, and Pyper for the majority of the presbytery, and against Rutherfurd, Bell, and Moncreiff for the minority. The presentee raised an action against the presbytery and the individual members, concluding for decree ordaining them to receive and admit him; and the majority having admitted that they could not resist decree, the pursuer moved for decree against the presbytery and the consenting majority, which motion was opposed by the minority on the ground that the granting of it would be prejudging their pleas in

[1] *Presbytery of Strathbogie*, 20th Dec., 1839; 14th Feb., 11th June, and 11th July, 1840; 2 D. 258, 585, 1047, 1380; 15 F. 605, 1478.

defence, which were, that the pursuer, as a presentee, had no title to maintain the action; that the Court had no jurisdiction to order a presbytery to admit and receive him as minister; and that the majority, having been suspended by the Church courts, had no power to admit and receive him. It was held that the pursuer's motion was competent, and it was granted accordingly.[1]

Then followed a meeting of the presbytery at Marnoch, on 30th December. Edwards, the presentee, appeared and renewed his application for induction, a copy of the interlocutor having been served on individual members charging them to proceed with the settlement. The presbytery tried to delay the settlement by serving a libel on Edwards accusing him of an offence in having asked to be taken on trials which the Assembly had prohibited him from doing, but to do which the Court of Session had found him entitled. Hope, Robertson, M'Neill, and Pyper advised the presbytery that this libel furnished no reason for delaying the settlement. Language of the most rabid kind was flung about by inflamed partisans. Every presbytery in the land made the cause of Strathbogie its own; and at a meeting of the metropolitan presbytery, one of the parsons hoped, if they had to induct the presentee, they would do it, not in the name of the Lord Jesus Christ, but in the name of the Lord President of the Court of Session, or in the name of Queen Victoria!—and proceeded to quote from Jeffrey's opinion, which he, the parson, with characteristic omniscience, described as the finest specimen of forensic argument in the English language. Finding that they must induct the presentee, the presbytery met for that purpose on Thursday, 21st January, 1841. Inglis and Hamilton Pyper, on opposite sides, appeared at the meeting and saw the presentee inducted amid a scene of great riot, in which it was thought

[1] *Edwards* v. *Cruickshank*, 18th Dec., 1840; 3 D. 283; 16 F. 226.

the presentee's counsel, Inglis, might be subjected to some violence. But the enraged populace seemed to think he had undergone sufficient punishment in having had to drive through a wintry wilderness to a scene of unparalleled ecclesiastical desolation.

The disturbances did not end here. Interdict was granted at the instance of the majority, who had been deposed by the Assembly but reponed by the Court of Session, prohibiting the commissioners elected by the minority from sitting in the Assembly.[1] The presentee also, who had been vetoed, obtained interdict against the presbytery of the bounds in a fresh conjuncture.[2] The minority of the presbytery, acting under the direction of a special commission appointed by the Assembly, admitted the new presentee "to the pastoral charge of the congregation in Marnoch adhering to the Church of Scotland, and worshipping in the church at A." (where a place of worship had been erected), and added his name to the roll of the presbytery. It was held that this amounted to a breach of the interdicts obtained by Edwards, the vetoed presentee, prohibiting the presbytery from proceeding to fill up the vacancy, and from doing any act or deed prejudicial to the status, rights, and privileges conferred upon him.

And last of all, just before the Disruption, on the initiative of Cruickshank, advised by Robertson, Pyper, and Inglis, contending against Bell, Rutherfurd, Dunlop, and Moncreiff, it was held (1) that the Court of Session had jurisdiction to entertain reduction of a deposition by the Assembly of certain parish ministers, which sentence was rested on the ground, inter alia, of these ministers having applied to the Court for protection against censures of the

[1] *Presbytery of Strathbogie*, 27th May, 1842, 4 D. 1298; 14 Jur. 415.

[2] *Edwards* v. *Leith*, 11th Mar. 1843, 15 Jur. 375.

Church courts, imposed on account of proceeding to induct a presentee, notwithstanding his rejection under the Veto law, and also to entertain a declarator that the sentence was beyond the power of the Assembly and inoperative; and (2) that the moderator and the first and second clerks of the General Assembly, as representing the Assembly of which they were the office-bearers, and as individuals, and the Procurator for the church, were properly called as defenders.[1]

The Auchterarder case followed—Hope, Whigham, and Inglis appearing for the Earl of Kinnoull and the presentee, and Wood and Moncreiff for the majority of the presbytery. After a decree finding that the presbytery were bound to take a presentee on trials, a memorial was presented by him and the patron to them, requesting them to make trial of his qualifications, and if they found him qualified, to admit him; but in place of doing so, the majority resolved to refer the memorial to the Commission of the General Assembly. Here it was held that an action of damages at the instance of the presentee and patron against the individual members constituting the majority of the presbytery in respect of such resolution was relevant, and that it was not necessary to aver malice.[2]

In this case Moncreiff opened for the presbytery, and the Lord President warmly complimented him on his able and ingenious statement. The Dean replied. There had been an Auchterarder case before the Assembly in 1836 when Dr. M'Leod was moderator. Maitland then appeared for the appellant. Penney, who was a great ecclesiastical pleader, appeared, as he had done in the Doon and Eskdalemuir cases, for the presbytery, who had irrelevantly

[1] *Cruickshank* v. *Gordon*, 10th Mar. 1843, 5 D. 909; 15 Jur. 378.

[2] *Earl of Kinnoull* v. *Ferguson*, 5th Mar. 1841, 3 D. 778; 16 F. 841; Aff. 11th July, 1842; 1 Bell, 662.

charged the presentee with solicitation and "moyenning." The majority of the presbytery having refused to take a presentee upon trials, though the Court had found that it was not within their competency to refuse, it was held that an action at the instance of the patron and presentee concluding to have it declared that the proceedings of the minority of the presbytery, who were willing to obey the law, should be valid and sufficient, and for interdict against the interference of the majority, was competent.[1]

Culsalmond was the next great battlefield. An ordained minister having received a presentation, the presbytery at first adopted the procedure prescribed by the Veto Act. Thereafter, although dissents were tendered by an apparent majority on the roll of communicants, the presbytery, by a majority, sustained the call, and admitted the presentee; and a petition and complaint having been presented to the Commission of the Assembly by the minority and by a number of the parishioners against the presentee and the majority, particularly on the ground that the presbytery had disregarded the Veto Act, the Commission cited the parties to appear, and in the meantime interdicted the presentee from officiating in the parish, and enjoined the members of presbytery not complained of to provide for worship. A note of suspension and interdict against this deliverance was passed, and interim interdict granted.[2]

On 27th January, 1842, Inglis, who was with Robertson and Whigham, opened for the petitioner in the First Division, asking them to reverse the decision of Lord Ivory. He spoke for three days, and the late Lord President (Hope) and Lord Murray were on the bench as auditors. Moncreiff replied, and was followed by Robertson. As there arose the question whether the Commission of the General

[1] *Earl of Kinnoull* v. *Ferguson*, 10th Mar. 1843, 5 D. 1010; 15 Jur. 381.

[2] *Middleton* v. *Anderson*, 10th Mar. 1842, 4 D. 957; 14 Jur. 347.

Assembly is a judicature of the church, established and recognised by the laws and constitution of the realm, the case was again and again adjourned. There was, it seems, some difficulty in getting hold of Rutherfurd for the respondents, and a note was presented to the Court asking for indulgence, as they had relied on him for concluding the debate, and that the Court should adjourn to permit of his coming from London after fulfilling some Parliamentary engagements. The Court fixed the 22nd peremptorily, and Rutherfurd then appeared and made a very ingenious but unavailing speech.

After the harm had all been done, the Act of Queen Anne was modified by Lord Aberdeen's Act, 6 & 7 Vict. cap. 61, which allowed parishioners to object to a presentee in respect of his ministerial gifts and qualities—an elastic phrase which has given rise to many disputed settlements and much humour, particularly at the inquiries where the members of presbytery, of all men in the world, had to satisfy themselves whether or not the objections were well founded. Hardly a case occurring under this statute was not tinged with even more absurdity than the election of ministers in our own day—the farce of a preaching and praying competition. Cockburn gives some examples of the kind of objections taken by illiterate but orthodox believers. Others have occurred since his time. If I remember rightly, the last case of the kind which amused the public and degraded the Church was the Alloa case, where the present Lord Justice-Clerk and the present Sheriff-Substitute at Dundee were pitted against each other. It was these inquiries—recognised to be an expensive, cumbersome, and unsatisfactory expedient—and the extended publicity they received through a cheapened press, no less than the policy of Churchmen, following upon and suggested by the disestablishment of the Irish Church a few years

before, that led to the Act of 1874 (37 & 38 Vict. cap. 82), by which patronage as a patrimonial right was abolished, and the right of appointing ministers of the Established Church transferred to congregations.

I have gone over these events thus fully because Inglis was an ecclesiastic as well as a lawyer, and because, apart from his intellectual power, which must sooner or later have forced him to the front, these cases furnished for him, at the age of thirty, a prominent part in a drama in which every Scotsman felt a vital interest. The strife developed into a game between the magistrate and the Kirk, and a knot of men in Parliament House moved the pieces.

And yet, after all this period of volcanic turmoil and laborious subtlety, the description of the General Assembly by Cockburn,[1] who was rather a prejudiced observer of the Establishment, might stand almost unaltered for Inglis's day and our own. We have still with us the Royal Commissioner and his attendants, stiff in court attire, brilliant but grotesque withal; the members of Assembly gathered from every part of the country—from growing cities, lonely glens, distant hills, agricultural districts, universities, and fallen burghs; still a mixture of clergy and laity, civilians and soldiers, of nobility and commoners, although the nobles, it must be remarked, are becoming fewer year by year; the same varieties of dialect, a little more corrupted by fine English than was the case fifty years ago; the same kindly greetings, social arrangements, and paltry plots; the same heterogeneous subjects for debate—partly theological, partly judicial, partly political—of the deepest apparent importance to the house, however insignificant or incomprehensible to others; the same awkwardness of forms and irregularity of application; the same ignorance

[1] "Life of Jeffrey," p. 174.

of methods of business, and the helplessness, in storms of disorder, of short-lived, inexperienced Moderators; the same, or nearly the same, conscientious intolerance of rival sects.

In its main features this picture is still accurate. But what vicissitudes of fortune has the Church gone through since that distant day! Yet how faithfully have her traditions been preserved by the witnesses and instruments of her rescue and resurrection! There is still the annual visit to the picturesque old city, but it is by an enlarged Assembly, to whom Chalmers and 1843 are mere memories. Instead of toiling up by coach, old parsons and young are swept with ease and velocity into town by the evening mail—the ladies of the manse accompanying them, as of yore, to do their annual shopping and note the city fashions. There are more kindly greetings too. Members of Assembly alone used to come up and carry back to the distant banishment of sequestered glens and quaint villages the tidings of the great city. Now, as each May opens many a minister who has no seat in Assembly, prepares to leave his patient flock, and sets his face to the beloved town pinnacled on crags between the Pentlands and the Forth. We all know in what herds these faithful shepherds climb the Mound in the fresh spring sunshine to the daily feast of dialectics in their well-known halls! Have we not seen them time and again? Perhaps nothing rejoiced Inglis's heart in his declining years so much as the part he had taken in vindicating the position of the Kirk as an Establishment, and in conducting her to a period of unprecedented prosperity.

Soon after getting into practice, Inglis had to confront this tribunal, which, with its galaxy of court people, and semicircle of doctors of divinity and severe ex-moderators, may fittingly be styled imposing. I must content

myself with the general statement that he was before them repeatedly.[1] It is the case, however, that after 1841 the exigencies of his civil business confined him to the more important forum in Parliament Square; and while, of

[1] I pause for a moment to note the cases before the General Assembly in which Inglis acted as counsel in four years :—

1838. *Commission of Assembly.*—For the minister of Dunbar, in reference from the Presbytery of Dunbar, with respect to the erection of a new church in the parish—Robert Waugh and others, petitioners. Also for the heads of families, petitioners against. Reference sustained, and found that sufficient ground had been shown for the erection of a new church in the parish of Dunbar.

1840. *General Assembly.*—For Dr. Fleming, commissioner for the University of Glasgow, whose commission was objected to on the ground that he was not elected by a legal quorum of the Senatus Academicus. Commission rejected.

1840. *Assembly.*—For Rev. Thomas Wright, of Borthwick, in two appeals by him, (1) against a sentence of the Presbytery of Dalkeith repelling the objections stated to the form and structure of the libel against him ; and (2) against a resolution of said presbytery referring the whole case to the Assembly. Sentence of presbytery affirmed, finding libel relevant, reference dismissed, and remitted to presbytery to deal with Mr. Wright.

1841. *Assembly.*—Appeals by Mr. Wright, (1) against sentence of said presbytery resolving to cite him *apud acta* that he might still have an opportunity of being heard on the proof, with certification that if he should fail to appear or decline to plead, the presbytery would go on to discuss the merits and ripen the case for judgment; and (2) from a decision of the Synod of Lothian and Tweeddale dismissing the appeal and affirming the judgment of the presbytery. Appeals dismissed, and the judgment of the presbytery and synod affirmed.

1840. *Commission.*—For Mr. Edwards in the Strathbogie case, when he appeared at the bar as directed by the previous General Assembly and when it was resolved to libel him.

1841. *Assembly.*—For Mr. Edwards, who was found guilty of the charges libelled and deprived of his license as a probationer.

1841. *Commission.*—For Mr. Taylor in appeals by him and by the Presbytery of St. Andrews, against a judgment of the Synod of Fife, reversing a sentence of the Presbytery of St. Andrews resolving to hold a visitation in the parish of Carnbee. Mr. Taylor's appeal withdrawn. Appeal by Mr. Taylor against sentence of the Presbytery of St. Andrews. Appeal dismissed, and deliverance of presbytery affirmed.

1840. *Commission.*—For Rev. Mr. Wilson, the appellant in the Stewarton case. Complaint dismissed.

1840. *Commission.*—For Presbytery of Mull in reference to leave granted by them to minister of Ardnamurchan for eighteen months. Presbytery's conduct disapproved of.

1840. *Commission.*—For minister in case of libel against Mr. Livingstone, at Cambusnethan. Petitioners' complaint against a sentence of the Presbytery of Hamilton sustained in so far as the presbytery found the libel against him relevant. Relevancy of libel considered by Commission, and certain alterations having been made upon it, libel found relevant.

1840. *Commission.*—For the Presbytery of St. Andrews in reference to the Synod of Fife relating to the settlement of the parish of Kemback.

course, his professional activity branched out into all the varied avenues converging upon that centre, yet, owing to the historical events of which those decades were fruitful, and of which he was not an unmoved spectator, church cases were exceptionally numerous and the issues involved in them unusually important. In these cases he enjoyed the study of ecclesiastical history, always a congenial subject to him, and one which as he advanced in years engaged more and more of his attention.

It only remains to mention the Teind Court, where Inglis came to have a monopoly of practice in abstruser points. Like most counsel with a Church connection, he was in the first few years a favourite for augmentations. In the Teind Court, if nowhere else, his antecedents did him good service. He soon became a first-rate authority on valuations and sub-valuations and the nameless intricacies of that antiquarian domain. That Court, as some forgotten authority once remarked, has always been like the wooden horse of Troy, too big and unwieldy for any useful purpose—a large antique animal, venerated by clergymen and historians. One judge in the Outer House can determine the succession to an earldom, but four or five, formerly nine, judges must assemble to consider whether a country minister is to have an extra chalder of victual. The quorum of the Teind Court was fixed at five by 2 & 3 Vict. cap. 36. Several expedients to provide the reformed clergy with proper stipends having failed, a Commission of Parliament was appointed by the Act 1617, cap. 3, to plant churches and modify stipends out of the tithes of every parish in the kingdom. Other commissions

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Findings of presbytery complained of reversed.

I quote these cases as illustrations of the character of Inglis's professional work in this department, and not as by any means exhausting the ecclesiastical practice he enjoyed.

were afterwards granted with powers to unite or disjoin parishes, to sell or value tithes, &c. The last of these commissions was authorised by 1693, cap. 23; and by 1707, cap. 9, the powers of it and of all former commissions were transferred to the Court of Session, which since that time has continued to exercise the powers thus conferred upon it.[1] By the Judicature Act, 6 Geo. IV. cap. 120, sec. 54, a distinction was made between the judicial and ministerial duties of the Court. It was provided that all actions for the valuation or sale of teinds or proving the tenor thereof, all actions of suspension or reduction of localities, and all actions of declarator or reduction of teinds should be brought before one of the Divisions of the Session sitting as a Teind Court.

Whether it was from hereditary bent, or a taste instilled by parental converse, or a natural preference for a part of the law which demands deep and accurate knowledge of church history one cannot quite say; but, to whichever or whatever it was due, it is the fact that Inglis was unrivalled as a master in the department in which had to be discussed valuations, exclusive privilege, Act of Security, the Statutes 1690, cap. 17, and 1707, cap. 6, 7 & 8 Vict. cap. 44, presbytery law and jurisdiction, patronage and stipends, and parochial and educational and poor law, and the mysteries of parsonage and vicarage teinds. In the department of parochial and ecclesiastical law alone, between 1836 and 1852, when he became Dean, he figured in sixty important cases.

The mention of these sixty cases introduces me to the other provinces of his civil practice. In order to aid in giving lawyers throughout Scotland an adequate conception of Inglis's breadth and grasp, fertility and power, it has been

[1] Bell's Dic. s. v. Teind Court.

thought worth while to count the number and estimate the variety of his reported performances in Shaw and Dunlop, ending, however, with the year in which, by the unanimous suffrage of the most intelligent constituency in Scotland, he was placed in the chair of the Faculty. The reported cases in which Inglis was counsel on one side or the other number 750 in that period of, say, fifteen years. Appropriately enough, about one-fourth of these deal with questions of process—advocations, diligence, arrestments, jurisdiction, citation, executions, title, relevancy, expenses, and the like—a marvellous variety of knotty little points, the decisions in which have already guided two generations of practitioners. In the law of trusts, succession, and reparation he argued about three hundred cases. Points in bankruptcy—and this was before the great consolidating statute of 1856—arose in fifty others; entails, leases, and property cases were answerable for a hundred and fifty more.

Fifty husbands or wives availed themselves of his advocacy in avenging or justifying matrimonial wrongs, and in fixing the domicile of their spouses; and he aided the Court in adjusting or protecting the rights of a hundred pupils and imbeciles. In the more commonplace departments of obligations, whether of sale, guarantee, carriage, or the like, the amount of his work seems secondary compared with the instances just named, but all the same we have from thirty to forty cases in each of those branches in which he appeared and discussed such themes as retention, stoppage in transitu, possession, lien, delivery, and caution. Bottomry bonds, affreightments, charter parties, insurance, agency, and salvage, engaged an equal share of his attention.

Nor in this hurried enumeration has account been taken of the many cases which, for the present purpose, may be called miscellaneous. Of such are administrative questions—questions about roads and ferries and corpora-

tions; nuisance, health, and privilege; records, officials, and jurisdictions—a vast maze of complexities and contradictions, by itself seemingly too great for the little brain of man.

One other class of case must be noted, and that because it illustrates a great era in the commercial history of the country, namely, the development of railway and arbitration law, coincidently with the introduction of a new system of locomotion and the passing of 8 Vict. cap. 19, and 8 & 9 Vict. cap. 33. Over sixty reported cases occurred in this department alone within a period of eight years. But in no one branch do these cases more than superficially indicate the volume of Inglis's business. They are exclusive of proofs and jury trials—of which he conducted a greater number than any of his contemporaries, Duncan M'Neill alone perhaps excepted—and Outer House and outside work generally; and when it is kept in mind that the Outer House is the domain of fact, and that the elucidation of fact forms at least the half of its occupation, some adequate notion may be formed of the power, the grasp, and the method of Inglis's mind in his palmy days.

It was one of the severest things said of Cockburn's "Life of Jeffrey" that it contained an imperfect appreciation of his long series of literary labours, since it disposed of those labours in three little lines: "Nevertheless, besides the three articles just mentioned, he wrote during this period thirty-six more, chiefly on literature, biography, and general history." Aware of this reproach, one thought of here embodying some notes of Inglis's notable cases. But to enumerate such performances in the Court of Session from 1835 to 1858 would be to epitomise the case-law of a prolific period. The unsatisfactory criterion of numbers must therefore be adopted. I ought, however, to say that his first great cause is said to have been the Hot-blast Patent, in 1842,

when he had been eight years at the bar.[1] There is a notion among his few surviving contemporaries that it enabled him to marry. He was the junior of four counsel for Neilson, the patentee; and though the first verdict was lost by a misdirection of the judge (Lord Justice-Clerk Hope), that proof of prior use was not sufficient to upset a patent unless continued to its date, the case was won on the second trial against the great ironmasters, the Bairds, and gave Neilson the profits and Scotland the honour of an invention which revolutionised the iron trade. Besides large emoluments, Inglis derived from this case a thorough insight into patent law, and that aptitude for physics which is indispensable to a patent lawyer. Of neither of these advantages did he ever lose the grip. Lawyers remember how they were called into play as late as 1877 in the Glass-blowing and Anderston Foundry cases. After 1842 until his elevation to the bench, it were difficult to name an important cause in which he did not figure. Tradition tells again of his great speech on the Torbanehill case, touching the question, What is coal? The Solicitors in 1843 recorded a valued tribute to his excellence in choosing him, along with Rutherfurd, to present their case involving a question in corporation law, *Henderson and others.*

[1] *Neilson* v. *Househill Coal and Iron Co.*, 4 D. 470, 1187; 5 D. 86, 1180 and *Neilson* v. *Baird & Co.*, 4 D. 1328; 5 D. 130.

VI.—As a Criminal Pleader.

HAVING said so much of the civil and civilian side of Inglis's work at the bar, I hasten from it, postponing meanwhile the analysis of his methods. He was not so great as a criminal pleader, but this inferiority was not personal to himself so much as it was an incident or peculiarity of Scotch practice. For in Scotland we have no specialism in criminal advocacy, or, for that matter, in anything else —a fact which emphasizes the difficulty of an advocate's duties when contrasted with those of his English brethren. Such are the extent, the breadth, the necessities, and the prizes of their possession that barristers surrender themselves at their call to the particular grooves—the Old Bailey, Chancery, Probate, Divorce, Admiralty, &c.—which seem most tempting or congenial to each man. With us the nocturnal burglar and the daylight thief are disposed of chiefly in the lower Courts; and at the High Court and on Circuit, where rapes, robberies, arson, and murder are tried, practice is mainly confined to the youth of the bar. All honour to them for having defended generations of the debased without fee or return of any kind save upon occasion the curses and contumely of their clients. For although, in the case of a criminal,

with strange irony, the country supplies a clergyman to pray for his soul and a doctor to cure and keep him alive for future depredations, it has never yet seen the propriety of paying a lawyer to try to keep him off the rates. He has no money to do this himself. Accordingly, as I have remarked, criminal advocacy is mainly done by the most junior of our brethren at their first Circuits; and after etiquette or prosperity has bid them abandon these eleemosynary perambulations, it is only at rare intervals that the defence of a criminal falls to their lot. There may also be something in the cold logical bent of the Scots lawyer which makes the purely criminal advocate—he who can at will, with fine or fiery or fitting phrase, cajole or turn or persuade a jury—a rare plant in this northern latitude.

Be that as it may, the repute which Inglis ultimately achieved in this department was probably as great as such repute ever can be in this country. His name does not figure frequently in the reports until he became an advocate-depute in 1844. Leading criminal counsel about that time seem to have been men who afterwards dropped out of view—James Milne,[1] for example. The M'Neills, Robertson, Craufurd, and A. Moncrieff[2] are mentioned in the contemporary journals as conducting ingenious and able defences, and at that time the trials not unfrequently finished in the early hours of the morning. For a criminal pleader the profession need never seek a higher standard than Inglis. Demanding to the full the rights the

[1] James Smith Milne, a son of George Milne, a writer in Dundee, who, however, was not called till 9th March, 1847. He was made Sheriff-Substitute of Selkirk in 1861 in succession to Francis Somerville, and died 16th September, 1883.

[2] Alexander Moncrieff was eldest son of Hugh Moncrieff, long the head of a well-known Glasgow firm of writers. Called in 1852 he was appointed an Advocate-Depute ten years later, and in 1869 succeeded Mr. Cook as Sheriff of Ross and Cromarty. He died very suddenly in June, 1870. "His nature was in an unusual degree pure, truthful, and generous, and throughout life unsoiled by the world. He, if ever any man, had kept 'the whiteness of his soul.'"

law allowed his client, he was never troubled with the shadowy phantoms of professional ethics or etiquette which have crept into the practice of weaker brethren. He fought for his client regardless of everything except his client's interest, and with a combination of logic and propriety which with Scotsmen was perhaps as effective as dramatic fervour. It must be remembered that our indictment, following strictly the syllogistic form, was an outcome of the logical turn of our early lawyers, just as the Shorter Catechism followed from the same bent among theologians. To the construction of those syllogisms, or the detection of flaws in the syllogisms of others, Inglis, like the lawyers of that and the next generation, owed no inconsiderable part of his reasoning powers.[1]

I have indicated that in the first volumes of the Justiciary reports his name does not figure very often—not nearly so frequently even in those early days as the volume of his business would have led one to expect. On April 25th, 1836, we find him defending a Highlander named M'Pherson, accused of falsehood, fraud, and wilful imposition, and convicted of the first two. At Perth, in the same year, he defended an engine-driver, indicted for culpable homicide, who had permitted a man to ride on his tender on the Newtyle Railway with the result that the man lost his life. Offering a learned argument on the relevancy, he quoted Blackstone, Hume, Alison, and the law of England, on the proposition that culpable homicide was homicidium culpa lata commissum, and the charge was abandoned. He was one of three counsel for Alexander Humphreys or Alexander, pretending to be Earl of Stirling, who was charged with forgery and fabricating false and simulate writings to be

[1] The syllogism, which must be admitted to have been a cumbrous form, was swept away by Lord-Advocate Macdonald's Amendment Act of 1887.

used as evidence in Courts of law. The other two counsel were Robertson (the great) and Adam Anderson, and they got him off—the prisoner fainting when the verdict was announced. These, however, are but types of what Inglis's everyday practice as depute became.

In the trial of Wielobycki, an Edinburgh doctor who confounded law and physic, and endeavoured to pocket the emoluments of both by impetrating a benefit from a patient on death-bed, and who was sentenced to fourteen years' transportation, Inglis made one of those brilliant displays in which he had no superior. An acquittal was hopeless, but, as counsel for the unhappy doctor, Inglis levelled on the prosecutor's case every resource of his keen, searching, and powerful intellect. His attack on the testimony was admitted on all hands to be masterly, and he criticised with deadly effect the treacherous memory, the imperfect knowledge, and the evil bias of the persons on whose testimony the Crown had depended. Nor is his ingenious and successful defence of Dr. Smith of St. Fergus, accused of shooting a friend and patient whose life he had insured, yet forgotten.

There was a trial in 1857, however, in which Inglis's powers were seen at their zenith—the trial, namely, of Madeleine Smith for poisoning her lover, Emile L'Angelier, by means of a cup of chocolate handed to him from the window of her father's house in Blythswood Square in Glasgow. Lord Justice-Clerk Hope and Lords Handyside and Ivory presided. The Crown counsel were Lord Advocate Moncreiff, Solicitor-General Maitland, and Advocate-Depute Donald Mackenzie. The prisoner was defended by Inglis, then Dean of Faculty, with George Young and Alexander Moncrieff as juniors. Crowded as are the criminal annals of our country with stories of romance and mystery, yet they contain no story more remarkable than this. It excited profound

interest throughout the empire. The clandestine love that formed the motive of the tale, and its tragic consequences, fascinated the great and the simple alike. The passionate outpourings of the accused—rivalling in intensity the prayers and the confessions of the ardent Heloise—her sex, her age, and her social position all combined to focus the eyes and sympathies of the nation. The pale but fresh firm face, set in the curtained bonnet of the day, the graceful figure, its lines traceable through the lace of a black mantilla, the lustrous eyes and full quivering lips as she sat in the seat whence so many have gone to the scaffold, caused even strong men to quail at the mere apprehension of her doom. Guilty or innocent, she made them think, not of the crime or of the possibility that her hand poisoned the fatal cup, but of their own sisters and daughters. To hang her was impossible!

Few trials since that of Lord Provost Stewart in 1747 for neglect of his duty at the time the Jacobites got possession of Edinburgh had lasted so long. The trial lasted nine days. Every scrap of information concerning it was eagerly caught up and discussed. The slightest incident of place or person connected with it was recorded sensationally and at length. Reporters of the press became spies upon witnesses and officers; private conversations and secret investigations found their way into print. The excitement reminded one of the trial—the longest in the records of Justiciary—of the cotton spinners in 1838, when upon a January morning the verdict of condemnation was awaited by great crowds amidst heavy falls of snow.

A memorable scene to the ordinary spectator, this trial was doubly interesting to the lawyers. The fame of it extended to the schools of Paris and Heidelberg and Bologna. The German jurist Mittermeyer described it as the most

representative specimen of the excellence of criminal trial in Great Britain. It witnessed the climax of two careers equally rapid and equally brilliant—the careers of two schoolfellows, namely, John Inglis and James Moncreiff. In some respects these men were a contrast, in others a parallel. That both were in the first rank of Scotsmen no one can deny who has studied their characters and the history of the time which they helped to make. At this trial they were the leading counsel. Like the great men they were, they rose to the occasion and are said to have surpassed their previous efforts in this domain.

The Lord Advocate laboured under the disadvantage of prosecuting an attractive girl who had gained the favour, or at least the sympathy, of the public. Besides, as prosecutor, he had to recognise the traditions of the Scottish school. For so humane is our jurisprudence that a prosecutor here is not allowed to adopt the persecuting methods which are followed elsewhere—in France, for instance. He must assume and maintain a clear, moderate, quasi-judicial attitude towards a prisoner; nay, must even display a temper biassed in the direction of clemency. However deeply rooted his conviction of guilt, however deeply stirred his emulation, he must abjure and avoid the least semblance of apprehension that the law is to be balked of its victim. This position tested the ability of the prosecutor to the very utmost.

A momentary digression may be allowed to speak of Moncreiff's happy rhetoric to a generation which did not know him in his palmy days. With him eloquence was unquestionably a matter of genius. Otherwise it could hardly have survived, as it did to the termination of his public career, the indurating process of legal study and strife and business. The faculty which he possessed had ample scope in his political life, for here he plumed

himself for those great flights which charmed great gatherings of his fellow-countrymen, and raised the reputation of the Scots bar in Parliament. He had sat at the feet of his father and of his grandfather. He had moved in the bright galaxy of stars that lit our Scottish firmament fifty years ago. He had formed his classic style on the models of Jeffrey and Cockburn. His province was the province of oratory—of polished phrase and seductive simile—and when occasion demanded, as it frequently did, on the platform and the hustings, of impassioned appeal and fiery declamation. But at this trial, by the moderation and mercy of his position, his airy pinions were shorn. How well he held the balance, and yet with what power he discharged his delicate function, some of the older members of the Faculty still remember.

Inglis, on the other hand, was in every respect in a most favourable position for a great display. It need not be denied that he seized the possibilities of the situation with avidity. Yet he fulfilled his duty with that calm dignity and self-possession which were the dread of his opponents and the admiration of Parliament House. His manner, like his eye, was steady and mild. As in the case of his father, there was a vein of sadness in his rich resonant voice that enlisted the sympathy of the crowd at the same time that it compelled assent to his argument. Time and space alike fail to outline that great speech. At this distance, when impressions are dim, the mere reading of it conveys no adequate conception of its power. But his method gleams through every line of it. Like John Clerk of Eldin, he walked deliberately up to his enemy's position and assailed its buttresses, demolishing them one by one. It was not his way to wander around the stronghold, afraid to fix upon the point of attack. Calmly, resolutely, fearlessly, he trod the path of danger, and rarely

did he find himself baffled. Then, after the theory of the Crown had been destroyed bit by bit, with what dignified appeals did he assail the hearts of his hearers! To the present generation he had rather the aspect of a hard man, or, at least, of a man devoid of deep feelings. He did not indulge in effusive emotion at any time, yet the exordium and the peroration of that address were masterpieces of simple, effective forensic oratory. "Gentlemen of the jury," he began, "the charge against the prisoner is murder, and the punishment of murder is death; and that simple statement is sufficient to suggest to us the awful solemnity of the occasion which brings you and me face to face." Towards the close he nearly broke down with genuine emotion, and few men or women in the Court remained unaffected. "Never did I feel," he protested, "so unwilling to part with a jury, never did I feel as if I had said so little, as I feel now after this long address. I cannot explain it to myself except by a strong and overwhelming conviction of what your verdict ought to be. I do feel a deep personal interest in your verdict, for if there should be any failure of justice I could attribute it to nothing but my own inability to conduct the defence; and I feel persuaded that if it were so, the recollection of this day and this prisoner would haunt me as a dismal and blighting spectre to the end of life. May the spirit of all truth guide you to an honest, a just, and a true verdict! But no verdict will be either honest or just or true unless it at once satisfies the conscientious scruples of the severest judgment and yet leaves undisturbed and unvexed the tenderest conscience among you."[1] Such snatches, potent as they are and exquisitely rounded, are powerless to illustrate the versatility and evenness of his style. It was always earnest and

[1] The speech will be found in Appendix B.

dignified, and never failed to impress. A memorable scene, indeed, was this trial, and a scene which no one can vividly paint. However faithful the brush, it must leave to imagination the magical effects of gesture and delivery. They were of surpassing excellence in Inglis's case, lacking perhaps in fire and energy, but nevertheless full of power. He never allowed many notes to distract his mind or dissipate its power. His notes were mere words in a large plain hand, and seemed like milestones on his march. His speech began the day's proceedings, but he strode into Court only after the entire audience, including judges, were seated, and then he spoke to the jury from the far side of the prisoner.

The most popular of his speeches was that delivered on behalf of Madeleine Smith, but it was, we are told, by no means the best, and did not give the same assurance of gigantic intellect as did many of his extempore speeches in the Inner House, when he rose as senior counsel to restate his own case, and then to destroy, with quiet, deliberate, impressive energy, the structure reared by his adversary. These speeches showed wonderful ease, reserve, and fulness of power. There was no jerk or spasm in them, or appearance of effort. "All was easy strength—arguments sometimes dexterous, but generally strong rather than dexterous, clothed in appropriate words, spoken without hesitation or gesticulation, and dropped with consummate if unintentional skill into the right places, reiterated in new aspects when necessary to make them fully understood, and adjusted so as to give the impression that truth and reason could not exist outside the barrier which he set up, partly through judicious speech, but also not a little through judicious silence which ignored what could not be conclusively answered."[1]

[1] Sheriff Campbell Smith.

And this criticism applies not merely to great occasions and great causes, but to the routine and trivialities of diurnal practice. Take as a type the following which appears in a discussion about a diligence after the form of the issue had been adjusted in the action, *M'Laren* v. *Ritchie,* where a prominent Edinburgh man sought damages from a daily newspaper, for having in a series of eleven numbers before and during a Parliamentary election held him up to ridicule and likened him in his public character to a snake—

It was vain to say that it was false that the pursuer was a snake, or that certain things were said of him that were purely figurative. Neither falsehood nor truth could be properly predicated of these things. The true description of a case of this kind was not that it was a combination or collection of actionable statements or epithets, but on the contrary, that it was a combination or collection of statements or epithets not actionable, or not necessarily actionable, but the provoking repetition of which constituted that which was described in the issue as holding up the pursuer to public hatred, contempt, and ridicule. The charge made by the pursuer, therefore, was not a charge of a series of libels or slanderous statements, but it was a charge of having by repeated articles, and by the use of contemptuous epithets, so injured the feelings of the pursuer as to entitle him to damages. Now, it was absurd to think that the defenders could plead justification in this case, because, from the very nature of the thing, they could not prove the truth of the statements contained in these articles; and if they could prove their truth, that would be no answer to the complaint, because the complaint was not that they were false, but that they were scurrilous and abusive and offensive.[1]

[1] *Scotsman,* 19th July, 1856.

VII.—Forensic Character.

While it is impossible to follow the ramifications of Inglis's practice, even in one department of it, it may be of interest to note some of the distinguishing qualities that built it up. They were peculiarly a combination of natural advantages and acquired habits. They were in no sense the efflorescence, fitful or fugitive, of genius, but the result of many years of patience, of toil, and of discipline. The advocate had, and has, a threefold character to sustain—namely, that of a man of business accustomed to manage affairs, that of a counsel or adviser, and that of an advocate who asserts or defends rights. This division corresponds with that of Cicero, the greatest advocate of ancient or modern times. The qualities germane to the first—promptness, brevity, punctuality, sense, and sagacity—need no elaboration; and while the others can be but lightly touched upon in this place, some outstanding traits that marked Inglis's conduct as an adviser and as an advocate require our notice.

Our modern advocacy is a composite and diverse thing. It embraces many of the elements of the Greek and Roman methods. The theory of the Athenian system compelled the lawyers of Greece to be chiefly chamber

counsel, and accordingly we have few remains of their works. In that polished republic the litigant was not allowed the luxury of an advocate. In advising clients of their rights and remedies, and in preparing speeches for them to memorise and deliver, the logographers acted as so many superior law coaches. Yet their work of writing speeches was done with consummate skill and beauty. Not only had the writer to know the law, but he had to marshal facts forcibly and in such artful order that the attention and sympathy of the dicasts were effectually engaged. The character of the parties and of the witnesses had also to be studied. Moreover, he had to be such a master of style and imagination as to make the speech appear natural to the speaker for whom it had been prepared—a task clearly beyond the skill or the patience, or at least the time, of the most accomplished modern.[1]

In Rome, again, where the jurisconsult sprang from the patrician, it was the duty of the patron to advise and to defend his client. Being liable at all times to be called upon for advice and assistance, he was bound by self-respect, if not by caste, to know the law. The sessions which the patricians established in their porticos gradually increased in importance until the houses of the distinguished and professional jurisconsults were thronged with clients, and by young lawyers who hung upon the lips of their oracles. Under the Roman system, and apart from the sordid pettifoggers who abounded then as in every age, pure advocacy flourished, although the pleaders, especially the Republican pleaders, concerned themselves with law chiefly in its political aspects.

The work of Scotch counsel embraces elements of these

[1] In this professional ancestry may be named Antiphon, Andocides, Lysias, Isæus, Isocrates, Hyperides, Lycurgus, Æschines, Demosthenes. Vide lecture on "The Ancient Lawyer," by George Fenner, in the "American Law Review" for 1891.

two systems, adapted no doubt to the changed conditions of modern life, and immeasurably enlarged by the wide and diverse fields of law, politics, and fact on which the advocate is now permitted to figure. In the profession of wisdom—that is, of giving sound advice—the work of an advocate has been pretty much the same in all ages; but when Inglis joined the bar, and, as we have seen, for some centuries theretofore, the half at least of counsel's time was devoted to as severe, if not as ornate, composition as ever engaged the attention of Carneades.

There were three classes of writings in which this gift or acquirement—for it was more a science than a gift—had to be exercised, the composition or revision, firstly, of statutes; secondly, of deeds, such as contracts, wills, and the like; and, thirdly, of judicial documents, including pleadings. We know that Inglis had abundant experience in each of these subdivisions, and that he prepared himself for the two first by a wide range of practice in the last. For ten years at least, in the minutes of debate of which I have already spoken,[1] Inglis practised this severe style. It is called severe, not merely because of the absence of rhetorical colour, which chiefly marks it, but because of its innate difficulty. "The expression of rights and obligations and the embodiment of legal propositions in so fitting language that their exact meaning might be translated into other tongues possessing an equally significant and compendious terminology is obviously a difficult art, and requires the acumen, the brevity, and the precision which distinguish Paul and Ulpian among the civilians, Thucydides in history, and Bacon in philosophy."[2] In severe composition Themis does not appear in her holiday garb but in her

[1] See pp. 54-57.

[2] See a lecture on this subject by Sheriff Mackay, and also the obituary notice of Inglis in Proceedings of Royal Society for 1891 by the same author.

ordinary week-day dress, without a tag of ornament to commend her to any but the purely legal reader.[1] Inglis devoted the full intensity of his mind to this work, and there are in the antiquarian repository already referred to —the upper storey of the Law Room—certainly many scores of papers from his pen which attest the depth and soundness of his law and the accuracy and adequacy of his legal style. I refer to those papers thus specially because of their undoubted influence on his style as a pleader and upon his judicial compositions. For persons who are most competent to speak declare that it was the labour that he spent on this branch of his work which made his dicta seem not so much the voice of Inglis as the voice of law.

It is difficult, without making this chapter a lesson in pleading, which were out of place and might be presumptuous, to traverse leisurely this early tract of Inglis's career. But there are some salient features of it which may be noted in a word, since they are germane to the notice of him as a writing counsel with which we are at this point concerned. The young advocate has no harder lesson to learn than that of distrust of himself and his client and his client's case. He is prone to overlook the inaccuracy and exaggeration by which facts are often obscured. Young men vote their seniors timid. It sounds trite to say that suspicion is the fruit of experience; but without cause elderly men are not suspicious or cautious. In all probability they have paid bitterly for their experience. Consciously or unconsciously, clients are given to concealing essential facts if concealment aids their purpose; and that every man has an object, and a deliberate one, sometimes good, often bad, and occasionally wicked, goes without saying before a legal audience. Now, in distrust, and in what one may call legal pessimism

[1] Lord Moncreiff at the Edinburgh Juridical Society in 1870.

—unbelief in one's case—Inglis gave evidence of eminence in the first years of his career. He wormed himself into the vitals of a dispute, applying intense thought to its facts and the principles applicable to them. He spared no labour as a junior in the preparation of his records. His mind being intense, his preparation was exhaustive, and, what must seem strange to some practitioners now-a-days, he prepared as thoroughly for a consultation as for a debate. Similar criticism may be urged of his far-sightedness, using that word as distinct from foresight. He watched for the pitfalls of a case from the very beginning. A man may be a successful pleader without this faculty, but without it he cannot be a successful counsel. It is a sort of second-sight, enabling one to trace the windings of the thorny path most cases follow, and to descry the shallows and quicksands devised by the strategy, the ingenuity, or the unscrupulousness of one's opponent. Inglis bent his whole energies to carefully extricate salient points from masses of detail, and present them clearly when the stage for pleading was reached. These qualities of distrust and caution and far-sightedness, which distinguished him equally with Deas and Anderson, Marshall and Penney, made him make sure that the ship was sound ere she was launched. Experienced men are sometimes in the dark about the real merits of a case until confronted with revelations at the trial. This was not Inglis's way, for, as far as possible, he knew his case from the beginning, and having decided that it was good, he was never unsettled by mixed motives, affected sentiments, or doubts or fears about the course to be pursued. The perspective faculty, which seems to have been part of Inglis's genius, often saved him from discomfiture; and having out of pure scrupulosity cultivated this faculty for forecasting dangers, and—considering it apart altogether from the

excellence of his forensic manner—while it cannot be said of him, or of any modern, as it was of an old Greek, that he never advanced a proposition which he failed to establish, or assailed one which he failed to overthrow, there need be little wonder that he deserved, as he certainly earned, the reputation of being the most successful case-winner of his time.

In his relations with agents, too, Inglis was remarkable —speaking both of those whose experience and character made them safe guides, and men of narrow or distorted view. In nine cases out of ten, the young advocate draws no wisdom he can use out of his own armoury. He has little experience of the affairs of life and no knowledge of law beyond the chaos of unapplied dicta culled from books. He is, therefore, timid and deferential to the man who takes pity upon his helpless, and often hopeless, idleness. Such was his resolute conception of an advocate's duty, and so carefully did he apply it, that John Inglis was never interfered with by any agent even in his early days. But then few men are Inglises, and fewer still command such confidence as was reposed in him.

But how great soever his perfection in these, the more sequestered avocations of a counsel, Inglis's greatest power was exhibited in the forum. "There is a certain difficulty in the strife of litigations, and I scarcely know whether in human efforts it be not the most difficult in which the ability of the speaker is often measured by the ignorant according to the issue or the victory; where there is a foe armed at all points who has to be hit or driven back; where he who is to be the arbiter is frequently prejudiced and irritated, or even friendly to your opponent and hostile to yourself—in which case he must be informed, soothed, or excited, his prejudices removed, and himself managed by your skill in every way to suit the occasion. Severity

of the mind must, as if by some mechanism, be twisted sometimes to gentleness, sometimes to sympathy, and sometimes to joy. (To this end) all impressive thoughts and weighty words must be employed; added to which there must be picturesque and energetic delivery, full of confidence, pathos, and truth." [1]

This portrait mirrors with wonderful truth the character of the pleader still. The modes and conditions are no doubt changed. He does not now accumulate the material for a speech, arrange it skilfully so as to give it most weight, clothe it in a fitting garb, commit it to memory, and then deliver it with grace and dignity as elocutionists. The object now is not to impress the judicial audience with a favourable opinion of ourselves—to mould their minds by seizing upon and pandering to the character or characteristics of each of them. With a bench passionless and impartial we no longer give place to the primary canon of pleading among the ancients—that the mind of the judge has to be conciliated, and led by certain easy stages to prepossessions in favour of persons or propositions. Moreover, modern pleading demands little enlargement or even encroachment upon the vices or virtues or sufferings of mankind. It is a dry and relevant thing—any lapse into the region of feeling or of rhetorical license or embellishment being accounted bad form. It is fre-

[1] In causarum contentionibus magnum est quoddam opus atque haud sciam an de humanis operibus longe maximum; in quibus vis oratoris plerumque ab imperitis exitu et victoria iudicatur; ubi adest armatus adversarius, qui sit et feriendus et repellendus; ubi saepe is, qui rei dominus futurus est, alienus atque iratus aut etiam amicus adversario et inimicus tibi est; quum aut docendus is est aut dedocendus aut reprimendus aut incitandus aut omni ratione ad tempus, ad causam oratione moderandus; in quo saepe benevolentia ad odium, odium autem ad benevolentiam deducendum est; aut tamquam machinatione aliqua tum ad severitatem tum ad remissionem animi, tum ad tristitiam tum ad laetitiam est contorquendus; omnium sententiarum gravitate, omnium verborum ponderibus est utendum; accedat oportet actio varia, vehemens, plena animi, plena spiritus, plena doloris, plena veritatis.—De Oratore, ii. 17.

quently mere conversation, often the conflict of one mind with another, sometimes even a wrangle. Our lawyers seem incapable of emotion, or, rather, of showing it—like old Ilay Campbell, who, although "heaving internally with strong passion, externally was like a knot of wood."

For success in this, the most arduous of human occupations, it is needless to say, a certain unity and diversity of mental and bodily endowment are still essential. However highly mental grasp and acquirement ought to be exalted above adventitious gifts, yet there is no profession in which solidity and symmetry of frame and feature count for so much as in a professional speaker. In voice, in feature, and in stature Inglis was distinctly commanding. He had a good face, and a firm, not handsome, but solid and well-knit lawyer-like aspect. His eyes—mild, steady, irresistible—were surmounted by a massive intellectual brow. Dignity and repose of feature imparted character to the whole man. His figure was about the medium height, erect and easy. His mien was mild and pensive, his gait slow and deliberative, and he was always on excellent terms with his wig. He seemed to have formed his manner on that of the contemplative Blair, whose disdain for fuss came by inheritance from the author of "The Grave," and, not unlike that great President, he gave no place to the distractions of excitement. His voice, although not conspicuously attractive, had a certain mellow resonance in it, and was capable of effective modulation, and wide range. Instinctively, although not academically, he was familiar with the canons of elocution; and not infrequently he subdued his voice to sweetness—occasionally, as on Madeleine Smith's defence, even to tenderness.

The first quality which distinguished him was his extraordinary self-possession—a gift of surpassing importance

to the advocate, and one which Inglis possessed in so remarkable a degree that there was no situation in which he appeared to be discomposed. He had been accustomed, when comparatively young, to do battle with such veterans as M'Neill, Cuninghame, Keay, Anderson, Hope, and others; and by 1840 he seemed to feel unruffled confidence in the sufficiency of his powers. It need hardly be added that this confidence and repose enabled him with freedom and effect to use whatever weapons the emergency of the moment demanded from his well-stocked armoury. When he began any speech there was observed in him, as in many gifted speakers, a certain tremor which enhanced rather than diminished the effect of its apparent deference, but it still left the mind absolutely untrammelled for the full exercise of its powers of reasoning, memory, and speech.

Nor did he ever exhibit that eagerness which is so fatal to soundness and to weight. An advocate is committed to his client no doubt, and must urge all reasonable views on his client's behalf; but when, even in the heated anxiety to win, his zeal or his stubbornness exceeds the bounds a calm discretion prescribes, it has been remarked that the judicial balance is sure to become depressed on the other side. When deeply moved, as Inglis undoubtedly was in many ethical arguments, his feelings never betrayed any outward sign of their intensity, and it was a psychological study of some profit to note his mastery over temptation to exaggeration alike in speech and in gesture.

But whatever Inglis's outward aspect may have been, it was the constitution, the order, and the equipment of his mind that raised him to the pinnacle of his profession. At the outset of his career his mind was fairly stored with academic knowledge. He had at least the usual tincture of letters. The science of jurisprudence was

well known to him and fairly digested, and he never was content with creeping along the subsidiary streams, but mounted to the fountain-heads of law in what are known to us as institutes, and was thus able, even when a young man, readily to advise an increasing number of chamber clients, and to apply the law to a numerous series of facts. In an address on the study of the law, in May, 1865, he said, "No man can be an adept in any science without a knowledge of its history; and this is especially true of the science of jurisprudence."[1] Aptitude for and mastery of detail are the evolutions of years and of experience. The very first precept which Inglis seems to have embodied in his habits was to obtain a thorough command of facts as they arose in his practice; and he thus rapidly acquired what is as essential to an accomplished lawyer as the mastery of laws and precedents, an intimate knowledge of the customs and commerce of his country, of men and manners, and of books.

Cognate to this characteristic is the gift of classification, which, in a lawyer, must be ready and comprehensive, and which in Inglis, after a year or two of practice, became so astonishing that the Court, the counsel, the agents, the officials—people who usually listen to debates out of no love for them—enjoyed the order and luminosity of his exposition as he laid hold of and arranged facts at the appropriate points of his argument, and strode calmly on from one point to another. One is struck with the praise given to the pleaders of all ages for complete mastery over the facts of intricate cases. It is a faculty distinct from power of

[1] In the same lecture he discussed the authenticity of the Regiam Majestatem, and came to the conclusion that "all that can be safely affirmed of the Regiam Majestatem as a whole is this, that it is a collection of laws made by an unknown author, within the 13th and 14th centuries, professing to be an authoritative compilation of law for Scotland, and in great part copied from the Treatise of Glanville on the Laws of England." But see Appendix C for the lecture.

expression or any other weapon in an advocate's armoury. Nothing surprises listeners more than this grasp of details. It is the result of a special acquisitive aptitude which no one outside the profession can well understand, and, like any other quality of mind, the aptitude itself increases with practice and experience. In this part of his work, too, Inglis had the advantage of a powerful and retentive memory, which is specially the faculty of the jurisconsult as language is that of the pleader. "Quid dicam de thesauro rerum omnium, memoria? quae nisi custos inventis cogitatisque rebus et verbis adhibeatur, intellegimus omnia, etiam si præclarissima fuerint in oratore, peritura."[1] It seemed as if, having mastered a cause, he laid it aside in a recess of the mind whence it could be recalled with ease at pleasure or opportunity. A strange subtle power it is, this lifting up of whole tracts of thought and fact from the depths of mental consciousness at the bidding of occasion! An intuitive power, enlarged like all latent gifts by exercise, Inglis in his later days possessed it in perfection.

Now, the qualities thus outlined are the constituents or the handmaids of eloquence in a pleader. I am at a loss whether or not to assert that Inglis was an eloquent man—using the term eloquence as descriptive of that overwhelming power which sways bodies of men by the marvellous resources of language. His contemporaries say he was rather of the class of good, consecutive, and persuasive speakers. He certainly did not claim the privilege of declaiming fluently without preparation on every possible variety of subject and from the first, by the vigour of

[1] De Oratore, i. 5.—What need I say regarding memory, the storehouse of all things? We know that unless it is used as the keeper of what we have learned or thought out in the way of science or language, everything is lost even in the case of the most brilliant speaker.

his conceptions, the purity of his style, and the impressiveness of his manner, he maintained his position as very much more than what it may without offence be said many pleaders become, namely, bustling men of business with glib tongues.

His chief grounds of pre-eminence as a pleader, then, were culture, determination, quick apprehension, ready-wittedness, a keen, strong, logical faculty—logical grip and toughness—and a vast command of appropriate precise language, the outcome of that careful selection and arrangement which he had practised in severer composition.[1] I have said that his preparation was always exhaustive, although never so laborious as Rolt's or so light as Cairns'. Having mastered the facts of his case and placed them in a certain order, he trusted to intuition for the success of his forensic performances. His words—simple, clear, and fitting—mirrored a clear mind. His logic was irresistible. He saw the end from the beginning. Only his opponents could sufficiently dread the blows which they knew must inevitably fall. Moreover, his logical faculty led him to correct conclusions with the velocity of instinct. Then his command of language was

[1] These qualities are attested by a writer describing them soon after Inglis was raised to the bench, namely, Sheriff Campbell Smith. In regard to clearness of mind, let me quote from Lord Moncreiff's address to the Scots Law Society in 1867 the following sentences pervaded by the author's grace and power: "Mere fluency, although an important, is very far from being the most important, quality of a pleader. The easy command of appropriate language is no doubt a material attainment, and is necessary to excellence. But the easy command of language, whether appropriate or not, is perhaps one of the greatest snares which can beset a pleader at the outset of his career. The man whose thoughts outrun his power of expression often chains and rivets the attention. The bright, clear intellect, even when struggling through a misty veil of confused utterance, communicates, by a secret influence, with his audience. But a man whose power of expression outruns his thoughts never can convince. The words are only convincing as they are the envoys of the mind within; and when they throw off restraint and discipline, they become a rabble without a leader."

aided by a fancy not deficient in fertility. The speaker is barren indeed to whom the course of his speech does not reveal fresh tracts of thought and flashes of illustration. In this respect Inglis was prolific, but not discursive or exuberant. Even when a young man, his illustration, never splendid, was always appropriate. In short, he so analysed and expounded as to guide others gradually but surely to the same conclusions—guide them, moreover, pretty often without appearing to do it, or to do more than calmly set forth what was manifestly undeniable.

One does not wish to labour or to overdraw this part of the picture lest admiration so complete should be thought to be mere eulogy. But there are one or two points of contrast to observe, by which definiteness may be imparted to it. It must be remembered that, while Inglis's pellucid mind and style were the result to some extent, perhaps, of genius, using the term as a synonym for natural gift, yet to a greater degree they were the fruit of sedulous, secret training, that is, of diligence in all its subdivisions of care, attention, thoughtfulness, labour, constancy. His eloquence was not always guiltless of redundancy, but believing as he did that by lapses into slovenly speech, men learn to speak carelessly, he was never unfaithful to the standard of purity and simplicity which, in preference to any other model, he seemed to have set up. On the importance of exact and fitting language he has left us some wise words. Said he: "I think legal composition comes to be distinguished by a precision and accuracy of expression that is perhaps beyond the reach of frail human nature, and towards which we seem at present to be making no appreciable advance." I think he not only made an advance, but founded a style.

Many advocates, again, decline at the suggestion of senior or judge to relinquish some point in their case on which they have fixed, and on which they desire to fix the judge—returning to it again and again, hoping like an ancient pleader to succeed through much importunity. This pertinacious method contrasted strongly with that of Inglis, who had none of the loquacity or pugnacity common in lesser natures. If he had a weak point or case he placed his argument fairly and in a strong clear light before the Court, but without any contentious prolixity or finesse or rhetorical device, so that, so to speak, if the bait did not take, his duty to himself and his client had, by a courageous effort, been fairly discharged. Regarding this characteristic the words of a great authority are very pertinent. In a lecture which Lord Moncreiff delivered before the Legal and Speculative Society of Glasgow on the subject of pleading, he paid this graceful compliment to his old rival: "In the next place, go straight up to your adversary's argument. It was told to me of the late John Clerk, who was in his time probably the most acute and boldest pleader at the bar, that he despised greatly some of his contemporaries, who went round about the adversary and never fairly met him but endeavoured to draw away the attention of the Court from the strength of his argument. His advice to his younger friends was—go straight up to your adversary's argument; meet him if you can, and if you cannot meet him, why even lose your case. Again, never mis-state the argument of your adversary in order to gain an edge for your own; rather state it strongly. And here I think I may point to the practice of a great leading pleader now on the bench—I mean the present Lord Justice-Clerk, who, in legal dialectics, was probably as accomplished a man as the bar of Scotland ever produced. One of his great merits was that he never mis-stated his adversary's argument; indeed,

he very often stated it more strongly than his adversary had done, and put it in the strongest and clearest light, just in order that his triumph might be the greater when, after having presented it in its full force, he was enabled to crush it into atoms. The victory is not worth winning if you have not stated fairly the argument of your adversary." Nor would he continue the contest after he felt convinced it was fruitless. *Gilmour* v. *Gilmour,* tried at Glasgow in October, 1852, is an instance in point. This case—involving the right to the Eaglesham and Hazelden estates—which Lord Robertson, who tried it, characterised as the most important in point of pecuniary amount since the Douglas cause, had been three days at proof, when Inglis, who was counsel for the pursuer, intimated that he felt satisfied that the deed in question was the true expression of the will of the deceased, and consented to a verdict for the defender.

We have all known counsel, too—genial, epigrammatic, warm-hearted successors of George Ferguson, but without the splutter of that worthy—who spoke of every client whom fortune or poverty or friendship brought their way as if they had a mission to aid the suppliant and to raise the prostrate. Inglis had a very different way. While he never flinched from any attack, he possessed a certain calmness of manner which did not consist well with supplicating judge or jury, and he rather confided the vindication of his client and his case to a simple statement of the truth. Some critics used to complain that when at bay he did not show fight enough. Perhaps that was so, but then persistence of this kind would clearly have detracted from the impressiveness of his manner.

Only one or two other departments of a counsel's work need be mentioned in this place. There are acknowledged to be three classes of questioners—the short and quiet, the

diffuse and random, and the browbeater. Inglis belonged to the first of these orders, like Jeffrey, Cockburn, Hope, M'Neill, and Robertson, who all practised a short and pointed cross. Lastly, Inglis never wasted power in mere dialectical ingenuity.[1] He concentrated every effort upon the broad grasp and vivid exposition of the fitting chapter of the law. He seldom, if ever, employed the inventive faculty to discover a technical flaw. He cared nothing for the tricks of procedure, which seemed to his great mind to suit only the chicanery of the pettifogger. No eminent lawyer whose function is the luminous exposition of great principles, to be applied in acts of justice, can have patience with such things. Inglis had none while he was at the bar; he disdained even to speak of them. On all occasions, as was said of a man who, had he lived, might have been Inglis's colleague on the bench, he exhibited the noble characteristic of doing his work

[1] He was not inapt at repartee. On many occasions Duncan M'Neill and Inglis were pitted against each other. At an Inner House debate, Inglis's junior was in before him, and found M'Neill and his junior already there. Said M'Neill, "I think, Mr. S———, two speeches will be enough in this case. You had better go on." At that moment Inglis came in, and his junior whispered to him, "M'Neill thinks we should only have two speeches here and that you should begin." Said Inglis, "If you had been as long here as I, you would know by this time that Duncan is a sly old fox! Go you on." One recalls another occasion before Lord Neaves. Inglis was denouncing the proposition of the junior on the other side as the most preposterous he had ever heard. The junior retorted that if it was the most preposterous Mr. Inglis had heard of, it was strange that Mr. Inglis should have given an opinion to the same effect. "When did I give that opinion?" asked Inglis. "He gave that opinion, my lord, in this very case, and I have pleasure in handing it up to your Lordship." His lordship's eye was beginning to twinkle wickedly. "Show me the opinion," said Mr. Inglis. On examining the document, he observed, "I see, my lord, that this opinion is dated from Blair Athole, and anybody who chooses to follow me to Blair Athole for an opinion deserves what he gets." That case was a typical one of the class which occurred not infrequently in those days in which the agent heaped useless and irrelevant papers into the process—amongst them, the opinion in question, and also a letter from the country correspondent telling the agent what counsel to employ, and adding, "You may get old——— for half the money, but for God's sake don't take him at any price!"

generously as well as fairly;[1] and while, after fair warning, he did not scruple to gain a case on preliminary plea, it was repugnant to his manly nature to take advantage of a brother's slip, as he also scorned any of the arts by which employment and political promotion may sometimes be obtained or victory achieved.

[1] Alex. Shank Cook (1834), born in 1810 at Laurencekirk, of which parish his father, the Rev. Dr. Cook, afterwards Professor of Moral Philosophy in the United College of St. Andrews, was minister. Mr. Cook was appointed Sheriff of Ross and Cromarty in 1856 and Procurator in 1861, and died at the age of fifty-eight on 16th January, 1869.

VIII.—Dean of Faculty.

Such being the characteristics of the man, it is not surprising that success should have crowned his efforts at an early age. The rapidity of his rise had, indeed, never been equalled except in the case of Lord Justice-Clerk Hope, who was Solicitor-General at twenty-nine, and Dean in his thirty-sixth year.

The first recognition by the State to which an advocate aspires is the Advocate-Deputeship, in which office, as the prosecutors of criminals, four deputes of the Lord Advocate embody the State's corrective power. There is no similar official in England, because there prosecutions other than police or fiscal prosecutions are more frequently at the instance of private persons than at that of the public authority. In England, no doubt, there is a director of public prosecutions, but he is in no sense the equivalent of the public prosecutor in Scotland. His chief duty, it is said, is to find reasons for not prosecuting. Moreover, the Scotch Advocate-Depute fulfils to some extent the function of the English grand jury. The Scotch system is favourable to the prisoner to begin with; the English is so at trial. The Advocate-Depute is slow to prosecute unless he has a clear case. The private prosecutor is

governed to some extent by malice; the Advocate-Depute is not. The Advocate-Depute, therefore, is generally able to count upon judicial aid in bringing a malefactor to trial; the private prosecutor frequently finds on the bench a senior on the side of the prisoner whom he had not calculated upon.

The selection for this coveted appointment, which usually marks the first step on a precarious and factitious ladder, is governed by a variety of considerations, amongst which may be mentioned as not the least powerful, favour, family influence, political service, as well as professional ability and promise. In Inglis's time the deputes named by the Government of the day were all the young men of any brains or influence on their side.[1] For some years it has been the practice to appoint four only, each with a definite salary. Although Mr. Inglis was at no time an active politician, his party, in 1844, when he had been about ten years at the bar, by including him in this envied band, recognised not merely the services by way of secret counsel and peripatetic oratory which according to use and wont he had contributed to its ascendency, but his tried and acknowledged ability. Duncan M'Neill was Lord Advocate at the time.

I am able only hurriedly to summarise the steps by which Inglis attained to that pinnacle from which, by its unanimous suffrage, the most intelligent con-

[1] For instance, as late as 1867 there were fourteen honorary A.D.'s, and all took the oaths. They were G. H. Pattison, afterwards Sheriff of Roxburgh; John Pettigrew Wilson, afterwards Sheriff of Ross and Cromarty; Charles Scott, Clerk of Justiciary; John Marshall, second Lord Curriehill; William Lamond, Sheriff-Substitute at Dunfermline; Robert Johnstone, counsel for the Caledonian Railway Company; and John Burnet. These are all dead. The others were William Watson (now Baron Watson), J. H. A. Macdonald (Lord Justice-Clerk), W. E. Gloag (Lord Kincairney), Alexander Blair (Sheriff of Midlothian), David Boyle Hope (Sheriff of Roxburgh, &c.), and John Skelton, C.B., chairman of the Board of Supervision.

stituency in Scotland transferred him, over the heads of men amongst whom he was little more than a youth, to their honoured chair. He remained a Depute until, in June, 1846, on their Irish Bill demanding additional repressive powers, Sir Robert Peel's cabinet, under which Inglis served, fell through the influence of the Protectionists. When Lord John Russell's Government was defeated in February, 1852, on the Militia Bill (arising out of fears of Napoleon III.), and Lord Derby came into power, Inglis was appointed Solicitor-General, and he held this office for three months. After the general election in the summer of the same year—referred to in a subsequent chapter—the elevation of Adam Anderson to the bench made way for Inglis's promotion to the blue ribbon of the bar.

To his career as Lord Advocate and as a law reformer I shall recur. Here I propose only to treat of his Deanship, which one authority has declared to be one of the most cherished characteristics of Parliament House. He retained the office of Lord Advocate until November, 1852, when, Lord Derby's Government having been defeated on Mr. Disraeli's financial proposals, the Lord Advocateship passed into the hands of James Moncreiff. In that same month of November, namely, on the 13th, upon John Marshall the elder's promotion to the bench under the title of Lord Curriehill, and when Inglis still held the office of Lord Advocate, and was soliciting the suffrages of the electors of Lisburn, he was elected Dean. Mr. Penney moved, and Mr. Moncreiff seconded, his appointment. On taking the chair he thanked the Faculty for the honour of their unanimous choice, and is said by the contemporary journals to have made an eloquent speech, of which, however, there is no record. He thus filled the offices of Solicitor-General, Lord Advocate, and

Dean of Faculty within a period of several months—a rapidity of progress rarely equalled.[1]

This elevation to the Deanship at the age of forty-two Inglis owed purely to professional eminence, an eminence which, as has been shown, was the outcome of great ability and of great moral elevation of character. Many Deans have been placed in the chair of the Faculty with a grudge or as a concession to the claims of party, but Inglis's superior merits as a man and as a lawyer were clearly undeniable, and he had been implicated in no controversy or movement which could detract in any way from the unanimity with which his brethren conferred this honour upon him. He was much less a politician than a lawyer, and lawyers of all shades of opinion recognised in him their head. His politics, like his church, were a matter of hereditary tendency as well as personal conviction, but he never allowed his views to become aggressive. Jeffrey, Cockburn, Murray, Rutherfurd, and Moncreiff spent half their leisure at public meetings. Inglis never bulked largely in the public eye. He never required or attempted to spread the thin oar or catch the driving gale. His habits apart from business, and perhaps owing to business, were those of a recluse. Prominent members of the bar are in use to adorn with their presence the social and scientific, sometimes even the religious, gatherings of their

[1] For the sake of completeness, let me here name the Deans of the Faculty of Advocates since 1801 :—

1801. Robert Blair of Avonton.
1808. Matthew Ross.
1823. George Cranstoun.
1826. Sir James W. Moncreiff, Bart.
1829. Francis Jeffrey.
1830. John Hope.
1841. Alexander Wood.
1842. Patrick Robertson.
1843. Duncan M'Neill.
1851. Adam Anderson.
1852. John Inglis.
1858. James Moncreiff.
1869. Edward Strathearn Gordon.
1874. Andrew Rutherfurd-Clark.
1875. William Watson.
1876. Robert Horn.
1878. Patrick Fraser.
1881. Alexander Smith Kinnear.
1882. John Hay Athole Macdonald.
1885. John Blair Balfour.
1886. William Mackintosh.
1889. John Blair Balfour.
1892. Sir Charles Pearson.

fellow-citizens. At a dinner to Sir William Allan in 1838, for instance, Cockburn proposed "Prosperity to the Royal Scottish Academy," and Jeffrey replied; Neaves celebrated the memory of Sir Walter Scott; and poor Patton said a cheering word about the moribund art of engraving. Inglis's activity did not radiate so diversely. His personal character had also raised him above the bitter contentions of parties. That character had always been unassailable. His heart was sound, and in his mode of life he was as simple as Fenelon. His sagacity was great, and his counsel was sought for on matters of delicate import both before and long after he ceased to be Dean. Others have incurred dislike or prejudice in the course of successful careers; and upon an occasion so momentous as the selection of a Dean the feelings or prejudices of persons and of factions have had to be humoured. In Inglis's case no such expedient was necessary. He was mortified by no factious opposition. His appointment was the uppermost thought with every one when the vacancy occurred.

While his selection for the chair did the Faculty honour, he did himself and the Faculty credit by the manner in which he fulfilled the duties of the office. The Faculty of Advocates is the most learned and influential body in Scotland. Coeval with the institution of the College of Justice in 1532—although the profession of a Scotch advocate is much older—it is of venerable age and honourable history. Its Dean is not merely the acknowledged premier of the professional men of his own day, but the heir of an illustrious and unique succession. As Dean he has certain great traditions to sustain in his treatment of the Faculty, in his attitude to the Court, and in the relations of both in bench and bar to the public. He has to vindicate the position and integrity of an institution which, while its members are responsible to the Court for their official con-

duct, is, in the exercise of its corporate rights, independent of the Court and of the Crown, to govern its internal concerns, to maintain amongst its members a high tone of intercourse, attainment, and conduct, and to dispense a certain hospitality. In these particulars Inglis was declared by the organs of the profession to have been a model. And he succeeded so well because of the fit and comprehensive standard of duty which he set and sedulously kept before him throughout his tenure.

The history of the Faculty discloses one fact of mingled significance, which is that, by its sufferance and suffrage, the real management of its affairs is entrusted to a number of amiable gentlemen whose chief qualification for such pre-eminence is good sense and seniority, and sometimes scholarship. Mere eminence at the bar does not govern the grades of this inner hierarchy, and it frequently happens, therefore, that the leaders of the bar know little or nothing of the history, the finance, the discipline of their body until they are called upon to fill the Dean's chair. In the case of some incumbents, indeed, it has been found that, even after the attainment of an eminence so great, the distractions of politics and of legislation have obscured the concerns of what in that regard may be esteemed a provincial corporation. From the slender ranks of the sheriffs and other such members the Vice-Dean has usually been chosen.[1]

Owing doubtless to the engrossing nature of his business, as well as to the dominant influence of the seniors, Inglis's

[1] Mr. James L'Amy was a typical instance forty years ago in amiability and in usefulness within the Faculty, and in mediocrity otherwise. From 1840 onwards he took an engrossing interest in every Faculty detail; he was appointed Vice-Dean in January, 1844; and, owing to the long absences of Duncan M'Neill in London, he was the practical Dean of his day, and that at a time when the Faculty comprised such men as Graham Bell, A. S. Cook, A. S. Logan, Patrick Fraser, Penney, and a score of others of equal merit. Mr. George Dundas, who signed the letter to Inglis (p. 129), and Mr. Horn filled a similar position. Mr. Horn is the only gentleman of this type who has been promoted to the baton.

interest in Faculty matters remained dormant for many years. Not only so, but his manner and his habits opposed his identification with, or ascendency in, any of the different and divergent sections—wits, scholars, politicians—into which the bar was divided. Accordingly it is not to be wondered at that up to 1851 his name does not seem to figure at all in the Faculty minutes. In January of that year, however, a resolution stands in his name which is significant of the practical interest he took in Faculty affairs. The rules then prohibited the lending out of any law books. Only the judges and leaders had workable libraries at home, and all the other members of Faculty, seniors as well as juniors, winced under the inconvenience arising from so strict a rule. Inglis therefore proposed that the Dean be requested to prepare a regulation authorising such books to be borrowed in urgent cases. The rule was accordingly drawn up under which to this day law books may be borrowed from the Faculty library every afternoon and returned in the morning. It is also illustrative of his practical, sagacious bent, and of the keenness of his interest in foreign judicatories, that, on 10th July, 1851, on his motion a committee was appointed to consider the bill then before Parliament for improving the administration of justice in the Court of Chancery and the Judicial Committee of the Privy Council. He was at the same time appointed to go to London with reference to this matter, and to take such steps as he and the convener might think necessary to carry out the wishes of the Faculty.

The only other addition to these fragmentary instances of an interest in Faculty matters is an undertaking by Inglis, as Lord Advocate, in 1852, to make inquiries into the Hereditary Prince's establishment in Scotland—an undertaking which induced Mr. A. M'Neill to withdraw

a motion about the appointment of Scotch counsel to the Prince of Wales—and his discovery in the course of that inquiry that there never had been a separate establishment of any kind for the Prince during the nonage of His Royal Highness.

But after he had been installed in the chair of the Faculty, there is scarcely a page of the minutes on which the plain, well-known signature of John Inglis does not appear, and one is absolutely safe in saying that, during the six years over which his tenure of office extended, no subject connected with the external influence or internal autonomy of the Faculty escaped his surveillance. It is true that the range of subjects dealt with is limited, but that range, narrow though it may be, is entirely significant of his deep interest and watchful jealousy. Heraldry and genealogy are kindred subjects, and he had an enduring interest in them. Accordingly we find that authority was given to him in 1856 to present a petition to the Lord Lyon for a grant of arms—the Faculty, although using a common seal, never having been possessed of any proper armorial bearings, and the want of such having been felt in, for instance, the selection of book-stamps or dies. The patent of arms, dated 6th February, 1856, signed by James Tytler of Woodhouselee, the Lyon Depute of the day, and which was laid before the Faculty on 10th March, 1856, had its origin in this way.[1]

Among the subjects which engaged the attention of the Faculty during Inglis's Deanship, it is curious to notice the ever-recurring question of precedence and patents of Queen's Counsel, provoking conflicting views from such diverse

[1] There is authority for the sword and balance which the patent of arms contains. They occur along with the motto "Suum cuique" on the title-page of the first catalogue of the Advocates' Library, printed in 1692, and also on the stone over the lower entrance to the Library.

characters as R. Thomson, H. J. Robertson, Hamilton Pyper, G. G. Bell, C. Neaves, R. Handyside, W. Penney, C. Baillie, T. Mackenzie, A. S. Logan, R. Macfarlane, John Millar, George Young, A. Broun, A. T. Boyle, John (afterwards Sir John) Gorrie, James Adam, and John Marshall. Attention had been directed to the state of precedence some years before, but practical difficulties then stood in the way of a satisfactory solution of the question; and it was now again in 1857, in consequence of a letter from Lord-Advocate Moncreiff, the occasion of a good deal of feeling and of some contradictory resolutions. From none of these, however, and from no discussion on the subject, does it appear, even approximately, what opinion Inglis held about it. There were, and indeed there still are, no means with us, such as exist in England and Ireland, of adjusting the anomalies which must arise where seniority alone regulates this matter. That anomaly was greatest, and felt to be most unjust, in the case of the law officers of the Crown. On ceasing to hold office, these gentlemen returned to the standing, inferior or otherwise, they may have enjoyed prior to acceptance of place. The Lord Advocate, for instance, might lead the Dean one day, and the next be led by any obscure advocate who had been admitted a month earlier. The anomaly was ultimately (16th March, 1858) rectified by every law officer being accorded letters of pre-audience, either on appointment to, or certainly before demitting office, carrying a precedence which subsisted after going out of office, and which was postponed only to that of the Lord Advocate, the Dean, and the Solicitor-General. As regards the general body there has always been a proper vigilance in guarding so small a bar against an extensive invasion of the consuetudinary rights of individual members. Until 1892, the subject was last considered by the Faculty in 1867.

In these matters of ordinary legal life Inglis took an unflagging interest, guiding the Faculty with that calmness and sagacity which were his unfailing characteristics amid all surroundings. But there was one department of associated activity on which he left a very deep and lasting impression, namely, the tone and culture of the bar. From the colour of his mind, his habits, and his high ideals, he felt compelled to give this subject unremitting care. Just as he strove from his first entrance into responsible civil life to heighten the status, the character, and the attainments of Scotch graduates, such was his high conception of the interests and duties of his profession that he laboured as long and as zealously at making the advocate something much nobler than "leguleius quidam cautus et acutus praeco actionum cantor formularum auceps syllabarum" depicted by Cicero. Accordingly we find that soon after his installation in the chair a movement was begun to raise the standard of scholarship required from intrants. In 1854 a committee, consisting of the Dean, Patrick Fraser, Graham Bell, A. S. Logan, A. S. Cook, and W. Penney, was appointed, and they presented a long report in which the learning and research of its author, Patrick Fraser, are conspicuous.[1] The practical suggestions with which the report concludes were the result of many meetings and of careful consideration of the mass of material which had been collected, and these suggestions, with slight modifications, were embodied in the existing regulations, and, subject to a few minor alterations made subsequently, constitute the present educational code of the Scots bar,—which, it is needless at this time of day to remark, is essentially a learned profession, and has always, but especially in the last half century, held a high position for scholarship amongst the Faculties of Law

[1] See the Report in "Journal of Jurisprudence" for 1856.

in Europe. But nothing can be more fitting or eloquent in setting out the motive, the purport and aim of those regulations, which the wisdom of almost two generations has confirmed, than the appropriate homily which Inglis, at the meeting in January, 1856, when the new rules were inaugurated, added to an exposition of their scope, in these words—

My duty being performed, I doubt whether I ought to take upon me to say more. But there are two reflections of some importance which occur to me, and to which, with your permission, I shall give expression.

There seems to be some misapprehension existing out of doors, and perhaps not altogether absent in the Faculty itself, as to the manner in which it is intended that the examination, more especially that in general scholarship, should be conducted. It seems to be supposed that in calling in the aid of persons accustomed to conduct examinations, as provided under the second head of regulations, we betray a consciousness of want of sufficient scholarship for this purpose on the part of members of Faculty, and at the same time practically supersede the Board in the performance of the duties to which they have been appointed. I was one of those who approved of this part of the scheme when it was first proposed, and in the course of the ample discussion which it received, I saw no reason to change my opinion; but if I had believed that its true meaning or effect was such as has been supposed, nothing could have induced me to consent to it. The existence of this misapprehension, however, must be my apology for now stating to the examinators what I understand the Faculty undoubtedly expects of them, namely, that they will keep the conduct and control of the examinations in their own hands, and that, while they make use of the aid of others to put questions which their everyday experience suggests as best adapted to give fair play to the various candidates and develop the extent of their respective acquirements, they will reserve to themselves alone to deal with the result of the examinations, and in the exercise of their own independent judgment sustain or refuse to sustain the trials.

This leads me to observe in the second place that the grand object of the change which we have introduced is to substitute a real for a merely nominal and elusory test of qualification, both in general scholarship and in law. The utility of the change and the efficiency of the new system depend on the firmness and consistency with which it is administered; and therefore I cannot resist the temptation of availing myself once more of the privilege of my office to add another word of admonition to the new Board. Of favour or partiality or prejudice I should scorn to speak to scholars and gentlemen, but against easy good nature and undue lenity I may be allowed to warn them as the prevailing vice of our fathers and their predecessors in office and as the fruitful parent of those evils, the apprehension of which has compelled us to introduce the present important changes in our system. I say then, let the examinators make up their minds (and none can do this well but men in the practical exercise of their office) what is the amount of acquirements without which no man is fitted to enter this body, and, having arrived at settled convictions, let them never swerve from the line of duty which they thus lay down for themselves; otherwise our regulations have been made in vain, and it would have been better and more honest at once to acknowledge that we have neither the ability nor the desire to effect any improvement in legal education.

But I confidently anticipate a very different result, and it will be a high gratification to all of us hereafter, and no small addition to the reputation which the Faculty has in former times achieved, that, while the great law societies of England are as yet only pointing distantly, through the instrumentality of a Royal Commission of Enquiry, at the possibility of some future legislative interference to improve their admittedly faulty and defective system, we have by virtue of our inherent power of self-government, within so short a space, proposed, matured, and I hope soon to be able to add, carried into successful execution a scheme simple in itself, but calculated to advance year by year the professional reputation and usefulness of the individual members of the Scotch bar, and to secure the Faculty of Advocates in its ancient place of eminence among the learned societies of Europe.

In subsequent years Inglis maintained his interest in the profession by the care with which he framed rules for, or at all events placed checks upon, the admission of members to the different bodies of practitioners. He was consulted by successive Deans on every delicate point that arose; and when attempts were made to relax the conditions of admission, even in individual cases of urgency, his voice was invariably on the side of strictness. There are only two things in this connection which seem inexplicable. The first is that his outstanding sagacity should ever have countenanced a prohibitory year before admission to the bar, and the second, that in the later years of his life he should have dispensed with attendance at a university in the case of law-agents. In regard to the first, it cannot but be said that it is an arbitrary, unpractical, unnecessary rule, which produces hardship in individual instances and seems contrary to public policy. With reference to the second, Inglis is understood to have sanctioned the Act of Sederunt referred to only from a strong sense of loyalty to the spirit of the Act of Parliament on which it follows, but he frequently expressed to professors and others his desire to have the Act of Sederunt abrogated. It was one of the subjects of administration which he meant to take up at the beginning of the winter session of 1891.

But, after all, these are but the academic minutiæ of a close corporation, whose private affairs, transacted at infrequent meetings—held in Inglis's day at the upper end of the long corridor, now in a sumptuous reading-room flanking it—excite a lively interest amongst its own members only. There were other details, equally unimportant perhaps from a public point of view, the adjustment of which received his ready and steady attention. In conjunction with the Vice-Dean, the Treasurer, and the Dean's Council, he laid the foundations of that prosperity of the Faculty which pro-

duced, in its membership, its accommodation, and literary equipment, the most delightful club in the kingdom. For the elegance and completeness of its great heritage of books he never ceased to care, and to care with a solicitude compounded of the jealousy of the patriot and the acquisitiveness of the bibliophile.

Of delicate little attentions by which Inglis, like many loyal and generous members, made drafts on the gratitude of successors, I select two instances, and these not because of their magnitude, but because they are characteristic. The one was when, in June, 1885, he presented to the Faculty a portrait of Lord Robertson—the great Lord Peter—which had lately come into his possession, and which he felt ought to have a resting-place within the precincts which that portly personage adorned. The other occurred after he had become Lord Justice-Clerk. He attended the sale of Professor More's books, and purchased, after competition with the representatives of the Faculty, two small legal treatises not elsewhere to be found, it was said, in the United Kingdom, namely, Paul Voet's De Statutis and Livermore's Observations on the Conflict of Laws. When he, who had been one of the most popular of Deans, came to know that the Library authorities had competed for their possession, the books were handed over to them.

This much I have said regarding his purely official life as Dean—his disciplinary and managerial functions. There are other capacities, however, in which so public a character as the Dean bulks more largely in the eye of the Faculty, of the Court, and of the public. The public regard him as the head and type of a powerful body whose lives are spent in the expiscation of law, the vindication of right, the administration of justice; and they expect him, as such, to wield widely and outside of the Parliament House a corporate and personal influence upon movements for the

promotion of virtue and the alleviation of suffering. The Court recognise in him not merely the successful advocate, but the pledge of observance of nameless rules and courtesies subsisting betwixt them and the body which produced themselves and which must furnish their successors, and the link connecting them, the public, and the Executive in the chain of government. Towards the bench, therefore, he has to exemplify the tone and deportment befitting his order, and also, if need be, its independence and privileges.[1] Amongst such complex characters as compose the Faculty he is not merely the chief, entitled to implicit reverence and obedience, but also a considerate friend to the old, the sensitive, and the disappointed, and a father to the young. In the fulfilment of those capacities and expectations, and in the discharge of these duties, Inglis was an ideal Dean; and it is needless to say that he secured this verdict all the more readily that he united to the character and achievements of a great pleader the graces rather than the asperities of nature.

And here I must go back a little. When Inglis joined the ranks of the bar his friends were few in number, and he never at any time fraternised with the noisy or frivolous.

[1] Jealous of the privileges of the bar, he vindicated its independence upon one memorable occasion. Lord Justice-Clerk Hope, like some judges before and since, was in the habit of taking dislikes to particular men and particular cases. Hope did not show himself to be a particularly broad-minded man, and was constantly making cross-country paths to the bulwarks of morality and the safeguards of religion. Inglis was one of the counsel in a case to which Hope had evinced a strong repugnance. Inglis saw it was no use going on, and as a stratagem asked a continuation, in accordance with the forms then in vogue. Before the case again came on for hearing it was appealed to the House of Lords on another point. When this was announced, the Lord Justice-Clerk got into a fury and declared such conduct was dishonourable. Charles Baillie, a good, mild soul, turned the thing off with good-humoured indifference. Not so Mr. Inglis. He flashed into the Division, flung down his papers on the bar, and told the Lord Justice-Clerk, with firmness, tempered with respect, that as long as he sat there he would not plead before that Court again. Moncreiff afterwards tried to induce Inglis to make some excuse, but he stood resolute to his position. The Lord Justice-Clerk ultimately wrote him a letter which smoothed matters between them.

The great tribunal of wit was then, as now, the middle fireplace. There the juniors assembled to talk wit or politics or scandal, or to sit in judgment on the judges; the seniors—the Whighams, the Pypers, the Hopes, the Robertsons, the Neaveses, the Penneys, the Bells—warming themselves at the north fire near the Signet door. Inglis was rarely seen at either. He spoke to few of his brethren. Barring the bitterness of faction, they were among themselves a kindly and expansive body of men, and had, as they still have, less of the jealousy of a craft than their English brethren. But Inglis seemed to be as little at home with buffoons like Robertson or formalists like Andrew Skene, as with quiet contemplative scholars of the type of Rutherfurd, Fullerton, Manor, or Erskine. His taciturnity was resented until his brethren came to understand his retiring nature. One of the few survivors said the other day, just before the hand of death was laid upon himself, "He never came near us." The normal junior, intent upon sharing every phase of bar life, knew not at first whether to set down his distant manner to pride, sullenness, shyness, or repugnance to that competitive mirth which has sometimes characterised this society. About the Disruption time, Inglis was beginning to be better known by his brethren. He had melted somewhat. He and George Young became fast friends for a time, and walked in the hall together, arm in arm, but rarely going near the middle fireplace. Inglis is said to have had little playfulness. What wit he possessed disported itself so carefully that his audience was fascinated, deeming it brilliant probably from its very rarity. Yet it was only a flash lighting up the otherwise sombre tenor of his way, as lightning in a melancholy sky. The absence of mirth, however, was in one respect a positive gain to him, for it preserved him from a path—the way

of wit—which is obstructed by many barriers to personal ascendency.

For there was a certain suffusion of wisdom in his presence and manner. His conversation, appropriately dignified, had a sound, sober Presbyterian tone about it. Not that he was devoid of humour; far from it. No one enjoyed a jest more. On occasion he could even supply one. But his conversational province lay more in reminiscence, where there is least call for the vivacity which is essential to the social talker. He listened to several generations of story-tellers. Reciters often felt the thrill of well-earned appreciation in the hearty guffaw of the hardened and careless, as well as in the suppressed merriment of the modest, but without the quiet smile of Inglis, however, as with his hands hid in his gown, he walked away, the story-teller was never content. But of the humours of Logan[1] and Hamilton Pyper, or even of

[1] The memory of Logan, who died as long ago as the 2nd of February, 1862, is still fragrant to the older men in Parliament House. He was a pet in Edinburgh society, and his death, following at some interval after that of Jamieson, left a blank which has not yet been filled. He was a masculine humorist of the old Scottish type, and laid himself out for wit in every phase of his social and professional intercourse. A son of the Rev. J. Logan, Relief minister of St. Ninian's, Stirling, he was a devoted member of the old Whig party. He was born in 1811, and called to the bar in 1835, but for a long time found professional progress exasperating in its slowness. At first he was not very enthusiastically received in the Edinburgh cliques; it was only when his qualities as a rich and racy humorist became known that he sprang into general favour. As frequently happens to a man of this stamp, however, the party which ought, out of sheer gratitude, to have given him a helping hand, turned its back upon him. His superficial qualities were held to obscure anything more original and solid. Yet he came to be generally held as superior to most of his contemporaries. In breadth and grasp of mind, and in the variety and lustre of his attainments, he excelled some who outstripped him in the race. It is said that had he sympathised more with the views, feelings, and policy of the class from which he sprang, he would have wielded more political influence, and secured the gratitude and the attachment of a large portion of his countrymen. But he chose to lay himself out for purely professional distinction; he wished to be known as a painstaking lawyer alone. And yet, through some twist in his composition, he did not take the right way to gain that success which many thought his due. He had power and aptness in expression, and few subjects did he take up without lightening them with a flash of wit. He is said to have been the only man

the more cultured wit of Jamieson, when Jamieson was in the House,[1] he had little appreciation. But Jamieson was already beginning to be a memory when Inglis joined the bar.

As time wore on, and he rose to his highest fame, he expanded not a little, and in his relations with individual members of the Faculty, especially after he became Dean, he was the soul of courtesy and consideration. If we except only a very short period before and after he was called, Inglis never was a young man, and looked with aversion or contempt upon the idle and frivolous; yet towards young pleaders he was singularly gracious, always seeking to impart tone and dignity and harmony to their work and intercourse. Moreover, there are some now on the bench who have been heard to confess they regarded him as a father; and so ready ever was he with sympathy,

then at the bar who could be compared to the wits of the former age. But still, for the most part, it was a studied wit. He has been known to make more than one journey round the Queen's Drive to manufacture a joke. Shortly before his death he was defending the case of a widow who had apparently been harshly treated by some relatives. The judges of the First Division were inclined to recommend a compromise, and Lord Ivory suggested that his side should feel the pulse of their opponents, and ascertain upon what terms the case could be adjusted. "My Lords," instantly replied Mr. Logan, "there can be no pulse where there is no heart." The chief factors which retarded his progress were his Town Councillorship, and his inveterate habit of humour and ribaldry. Mr. Logan was appointed Advocate-Depute, 1853, died Sheriff of Forfarshire in 1854, when little past his prime.

[1] I speak here of Robert Jamieson who died in 1835, and whose qualities Cockburn celebrates in the "Memorials," i., 78. Another Jameson singularly enough supplied his place. Andrew Jameson was the son of Sheriff Jameson (Fife), and was called in 1835. His health was not robust, and after his call he spent some time on the continent, where his time was occupied in preparing a report upon the laws of Malta, and framing a code on the employment of the British Government. This code was described by Mittermeyer of Heidelberg thus:—"Le meilleur code de la procèdure criminelle est celui de Malte car il a été rèdigé en commun par les jurisconsultes anglais et italiens, et puis corrigé et refait d'après les indications des practiciens les plus èminents de l'ecosse." Lord Derby in 1843 acknowledged the great merit of Mr. Jameson's work. On his return to Scotland, he was appointed Sheriff-Substitute at Ayr, and was promoted to the same office in Edinburgh in 1845. After serving for twenty years he was made Sheriff of Aberdeen. He died on the 30th October, 1870, aged 59.

counsel, and guidance that he secured the lasting attachment of every junior.

While speaking of this matter, it may be interesting to recall what Inglis himself said about it five years after he had laid down the Deanship, and embarked on his splendid judicial career. He had been delineating the characteristics of some of the leading jurists of the seventeenth century in the easy fitting language of which he was a master, and coming at last to President Spottiswood, he said—

It was the custom of those days for the Lord President, at the commencement of the session, to call the whole advocates before him, and admonish them of their duty. We owe it to the care of Sir Robert's affectionate and admiring biographer that one of those annual orations has been preserved to us. Its style is somewhat pedantic, and its tone, as an address to the members of a learned profession, is strange; for it reminds one of nothing so much as what is familiarly called a good scold. But the topics which the Lord President handles are, for more reasons than one, worth enumerating: the great delay produced by keeping up processes, a disposition to be too late in the morning so that business cannot be begun till half-past nine, constant applications to put off cases on the ground of want of notice and preparation, tediousness and idle repetitions in argument, an uncivil practice of the advocates interrupting one another in debate, and a tendency to question the justice of the Court's judgments and ascribe them to unworthy motives. It is amusingly characteristic of Sir Robert's political principles and personal feelings to find him conclude by representing the whole sum of an advocate's duty to consist "in three words only, *in a willingness, a sense of shame, and a ready obedience to superiors.* Have but us that are set over you in that reverence and regard that ye should, and we shall not be much troubled to admonish you of your duty. This is the first and strictest obligation that ye are tied to, *To honour and respect the judges*, wherein if you fail, you transgress one of the first principles of your profession, which is, *Suum cuique tribuere.*"

Then, again, it is a cherished characteristic of the Deanship not merely to promote social intercourse among the

members of the Faculty, especially the young and friendless, but to entertain. Few Deans dispensed a richer hospitality than Inglis. His dinners in Abercromby Place were choice, almost epicurean. The host was genial, a good listener, and a fair, not brilliant, talker. Never was he content with the convivial suppers wherein certain jolly old gentlemen delighted. He always gave a dinner in his own house, and many a one he gave. He did not seem to approve of, at all events he did not participate in, the ancient supper—the "Noctes Ambrosianæ"—in historic taverns, at which the fun and frolic of the bar found fitting vent. There was a vein of melancholy in his composition, attributable to a cause referred to elsewhere, and which seemed to grow with years. The convivial meetings in the Marrowbone Room in Fleshmarket Close were not in his way. He was too solemn and self-contained for that genial company.[1]

I have said that Inglis's Deanship is amongst the most cherished traditions of the bar. It came to an end in the summer of 1858, sooner and more suddenly than we can now realise, though I shall have occasion to tell the incidents that produced the change. It is a pleasing

[1] The following account of a Marrowbone dinner or supper got up by thirty juniors to Moncreiff, Craufurd, Macfarlane, and Logan at Paterson's in the Old Fleshmarket Close was furnished by one of three survivors a week before he died. I print it because it describes the last known supper based on the traditional conviviality of a bye-gone time. "Crichton, the Sheriff of Midlothian," said my friend, "was one of us. When Crichton was asked some short time before his death if he remembered the supper, he said, 'Oh yes; I have the menu card still, and the invitation; but I will not let it out of my possession. If you come up to my room at the Sheriff Court I will let you copy it.' It was rather good in its way. They were all Scotch dishes but frenchified. Instead of puddings blanches, white puddings, there appeared 'Puddings à la Logan'—Logan being very pale. Then there was 'Pudding à la Diable'—a compliment to a sceptic named Goodall. It was a terrible night. After the dinner everybody opened his waistcoat, put his feet on the table and smoked a churchwarden. The drinking, the fun, the frolic, the laughter—all prodigious. Some of the men did not turn up in Parliament House for a fortnight afterwards."

feature of Inglis's whole career that he made every great step in his life the subject of intense mental application and wrote down the reflections which it inspired. Here is what he wrote to the Faculty when he resigned:—

30 Abercromby Place, July 10th, 1858.

Gentlemen,—By your favour I have held the office of Dean of Faculty for nearly six years, and have thus enjoyed for a comparatively long period the highest honour which it is in your power to bestow, and, in my opinion, the highest professional honour which a member of the Scottish bar can attain.

But the appointment of Lord Justice-Clerk, which her Majesty has been graciously pleased to confer upon me, necessarily puts an end to my tenure of office as Dean; and I therefore lose no time in placing my resignation in your hands.

My constant desire and earnest endeavour have been so to discharge my duties as to render the office practically available for the purpose which it is intended and calculated to serve, to induce unity of sentiment and of action within the Faculty, to maintain its privileges and its independence, to secure a scrupulous observance of the rules of professional propriety, to promote that social harmony for which the Scottish bar has long been eminently distinguished, to advance the interests and reputation of the Faculty as a learned society and a national institution, and to encourage by all legitimate means the cultivation of learning and scholarlike accomplishment by those who enter the profession and aspire to forensic distinction.

If I have succeeded in identifying myself with the feelings, the habits, and the interests of the profession in such a way as to promote in any material degree these great objects, it will be a subject of the most gratifying reflection to me during the remainder of my life.

You will, I am sure, readily sympathise with my feelings of deep regret in contemplating the termination of this part of my career. I have always loved my profession; and within its society have formed my best and dearest friendships. It was therefore with justifiable pride that I rejoiced in the distinction of being placed at your head by your own unanimous choice, and

it was not surprising that the happiest days of my life should be those in which I found every effort I made, and every project I suggested for the benefit of the Faculty and the profession, supported by my brethren with an unreserved heartiness and a discriminating good sense which inspired me with a self-reliance I could not otherwise have possessed, because I was thus assured of that friendly regard and generous confidence on your part which it was my ambition to conciliate.

To all this it is most painful to bid farewell. But it is some consolation to know that the duties of my judicial office will place me constantly in such a relation to the practising members of the bar as will enable me to show the sincere respect and admiration with which I must ever continue to regard them, and to prove that the jealous care with which I have striven to guard their privileges was not the exhibition of mere official zeal, but the result of an abiding sentiment and a strong conviction that, to the efficient and satisfactory administration of justice, not even the purity of the bench is more requisite than the integrity and independence of the bar.

With feelings of the most profound gratitude and esteem, I remain, gentlemen, your most faithful servant,

JOHN INGLIS.

I do not know that the excellence and popularity of Inglis's tenure need any further statement than the attestation of his contemporaries that in their opinion his own high ideal had been realised. Thus—

Edinburgh, 15th July, 1858.

My Lord,—I have been requested by the Faculty of Advocates [at a meeting held on 17th July, 1858] to acknowledge your lordship's letter intimating your resignation of the office of Dean of Faculty in consequence of your appointment to the high place of Lord Justice-Clerk and President of the Second Division of the Court of Session.

The Faculty feel grateful to your lordship for the warm and feeling manner in which you allude to the connection which has for the last six years subsisted between the bar of Scotland and yourself, and for the high estimate which your lordship has been

pleased to express of the professional character and conduct of that body. They beg to assure your lordship that they will always retain the strongest sense of the dignity, impartiality, and courtesy with which, during that period, the duties belonging to the office of Dean were discharged; of the zeal with which you laboured to promote the interests and to maintain the privileges of the Faculty; and of that kindly advice and cordial assistance which, amidst your own professional avocations, you were ever ready to afford every member of the bar.

While the Faculty cannot but regret on their own account the termination of a connection from which they have experienced unmingled satisfaction, they feel it at the same time to be a pleasing duty to tender to your lordship their congratulations on your appointment to one of the highest and most important offices which Her Majesty had it in her power to confer. They trust your lordship may be long spared to adorn the eminent station which you now so worthily occupy, and in which those great qualities and accomplishments by which you were distinguished at the bar will find a still more extensive and influential sphere of exercise.—I have the honour to be, my lord, your lordship's most obedient servant,

GEORGE DUNDAS, V.D.

IX.—Lord Advocate.

A POLITICAL thread runs through the woof of every advocate's life. It is distinctive, permeating, recurrent, like a refrain or quality in music, though not so harmonious, perhaps. In some lives it forms a broad band in the texture; in others, a few shreds, thin and shifting as gossamer. That it should be present in all is not wonderful, since no calling has been so identified with or effective in the solution of great social problems. There seems to be a close connection betwixt the esoteric experiences of a counsel and the perplexities of his country—a connection which has subsisted in its palpable or its hidden phases since before the days of Cicero.

Parliament House, it must be owned, is no contemptible academy for the mastery of political science. As a rule, young men now go there familiar with the traditions of a profession closely identified with history, and rather better prepared than their grandfathers were to discuss, as they do with sense and boldness from day to day, the numerous questions of foreign and fiscal policy that agitate the times. Youth itself gives zest to this intellectual exercise. The young advocate enters the old Hall when life is full of wonder and enchantment, of dreams, illusions,

transports, emotions. He has ceased to be a block of hot iron hammered upon in the class-room or academy. He is, or longs to be, an actor or producer. Well equipped for the battle, he burns to engage in it. With a keen and fresh mind steeped in all manner of theories, the substance or hollowness of which he has now to find out in the multifarious conflicts of life, is it wonderful that he should at once dash into the dusty arena of politics?

The political existence of an advocate may be divided into three stages. There is, first, the callow stage, characteristically different in different men, according to the nature or manner of their minds and the measure of their capacities. There is, secondly, an interregnum of silence coincident with maturity. Thirdly, there is the period of effective political influence acquired contemporaneously with professional weight, when a tilt with antagonists of equal calibre may be safely tried for a seat in Parliament, or in the pursuit of place. Most advocates have to go through the first stage. All of them experience the second—generally about the time when the hopes of the rosy morn have sustained their first blight; but it is reserved for the successful few to maintain the honour of their order in the third. These three stages have been well known and well marked since the country shook itself down to its emancipated prerogatives after the year 1832.

Then, again, for fifty years the junior bar, while doing the political work effeiring to the first stage, has ranged itself into three distinct divisions. The first may be likened to an engineering corps—genuine workers drawn from every class of the community who go forth with spade and mattock and attack the enemy's entrenchments in the back streets of cities and in the country hamlets, where the fate of governments is now cast. Secondly,

there is the limited section of professional successes—hopeful, busy men who, having got a good start in business, wisely devote their days and nights to Stair and Dunlop, issuing from chambers only occasionally at the bidding of local whips to do a small share in the strife. Lastly, there is the class who possess the adventitious advantage of birth or fortune, who are anxious to do some work in order to justify the expectation of the stray crumbs of office when they fall. It is to the first section that a party owes most. Year after year they burrow and canvass, and cajole, flatter and spoil the master of the situation, the British workman, ungrudgingly and often without reward! They may have a personal objective, but in the main they are actuated by principle, by sympathy, and by the love of political science for its own sake.

Throughout the greater part of his life, John Inglis belonged to the second of those divisions. Work came to him late in the fourth decade of this century; and thereafter business became his sole object, occupation, and pleasure. He allowed his mind no distraction or relaxation in the shape of politics or literature for a period of fifteen years, namely, from 1838 to 1852. But while that is so, it would be a mistake to suppose that he took no interest in the manifold schemes which were being propounded and matured for the amelioration of the people and the improvement of their institutions. It was a period of great social unrest and upheaval. It was the era of Corn Law repeal, passed by Peel amid the reproaches and execrations of his party.[1] There were insurrections in Austria and Italy, and revolutions in France, Spain, Poland, and Hungary. Long before Inglis was called upon to join a Ministry—in 1852—he

[1] Erskine May ii. 213.

had attained the stage aforesaid of effective political influence. Yet his interest was passive, for we look in vain for his name at any of the many meetings held in support or condemnation of the measures which had such men as Palmerston and Russell, Cobden and Bright, Disraeli and Peel as their sponsors. Early in his career Inglis had been pointed to as a parliamentary possibility. In 1836, at the annual Conservative dinner held on the anniversary of Waterloo, under the chairmanship of "Christopher North" —Charles Baillie being croupier—supported by Duncan M'Neill and Charles Hope, Inglis was considered of importance enough to take a toast.

Comparatively few men at the Scotch bar aspire to a seat in the Commons. What has been said by Cockburn about the temporary banishment to London of those Lord Advocates who are undistinguished for social or literary gifts, or great wealth, or certain practice, applies even more forcibly to the private member, foolish, ambitious, or disinterested enough to covet the coyest and least satisfactory of public favours. As a matter of fact, therefore, no advocate who has outlived the enthusiasm of youth, and to whom politics is not a high and serious study, or who does not hope to become Lord Advocate, is solicitous about entering Parliament. There are eighty or ninety English lawyers at Westminster. At the present moment—the autumn of 1892—only nine men from Parliament House bear them company.[1] This number is above the average. During the last half century the average has stood at three, consisting of the chief law officer—he who is in and he who is out—and an odd

[1] The Lord Advocate, Clackmannan; the Solicitor-General, Elgin Burghs; Mr. Harry Smith, Falkirk Burghs; Mr. Donald Crawford, North-East Lanark; Sir Charles Pearson, Edinburgh University; Mr. Grahame Murray, Bute; Mr. Thomas Shaw, Hawick Burghs; Mr. H. J. Maxwell, Dumfriesshire; Mr. H. T. Anstruther, St. Andrews Burghs.

adventurer like the late Roger Montgomerie, sometime member for North Ayrshire. Until recently it was not expected even of the Solicitor-General that he should obtain a seat. The odd man has often been extremely useful. In the beginning of the century he was Kennedy of Dunure, and every student of that troublous time knows the important part he played, if not by action, at least by private influence and correspondence. In the middle of the century, in the days of James Moncreiff, there was Mr. Dunlop,[1] the member for Greenock, whose value was gracefully acknowledged by Inglis when he admitted him as the twelfth member of the University Commission of 1858.

We have seen that Inglis was made an Advocate-Depute in 1844 by Lord Advocate M'Neill, and remained in office until June, 1846, when Sir Robert Peel was turned out. Until 1852 Inglis was not called upon to assume any other public function, but in the interval changes in the constitution of the bench, including the elevation of M'Neill and the promotion of Adam Anderson to M'Neill's place, made it probable that, on the accession to power of Lord Stanley, called to the House of Lords in the lifetime of his father, the Earl of Derby, Inglis would occupy a prominent posi-

[1] Alexander Colquhoun Stirling Murray Dunlop, eldest son of Alexander Dunlop of Keppoch, died 1st September, 1870, at the age of 72. Born in Greenock, where his father was a banker, he was called in 1820, and distinguished himself by a work on the Poor Law, and was associated with Patrick Shaw from 1823 to 1835, and with other gentlemen till 1840 in the compilation of reports. He was a keen politician and had a hostile meeting, which fortunately involved no bloodshed, with a rival candidate for the representation of Dumbartonshire. This keen spirit did not prevent him becoming adviser of the Free Church, whose claim of right and protest he framed. After being twice defeated he was elected member of Parliament for Greenock in 1852, and he continued to represent that constituency practically till his death. He received the degree of Doctor of Laws from Princetown University; and on his wife, the only child of John Murray, an East India merchant of Edinburgh, succeeding to her father, he assumed the surname of Murray. Upon succeeding to the entailed estates of Law and Edinbarnet, he assumed the name Colquhoun Stirling.

tion in the administration. Accordingly, when Lord John Russell was defeated in February, 1852, Inglis was appointed Solicitor-General.[1]

As a prospective Lord Advocate it became necessary for him to cast about for a seat in the House of Commons, and the counties of Orkney and Shetland were selected as the scene of his attempt. His experience as a candidate for parliamentary honours was not very fortunate, but I propose to enter upon it in some detail, because it gives ample evidence—particularly in his speeches, which mirror the clearness of his mind—that, had the fates ordered his opportunities so, Inglis would have attained a high position as a statesman. It also casts a bright light upon contemporary history and

[1] The Solicitors-General from 1789-1891 were appointed in the following years, the dagger indicating those who became Lord Advocates, and the asterisk judges—

1789. *Robert Blair of Avonton.
1806. *John Clerk of Eldin.
1807. *David Boyle of Shewalton.
1811. *David Monypenny of Pitmilly.
1813. †*Alexander Maconochie of Meadowbank.
1816. James Wedderburn, July 20.
1825. *John Hope.
1830. *Henry Cockburn.
1834. Andrew Skene.
,, †*Duncan M'Neill; again 1841.
1835. *John Cunninghame.
1837. †*Andrew Rutherfurd.
1839. *James Ivory.
1840. *Thomas Maitland of Dundrennan.
1842. †*Adam Anderson.
1846. *Thomas Maitland of Dundrennan.
1850. †*James Moncreiff, Feb. 7.
1851. *John Cowan, April 18.
,, *George Deas, June 28.
1852. †*John Inglis, Feb. 28.
,, *Charles Neaves, May 24.
1853. *Robert Handyside, Jan. 17.
,, *James Crawfurd, Nov. 16.
1855. *Thos. Mackenzie, Jan. 11.
1855. *Edward Fras. Maitland, Feb. 14; again 1859.
1858. †*Charles Baillie, March 17.
,, †*David Mure, July 12.
1859. †*George Patton, May 3.
1862. †*George Young, Nov. 11; again 1868, Dec. 14.
1866. †*Edward Strathearn Gordon, aft. Lord Gordon and Lord of Appeal, July 12.
1867. *John Millar, March 9; 1874, March 4.
1869. *Andrew Rutherfurd Clark, Oct. 14.
1874. †*William Watson, July 21.
1876. †*John Hay Athole Macdonald, Dec. 5.
1880. †John Blair Balfour, May 6.
1881. Alexander Asher, Aug. 19; again 1886, Feb. 13; and 1892.
1885. †*James Patrick Bannerman Robertson, July 2; 1886, Aug. 6.
1888. *Moir Tod Stormonth Darling, Oct. 27.
1890. †Sir Charles J. Pearson.
1891. Andrew Graham Murray.

customs, and particularly upon the intense interest in public affairs which engrossed a remote and insular community at an exciting conjuncture.[1]

The circumstance of the Lord Advocate being one of the candidates for the honour of serving those islands gave to the election more than local interest. Although the constituency had for years been represented by a Liberal, yet he who at the opening of the contest was about to become the representative in Scotland of the Conservative Ministry had by his name and talents gathered around him a share even of Liberal support.

The first reference to Inglis in connection with this contest was an announcement in the public journals of March 26th, 1852, that the Solicitor-General had commenced his canvass on the previous Tuesday in the west mainland of the counties. On April 2nd it is stated that Mr. George Loch had agreed to canvass the constituency in the Liberal interest, and had gone to Shetland to begin his campaign. A brother of the Solicitor-General, Mr. H. M. Inglis, proceeded by the same boat, "and betwixt them," it is said, "the poor Shetlanders will be taken by storm." Mention is also made of a Dr. Still who had been canvassing in his own behalf during the previous week in South Ronaldshay. He was a Conservative, and ultimately retired in favour of Inglis. On April 2nd an address to the electors by Mr. H. M. Inglis appeared, in which he said, "As I observe an address to you has just appeared by Mr. George Loch, I take the earliest opportunity of informing you that it is the intention of my brother, the Solicitor-General of Scotland, to offer himself as a candidate for the honour of representing you in the next Parliament in the Conservative interest.

[1] The facts are taken from the "John o' Groat's Journal," the "Scotsman," and "Caledonian Mercury" of the time.

The Solicitor-General is at present detained in London upon public business." He had not yet received his appointment as Lord Advocate. On April 9th Inglis's address to the electors appeared. For the sake of literary comparison, and as an essential part of an interesting contest, I give in full this address, which is thoroughly manly and judicial in tone:—

"To the Independent Electors of the
Counties of Orkney and Shetland.

"Gentlemen,—In compliance with a desire expressed by a very numerous and influential body of the electors, I take leave to offer myself as a candidate at the approaching general election to represent you in Parliament.

"The peculiar combination of political events which has placed Lord Derby at the head of the Government, seems to me imperatively to require every one who is entrusted with the elective franchise, calmly and impartially to consider the prospects of this country, and to anticipate the probable consequences of the success or failure of the present Administration. I have not had one moment's hesitation in taking my course. I sympathised in the almost universal admiration of the patriotic and self-sacrificing spirit which induced Lord Derby to assume the reins of power under circumstances of great embarrassment. I felt so much confidence in the line of policy to be expected from such a Minister as at once to accept office under him; and I rejoice to say that my expectations have been fully justified by the subsequent avowal of principles and intended measures by that distinguished statesman.

"In thus contributing my humble support to the present Government, I am not called on to abandon or modify any opinion which I have ever held, nor am I bound to the maintenance of any principle that can be otherwise than

acceptable to the whole Conservative party throughout the empire.

"I am not prepared to vote for any measure calculated to promote mere class interests at the expense of the general welfare of the country; and while I am very sensible of the great pressure under which agriculture is now suffering, I am satisfied that the evil may be greatly lessened, if not removed, without the necessity of re-imposing a tax on the people's food. To the grievances of every portion of the community the ears of Parliament ought ever to be open; and the first and fundamental principle of political science must henceforth be, even-handed justice to all classes and all interests.

"On the subject of education—one of the most serious and pressing of the topics of the day—I cannot doubt that the existing means of instructing the people are wholly inadequate; and while great difficulties have been and may be still encountered in regard to the mode in which the State should provide for the diffusion of knowledge, I am strongly persuaded that no scheme of education will ever prosper which is not rested on a sound religious basis.

"I disapprove of grants of public money for the purpose of supporting the Roman Catholic religion or of educating its priests, because I am, from sincere conviction, a zealous and uncompromising Protestant. I cannot therefore applaud or sanction the principle on which the present grant to Maynooth was voted by Parliament, and I rejoice to perceive a growing feeling of repugnance to all such measures. But there may be many difficulties in the way of an immediate repeal of the Act by which the grant is secured; and you will therefore not be surprised that I decline at present to offer you any pledge that, under all circumstances, however unfavourable, and at any time, however unseasonable, I will vote for such a proposition.

"Although I am as yet a stranger to the counties which I aspire to represent, my professional studies and practice have made me well aware that your local interests are both peculiar and very important; and, if elected, I should feel it at once to be my duty and my pleasure to make myself fully acquainted with the subject, and humbly trust that I may be instrumental in removing some of the grievances under which the people both of Orkney and Shetland have long suffered."

On April 9th it is announced that "the combat thickens. Mr. Inglis has made an energetic canvass during the week." Side by side with Inglis's address there appeared a long letter which Mr. Samuel Laing, candidate for the burghs and afterwards a well-known member, wrote to a John Mitchell, Kirkwall, calling in strong terms on the electors *not* to support Mr. Inglis (or any Protectionist candidate), and not to forsake Mr. Anderson (the sitting member, who was expected to stand again), who had represented them for four years. By April 16th, it is stated, the Solicitor-General had completed his canvass in Shetland, and gone southwards with his friends. He left a favourable impression behind him, both in Orkney and Shetland, as regards his talents and eloquence, "but his politics are not so well received." Mr. Inglis spoke for upwards of an hour to an attentive audience at Kirkwall, but owing to the arrival of the steamer by which he was to leave, the meeting broke up rather suddenly. When he went on board, several shots were fired from the Mons Meg on the Mount, which were replied to from the "Queen." In Orkney, when he arrived there, matters had in some degree calmed down, but there was still some keen canvassing going on. A paragraph which appeared on May 21st intimates a timely grant from the Treasury of £30 to the Kirkwall Academy, accompanied by a letter from the Solicitor-

General to Provost Spence. By-and-bye it was announced that Mr. Anderson had retired from the contest, and that a former member, Mr. Dundas, would again come forward in the Liberal interest to oppose Mr. Inglis, who had now become Lord Advocate. This proved to be a successful "move." Monday, the 19th of July, 1852, was the day fixed for the nomination, and on that occasion there were gathered into the burgh of Kirkwall numerous voters and non-electors from nearly all the different islands of the north. At eleven o'clock, it seems, the supporters of the Lord Advocate, wearing blue and white cockades, met on an open sward and on a rising ground at Papdale, about half a mile south of Kirkwall, and were there arrayed in processional order and provided with blue and white flags with inscriptions of the well-known type. The friends of Mr. Dundas met at the same time at Greenbank, across an inlet of the bay of Kirkwall, and, with a profuse display of yellow standards, were there marshalled to precede the candidate to the hustings. While both sides thus mustered for the contest, cannons were fired with little intermission from various eminences in the neighbourhood, from the Lord Advocate's steam yacht "Glenalbyn," and from other craft moored in the bay. Firearms were constantly discharged during the forenoon by men and boys out for a holiday. Business was suspended, the population turned out *en masse* in front of the hustings, electors came in boats from the distant isles, and men, women, and children all assumed the blue and white or the yellow badge. The principal gentlemen of the constituency appeared with the Lord Advocate and his supporters, Mr. H. Maxwell Inglis of Loganbank and Mr. H. Maxwell of Dargavel. The Sheriff (Mr. Aytoun) having gone through the usual preliminaries, the Lord Advocate was nominated by Mr. Traill of Holland, seconded by Mr. Scarth of Binscarth. His lordship, who

was received with loud and protracted cheering, made a powerful speech.[1]

At the show of hands Sheriff Aytoun gave his casting vote for Mr. Dundas. Mr. Traill demanded a poll on behalf of Mr. Inglis. The polling days were July 30th and 31st. All eyes were turned towards Orkney and Shetland. Electioneering was carried on with a keenness rarely exampled. The Lord Advocate had a steamer on hire plying betwixt the several islands of Orkney and Shetland. This was the tone in which the press discussed the contest:[2]—"The contest between the Lord Advocate Inglis and Mr. F. Dundas, who entered the lists in the Liberal interest at the eleventh hour, promises to be very close, and this election is altogether viewed as one of no ordinary importance. It not only comes into relief as remote both in position and time, but the highest law officer of the Derby Government in Scotland sues those islanders for admission into the Imperial Parliament. If the Lord Advocate succeeds, then he will have the credit of wresting the only seat from the Liberal party that they have lost in Scotland at this general election of 1852, and if he fails, the defeat will be a corresponding blow on the other side. When we consider the position which Mr. Inglis, the Lord Advocate, has so honestly and manifestly gained at the Scottish bar, as well as the general and cordial estimation in which he is held, we do not regard it as a happy incident in his career that he has had to enter public life under the auspices of the Derby Administration. He may gain or he may lose the representation of Orkney, but he cannot add to his reputation by standing forward in defence of the principles of an Administration when within that

[1] See Appendix D.

[2] "Caledonian Mercury."

Administration the most opposite views are proclaimed as to what these principles are," &c.

The interest excited in Edinburgh by the election was tolerably well marked by advertisements which appeared in the local journals. These consisted of letters by Charles Spence,[1] S.S.C., 6 St. Andrew Square, Edinburgh, calling on the electors in strong terms to support the Lord Advocate. The poll was declared by Sheriff Aytoun at Kirkwall on Tuesday, August 3rd, 1852, in favour of Dundas who received 227 votes, as against 194 for Inglis. After the declaration the Lord Advocate stood forward, amidst loud cheers and hisses, and said—

They had met now after having performed part of the business of that election, and he was there to consider what they had done, how they had done it, and if it had been done well. It is but a small minority of the people of this county that are interested in the elective franchise, but in exercising that right it must be remembered that the eyes of the country—of the people of Great Britain—were upon them, and the public were entitled to judge. By the voice of those entrusted with the franchise in this county, his honourable opponent had been returned to represent them in Parliament, and he had himself been defeated. It was needless to conceal that he was not a little mortified and disappointed at the result; but he had many things for consolation on the present occasion. He would say a few words regarding the speech of his honourable opponent, and in vindication of his own conduct; and perhaps some facts would come to his (Mr. Dundas') knowledge for the first time. They had been told that at the late nomination he had said some things in disrespect of the honourable gentlemen who had proposed and seconded his opponent. He, however, did not feel conscious of having uttered one sentiment derogatory to either of these gentlemen. To the seconder he had not used language in any way disrespectful, but perhaps a

[1] Mr. Spence was a man of somewhat singular aspect, with a real or fancied resemblance to Oliver Cromwell, which he was more than suspected of cultivating. He was a native of Orkney. In real benevolence of intention few men excelled this Edinburgh solicitor.

silly joke; but as regarded Professor Traill, he was a gentleman with whom he was then acquainted not for the first time, and for whom he had the greatest respect. He was a gentleman who had raised himself to the highest eminence in the walks of science. As to Mr. Dundas himself, if he complained of having his public character talked of, he must remind them he did not come there to make use of mealy-mouthed expressions, but to bring forward the simple truth both as to measures and men. (Cheers.) He would speak of his opponent as a gentleman deserved, but with that freedom of speech to which every man is entitled. It seemed as if his friends had left him on the ice, and left him there to sink or swim—that his friends had misled him as to the real state of matters in the county—and that he stood before them a very ill-used man. He saw none around him but those in whose truth he could place the greatest reliance. It was not they who had misled him, but it was eighteen voters who gave him their solemn promise and at the day of poll turned round and voted against him. (Uproar.) If any man doubted what he said he would give him an opportunity of satisfying himself as to the truth of his statement. That was not a place to enter into details, but whoever had the least doubt let him come to him after the proceedings, and he had no doubt he would entirely satisfy him. The next point was, what was the motive for these men acting so? Had they suddenly changed their public opinions, or were they convinced that all the misrepresentations made against him were true? There had been no such conviction, no change of sentiment. They were coerced and influenced to vote as they had done, and, he was sorry to say, by ministers of religion—(disturbance)—who, forgetting the duty of their calling and the Christian graces, had stepped out of their sphere and become electioneering agents. Whatever opinion he formed of such actions, he would not have owed his election to such means. These things told a tale, for, if eighteen men suddenly turned their coats, how many would be deterred from voting, and how many would be brought forward who had no intention of voting? It was by these means that he had been defeated, and by no other means; for this plain reason that, as regarded political opinions, there was a complete concurrence between him and almost the whole constituency. It was not an election carried according to principle

at all, but by a certain class, a miserable minority in the county. (Uproar and cheers.) He was not to be debarred from speaking by clamour. Before departing, which he hoped they would do with all good feeling, he would beg to give them a word of warning and encouragement, and that was, that as they stood they were not in a condition to choose a representative at all! (Hisses from Mr. Dundas' party.) The great majority were carried away by mere popular delusion, and so occupied were their minds by that delusion that they never considered whether the candidates and their political principles agreed or not. The Lord Advocate continued by requesting them to exercise an independent judgment and not to be led away by demagogues, as he feared a part of them were. His honourable opponent had, on a previous occasion, at the election of 1847, been defeated, and shortly after he published an address to the electors of the county, which he (the Lord Advocate) had just lately seen, in which he congratulated them on having had all the support of the landed proprietors and clergy, but he should think that the present position of his honourable opponent must be a little mortifying, those electors not having been found on his side at this time. He now thanked them for the kindness shown to him since he had come into the county, and for the manner in which the people had conducted themselves throughout the whole proceedings. It was a creditable fact for the county that a matter of such an exciting nature should pass off so quietly, and that, too, in a place where the maintenance of order depended on the people and not on a military or police force. He owed a much higher debt of gratitude to those who had given him their support and from whom he had received much kindness. He could never forget all that he had seen and felt on that occasion. In bidding them farewell he said he never could cease to have their best interests at heart, and although not destined to be their representative, it would always be a matter of high gratification to him to serve them in what he could. If at any time they wanted a friend in need, they would always find a zealous friend in him.

The contest was undoubtedly a very keen one. The Lord Advocate and his friends complained that the Earl of Zetland had given them to understand that there would be no contest, and that immediately on the back of this

intimation, the Earl's friend, Mr. Dundas, was run. The clergy of the Established Church, presentees of the Earl of Zetland, but the natural supporters of Inglis, were, they thought, subjected to importunity amounting to a species of persecution by his opponent's agents.

Such was Inglis's first election contest. We have seen that Lord Advocate Anderson was made a judge on the 28th February, 1852. Inglis naturally expected to succeed to the vacant place. For some unexplained reason he was not formally advanced till May 19th, when he was in the middle of the Orcadian contest.[1] In the throes of political unrest and the excitement of this election, he had not much time to speculate on the career on which he was now entering. But when defeat liberated him for a time from the thrall of public exactions, he was free to measure the nature and extent of its possibilities. Obviously prepared and able to fulfil all the political essentials of his high office, he viewed his elevation to it, as most Lord Advocates do, with mingled feelings. In the first place, his career had been that of a hard-working lawyer, with as little time as inclination to criticise the principles or

[1] The Lord Advocates during this century were appointed as follows,—all of them excepting Erskine, Colquhoun, and Rae attaining the bench :—

1801. Charles Hope of Granton.
1804. Sir James Montgomery, Bart.
1806. Hon. Henry Erskine.
1807. Archibald Colquhoun.
1816. Alex. Allan Maconochie.
1819. Sir William Rae, Bart.; 1834, Dec. 19; 1841.
1830. Francis Jeffrey.
1834. John Archibald Murray, aft. Sir J.; 1835, April 20.
1839. Andrew Rutherfurd; 1846.
1842. Duncan M'Neill.
1851. James Moncreiff, April 8; 1852, Dec. 30; 1859, June 24; 1868, Dec. 10.
1852. Adam Anderson, Feb. 28.
1852. John Inglis, May 19; 1858, March 1.
1858. Charles Baillie, July 10.
1859. David Mure, April 15.
1866. George Patton, July 12.
1867. Edward Strathearn Gordon, aft. Lord of Appeal, Feb. 28; 1874, Feb. 26.
1869. George Young, Oct. 14.
1876. William Watson, aft. Lord Watson and Lord of Appeal, Oct. 13.
1880. John M'Laren, May 5.
1881. John Blair Balfour, Aug. 19; 1886, Feb. 13; 1892.
1885. John Hay Athole Macdonald, July 2; 1886, Aug. 6.
1888. James Patrick Bannerman Robertson, Oct. 24.
1891. Sir Charles J. Pearson.

the policy of Government. His income had been one of the largest any advocate had made in his or in any other day, and his removal to London would therefore involve no insignificant pecuniary sacrifice. Besides, the bent of his mind having been purely and entirely forensic, the circle of his acquaintances remained provincial, and he could not, like Jeffrey, turn with satisfaction to constant interchange of thought and sympathy with the bright intellects of metropolitan society.

When appointed Lord Advocate, therefore, his whole mode of life was in danger of being suddenly changed. He had the prospect of becoming engrossed with duties of statesmanship necessarily new and not altogether congenial to him. Had it not been for the parliamentary and burgh reform which he had seen accomplished in his early days, and the subsequent period of quasi-public life which he, like every advocate, had to lead, with the legislative preparation incident thereto, the transition from the seclusion of a counsel's chamber and the decorum of Courts of law to the crowds and noise of politics—from the clear air, the picturesque situation, and the delightful environment of Edinburgh to the vastness, the fog, and the worry of London—would have been insupportable to a person of Inglis's repose. But the exigencies of reform and his intervening experience had undoubtedly familiarised him with the requirements of the time, and imparted a certain aptitude for the destiny which was then, as it is now and probably ever will be, in store for a certain proportion of the Faculty.

One may here step aside for a moment to deplore the evil treatment which high Scotch officials receive at the hands of the Imperial Parliament. The public does not understand, and no Government has yet appreciated, the sacrifice which the promotion to the position of Lord

Advocate entails upon a man whom his own excellence or fortune or favour raises to the highest pinnacle in the legal world of Scotland. Its English analogue is the post of Attorney General, but the emoluments of the one office are only some £3000 a-year compared with £10,000 given to the other.[1] Besides, the Attorney General never leaves the scene of his accustomed labour. His position, his employment, and his fees are all immeasurably enhanced by political promotion. On the other hand, the Lord Advocate is banished from his practice, except such fees as he may get in Scotch appeals, which are now comparatively rare. Even the Parliamentary bar, where the fees are largest, and where the Lord Advocate would be certain of representing one side or the other, is closed against him as a member of the House. His absence from Parliament House is protracted, and he becomes a stranger to his

[1] The discrepancy is brought into strong relief in a return obtained last year by a member who interests himself in this matter. The tables exhibit the swollen incomes of the English law officers in sharp contrast to the shrunken earnings of their Scottish brethren. The Attorney General has a salary of £7000. In 1887 and 1888 he added to it by fees for contentious business not less than £4600 and £5000. In 1890 his fees dropped to £2179, and in 1890 they did not amount to more than £2782. The Solicitor-General for England does nearly as well. His salary is £6000, but in 1888 he all but doubled it, his fees amounting to £5000. That was his best year. In 1887 the fees yielded him £3770, in 1889 £2500, and in 1890 £2044. The Home Secretary was pointedly asked whether or not Sir Richard Webster was worth three times as much as Lord Advocate Robertson. The salary of the Lord Advocate is £3279, and the extra fees have never within the last four years brought his official salary to more than £3500 except once, and then the total was only £3916. The case of the Scotch Solicitor-General is still worse. His salary is less than one-sixth of that enjoyed by the like functionary in England. It stands at the handsome figure of £955! Once in the last four years the fees raised the total earnings of the office to £1416; in the other three years the aggregate income was £1215, £1154, and £1109. The Irish Attorney General's salary is £5000, and his fees have added £989, £1722, and £1181 to his income. The Solicitor-General for Ireland receives £2000 as salary, and his fees ranged from £127 in 1887 to £789 in 1890. A Treasury minute agreed to, February, 1893, to some extent lessens the inequality complained of by cutting off some of the fees exigible by the English law offices. If some levelling up were done in the case of the Scotch law offices, the grievance might be removed altogether.

profession. Unless of pre-eminent ability he may at any moment be permanently supplanted by men whose powers are called into exhibition by his absence. He may thus lose the footing he had secured before promotion. Railway communication has undoubtedly improved matters a little in this respect.

The only return which the Lord Advocate obtains for the sacrifice he has thus to make, and which in some cases has involved the holder of the office in financial difficulty, is the command of patronage and the first vacancy on the bench. Unless he possesses rare vigour, talents of adaptability and eloquence, debating and administrative power, or the genius for government, he is usually at an age too advanced for setting out upon a fresh career. He can only look on this expensive banishment as a step to a high and congenial dignity. The attainment of the position causes him to be regarded as among the luckiest of mortals, but he is in reality the victim of his own fortune. This ought not so to be. North of the Border it is the veriest commonplace to say that the fiscal arrangements of official life are flagrantly anomalous and unjust. There was perhaps a time when the pruning-knife was required. That condition of affairs may still linger in London, but it has long since gone by in Edinburgh. The offices to which Scotsmen may aspire in their own country have been whittled at until little substance remains in them. Comparisons with England and Ireland have often been made, but with no effect. The necessities of the holders of such offices, and the history of Scotland, which does not countenance distinctions so invidious and unjust, alike demand an immediate and radical revision. One can hardly imagine that there should be a dissentient voice to the placing of the Lord Advocate and the Solicitor-General in a position at least

half as lucrative as that of the corresponding officials in England. It only requires a glance at the labour and responsibility of the Lord Advocate's position to see how grossly unfair existing arrangements are. Compare the scores of measures he has to watch over now with the few which engrossed the attention of his predecessors, when salaries were worth double their present value. Business has quadrupled in the Scottish office. The economical conditions of existence in the metropolis have become tenfold more exacting; life in Parliament has grown more and more trying; and yet successive administrations have regarded in silence and apathy, if not contempt, the sacrifices and the struggles of a score of Lord Advocates.

This, however, by the way. Whatever its disadvantages, the office was Inglis's natural destination, and his speeches to the electors of Orkney and Shetland furnish ample proof of fitness for its responsibilities, and he determined to discharge them in a manner worthy of the traditions of the office and of the able men who had filled it before him. It was requisite, however, that when Parliament met he should be in possession of a seat. Owing to the protracted existence in full force of the popular reaction against Toryism — alluded to in the opening chapters of this memoir—the ascendency of the Manchester school, and the continuance since 1843 of ecclesiastical rancour, it was found impossible for him to secure this in Scotland. Accordingly, in the autumn of 1852, he turned his eyes to the borough of Lisburn in Ireland, then rendered vacant by the appointment of Sir James Emerson Tennant to the secretaryship of the Board of Trade. The local organ of the Whigs remarked that, while regretting that some Liberal connected with the locality had not been brought forward, "it is right to say

that, independently of electoral knowledge, there is little reason, politics apart, to condemn the choice made, as the gentleman about to represent the borough is calculated to do it honour." For Inglis's fame as a pleader had spread beyond the narrow confines of his own country, and the energy of his attack on its remotest constituency had been recognised by friends and foes alike, being referred to in complimentary terms at a great dinner given to Lord Panmure at Perth about this time. But the exigencies of party warfare prevented Inglis for the present from entering the House of Commons. Lord Derby became Prime Minister in February, 1852, and Parliament had passed a Bribery Act for inquiry into corrupt practices on the appointment of a commission, when Crawford's Bill to secure and regulate the tenant-right of Ulster, to secure compensation for improvements, and to limit the power of eviction in certain cases, was thrown out on the second reading. The dissolution took place in July, and when Parliament met in November, Disraeli's budget being defeated, Lord Derby resigned.

Inglis was not chagrined at having to abandon political ambitions. He returned to his practice with renewed zest, and worked unceasingly until time brought round its revenge. In the interval the State was agitated by events of surpassing importance both at home and abroad. As the outcome of a conference between representatives of Great Britain, France, Austria, and Prussia at Vienna in July, 1853, the ultimatum of the allies was sent to St. Petersburg in February, 1854, and the Crimean War broke out, followed in 1857 by the Indian Mutiny. There was in office during these years the ministry of resignations —the ministry of Lord Aberdeen and Lord Palmerston. Lord Palmerston resigned in 1853 because he considered the attitude of the Government toward Russia to be

feeble. Lord John Russell resigned because his views as to the presence of a War Minister in the Commons had not been carried out. Lord Aberdeen resigned because Roebuck's motion for an inquiry into the war had been passed. Gladstone and the Peelites left the ministry. Lord John Russell, who succeeded Sydney Herbert, a Peelite, resigned (the second time within six months) on notice of a motion expressing want of confidence in him for his conduct at Vienna. A Reform Bill, reducing the franchise to £10 in counties and £6 in burghs, was introduced and withdrawn. A Corrupt Practices Act, providing for publication of election accounts and payment of expenses only by agents, was passed. A scheme of national education was discussed, the disestablishment of the Irish Church was proposed, and there was a commercial panic.

During all these years Inglis pursued the even tenor of his way in Parliament House, facile princeps as a pleader, seemingly oblivious of the stirring events occurring elsewhere, and varying the technical life which had its highest embodiment in him, by a singular devotion to his duties as Dean, and also, as we shall see, to reforms in the law. But at the dissolution of 25th March, 1857, efforts were made to induce him to enter the House of Commons. The representation of Scots lawyers had become sadly attenuated. There had just retired—although only for a time—Mr. Dunlop, one of the authors of the Succession Act, a man whose merits were admitted on all hands, and who had, moreover, originated many schemes of social and legal reform in Scotland. With the exception of the Liberal Lord Advocate (Moncreiff), whose genius had lent lustre even to that great assembly, Mr. Dunlop was the only Scotsman in the House of the energy and elasticity of mind essential for a reformer. The other Scotch members were proud country gentlemen, or dandy cadets

of noble houses, or retired tradesmen. It was thought that the addition of Inglis, whose powers had been sufficiently tried, would prove of immense value to Government and to the Legislature. Inglis, however, was not to be tempted away from his lucrative practice. His decision was lamented. The organ of the legal profession said that no man of any party would not regret the omission of him from Parliament.[1] Amongst the list of persons, it went on to say, reported as countenancing with their presence the election of the Earl of Dalkeith was to be found the name of Mr. Inglis of Glencorse, and it took some time to identify in such humble guise the leader of the Scots bar.

But the year 1858 opened with an attempt on the life of the French Emperor by Orsini, which caused a great deal of irritation in France and some danger to the continuance of our friendly relations with that country, and Lord Palmerston's Conspiracy to Murder Bill, making such conspiracy a felony, was introduced. The Bill was defeated, and Palmerston resigned. Lord Derby then resumed office, and John Inglis was re-installed Lord Advocate, presenting his commission to the Court on March the 5th, in presence of a large concourse of the profession.

Inglis was now fortunate in securing a pocket borough. He was elected for Stamford in succession to Thesiger. His experiences at this sleepy English borough formed a curious contrast to the turbulence and disappointment he had undergone in the north six years before.[2] The electors of Stamford remained ignorant even of the name of the successor to the seat vacated by Sir F. Thesiger until the end of February, 1858, when the Edinburgh and London papers announced that Mr. Inglis would

[1] The "Journal of Jurisprudence."

[2] I have taken the details of this election from the file of the "Stamford Mercury" for 1858.

be returned "for Lord Exeter's borough of Stamford." On Saturday morning, the 28th February, the new candidate's address was issued, accompanied by a farewell address from Sir F. Thesiger (Lord Chelmsford), and the same evening the Lord Advocate arrived in Stamford. The writ, which had been despatched from London on Friday morning, was by mistake sent to Lincoln, and did not reach Stamford till Saturday evening. However, to expedite the election and suit the convenience of the candidate, the proclamation was forthwith made (at about nine o'clock p.m.), and the election fixed for Wednesday morning. On Sunday the Lord Advocate attended St. Mary's Church, and on Monday morning at ten o'clock he appeared in the large room of the George Hotel, whither the electors had been invited by handbill to meet him and hear an exposition of his political principles. The attendance was very limited, not more than twenty persons being present, and the learned gentleman's address was very brief. He said he was in politics a Conservative, but that every species of rational and intelligible reform and improvement would meet with his most decided support. On Monday and Tuesday, amid falling snow and in the face of a keen east wind, he pursued his canvass, which was stated to be very satisfactory. On Wednesday morning at ten o'clock the election took place in the Town Hall. The Lord Advocate was accompanied by a Mr. Phillips and six attorneys. The writ having been read by the Town Clerk, the Mayor called upon the electors to exercise their privilege and proceed to the nomination. Mr. Phillips said, in consequence of the elevation of their late member, Sir F. Thesiger, to the highest legal distinction in the kingdom—a distinction which he believed had been most properly and deservedly conferred—it became the duty of the burgesses of Stamford to elect a successor. In furtherance of that

duty he had the honour to propose John Inglis, Esq., the Lord Advocate, who had been for some time at the head of the legal profession in Scotland, and whose worth was proclaimed in the fact that he had been continued as Dean of the Faculty of Advocates for many years. He considered Stamford had reason to be proud of having had for one of its members a man who was now Lord Chancellor of England; and he had no doubt that hereafter it would be justly proud of having the Lord Advocate as his successor. Alderman Handson seconded the nomination, and no other candidate being proposed, the Mayor declared John Inglis, Esq., duly elected. The audience numbered 47 electors and 11 non-electors. The Lord Advocate then presented himself, and was received with applause. After thanking the electors, he said—

He could not but think it a distinguished honour to be returned by them when he reflected how many distinguished names appeared on the list of representatives of the borough of Stamford in times past; and looking, before all, to that distinguished individual who had been so recently elevated to one of the highest places in the kingdom, he felt it was an additional honour to be selected as his successor, and he could only say that he would at all times, to the best of his ability, endeavour to follow in his footsteps. He was happy to have it in his power to number himself among Lord Chelmsford's personal friends, and the influence of his example would be more likely to stimulate him to imitate him. It was not merely for the honour they had conferred on him that day he desired to thank them, but for the reception they gave him as soon as he came among them. He had met nothing rough and disagreeable, unless he excepted the inclement weather. From every elector he had experienced a pleasant reception. He had not found the snow so deep or the frost so keen as to chill the warm-hearted and congenial sentiments of the people of Stamford. He had been surprised at the extreme courtesy he had met on all hands. He had found very few gentlemen, and a still smaller number of ladies, who differed from him; but even from those who did differ he met a

friendly reception. He had been returned to Parliament without having had any pledge asked of him. He remembered one fair electress who lamented much the absence of bands of music and banners, and he was firm against all remonstrance on that subject, but he thought he stood committed to this extent—that if any dashing young member brought forward a Bill to revive election balls, he promised to give it his consideration. He, however, did stand pledged to one thing, and that was to support the present Government; and he believed that when the measures of the Cabinet became fairly developed they would command the general support of the country. The circumstances under which the present Government was formed should be well understood. The cause of Lord Palmerston's resignation was a vote of censure by the House of Commons. That was the immediate cause, but other causes were at work, and would have shaken his position even if the Walewski despatch had never been heard of. When it was thought the British flag had been insulted in the China seas, and Lord Palmerston found himself not adequately supported on that question, he appealed to the country, and they all knew with what result. They knew what a majority he gained by the elections, and yet, after the lapse of a short time, on a similar question—on a question affecting the honour of England—a majority of the House of Commons pronounced a censure against him. He believed that Lord Palmerston and his colleagues were prepared for an early reverse independent of the French affair. The despatch from Count Walewski contained expressions of a most offensive character regarding both the law and the people of this country, and how had the advisers of the Crown dealt with it? They had answered it in the shape of a Bill that would be construed in foreign countries, as it had been in this country, to admit the truth of the charges. This the House of Commons could not stand, and, the Government being defeated, they had no choice but to resign. The country had lost a Government at one time strong, but since weak; and the great object was to find those who could make a Government as strong as possible to fill their places. There was little choice, for it was known that no other person could get such a following as Lord Derby, and he had great hope that Lord Derby's Government would be successful. (Applause.) The Lord Advocate then alluded to the manifesto of

Lord Derby in the House of Lords on Monday evening, and stated that the primary point for consideration was the French question. He did not consider that Mr. Milner Gibson's amendment affected the principle of the Conspiracy to Murder Bill. He was not prepared to say that the Bill was sufficient; but if any doubt existed as to what the law of England is on a matter of so much importance as conspiracy to murder, he should be ready to support any proper amendment of the law. But he should not consider that an answer on the part of this country to the French despatch. It was the want of a more spirited answer that sealed the fate of the last Government. Another measure of high importance, but which some time ago he did not consider one of urgency, was the Bill with regard to the government of India. If he had been in Parliament he should have sympathised with those who thought this was not the time for such a measure, the country being still in a critical condition; but as a large majority of the House of Commons had expressed an opposite opinion, he did not think there was anything wrong in the present Government bowing to that resolution. The Earl of Ellenborough, who had been appointed to the Board of Control, possessed great knowledge of India, and he had no doubt his lordship would produce a Bill that would give satisfaction, one that would not be subject to those objections so forcibly stated against the Bill of the late Ministry, namely, that the whole patronage and power of the Government were by it placed, without qualification or control, in the hands of the Minister of the day. (Hear, hear.) There was yet another subject on which he did not desire to be silent. For a number of years the House of Commons had said that the law regarding the representation of the people ought to be amended. Successive Governments had been of the same opinion; and, although there had been no great clamour in the country for a change, it could not be doubted that a reconsideration of this subject was deemed highly expedient. He confessed that he also entertained that opinion. (Applause.) It appeared to him that the time had come, not for a Reform Bill, but for a revision of the laws relating to the representation of the people, to see whether they could not be improved so as to secure the great ends they are intended to serve, to obtain not merely a fair, adequate, and complete representation, but that the constituencies should be so arranged and

organised as to produce the best representation—a consideration, he could not help thinking, those who styled themselves reformers forgot altogether. He could not deal with this subject on arbitrary rules; on the contrary, he thought that a measure of this kind should embrace the various circumstances and interests of the country; and it should not be forgotten that not numbers alone, not towns, intelligence, and property alone, but all the varied interests of society in this country in the different branches should be represented; otherwise there would not be in the House of Commons an adequate representation of the people. (Applause.) This subject would engage the early and earnest attention of the Government. They would be taunted, perhaps, with not bringing it forward in the present session; but no object was attended with greater difficulties than that, and therefore, when the Minister told them he was not prepared to introduce it at present, he did not demand a very great indulgence in asking for a little delay. It would be vain to expect any satisfactory measure of this kind unless it was introduced by Government in a perfect spirit of honesty and fairness. If any Minister approached it with party views, he must inevitably fail. He must consider it on its own merits with a single eye to the benefit of the country; and if he did so, by the blessing of God he would succeed.

It was while lawyers were being tortured in their minds by apprehensions of pecuniary loss and other results of new and untried procedure that the Parliamentary career of John Inglis began. He became a legislator when he was forty-eight years of age. The duration of this career was phenomenally short. He barely had time to take over from Moncreiff a legacy of unaccomplished reform, or to measure his own capacity to ascend from pleading power to the higher flights of statesmanship, when the sudden death of Hope, the Lord Justice-Clerk, placed the chair of the Second Division within his grasp. Short, however, as was his tenure of the Lord Advocateship, and few his opportunities as a legislator, he managed to place at least one important Act on the statute book. He was

introduced to the House on the 12th of March. Along with Cairns and Disraeli and other members of the Government, he had the satisfaction of listening to interesting debates on the condition of the army and navy and on the state of our relations with France, and thereafter he settled down to the routine of his duty in Parliament. In the course of the spring he had to parry the customary attacks on official salaries—notably his own and those of the Lord Clerk Register (the Marquess of Dalhousie) and the Keeper of the Register of Sasines (the late Mr. Brodie); but there were only two or three subjects of general interest touched upon by him in the House during his only session in it. His first set speech was made in March, 1858, on the order for the second reading of the Valuation of Lands (Scotland) Act Amendment Bill, which had been introduced by Mr. Dunlop—who had again entered Parliament, militant as ever—and the object of which was to do away with the exemption of certain subjects, notably deer forests and feu-duties, from valuation. The Lord Advocate opposed the second reading in a speech which was admitted by Colonel Sykes, the active and experienced member for Aberdeen, to be a singularly able and convincing one.[1] The bill was put off. Another measure introduced in the spring of 1858 by Mr. Dunlop—this time in conjunction with Sir Edward Colebrooke—was the Registration of County Voters Bill. The law on the subject, both in burghs and counties, had, two years before, been put on the same footing in Scotland as in England, but by the passing of this Valuation Act an easier system of registration had, to the joy of the electorate, been made possible. Moreover, Moncreiff had introduced a bill dealing with this troublesome subject, which passed through a

[1] Hansard, vol. 149, p. 662 *et seq.*

committee of Scotch members and a select committee of the House in 1856; but when it came back to the House, its supporters finding that in consequence of the opposition of some Scotch county members they were likely to lose the bill altogether, it was thought expedient to confine its remedy to the burghs, reserving its application to the counties to a future period. The Lord Advocate, in reply to a question, said the present Government did not propose to introduce a bill to extend its application to counties, and on the order for the second reading of the measure, thereupon undertaken by Mr. Dunlop, he saved its defeat by judiciously consenting to the second reading. The bill was ultimately lost by 12 votes.

During his short tenure of office in 1852 Inglis had prepared a bill dealing with a prolific source of ecclesiastical rancour known as the Annuity Tax. This tax was first imposed in 1634 by an Act of the Privy Council of Charles I., because "there was nothing so consonant to equity and reason as that all such persons as daily enjoyed in plenty the blessing of the word of God should contribute to the maintenance of the clergy." During the first half of this century it caused as much bitter feeling between Churchmen and Dissenters as patronage excited in the ranks of Moderates and Evangelicals, and the latter party, first when it became victorious, and also when it hived off, added its surplus zeal to the destructive efforts of dissent. Moreover, since 1833, when Jeffrey was Lord Advocate, this tax had been the subject of ten Parliamentary committees and seven bills! The measure of 1852 which Inglis prepared was not proceeded with in consequence of the change of Ministry in that year. In the following year, however, a bill in nearly the same terms was brought in by Lord Advocate Moncreiff, and, after being warmly supported by the eloquence of Macaulay, was lost through some of its

antagonists speaking against time. In 1857, a measure for the abolition of the tax, introduced by Lord Advocate Moncreiff, was read a first time, but was withdrawn on the order for the second reading, owing to the irreconcileable differences which it excited and the late period of the session when it was reached. Chagrined and obstinate, Mr. Black, one of the members for Edinburgh, in 1857 brought in a second bill for the abolition of the tax, being seconded by Mr. Baxter, the member for Montrose, in which town the impost was said to operate as obnoxiously as in the capital. The Lord Advocate opposed this bill. Although one can read between the lines a certain loyal sympathy with the order and the church from which he sprang, the speech is not remarkable or worth quoting otherwise than as throwing light on contemporary local history and on the question of church establishments generally.[1] At a morning sitting on June 16 the bill was lost by a majority of one.

This was one of the subjects of which Inglis, as the son of a Moderate leader, and as an Edinburgh man, had a traditional knowledge. His brother Harry made an unfortunate acquaintance with it. Two citizens, one of them a councillor named Russell, resolved that on no account would they pay the tax. Mr. Inglis was factor for the clergy, a post which as a Writer to the Signet, he secured through his father's influence, and as the result of instructions by the City Chamberlain to recover all arrears —a batch of papers being put into the factor's hands for that purpose—Russell one morning, as one of the martyr debtors, found himself in gaol. The greatest hubbub ensued. The clergy and the council both repudiated responsibility for so extreme a step, and betwixt the two Mr. Inglis was compelled to resign his agency in that matter.

[1] It will be found in Hansard, vol. 150, p. 2181 *et seq.*

One of the subjects discussed in the course of this and of nearly every session since was that of marriage with a deceased wife's sister, and Inglis embraced the occasion of a bill being introduced to make one of the most satisfactory speeches that could be made upon that vexed question from the religionist point of view.[1] Monckton Milnes, one of the speakers on the opposite side, afterwards Lord Houghton, acknowledged the power of this contribution to the debate. The bill was rejected then. It suffers annual rejection still.

It is quite true that, even in a professed éloge, one cannot claim anything unusual either in the nature or quality of these performances of Inglis's. We have seen, however, that on the platform Inglis could hit out upon occasion with remarkable freedom and effect. In the House of Commons, in his first essays, he spoke in so modest and restrained a tone, that in many passages he was barely audible beyond the surrounding benches. Even in making his greatest speech, that on the University Bill, he was greeted with cries of "Louder." One cannot imply that he ever did anything which was not done seriously; but he was particularly in earnest when he had to rebut any slur upon himself, his profession, or his office; and the first of the only two occasions on which he was really put on his mettle in the House was in defence of all three. It happened in this way.

A calamity of the first magnitude in the shape of a commercial crisis befell Scotland in 1857. The Western Bank, which had a capital of a million and a half, and had been in existence for a quarter of a century, failed on the 9th of November, and as the Martinmas term followed two days later, the panic produced throughout the country was

[1] Hansard, May 5, 1858, vol. 150, p. 138.

indescribable. The west of Scotland was involved in confusion. The Western Bank had one hundred branches, most of them in the west, and these were besieged by panic-struck depositors. The run upon the other banks also was so great that the City of Glasgow Bank, which came to grief twenty years later, had for a time to close its doors. Two millions of deposits were swept away at one stroke of misfortune. The most intense suffering ensued. The shareholders and the depositors to the number of some ten thousand were ruined. Many of them were driven to lunatic asylums and into banishment—all of them were reduced from affluence or plenty to poverty. The resentment of the public was as keen as its sympathy was deep, and threats of vengeance were levelled at the directors. The Scotch banking system was denounced in the press and in Parliament; and press, Parliament, and the public bitterly lamented that no information in the hands of the Lord Advocate warranted him instituting a prosecution.

This led to the member for Leitrim, a Mr. Brady, on April 16, 1858, calling attention to the circumstances attending the failure. The speech of the Lord Advocate in reply is a good example of his prevailing tone and temper, and gives a view of the Scotch system of prosecutions which, while undoubtedly sound, leans somewhat to the fallacy that a public prosecutor is bound to wait and see the effects of crime before directing a prosecution:—

I can assure the House that, although rising immediately after the honourable member for Leitrim, I have no intention of answering the speech of that honourable member. I am not here for the purpose of defending the principles upon which the Western Bank of Scotland was established or the conduct of the directors of that institution. Neither am I here to offer any opinion as to the personal capacity of the directors; but I am glad to take the opportunity of removing an erroneous impres-

sion that prevails in certain quarters out of doors, and which seems to have taken possession of the mind of the honourable member. With regard to myself personally, the insinuation of the honourable member for Leitrim seems hardly to require even a passing observation; but I may mention that, both while the bank was carrying on its business and at the time when the bank stopped payment and was winding up, I was in my professional capacity frequently consulted by the directors, the shareholders, the liquidators, the depositors, and the creditors of that institution. In fact, all parties who might in any way be supposed to need legal advice with respect to its affairs have consulted me in turn, and I have endeavoured to do fairly what I believed to be my duty by all. It may be supposed, therefore, that I have no prepossession in favour of one class over another. The matter, however, to which I now wish to refer concerns my office as public prosecutor in Scotland. The honourable member for Leitrim has on a previous occasion asked me whether criminal proceedings would be instituted, and my answer in substance was that I had not before me any information that would justify a prosecution. I beg now to repeat that statement, for such is my position down to the present moment. I would, however, add that it does appear strange to me that the parties who have given the honourable member the information which justified him in using such strong language as that in which he has indulged should not have thought fit also to lay their information before the public authorities in Scotland. It seems that a very great misapprehension exists in the minds of the honourable gentleman and of many persons out of doors as to the nature of the office I have the honour to hold. A public prosecutor is not a minister of police. It is no part of the business of a public prosecutor to hunt out crime. On the contrary, I have always understood that the true theory of the Lord Advocate's functions is that he should prosecute only on the complaint of an injured party. This rule is liable to certain very important exceptions, it is true. Still, as a general rule, a prosecution should not be set on foot except on the complaint of the injured party; and I must take leave to say that that rule is peculiarly applicable to the case of commercial frauds, in the first place, because it is almost impossible that the public officer should be able to possess himself of the mate-

rials even for making a preliminary inquiry without the aid of injured parties; and in the second place, because in the ordinary case it may fairly be presumed that if the supposed injured parties remain silent, there can be no very good grounds for undertaking a public prosecution. This rule is firmly established by the practice of the law of Scotland, and is at once expedient and salutary; but I do not go so far as to say that it is a rule which, even in the case of commercial frauds, never can have an exception. On the contrary, had I been placed in the same position to the Western Bank of Scotland as was my honourable and learned friend the late Attorney-General with reference to the Royal British Bank in England, I should have adopted a precisely similar course. But it is just because my position is entirely different that I have been compelled to remain quiescent and to give to the honourable gentleman that answer of which so much complaint has been made. Let the House recall for a single moment in what way the prosecution against the Royal British Bank came to be instituted. The whole of the frauds charged were disclosed in the course of examinations in the Bankruptcy Court, and, being thus made public and notorious, necessarily came in that way to the knowledge of the Attorney-General, who had then no alternative in the administration of the duties of his office but to institute proceedings. On the other hand, what is the case with regard to the Western Bank? There has been but one proceeding in the Bankruptcy Court, and that was in the case of Mr. Taylor's sequestration. On that occasion, all that transpired was that Taylor seemed disposed to assume to himself the entire responsibility of the conduct of the bank's affairs and completely to exonerate the directors. It is true the matter did not stop there; there have been various meetings of the shareholders since; but it must be recollected that throughout the whole of those proceedings, and up to the present time, the published accounts given have been all a person in my position could know anything about. The tone adopted at those meetings was to charge the directors with great culpability and neglect of duty in not controlling their manager, but certainly to charge them with nothing which could be made the foundation of a criminal prosecution. I am anxious that this should be understood by the House; and that the honourable member for Leitrim should not think he made the

statement without foundation. I beg further to state that, so early as December last—very soon after the occurrence of the calamity—there was a meeting of the shareholders of the bank in Glasgow, when a committee was appointed to investigate the whole case. That committee did make an investigation, and reported to a subsequent meeting—I don't mean to say that this was a very complete investigation, for the inquiry occupied but a fortnight and was merely preliminary—but still it is rather important to see how this committee of shareholders, very indignant, and smarting under recent suffering, did express themselves as to the culpability of the directors. They said, "The committee are of opinion that, during the whole of Mr. Taylor's career, as well as during a portion of Mr. Smith's services, the directors of the bank have been much to blame in neglecting to perform the ordinary duties incumbent upon them on the acceptance of such a trust. They appear without sufficient inquiry or examination to have trusted to the statement of the managers, with a simplicity which appears to the committee almost incredible. While we acquit these gentlemen of any moral blame in their management as directors, and consider that their errors have been errors of judgment and not of intention, we are clearly of opinion that they have failed to perform those ordinary duties in the management of the company which it is well known they all practise with so much fidelity and success in the prosecution of their own private affairs, and their neglect of these duties has been, in part, the means of bringing both pecuniary and mental distress on hundreds of their fellow-countrymen." Now, that being the opinion of the shareholders in the month of December, I put it to the House whether there is as yet any encouragement for the institution of proceedings by the public prosecutor. It is true that time has run on since then, and the shareholders may now entertain different views; but, as before stated, down to the present moment, not one single shareholder or person interested has ever made a complaint to the authorities. But they have done what much more becomes their position, and I apprehend what any sensible person would advise. They have organised themselves into an association for the purpose of conducting a complete and searching investigation into the whole history and proceedings of this bank. That

association is now in action, and I have this day received a letter from the chairman—purely voluntary on his part, and not in reply to any communication from me—of which I shall take the liberty to read an extract to the House. The chairman says, "As chairman of the shareholders associated for investigation, I am now enabled to state that our arrangements are completed. Funds have been subscribed, and preliminary points have been settled. An accountant has been chosen, who will commence his investigation on the 9th. None of us anticipate such disclosures as would call for criminal procedure against the directors, whatever their pecuniary liabilities may be. If anything of the sort occurs you will be informed." Now, it is to be supposed that those gentlemen understand their own position much better than their representatives in this House, and are able, if they choose, to probe the matter to the bottom, and ascertain whether, in point of fact, there is any foundation for a criminal prosecution. I now leave the matter in the hands of the House, having stated what the actual position of the case is, and I submit that I would have been totally unjustified if, with the information before me, I had occupied the valuable time of public servants, and expended a large sum of public money in conducting this investigation for the shareholders of the Western Bank of Scotland.[1]

The discussion which followed brought to their feet personages so great as Palmerston and Disraeli. The former said, "I must bear my testimony in favour of the reasons which have been assigned against this motion, and more especially in the very able and clear statement of the present Lord Advocate, who has given a most lucid explanation of the duties he has to perform." The Chancellor of the Exchequer went further. Said he—

Is this office, then, inefficient? I have had some experience of this House, and I must say my experience leads me to this conviction, that of all public offices none have been sustained during the last twenty years with such continuous ability and sound intelligence as the office of Lord Advocate of Scotland. I do not

[1] Hansard, vol. 149, p. 1196.

remember a period in which it has been filled by a man of inferior ability or in which the service of the State, so far as that office is concerned, has not been efficiently conducted. I do not remember a period in which it has not been represented in all its attributes by men capable of respect, and often of admiration. Scotland has one peculiarity which redounds to its honour, that notwithstanding all changes, social and political, it has preserved its own law and a body representing that law which is celebrated throughout the world for its eloquence and ability. Under these circumstances I am surprised that Scotch members should come forward, and, as it seems to me, level a blow against that profession of which they ought to be proud—against that national system of jurisprudence which ought always to be deemed an ornament of their country. I should have thought they would have been proud that at this moment the administration of Scotland is conducted by the most eminent lawyer they possess rather than by a subordinate political officer.

Moncreiff, as the Lord Advocate in office at the time of the failure, supported Inglis's view, and we find nothing more said on the subject in Parliament except an occasional sneer that, after all, Scotch laws and institutions could not be so good as those in other parts of the kingdom, since the directors of the Royal British Bank, an English corporation which had failed under similar circumstances, had not escaped punishment. I daresay these strictures were remembered when, twenty years later, a similar calamity involved the directors of the City of Glasgow Bank in a prosecution at the instance of Lord Advocate Watson.

A cognate subject may here be mentioned. Some Scotch members of accredited position and known ambition seized the opportunity afforded by Inglis's novitiate to raise a debate on the propriety of the appointment of a Scotch Secretary and of divesting the Lord Advocate of his political power and patronage. The Scotch Secretary before the Union was not an officer of first importance, although a

member of the Privy Council; and after the Union he managed the affairs of Scotland along with the Lord Advocate. But in 1725, owing doubtless to the increasing influence of the chief law officer, due to his knowledge of law and history and his familiarity with affairs, Walpole abolished the Secretaryship concurrently with the appointment of Duncan Forbes as Advocate. Barring the unproductive incumbency of the Earl of Selkirk from 1731 to 1739, appointed at the instigation of Pulteney, the Secretaryship was in abeyance until 1741, when, again at Pulteney's instance, overcoming the opposition of the Duke of Argyll, who wished to retain the control of Scotch business, the Marquess of Tweeddale was installed, with an Under Secretary, and he continued in office down till 1746, when the office was abolished. It is uncertain how or by whom the business in the hands of the Marquess of Tweeddale was thereafter managed. Presumably it was done by the Lord Advocate, upon whom, as the only responsible connecting link between the nation and the executive, the Government were disposed to throw more and more of the public business. When in 1775 Dundas (Lord Melville) became Advocate, he assumed the control of everything connected with Scotland,[1] and was probably the most vigorous and independent Scotch minister of modern times, although he was too engrossed with imperial affairs to accomplish much genuine local reform, even if the period during which, and the men with whom, he held office had countenanced any efforts in that direction. Melville was followed by a succession of able men, but the tightness with which he held the strings, and the severe exclusion of the opposite faction from preferment, placed at the debit of Melville's office a long account which the Whigs felt must

[1] Omond, ii. 45, note.

be squared when the day of reckoning came. Accordingly after 1832 we find frequent mutterings in and out of Parliament—specially on the part of representatives of the emancipated merchant class—against the continuance of supreme political power as the heritage of Parliament House.

The project of placing the management of Scotch affairs in the hands of a Scotch Secretary was a pet one of Mr. W. E. Baxter, the Radical member during several Parliaments for the Montrose Burghs. In making his motion on June 15, 1858, he audaciously asked, how was it that the provisions of the Police Act and of the Lunacy Act were not sufficiently well considered, and why would the House be called upon to amend them ?[1] Simply because the late Lord Advocate (Moncreiff)—whom he quoted as having said that his political apart from his other duties were enough for any one man—had not sufficient time to attend to them while they were passing through the House. At the most critical period of the session he was absent at the trial at Edinburgh of Madeleine Smith for murder. Mr. Baxter complained that the Lord Advocate was the dictator of Scotland in political matters, and solemnly repeated a saying of Lord Advocate Hope—applicable to the beginning of the century—that the duties of Lord High Chancellor, of Lord Justice-General, and of Lord Justice-Clerk had all devolved upon the modern Lord Advocate. For the late Lord Advocate (Moncreiff) Viscount Duncan, a species of free lance, took up the defence, and appealed to the House whether the member for Leith, while occupying the office of Lord Advocate, had not merely passed many important measures —including measures which regulated the Courts of law

[1] Police Amendment and Lunacy Bills were brought in this session by Inglis, as Lord Advocate.

and consolidated the law of bankruptcy—but sacrificed a large portion of his time and considerable emoluments in order to do his duty to his country? But the most effective vindication came from Inglis himself, who was acknowledged by Mr. Baxter to be the greatest ornament of his profession, and who, to the amusement of the House and amid its cheers, quietly entered the House and walked to his place while the member for Montrose was girding at the office which he held.[1]

[1] See his speech in Hansard, June 15, 1858, vol. 150, p. 2134 *et seq.*

X.—University Reform.

THE subject of University reform had always been a favourite with Inglis, and it was undoubtedly towards this end that his chief effort as a legislator was made. Several things contributed to his grasp of the principles of University education. He had not by any means been a careless spectator of the differences between the English and Scotch systems during his academic career, and at an early stage he was convinced that, while philosophy might have her home on the north side of the Border, the Scotch educational system could not compete with the English in producing breadth and soundness of classical scholarship. While, therefore, in after life he never failed upon occasion to accord to our parochial system the praise it has received from all competent judges in Europe, he felt very strongly that there was too small a gap between the secondary schools and the universities, and that the teachers in the latter were better grammarians than scholars.[1] At his father's table he had been made familiar with the relations of the University to divinity,

[1] "While unprepared genius may be no disadvantage to a university, unprepared mediocrity, especially in large numbers, is fatal to the professorial system, for it turns the professor into a schoolmaster and sets the race-horse to draw a cart."—*Sir A. Grant.*

and subsequent experience as counsel for the Senatus enlarged his views of its functions towards medical science; but the initial personal conception from which he embarked on the reform of the Scotch universities was this, that in the development of the system of which they formed the superstructure, their destiny was higher than that of upper schools where raw youths from rural Scotland might take on a mere tincture of classical lore.

In a small country like Scotland, the reform of its institutions must necessarily devolve on small circles. This is specially true of the recasting of our university system. The jealousies subsisting between the original patrons of the metropolitan college, the Town Council, and its teachers, the Senatus, led to the intervention of lawyers and the exercise by them of the Parliamentary influence of which they more than any other class then had the control. Leaving out of view the compulsitor put in operation by those differences, the adaptation of our universities to modern requirements is due to the leaders of the Parliament House more than to any other body of men in Scotland, and that apart altogether from judicial interference.

The story of the contest between the Town and the Senatus is fully before the public,[1] and all that I am here concerned with is to trace Inglis's views and opinions upon the subject. But for that purpose it is necessary to recapitulate the salient features in a not unfamiliar tale. The disagreements referred to reached an acute stage when the Town Council in 1824 conceded the demand of Hamilton, then Professor of Midwifery, to make attendance on his lectures essential for the M.D. degree—a concession which, in a subsequent action at

[1] Principal Grant's "Story," ii. 1 *et seq.*

the Town's instance, was properly eulogised by Lord Pitmilly as enlightened and praiseworthy. The medical professors, with that selfish regard for their own pockets which naturally but unfortunately has characterised their body, objected to this concession, and in 1825 the Solicitor-General (Hope) advised the Town Council to try the question of their right to originate and sanction regulations as to education and degrees—Thomas Thomson at the same time counselling the Senatus that the efficacy of regulations devised by them without the sanction of the Council was doubtful. These disputes were preliminary to the appointment of the Royal Commission of 1826, the efficient members of which were all lawyers—namely, Lord President Hope, Lord Justice-Clerk Boyle, Chief Baron Shepherd, Chief Commissioner Adam, Lord Advocate Rae, Solicitor-General Hope, and Cranstoun, the Dean of Faculty, to whom Sir Walter Scott and James Moncreiff were added shortly after. The Solicitor-General drew up the "Requisition for Returns and Heads of Inquiry" issued by the Commission, an able, searching, and exhaustive document, which is said to have paved the way for the masterly report agreed to by the Commission after it had sat for three years, embodying a scheme in most particulars nearly the same as the constitution enacted in 1858. Their last meeting was held on 30th October, 1830, but owing no doubt to the engrossing nature of popular principles and the prevailing contentions regarding their embodiment on the statute-book, there was no result from the Commission till 1837, when a bill was introduced by Lord Melbourne for the constitution of an executive board to carry out the recommendations of the Commissioners. This measure had to be abandoned on account of the vigorous opposition of the Town Council and the General Assembly. Meanwhile the war between

the Council and the Senatus, or between the Council and individual members of the Senatus, like Sir William Hamilton, was waged with unabated zeal. It is sometimes imagined that this duel was one between enlightenment and culture on the one hand and arrogant ignorance on the other. It was really not so. The enlightenment was not unfrequently on the side of the patrons and the narrowness on that of the professors; and certainly the documents produced in the litigations on behalf of the Town were marked by great ability, accounted for, it is said, by the presence on the College Committee of the Council of two advocates, two Writers to the Signet, two Fellows of the Surgeons' College, and two Fellows of the Royal Society, the majority of these professional men being known to the public as authors.

For many years the parties had nibbled at law, but in 1827 they fairly embarked on a stupendous suit, which Lord Mackenzie, the Lord Ordinary, characterised as the most bulky case he ever saw. The point was whether the pursuers, the Town, had the right of making regulations for the College of King James. That point was decided in favour of the Town by Lord Mackenzie; and in the Inner House also the professors had the worst of it with Boyle, Glenlee, Pitmilly, and Alloway. No doubt the judges were influenced by the Lord President (Hope), and by Boyle, both of whom, as we have seen, were active members of the Commission, and knew that if anything were done upon the report, the terms of which they must then have known, little harm could result from giving the Town Council a temporary victory; and Boyle took care to scold the Town for raising at that conjuncture a question on which it was easy to see members of the bench might have to pronounce a legal opinion inconsistent with an administrative recommendation.

Inglis's first acquaintance with these disputes, so far as can be gathered from available material, was in 1846, when the Council had proposed alterations on the medical statuta, including the recognition of four extramural classes as qualifying for the degree. This encroachment upon their monopoly touched the Senatus on the raw. They consulted Duncan M'Neill and John Inglis, and by their advice applied for interdict against the new regulations coming into force, and declarator that their issue was illegal and that the Senate had the sole power of making laws for graduation within the University. This was really the same question as had been tried in 1829, but the motive of the suit was to obtain the opinion of the House of Lords. Lord Dundrennan decided that the point was *res judicata*, and his view was confirmed by the Inner House, and, after a three days' speech by Sir R. Bethell, by the House of Lords.

It was unavoidable that the prevailing rancour of politics should embitter these disputes. The Town Council was a nest of blind Radicalism and Dissent. The Senatus was unreasoning Church and Tory. While it must be owned that at various stages of the controversy the Town exhibited an enlightened spirit, it must also be admitted that the moment either belligerent proceeded on the line of party or personal interest, it was found to be in the wrong. Thus, when M'Douall, who, as a Free Church clergyman, had neither subscribed the Confession of Faith nor acknowledged the authority of the Kirk before the Presbytery of the bounds, was presented by the Council for induction as colleague to Dr. Brunton in the Hebrew chair, the Senate, as domini of records which would not bear the admission of any one whom law excluded, applied for interdict against the Council presentee, although the test had been constantly evaded from Robertson's principalship

(1762) downwards, and Lord Robertson could not but grant the interdict—Boyle, Mackenzie, Fullerton, and Jeffrey affirming his opinion. The General Assembly paid those costs incurred by the professors which the Court could not allow. After a futile attempt on the part of Lord Rutherfurd and Macaulay in 1845, Lord Moncreiff succeeded in 1853, after attending public meetings on the subject and making excellent speeches about it, alongside his old classfellow Maclagan, in substituting for the old test a declaration which made members of all churches eligible for all chairs except the Principalship, and the theological chairs and the Principalship were opened up in 1858 by an amendment of Mr. Dunlop's carried against the Government, Sir David Brewster, a Free Churchman, being appointed Principal in the following year.

The disputes between the Town Council and the Senatus, however undignified and amusing they may have been, undoubtedly directed the public attention to the university system of Scotland, and chiefly to this fact and to the inquisitive and reformative disposition which resulted, an association owed its existence whose objects were to strengthen the professors' position, to raise the standard of academic culture, and to attach permanently to the University by some visible and valued tie the general body of the graduates.

A deputation from this association waited upon Lord Moncreiff in 1857, and he promised to draft a bill which should embody the major part of the reforms contemplated in the Commissioners' report. He did so; but the honour was reserved for the subject of this Memoir, with whom, in accomplishing this and many other reforms, Lord Moncreiff worked hand in hand—a delightful unanimity worthy of men so great, and probably unattainable by men of smaller minds—to bring in the bill of 1858, "To make provision for the better Government

and Discipline of the Universities of Scotland." In introducing this great measure on April 22, 1858, Inglis rightly said he made no claim to originality. On the contrary, he acknowledged that he had derived very great assistance from his predecessor, who had furnished him with his materials and the sketch of his plan. With reference to this collaboration Mr. Black, at one of the public meetings on the subject, asked, was it not refinement in cruelty for the Lord Advocate to stand before a meeting at which many of the patrons were present and promise that no radical changes should be made in the University, and, while they were cheering him to the very echo, he and his predecessor were meditating a *coup d'état* to destroy the liberal and constitutional government of the University? While, however, Inglis secured Moncreiff's approval, the provisions he put into his bill were, at the same time, such as he himself thought would improve the Scotch Universities. He sketched the kind and extent of the changes he proposed in a speech which the reader interested in this subject may consult in the Appendix hereto.[1]

Upon the broad principles thus enunciated there was a favourable consensus of opinion both in and out of Parliament. The only differences arose out of local interests in Edinburgh and Aberdeen, too trivial to merit particular notice. Mr. Warren, an English member, but an alumnus of Edinburgh of the same year as Moncreiff and the then Bishop of London, congratulated the Lord Advocate on having tackled the question. Moncreiff, it is interesting to note, expressed his hearty concurrence in the views of the Lord Advocate, whose ability in framing and conducting the measure through the House was the subject of general praise. Even in Edinburgh, which was torn with the bitterness of

[1] Appendix E.—The speech is reported in Hansard, 1858, 1903 *et seq.*

opposing faction, his firmness was generally commended. A stormy meeting was held in the Music Hall one afternoon in July, 1858, to protest against the proposal to abolish the patronage of the Town Council, and to support the attitude, described by Sir William Stirling Maxwell as one of bitterness, of Mr. Black. It is surprising to find as the chairman of that meeting Mr. Robert Chambers, and still more surprising to find an intelligent reformer like Mr. Robert Macfarlane (afterwards Lord Ormidale) moving a resolution against the transference of the patronage to an "irresponsible junto," as Mr. Black characterised the curators. But the greatest surprise of all was a speech by the present judge at Dundee, Mr. Campbell Smith, about two years after he had been enrolled an advocate, describing the education and fitness of the Council in the plain epigrammatic language which he has been known to employ with equal force on other occasions, which fell like a shell among the audience and nearly dissolved the meeting.

Regarding Inglis's appearances in Parliament in piloting the University Bill through it, I am able to give the estimate of an observer, which proves that Inglis had in him the qualities fitted to make him shine in that sphere which he was only permitted to see when he was withdrawn from it. "This," it is said by a public observer and critic, "was the first real appearance of the present Lord Advocate; for, although his lordship made a long speech some weeks ago on the introduction of the bill, he persisted in speaking in a tone so perfectly inaudible that no opinion could be formed of the merits or oratorical characteristics of a man so celebrated in the north. On Thursday evening, however, he gave us an opportunity of judging how far he deserves the reputation he has brought with him from Edinburgh. Tall and erect, with one of those lithe, graceful figures whose spontaneous

and easy movements seem to sympathise with the current and emphasis of his argument, Mr. Inglis is further remarkable for features which, if they cannot be called striking in the largest sense of the word, at once arrest attention by their shrewdness, and by the clear piercing expression which animates them. His voice, although I should imagine only of moderate compass, is remarkably clear, while his elocution is easy and distinct. Add to this that there is a certain undefinable persuasiveness about his manner and delivery, and you may form some idea of the externals of the man. Of course, the nature of the subject discussed on Thursday evening gave no opportunity for the display of those higher gifts of eloquence which he has the reputation of possessing in so remarkable a degree. That he possessed a style of rare vigour, point, and condensation; that there was a large fund of quiet and covert sarcasm; that there was the rare power of dropping down direct on the blot of an opponent's speech, and scattering his fallacies to the winds with two or three happy sentences directed against their root; that there is about the speaker that air of latent power which gave you the impression that, if the subject warranted it, and if he let himself go, he would rise far above the quiet style of speaking appropriate to the occasion—these things we could all feel, although we have to wait for another opportunity of judging of his claims to the title of an orator in the strictest and completest sense of the word. Admirable, too, as are the gifts of the Lord Advocate, there is one defect about his style which will be a heavy drawback upon his efficiency in speaking upon other Scotch or legal subjects. His manner has that distinct forensic stamp upon it which few lawyers ever get rid of, and to which the House of Commons has almost as great an objection as to coalitions. But, upon the whole, there is

no doubt that Mr. Inglis is another of the fortunate accessions of the debating strength which Lord Derby has succeeded in gaining for the present administration." This is high praise, but there was on the other side of the account confirmation of the complaints about the quiet tone he assumed. Colonel Sykes said he had not heard one half of the Lord Advocate's statement, and Lord Elcho, who had been equally unfortunate, attributed his failure to the inattention of the House. By the time the committee stage was reached Inglis had become familiar with the cold critical surroundings of the legislative chamber, and he piloted the measure with great tact, urbanity, and firmness. I can instance only one reply. On July 5, Sykes presented an argument against the suppression of the Faculty of Arts in Marischal College, Aberdeen, and took occasion to remind the Lord Advocate of a passage in his speech as a prospective Lord Rector, which he thought he had belied, concluding with the "aphorism," as the gallant member called it, that those who live in glass houses should not throw stones. Inglis retorted thus—

One word with regard to the observations which my honourable and gallant friend has made regarding myself personally. Now, I think my honourable and gallant friend altogether misunderstands the information which has been put into his hands, and that the ancient proverb which he quoted about people who live in glass houses does not at all apply. In the first place, I have never thrown stones at my honourable and gallant friend, or anybody else, during the time I have been in office; and, in the second place, I beg to tell him that I do not live in a house of glass, if my honourable and gallant friend means by that that I am liable to a charge of inconsistency. When I had the honour of being elected Lord Rector of the University of Aberdeen, I was asked my opinion upon the question of the union of the two Colleges; and, in reply, I stated that I had not turned my attention to the matter, except

in a very cursory way—that my present impression was in favour of the union of the Universities, and the separation of the Colleges—but that opinion was formed without anything like an adequate consideration of the subject. That was a very distinct, and at the same time a very sincere expression of the opinion which I then entertained with the light I then possessed. I have had occasion subsequently, however, to study the subject a great deal more maturely, with a view to be examined as a witness before the Commission appointed for the visitation of Aberdeen University, and then I came to an opposite conclusion, though not without some difficulty, as I have expressed in my evidence. Still, in the end I certainly did come very decidedly to an opposite conclusion; and I leave it to my honourable and gallant friend to say whether, having so come to an opposite conclusion, it is more honest to act on that conviction or pretend that I am of the same opinion still.[1]

What "plain" John Campbell said in the House of Lords on Saturday, 10th July, 1858, when the bill was brought up from the Commons and read a first time, was an echo of the eulogy with which Inglis was covered for his conduct of this bill through the lower House.[2] Lord

[1] Hansard, vol. li., p. 949.

[2] On Thursday, 15th July, 1858, the Duke of Montrose mentioned, in order to show that the idea of improving the Universities of Scotland was not a new one, that a large meeting was held last autumn (1857) at Edinburgh, at which the Chief Justice of England attended, for the purpose of pressing on the attention of the Government the necessity of some reformation in the matter. The result of all these demands and inquiries was the Bill which had been introduced by the learned Lord Advocate into the other House, and which having passed that House, was now before their lordships.

The Earl of Aberdeen thought that every friend of education in Scotland must be grateful to the Government, and especially to the late Lord Advocate, for introducing and carrying this measure through the other House.

Earl Stanhope—"The Government were entitled to great credit for the introduction of the Bill, and the manner in which they had carried it through the House of Commons. Great praise was especially due to the late Lord Advocate, who, he understood, had just been called to a higher office, in which he would, no doubt, be as distinguished as he had been at the bar."

The Earl of Derby—"The late Lord Advocate, who had conducted the Bill through the other House, whose retirement from Parliamentary life, and the loss of whose valuable services nobody could regret more than himself, would be one of them (the Commissioners), and any decision which they might come to would be liable to revision

Campbell said that to his right honourable friend, the Lord Advocate, the people of Scotland were especially indebted for the measure; and he would add that, while he could not help sympathising with the noble Earl (Derby) at the head of the government in the feeling with which the noble Earl must regard the loss of so valuable a supporter of his government as the late Lord Advocate, he rejoiced in the well-deserved elevation which awaited his right honourable friend. Inglis, it should be said however, felt some doubt, at least for a time, whether he ought to accept judicial promotion, or lay himself out for a career in the Senate. He consulted his friends on the subject, and was advised to lay aside legislative ambitions.

The news of the death of Lord Justice-Clerk Hope reached the House of Lords on Tuesday, 15th June, at half-past two o'clock. Singularly enough, the House had been occupied in hearing an elaborate argument from Mr. Anderson, Q.C., in an appeal from the Court of Session of a case involving the question how far, according to the law of Scotland, a master is liable to a servant for injuries caused by the negligence of a fellow-servant. Mr. Anderson had been strongly enforcing on the law lords the erroneous nature of the doctrine recently started by the Lord Justice-Clerk, and followed by the other Scotch judges, and had been opposing with more than usual energy those views as founded on an entire misconception of the law. The name of the Lord Justice-Clerk had been so often mentioned to

on appeal to the Queen in Council. On the whole, he was inclined to adhere to the Bill as drawn by his learned friend the late Lord Advocate. As to the suggestion of the noble earl that the Town Council of Aberdeen should be heard by counsel at the bar, he could scarcely see of what use such a proceeding would be. In his experience of their lordships' House he had never known any petitioner derive benefit from the lengthened addresses of counsel at the bar, nor had he ever known the opinion of a single peer to be changed in that manner. Still, if the noble earl continued to think that any good would result from hearing counsel at the bar, he would not oppose it; and if such a course were agreed on, he would suggest that their lordships should meet at four o'clock on Thursday instead of five o'clock, for that purpose."

the House in connection with the subject matter of the suit that the report of his death caused a considerable shock at the bar. Inglis was at the moment addressing the House in defence of the views of the learned judge when a paper containing the report of the death was put into his hands by Sir R. Bethell, and then handed to the Lord Chancellor, Lord Brougham, and Lord Cranworth. The Lord Advocate very shortly afterwards concluded his argument, and left the bar. In advising a Scotch appeal on the succeeding Friday Lord Brougham said he could not help expressing his deep sorrow for the great loss which the profession and the public had sustained in the death of a most able, learned, industrious, and conscientious judge.

Of Inglis's subsequent career as a university reformer this may be the proper place to treat. It seemed eminently fitting that he to whose practical sagacity and long acquaintance with the subject the Act of 1858 so largely owed its existence should have presided over the Commission which that Act called into being, and have embodied the reforms it sanctioned in a series of ordinances dealing with almost every branch of university education and administration. The Commission in its effective elements was again chiefly a lawyers' Commission, for it comprised not only Inglis, but M'Neill, Moncreiff, and Mr. Dunlop, with the present Sheriff of Lanarkshire (Berry) as secretary. It lasted from 27th August, 1858, until 20th December, 1862, and held 126 meetings, at every one of which Inglis was present. "He was, in fact, the soul of the Commission, and the excellent ordinances which resulted from their labours may be regarded as especially the product of his judgment and of his untiring attention to the mass of details with which the Commission had to deal."[1]

[1] Sir A. Grant, ii. 101. In the same volume the ordinances of the Commission are summarised.

It is, of course, impossible to indicate even a small proportion of the work which this Commission achieved, and which originated an era of unexampled prosperity in university education, or of the particular improvements which Inglis inspired. There were, however, two subjects to a great extent bound up with each other in the regulations in connection with which his hand may be traced—namely, finance and extra-mural teaching. In the case of finance he had, no doubt, to make the best of slender endowments, and to provide that, with an honest and discriminating curatorial body, free to choose the best men for the chairs, they should be in a position to attract the best teachers. But in view of the almost certain success of the combination of academic with extra-mural systems, and the increased emoluments resulting from augmented classes, it may be doubted whether the best means were adopted, not merely to secure the efficiency of the chairs and their proper equipment, but to provide checks on the cupidity of the professoriate. The absence of such safeguards has promoted the growth of a scandal. The system of finance which he countenanced was radically defective. Any system must be egregiously extravagant which, in the abstract, permits the indefinite swelling of professorial incomes. Any system must be grossly unjust which tolerates such disparities as the difference between £500 and £3000 per annum. Perhaps the extent to which the combined system would bring prosperity could not have been foreseen; and Inglis was rather intent upon the emancipation of the college from the "thraldom" of the Town, the choice unfettered even by Government of the best professors, and the untrammelled discretion of these professors in the teaching of their subject. While he had a sound knowledge of the practical value to the University and to science generally of the recognised chairs, it must be

admitted that he leaned favourably to the monopolists, and failed sufficiently to forecast the requirements of the University and the public in the specialising of knowledge. It is said he disapproved of the application of the extra-mural principle to the smaller colleges, or to the faculties of theology or law, or even of arts, until the professoriate were better endowed. Many well qualified persons believe that this view is the offspring of the pernicious fallacy that the best paying chairs exist chiefly for the benefit of their occupants, instead of for the benefit of the corporation and the public. Strangely enough, this was the only part of the whole subject in regard to which Inglis's well-balanced mind allowed full scope to the natural tendency of professors to consider their own chairs paramount. As chairman of the association for the better endowment of the University of Edinburgh, it is said he directed public attention to a source of weakness in the Scotch universities in their meagre foundations and the scanty support they receive from Government. And it is so. In various quarters he urged contrasts between the liberal support accorded to foreign and colonial students, but he failed to notice the obvious fact that no university in the world except Edinburgh paid its teachers more than £1000 per annum.[1]

But where its success has been on a prodigious scale, it ill becomes one to pick flaws here and there in the remodelled framework of the machine. Its component parts responded gratefully to the touch of its master. When the Commission of 1876 was appointed, in answer to the obtrusive demands of science and utilitarianism, Inglis's assistance as chairman was naturally invoked. Lord Mon-

[1] The inequalities here adverted to are now in a fair way of being removed by the Executive Commission at present (1893) sitting under the chairmanship of Lord Kinnear.

creiff was again one of his coadjutors, but the work and constitution of the Commission were different from those which marked its precursors. The legal element did not predominate. It was mainly a Commission of Inquiry, and the investigations were largely influenced by the representatives of science. I do not know to what it was due, but it is the fact that Inglis was rarely present at these inquiries. The work fell chiefly upon Lord Moncreiff. Probably owing to its over-scientific colour, the recommendations of this Commission did not meet with the general approval of the public, and certainly they bore very little fruit.

Of minor duties which Inglis discharged in connection with the universities of Scotland little need be said. His interest in them never ceased, and there was no important movement initiated in or about them within the last twenty years which had not his sanction or co-operation. He was called as a defender in the action brought by the lady students to ascertain what were the legal powers of the University in the matter of conferring medical degrees on women, and was thus prevented giving an opinion on the point; but there is no reason to suppose that his view was different from that of the majority of the full bench in holding that the University had no power of admitting women to its degrees. Nor is it to be forgotten that to him were due the institution in Edinburgh of the degree of Bachelor of Laws, as a mark of academic distinction implying higher attainments than would be required for strictly professional purposes, and the restoration of the chair of Public Law, which had been in abeyance since 1832.

It only remains to mention the keen contest for the gold-embroidered robe of the Chancellor which ensued on the death of Brougham in 1868. Mr. Gladstone and Inglis, then Lord Justice-General, were both proposed by leading Liberals; and although the contest excited great interest

in the political world on account of the impending general election, it was in point of fact not a political contest at all. At that time, conscious of the exalted position he held and jealous of its purity, no man would have shrunk so readily as the Lord Justice-General from the lowering influences of party. But his claims as a university reformer were admitted to be superior even to those due to the eminence of his rival in letters and statesmanship, and he was elected by 1780 votes to 1570 cast for Mr. Gladstone. As Chancellor it was his pleasing annual duty to confer degrees on the graduates, and no one who was ever present can forget the quiet, kindly dignity with which he discharged that function.

This was not the only occasion on which he opposed and beat Mr. Gladstone. From what I have said of Inglis as Dean of the Faculty, it will readily be believed that he never outlived the sympathies of youth, and therefore the spontaneous outbursts of admiration of which he was the object in 1857, when elected to the Rectorship of King's College, Aberdeen, and again in 1865, when a similar ovation awaited him in Glasgow, were peculiarly gratifying to him. The votes recorded on the latter occasion in the nations Glottiana, Loudoniana, Transforthiana, and Rothseiana were, for Inglis, then Lord Justice-Clerk, 172, 129, 140, and 101 respectively; and for Mr. Gladstone, 191, 115, 123, and 119. The four nations being thus equally divided between the two candidates, the Senate, in accordance with ordinance of Universities Commissioners, No. 3, section 2, resolved to authorise the Principal to make intimation of the state of the vote to the Chancellor of the University. This being done, the Senate was called together for the 20th November, 1865, to hear read the following letter from the Chancellor, the Duke of Montrose, to the Principal, dated from Buchanan Castle, November 16, 1865:—

Sir,—I have received your letter announcing to me, by desire of the Senatus Academicus of the University of Glasgow, that the election of a Lord Rector took place yesterday, and has resulted in an equality of the nations, and that in consequence the duty of giving a casting vote, so as to decide between the two candidates, has devolved upon me. I feel that, where the votes of the students are so equally divided, and where the candidates are both persons of such distinguished talents and eminence, the task is one to which considerable difficulty is attached. There are, however, peculiar circumstances attending this election which must influence my decision. At the present moment it is highly desirable that the Lord Rector should be able, by residence in Scotland, to superintend the measures to be taken in regard to the removal of the college to a new locality, and that the authorities of the University should be able to consult with him on the subject with facility.

The Lord Justice-Clerk possesses the advantage of a residence in Scotland, and from the great knowledge which he enjoys of the Universities of Scotland, and which he evinced in passing through Parliament the Act which now regulates the Universities, I think him peculiarly adapted for the office of Lord Rector, and that his election will be of great advantage to the University.

I therefore give my decision in favour of the Lord Justice-Clerk, and I request you will have the kindness to make this known to the Senatus.

At the same meeting the Principal also stated that he had written to the Lord Justice-Clerk intimating the state of the vote, and also the decision of the Duke of Montrose in his favour, and had received from his lordship a letter intimating his acceptance of the office. Inglis, according to invariable custom, addressed the students as their Lord Rector. His address on the occasion was an admirable example of its author's style.[1]

Thus, during the last forty years of his life Inglis had been the head and fount of university reform, and particularly the reform of Edinburgh University. In

[1] See Appendix F.

high degree the present prosperous condition of this great seat of learning is due to his firmness as Lord Advocate in 1858 in carrying the Bill which had been drafted the year before by Mr. Moncreiff from the report of the Commission of 1830; to his wisdom as chairman of the meetings of the second Commission during the four years following 1858; and lastly, to the knowledge and foresight, the grace and urbanity of his rule as Chancellor after his brilliant and successful contest with Mr. Gladstone in 1868. To detail the incidents of that long-standing and altogether honourable connection—the graduation ceremonials, and the varied and brilliant functions of the Tercentenary celebration of 1884[1]—would be to epitomise the modern history of this seat of learning. Let it suffice to say that in his relations with its accomplished but somewhat pampered Senatus—in seconding their efforts to extend the scope and accommodation of the school consistently with maintaining the professors' salaries—in carrying to full fruition in the shape of the Union the students' yearnings after social life—in attentively discussing the General Council's six-monthly crop of reforms, chimeras, and hobbies, he was all that is efficient, amiable, and dignified. There could consequently be no more fitting recipient of the train of honours which he wore. In Scotland he was the emblem and epitome of academic distinction. As early as 1857 the students of Aberdeen elected him their Lord Rector, an example which we have seen those of Glasgow imitated in 1865. In 1858 the Edinburgh Senate conferred upon Inglis and Moncreiff, twin partners in carrying these reforms into effect, the degree of Doctor of Laws, and in the following year Inglis was made a D.C.L. of Oxford. King's College, Aberdeen, also conferred its doctor's hood upon him.

[1] For speech welcoming the University guests, see Appendix G.

XI.—Justiciar.

From what has been said in the previous part of this memoir it is clear that Inglis's chief, indeed, his only claim to fame is based upon his forensic power. What he might have been as a man of action or a statesman, performing on a grander scale and before a wider audience, can only be guessed from the few not very important incidents in his career which bear traces of fitness for these characters. But with his elevation to the bench he entered upon the phase which, how great soever his eminence as an advocate or his qualities for other functions, entitles him in the greatest degree to the regard of posterity. He became a great judge. Not to feeble grasp or imperfect experience or deficient knowledge is due the rareness of this character. It is owing chiefly to weaknesses inherent in human nature itself, to the system according to which judges are appointed, and to the difficulties of the situation. Many judges have been great in departments — specialists in branches of the law, or in philosophy, or in letters; "some have been gifted with great judicial virtue without great mental power, others with much mental power but without judicial virtue." A judge is probably the most venerated of our public characters, and various things combine to

limit the evolution of many perfect types. In the general case he is the creation of political party, and, so selected, may or may not have had occasion to study the multifarious aspects of the legal system he is called upon to administer. He may not possess that union of power and virtue which seems to be the chief requisite for a judge, and which would go far to make up for deficient experience, if that disadvantage were present in any particular instance. He begins his career at an age when the character is fixed—when repose is preferred to the mental alertness of middle life—when, from his physiological constitution, man is peculiarly open to the enticements of indolence; and when a judge who has had little practice succumbs to this vice, the disgrace may indeed be only personal but the calamity is a public one. Then, according to our system the appointment of each judge is an experiment. It may turn out bad or good, according to the qualifications which the judge discovers. Our system exacts no training except an education devoted chiefly to case law. Unless, however, a judicial class is to be created distinct from the bar, as in Germany, it is impossible to provide any other training than that which now exists; and no amount of mental discipline, or even experience, can supply the finer qualities of human nature—common sense, patience, self-restraint—which are more potent factors in the development of ideal judges than unaided grasp of mind or unaided erudition. It must also be remembered that, whatever system may exist, the absence or existence of requisite qualities may not be revealed until the experiment has begun.

The career on which a judge enters is usually one of infinite difficulty. The transformation is as complete as one of the secret metamorphoses of nature.[1] It is the duty

[1] Sheriff Mackay in "Blackwood," *cit. supra.*

of the advocate, regardless of right, to present his client's case with the aid of every weapon he possesses. It is the duty of the judge to lay aside the weapons of the pleader, and to find out, by the application of legal principle and broad views of justice and common sense, where the truth of a case lies. The advocate explores the interiors of cases, often losing himself in their mazes in striving, as he ought cunningly and patiently to do, to find out and to display their good points as habitations for the indwelling of justice. As judge he must abandon these adventurous quests—often so full of incident and disaster—and look down upon the whole field of controversy from the serene and high standpoint of justice. This transformation, to be successful, clearly requires an expansive mind; and the difficulty which all minds encounter in the process is enlarged by the wide field which is to be the scene of their activity. For, although Scotland is a small country, its jurisprudence embraces as numerous and diverse elements as any system in Europe, and her judges are expected to be conversant with all these elements. There are only one or two points of colonial law which do not fall within the scope of their study. While in a sense it is thus true, as has been said, that a Scotch judge may not attain the same kind of excellence as English judges of the type of Mansfield, yet, owing to the specialised work or temporary tenures of the highest class of English judges, this qualification humbly seems to me to be entirely in favour of our countrymen.

John Inglis was not merely a great judge, but the co-temporary verdict of the profession and of the public is that, with two or three others—notably Stair and Blair—he occupies the highest place in the judicial rank. I propose in this and the next chapters to show how great is his standing as a judge, and by what means

he gained this eminence during his thirty-three years of office.

The conditions of judicial life and work are so different at different periods that comparison with other venerated names is impossible. But while this is so, the age in which Inglis lived is not to be left out of account in estimating his career, for it was distinctly favourable to the development of the peculiar quality which may be called judicial virtue. The year after the institution of the Court, it was found in a certain cause—"Gif the king give onie privie writing quhilk is direct contrare to the administration of justice or hinderis or postpones the samin the lordis of Counsall may discharge or suspend the samin."[1] And the Court at that time had probably less to fear even from kings than from litigants who came to the bar in steel jackets, or, as old Dick Maitland puts it—

> To mak actis we have sum feil—
> God kens gif that we keip tham weil;
> We cum to bar with jak of steel,
> As we wold joist the judge and fray:
> Of sik justice I have na skeil
> Quhar rewle and order is away.

Happily no judge need now succumb to the words of flattery or the machinations of envy or the fear of resentment from king, factions, or disappointed litigants. Except in trifling instances, where personal vanity seemed to appeal to vulgar applause as much as to the approval of enlightened opinion, since the days of Braxfield—whom Inglis described on one occasion at least as an eminent judge—after rising through successive stages to real dignity and the confidence of the public, the Scottish bench has had an immunity from reproach of any kind. Barring certain episodes mentioned by Buchanan and

[1] Balfour Prac., 267.

Cockburn, our judges have been dominated by that high impartiality which is the essence of the judicial character. However tortuous the procedure may have been, it is a tribute to the singleness of their aims and to their sound ability that, having to a certain degree at any rate forecast the future of legislation and of law, for at least a century they have in the main impelled enactment and decision in a uniform and right direction—that amid the variety of circumstance, the pedigree of principle, the insolence of precedent, the conflict of interest they have prudently led the strength of reforming opinion.

Singularly enough, Inglis succeeded John Hope, who alone in the present century excelled him in the rapidity of a distinguished career. A word in passing may be allowed to Hope, whose tenure of the office of Solicitor-General at the age of twenty-nine, and of that of Dean at thirty-six, indicated no common man. Born in Edinburgh on the 26th of May, 1794, he was the eldest son of Charles Hope of Granton (a grandson of the first Earl of Hopetoun) who had been Lord Advocate from 1801 to 1804, Lord Justice-Clerk from 1804 to 1811, and Lord President of the Court of Session from 1811 to 1841. His mother, Lady Charlotte Hope, was a daughter of the second Earl of Hopetoun, so that he drew his lineage on both sides from a family which vies with the houses of Stair and Arniston in the number and repute of its lawyers.

Passing advocate on the 26th of November, 1816, Hope gave almost immediate proof of those qualities which in a short space made his practice one of the largest that Parliament House has ever known. It was not a time when a great position was lightly won or easily kept. Among the juniors of his own standing were Rutherfurd and M'Neill. Before he had entered his thirtieth year he had to take rank as a senior, and to hold his own against men

who had laid the foundations of their renown in the Courts before he had left the nursery—Skene and Jamieson, Cranstoun and Moncreiff, Clerk and Fullerton, Cockburn and Jeffrey. Most of these veterans surpassed him in brilliancy of parts—in eloquence and persuasiveness, in subtlety and profundity—but none of them was endowed with greater mental energy or diligence and application. The work of a successful advocate is always laborious; then it was particularly so. Night after night the preparation of written papers so engrossed his time that he could but snatch a few hours' sleep before hurrying to the bar.

When Boyle was removed to the First from the Second Division in 1841, Hope was selected to fill the vacant chair, and he filled it at least fairly well until his life was cut short on 14th June, 1858. He had felt not quite well on Friday, the 11th, and he asked one of his brethren to take the chair in the Second Division the next morning, in order that he might pass a day or two at his favourite retreat near Mauchline in Ayrshire. While there, he seemed to enjoy excellent health and spirits, and was still to all appearance in the same state when he returned to his house in Moray Place on the following Monday afternoon. Having ordered dinner, he sat down to write letters, and had been so engaged for about an hour when he rang his bell and asked for a looking-glass that he might see what was the matter with his face. A stroke of paralysis was creeping upon him, and the paralytic stroke was followed by apoplexy.

On Tuesday, 13th July, 1858, the whole Court assembled to receive the commissions of the new Lord Justice-Clerk (Inglis), the new Lord Advocate (Mr. Baillie, afterwards Lord Jerviswoode), and the new Solicitor-General (Mr. Mure, afterwards Lord Mure). A contemporary record says that

the occasion excited intense interest, as might be judged from the fact that, long before the proceedings commenced, the Court-room was filled to overflowing, and in great part by ladies. The galleries, from which little can be seen, were also crowded to excess. Many of those within the walls of the Court-room could see almost nothing of the proceedings. The commissions being received, Mr. Baillie and Mr. Mure were together sworn into office, and Inglis proceeded to undergo his formal trials as Lord Probationer, sitting first in the Outer House with Lord Neaves, and subsequently under the judges of the First Division. "The Lord Probationer concluded his trials to the high satisfaction of the Court," and next day he took the oaths of office and was invested in his judicial robes. He then ascended the bench as Lord Justice-Clerk, with the title of Lord Glencorse, taking his place at the right of the Lord President, and subsequently in the chair of the Second Division.

The name Glencorse was taken from the estate on the eastern slope of the Pentlands which Inglis had acquired in his growing prosperity. The traditional reason for a judge assuming a territorial name is an interesting bit of antiquarian courtesy—one of the few links connecting modern ways with ancient usages. After the domination of the priesthood had ceased, the judge as a rule was a landholder, and entitled by immemorial and universal custom to the name, not of his father and family, but of his farm or estate. And so deeply engrained in the Scotch nature is the love and the pride of land that the farmer, nay, even the crofter, of this democratic day is known amongst his class, not by his surname, but by the name of his holding. In the case of the Lord Justice-Clerkship no territorial title is requisite save for the brief space wherein the Lord Probationer goes through the

pleasing fiction called "his trials."[1] Inglis accordingly was known as Lord Glencorse merely to the compilers of guides to the landed gentry. His official designation was at the outset Lord Justice-Clerk, and then upon his accession to the President's chair, Lord Justice-General of Scotland. It will be remembered that the death of the Duke of Montrose, who was last Justice-General with a salary, sunk the office in that of Lord President in 1837. Notwithstanding the remonstrance of Cockburn, Montrose's successors outside of their civil functions have preferred the title of Lord Justice-General to that of Lord President, probably on account of its historical associations.

Cockburn assumed that Sir William Rae's Act of 1830, making the President Lord Justice-General, would obliterate the ancient importance of the office of Lord Justice-Clerk. It has not been so. The Lord President is as truly at the head of the criminal Court as he is chief of the judicial organisation of the country; but since the fusion of offices above referred to custom has assigned to him an honorary headship of the criminal department, and the functions of the Justice-Clerk remain unimpaired in their nature and importance. They are judicial and administrative. A word as to the administrative section in the first place. Both before and since the passing of Lord Advocate Macdonald's Criminal Law Amendment Act of 1887—

[1] The ancient farce — this may seem a hard term, but the tenets of this utilitarian age warrant it— of trying a judge before he is admitted has hitherto resisted the mutations of the times. For a brief season the novice is called the Probationer. In one case, at least, the opinion of a Lord Probationer was referred to in a House of Lords case; and there may well be others. It occurred about 30 years ago, and the Lord Chancellor somewhat unkindly inquired, "Do they ever pluck a probationer?" whereupon Mr. Anderson, Q.C., replied that there was only one case of a "pluck," namely, that of Patrick Haldane in 1721. Marshall, senior, sat for several hours as Lord Probationer in the First Division in 1852, and delivered his opinion in a case pleaded there. The Court sustained his trials, but the President (Boyle) intimated that from want of a quorum his introduction to the judicial office must be delayed.

which revolutionised criminal procedure and made all the Senators of the College Commissioners of Justiciary—the Lord Justice-Clerk has been the working chief of this department. The requisitions of the Home Secretary in regard to the appeals or petitions of convicts are addressed to him. He is the medium of communication between the State and the judge who tries and sentences malefactors. Theoretically, at all events, it is not the report of a particular judge the State demands; it is the opinion of the Lord Justice-Clerk upon that report. Practically it is the Lord Justice-Clerk who reviews the case appealed in the light of the judge's notes of evidence and opinion. If a man of strong individuality and the requisite enlightenment and equipoise, and inclined to mercy rather than to rigour, the Justice-Clerk may form an excellent criminal appeal judge, fitted to correct the prejudiced, eccentric, or unduly lenient or severe views of individual judges—his report being as a matter of form acted on by the Secretary of State; but it seems obvious that as a substitute for an appellate tribunal, such as exists in most civilised countries, the system is defective and might be dangerous. Inglis discharged this administrative or appellate function during nine years.

Inglis's vast experience as a judge was gathered in the High Court of Justiciary during his nine years' tenure of the Justice-Clerkship, and as head successively of the two Divisions of the Inner House. I propose meanwhile to speak of him as a criminal judge, his duties as such beginning on the 22nd July, 1858, when, with Lords Deas and Cowan, he tried a professional housebreaker, a lawyer named Jardine from Dumfries, and surprised everybody by a pertinacious examination of the witnesses, in which he then for the first and only time he indulged.

In outlining Inglis's career in this department, one must

here resume a thread which perforce was dropped in the first chapter. No department of our legal system has undergone greater change in this country of late years than the adminstration of the criminal law and the habits of its administrators. I have alluded to the ancient progresses on circuit, when the country was issuing from a crude state, and every gentleman bestrode a horse and carried a sword, and their lordships went abroad in the land with a train-attendant of magistrates and military, clerks and macers, trumpeters and counsel.

In those spectacular incidents the change toward simplicity since 1858 is obvious. But it is not so marked as the changes in more important particulars. At the cotton-spinners' trial, for example, after the jury were empannelled, Lord Justice-Clerk Boyle said that, from the great importance of the trial to the interests of the public and the prisoners, it would not be proper to publish any part of the proceedings until after the verdict of the jury was returned. The other judges concurred, so great and enlightened a judge as Moncreiff remarking that this was absolutely necessary as the prisoners might have a great deal of evidence to explain away the effect of that given for the prosecution. The cotton-spinners were transported to London by a Leith steam vessel in charge of a sheriff's officer.

But the greatest change is in the calendars. The calendars were heavy almost always and everywhere —at Inverness and Dumfries as well as at Glasgow and Aberdeen—as heavy as the horsemen; but owing to the growth of executive leniency, which sends more criminals to the Sheriff, and also fortunately to the spread of education since the passing of Lord Advocate Young's Act of 1873, business even at Glasgow now rarely extends into a third day. A few years before Inglis

became a circuit judge a great deal of other and more lucrative business was done in the larger towns. Especially was this so between 20 Geo. IV. c. 23, and 16 & 17 Vic. c. 80. The latter statute ruthlessly destroyed civil business at the Circuit Courts; but as appeals were occasionally heard by the judges in bed or after dinner, it was perhaps high time to make a change. The difference in the time devoted to sittings of the Court is also very marked. Lord Mackenzie and Lord Medwyn, following the custom at the Glasgow Circuit, sat till midnight without any apparent reason.[1] The heavy calendars seemed unavoidable, but how those late sittings were tolerated need not be discussed, except to say that nothing more disastrous to the interests of justice than late or hurried trials can be conceived. It was only symptomatic, however, of the little consideration entertained at that time for prisoners.[2] Counsel might rebel on the score of exhaustion, but the judge as a rule was obdurate. At another Glasgow Circuit Inglis and Lord Cowan sat for a week and disposed of a calendar so heavy that the record has not been broken since.[3] It was a circuit made remarkable—among other things—by the Advocate-Depute striking a bargain with the jury in

[1] The bar on one occasion had been invited to dine at Principal Hill's; and it was thought Medwyn, having smelt the dinner, purposely kept the young gentlemen from enjoying it. On reaching the venerable Principal's in the early morning they found the roast baked to a cinder and the potatoes cold as starch.

[2] Once at Stirling even Lord Jeffrey kept a prisoner waiting twenty minutes after the jury returned from their consideration of the verdict while he and a lady who had been accommodated with a seat on the bench discussed together a glass of sherry.

[3] "We must finish to-night," or "we must finish this trial to-night," was the customary refrain. M'Neill presided at a poisoning case in Edinburgh where the Advocate-Depute did not finish his speech for the Crown till one o'clock in the morning. Counsel for the prisoner, on the score of physical inability, asked his lordship for an adjournment, only to be told, "No, no, Mr. Blank, you must begin." Counsel was about to obey when a juryman, peace to his ashes, expostulated, "My lord, the jury are unfit to stay here any longer; we are quite unfit to hear speeches."

a child-murder case, declaring that, if a verdict of murder was returned, he should see to it that the capital sentence was not carried into effect. The precedent has not been followed in any subsequent case.

Inglis had not the opportunity of contributing so largely to the settlement or elucidation of the law in the criminal as in the civil department. In the criminal Courts he was not a great figure after the year 1867. Only occasionally did he officiate as Lord Justice-General. His greatest displays subsequent to that year were when the aid of the whole Court was invoked to unravel some knotty point for the determination of which a less august bench had felt itself unequal or undesirable; but while Lord Justice-Clerk he went the circuits regularly in turn and tried many a sorrowful case. His first circuit was at Perth in October, 1858, with John Millar (afterwards Lord Craighill) as Advocate-Depute, and Gloag (now Lord Kincairney), Thoms, and John Burnet as defending counsel. That his knowledge of criminal law was deep and varied goes without saying. Reference has already been made to his masterly defence of Madeleine Smith. His impressive manner marked him as a desirable counsel in cases where the expense of employing his skill could be afforded; but after his practice reached what in his case may be called its normal dimensions, he could seldom be retained for this class of work. It is, however, a beneficent provision of the Scots bar—at least for the prisoners—that in the early years of practice each advocate must devote himself gratuitously to the defence of those who are really the pariahs of society. As we have seen, Inglis had to take his share in this sad and interesting, but unremunerative toil. It is probably the easiest, as it is the least lucrative part of a lawyer's practice, but still it is most useful to the beginner in many ways. Many judges—amongst them

Lord Craighill, a competent though severe judge—have ascribed their success in life to perambulations on circuit. The principles of the criminal law, once mastered, cannot be forgotten. In practice they are so interlaced with facts that any ordinary intelligence has no difficulty or hesitation in applying them. Inglis had them at his finger ends, and, singularly alive as he ever was to the requirements of an advancing society, he readily held out every protection which the law allowed against its enemies. At the same time he was sensitive to the faults of our punitive system, and strove to abrogate, or at all events to neutralise, its enormities. His practice and his experience had imparted to him accurate and comprehensive views of human nature, and, though seemingly cold as well as quiet, yet he was one of those who do not despise but on the contrary who pity its frailties. This may account for the standpoint from which he viewed the question of criminal responsibility, to the varying phases of which, in the course of the past quarter of a century, he was keenly alive. As a metaphysician and theologian he was strongly convinced that moral responsibility is not an illusion, and that therefore a punitive system is necessary to preserve society from dissolution; but he was equally clear that conscience may be developed by association, and that there are physical and social causes at work—some of them attributable to or connived at by the State itself, as in the case of the liquor traffic, since it imposes no check on the sale of the adulterated or over-proof article which inspires or excites to crime — which diminish moral responsibility in individuals from whom full legal responsibility cannot be exacted. While, therefore, he avoided the doctrinaire extremes of the determinists, who regard crime as a physical fatality demanding asylum or elimination for criminals, and of the criminal anthropologists of Italy,

who regard the criminal as being born so, and aim at extirpation, including the sterilizing of the reproductive microbe,[1] he had an equal horror of what one may call the Calvinistic school of criminal jurists, whose only phrase is vindication of the law, and seemed to regard correction or care and not punishment to be the true aim and motive of the law. The kind of speeches that used to be made by judges is exemplified in what Lord Medwyn said in 1842 at the January Circuit at Glasgow. He said there had been sixty-eight cases including ninety-nine prisoners, and such had been the accuracy with which the precognitions had been taken and the completeness of the preliminary investigations that not one had been allowed to go on a verdict of acquittal. He felt it to be most satisfactory to find that the measures for the detection of crime and for the proper administration of justice had been so effective, and he trusted they would long continue so. And so on. Not a whisper of pity for the victims of heredity and misfortune!

I turn now to what Inglis actually did in this distressful domain. In one of his first charges (*H.M. Advocate* v. *Murray*, 15th November, 1858, 3 Ir. 262) he directed the jury that sufferers from delirium tremens were in the same position as insane persons. In several subsequent charges or opinions he expounded with his usual lucidity the legal relations and indications of insanity, particularly in cases where alcoholism had indurated and thereby impaired or destroyed the structure of the brain. For, while few doctors were more skilled in medical jurisprudence than Inglis, he had also a large repertory of curious out-of-the-way knowledge of crime and its causes and of criminal natures. Take the case of *M'Allum* or *M'Callum* (Perth,

[1] See "Le Crime et la Paine," Louis Proal, Conseiller à la Cour d'Aix. Reviewed "Juridical Review," iv. 91.

11th October, 1858, 3 Ir. 187), referred to in *Hannah* (a child-murder case from Ayrshire, tried in the High Court, 17th Dec., 1860, 3 Ir. 364), where he says, "To constitute the crime of child murder, there must have been a living child fully and completely born and having a separate existence independent of its mother, because the child that is not fully born has no separate existence from the mother, and is not in the eye of the law a living human being. It is in a state of transition from the fœtus in utero of a living human being, and it does not become a living human being until it is fully born and has a separate existence of its own. You may destroy a fœtus in utero. It has a principle of vitality. And you may destroy it on the eve of birth; or you may destroy it in the course of being born. And all these are very serious offences, and are punishable by law; but they are not murder, and murder is the only charge in this indictment." The charge was found not proven.

In legal metaphysics, it has been said, Inglis never soared so high into the empyrean as to lose sight of the solid earth, and the wants and ways of the men who have to live and struggle with each other upon it. Accordingly, in the case of *Ann M'Que* (March 12, 1868, 3 Ir. 578), accused of child murder, on the point being urged for the panel whether, in determining if the prisoner had an access of delirium, it is not of importance to inquire whether there was insanity among her relations, Inglis ruled it incompetent so to inquire, mainly on the authority of Lord Deas, who, in the case of *James and George Brown* at Perth, in 1855, said, somewhat inconsequently, that the question was whether the man himself was insane, not whether some of his relations had been so.

Aware, however, that this subject of alcoholic or other insanity had engaged the attention of jurists for many

years—that it had furnished themes for eminent judges like Moncreiff—and that able counsel had striven for half-a-century to import modifications of our inexorable code from the systems of Prussia, France, and America, he had very soon to give closer attention to it. He did so in the case of *Milne* (5 Ir. 306), an Edinburgh jeweller, accused of murdering a friend. This case is illustrative of another quality of Inglis's mind, namely, its openness even to the end of a trial. This particular case at the outset wore an aspect of peculiar villainy, and that was the view the judge took of it at first. But Milne's counsel, Mr. Charles Scott,[1] persisted with the insanity theory, and the judge laid down the doctrine of criminal responsibility according to Mr.

[1] Mr. Charles Scott died in April, 1892. A quarter of a century ago Mr. Scott was in leading practice as a junior, and figured in many cases alongside of the most brilliant advocates of his time. He was a unique type of man in his history, in his opinions, and in his tastes. The son of a cabinetmaker in Perth, he was educated at the grammar school of that city, and at St. Andrews, with the view of fulfilling his parents' wish that he should "wag his pow in a pulpit." Of a robust courage and keen intellect, however, he early abandoned orthodox tenets, and adopted the law as his profession. In 1844 he got a temporary appointment at Cupar-Fife as successor to Alexander Russel in the editorship of the "Fife Herald." He occupied a similar position on the "Weekly Register" in Edinburgh in 1845, and in 1848 was editor of the "Weekly Express." Called to the bar in 1847, he soon acquired a considerable practice, especially in jury cases and criminal cases, where he distinguished himself by his ingenuity, his pawkiness, and the ease with which he mastered the commoner details of human life, no less than by the propounding of certain novel but highly enlightened theories of criminal responsibility, in which many present-day jurists are participants. He was a very fair pleader otherwise, and received many compliments from the bench in the course of his day—notably one from Lord Romilly in *Jenkins*, 5 Macph. H.L. 27, for one of the best arguments on the plea of "res judicata" ever submitted to a Court. At a very early age he identified himself with politics, and did a yeoman's share in the conflicts of his time, but somehow he made little advance as a politician. In 1874 he succeeded Mr. Irvine of Drum as Clerk of Justiciary, and thenceforth his partialities seemed to lie chiefly in the direction of letters and philosophy. His mind was discursive in the highest degree, and at the time of his death, notwithstanding his age, he was engaged upon a book of poems, a novel dealing with Parliament House affairs, and notes on certain members of the bar. Various essays on ethics and kindred topics had flowed from his pen. His contributions to "The Juridical Review" on criminal responsibility and the history of the Justiciary Court are among the best features of that publication.

Scott's argument in simple and comprehensive terms, which have been repeatedly quoted with approval since that time. "The test of criminal responsibility," he said, "is an exceedingly simple one. If a person knows what he is doing—that is to say, if he knows the act that he is committing—if he knows also the true nature and quality of the act, and apprehends and appreciates its consequences and effects—that man is responsible for what he does. If he does not know what he is doing, or if, although he knows what is the act he is performing, he cannot appreciate or understand its nature or quality and its consequences and effects, then he is not responsible—provided he is in that condition through the operation of mental disease. Now, the counsel for the prisoner was quite right when he said that if you are once satisfied that this man was under the influence of insane delusions at the time the act was committed, you have no occasion to inquire further whether he knew what was right from what was wrong—whether he knew what was murder in the eyes of the law or what was a punishable act; because if he was in point of fact at the time under the influence of insane delusions the law at once presumes from that that he cannot appreciate what he is doing. But you must be quite satisfied that the person is in the condition of mental disorder and disease before you can proceed to acquit him on the ground of insanity." In *Milne's* case a verdict was given against the panel by a majority of one; but in the exercise of the appellate function before-mentioned, Inglis wrote to the Home Office in favour of the views urged by the prisoner's counsel, and the sentence was commuted.[1]

[1] It is interesting to record that many years after the trial the culprit wrote to his agent cursing him and his counsel for taking so much trouble to save his life.

In the end of 1865 a shipmaster's head was split open while he lay on the deck of his vessel asleep, off the Redhead, by a seaman named Andrew Brown. The murderer piloted the schooner to Stonehaven and ran to his mother's house there. Inglis's definition of legal insanity already quoted was repeated in *Andrew Brown's* case (5 Ir. 217), with this addition, "A person being of violent or passionate temper, or reduced to a state of weakness by the indulgence of bad habits, or in a state of deep moral depravity, either from the faults of original education or from faults more personal to himself—these were things which had nothing to do with insanity."

It is not difficult to predict that even these classical dicta in criminal law will receive a liberal interpretation in the near future. The species of madness due to drunkenness used to be called moral insanity, but in the light of recent investigation that term is entirely inadequate to describe so large and common a category of criminal cause; and the time seems to be approaching when judicial recognition will be given to the true pathology of mental disease, which makes no distinction between insanity produced by chronic alcoholism and that which is traceable to hereditary mania. It is the kind of insanity described by Lord Advocate Moncreiff in language of characteristic beauty in the trial of *G. L. Smith* (January, 1855, 2 Ir. 47), which I quote here because it furnishes the means of a notable comparison between the province of pure law where Inglis sat serene, and the domain of rhetoric where Moncreiff excelled:—"In some respects there are states of mind common to humanity in which there is to a certain extent an aberration of the reason without amounting to the condition of insanity. The mens sana in corpore sano may be subjected to all the chances and changes of habit and disease, —to racking pains, to sleepless nights, that prevent the

system from having its natural refreshment, that leave the nerves unstrung, and the mind incapable of exercise. There are numberless passions that disturb the conscience, and evil propensities that corrupt the heart. The anger that is a short madness, the love that blinds men's eyes, the jealousy that finds 'confirmation strong' 'in trifles light as air,' the wine-cup that man puts to his lips 'to steal away his brains,' the disease of the mind to which physicians cannot minister, the rooted sorrow that no medicine can cure,—these, and a hundred things, are sufficient, and do every day disturb and overset the nicely balanced machinery which we call reason. But to say that, when any of these result in violence or crime, they are to liberate and absolve from punishment, would be to stop the wheels of justice, and put an end to the whole social system. Therefore, so far as these ebullitions, these variations from a state of pure reason, are concerned, however much they may dwell on the mind of the judge in apportioning punishment, they can be no ground for a jury to liberate a person convicted of such a crime."

It is, of course, impossible in a work of limited scope to touch upon more than some outstanding features in each department, and therefore I am compelled merely to refer to the cases of *James Miller*, Nov. 24, 1862, *Simon Fraser*, Dec. 5, 1859, and *John Anderson*, Nov. 17, 1862, for characteristically lucid expositions of such commonplace crimes as sending a threatening letter, forgery, and housebreaking. There is what Lord Ardmillan described as a luminous and instructive opinion on the ancient law of Scotland as to marriage in a prosecution against *Ballantyne*, March 14, 1859—much learning being expended to show that marriage is merely a civil contract, and that in the criminal jurisprudence of the country there is no common law which makes the celebrating of irregular marriages an indictable

offence. Inglis enriched the reports by some admirable opinions on technical objections as in *Dudley*, High Court, Feb. 15, 1864; and he gave the keynote to the judge-made part of our only code of appeal from the tyranny and stupidity of an untrained magistracy. The Summary Procedure Acts of 1864 and 1881 were framed and passed during his rule, and he took the leading part in deciding such cases as *Gardner* v. *Dymock*, 5 Ir. 13, and *Thomson* v. *Wardlaw*, 5 Ir. 45. Indeed, as feats of intellectual strength, not less remarkable than his speeches in defence of prisoners were some of his criminal charges. Let me mention the trial in 1865 of Dr. Pritchard for the murder of his wife and her mother, the defence being conducted by Mr. Rutherfurd Clark and Mr. Watson. With those of Jessie M'Lachlan (Glasgow, 1862) and Chantrelle (Edinburgh, 1878), it shares the distinction of pre-eminent notoriety within the compass of the period under review, and though details are now forgotten, it will long be vaguely remembered as one of the most remarkable in our criminal annals. It was shown that by ordinary prudence on the part of the district registrar the life of Mrs. Pritchard might have been saved or death at least postponed. The doctor who attended upon Mrs. Pritchard, when asked by the registrar to fill up the certificate applicable to her mother, wrote thus to him:—"Dear Sir,—I am surprised that I am called on to certify the cause of death in this case. I only saw the person for a few minutes, and a very short period before her death. She seemed to be under some narcotic; but Dr. Pritchard, who was present from the first moment of the illness till death occurred, and which had happened in his own house, may certify the cause. The death was certainly sudden, unexpected, and to me mysterious." But the registrar took no heed of this letter, and Pritchard having succeeded

in removing his mother-in-law, proceeded to get rid of his wife. Inglis's charge to the jury that convicted Pritchard was a searching analysis of circumstantial evidence. It has been likened to Sir Alexander Cockburn's speech for the prosecution at the celebrated trial of William Palmer, also a poisoner, and it was infinitely more compact than the charge of that great luminary in the Tichborne case in 1873.

I have alluded to the remarkable case of Jessie M'Lachlan, who, at Glasgow, in 1862, was accused of the Sandyford murder. On account of collateral elements, this trial excited great interest throughout the country, and several points of professional importance arose in the course of it—such as the abuse of preliminary examination, changing the venue, and the inadequacy of existing machinery in exceptional circumstances. The jury, after a four days' trial, returned in nineteen minutes a verdict of guilty. Considering the intricate and sensational nature of the case, this haste was scarcely decent; and the culprit immediately after trial made a disclosure which prompted the Crown to institute an independent inquiry, and brought the whole proceedings under revision. Mr. Young, with the approval of the entire profession, was appointed to discharge this delicate office, and he performed it to the satisfaction of the Crown and of the country—the prerogative of mercy being ultimately exercised in the prisoner's favour. The Home Secretary had never before exercised the power of ordering an independent inquiry in Scotland. England had but one or two precedents, which are mentioned in the report of the Royal Commission on Criminal Appeal. The lessons which *M'Lachlan's* case taught the Crown—especially with reference to preliminary procedure—have falsified the prediction that such inquiries would be more frequent in the future than they had been in the past. There has been no similar case since.

It is hardly relevant, perhaps, to say anything here about this case at all, since Lord Deas and not the Lord Justice-Clerk presided at the trial of it. But it was a startling one, and gave rise to the expression of diametrically opposite views in the Commons by Lord Advocate Moncreiff and ex-Lord Advocate Mure as to the power of the Crown to empannel a party whom they had precognosced as against a socius. In such a curious conjuncture Inglis, as the practical head of the criminal court, had great responsibility, including the nomination, or at least the approval, of the commissioner. And I notice it here because the negotiations represent a fair type of Inglis's general supervision over all such matters, for when—as must periodically occur in human society—ebullitions of folly produced not merely assaults on the person but inroads on the constitution or upon the peace or property of men or classes, his sagacity, always invoked, never failed. This remark is specially cogent with reference to the trial of the City Bank directors in 1879, of the Dynamitards in 1883, and of the Crofters in 1886 and 1888. There were few steps taken in the prosecution or punishment of these persons without his cognisance and sanction.

Those were grave concerns. But in trivialities also, the treatment of which perhaps forms a severer test of a just and even mind, Inglis was open to few if any charges. In the matter of forms, for instance, he was finical from the first. Soon after his elevation to the bench we find him commenting thus—"The state of the jury list seems to the Court to call for serious remark. It contains the names of many gentlemen whom we could not expect to attend. There are no less than four who are marked 'Not found.' On the other hand, I know that many gentlemen who are qualified have not been called on to serve for twenty years. I think such a state of things

calls for serious animadversion on the part of the Court, and I would call the attention of the Lord Advocate to it." Of a similar complexion was the attention he bestowed on interlocutors, which in almost every case he drafted with his own hand. We find him laying it down as early as 1859 that when an interlocutor distinguishes between first and second charges, it refers to the minor proposition unless the contrary be expressed. What one wishes to emphasise here, however, is the unwearied patience with which he wrote the drafts of all orders and judgments pronounced in his Court, the drafts of all opinions he delivered, and the depositions of witnesses in trials at the sittings—disdaining to the last the aid of shorthand. His handwriting, too, unlike that of many lawyers and most authors, was good, provoking a comparison with that of such men as Cranstoun. In the Auchterarder case Cranstoun revised the President's draft of the interlocutor and made certain alterations, but the President could not read them, and Cranstoun would not promise to make them out himself!

XII.—Law Reform and Reformers.

Before continuing the thread of Inglis's judicial life, it is necessary to pause and look at the part which he played as a reformer. I am conscious that law reform is a somewhat dreary tract of literature, and on account of its technicality is necessarily dull to the legal as well as to the lay reader. I have devoted some attention to Inglis's short career in Parliament; but it was more by what he did out of Parliament than in it that his claims to be regarded as a reformer come to be considered at all.

Brought upon the stage of public life at a critical juncture, like other young men in whom the fire of ambition burned, he might well have proposed to himself the aim of universal reform, for there was scarcely a department of national life where abuses did not require to be removed or sufferings alleviated. Reform was urgently demanded in the social and sanitary condition of the people and in the development and regulation of their material resources. The conjugal relations required overhauling, and the intricacies of mercantile law needed simplification. Even education, which had formed the pet eulogy of Scotland, where it was more advanced than in any other country save Prussia, was more thorough in particular

instances and localities than generally diffused. Most of all perhaps was reform required in the procedure of the Courts so as to insure their accessibility to the meanest, and to prevent the operation of inherent habits of delay. It is part of the advocate's quasi-public life to note the requirements of the times in the various walks of human life, and when he attains the highest pinnacle his profession offers, it is his beneficent function to act as the hand of the executive in supplying them. The mutations of the centuries are illustrated by nothing more clearly than by this, that the career thus afforded to the advocate may now be followed without entailing the curse of inordinate ambition. What miseries did the Master of Stair inflict upon an unoffending people for the gratification of an ill-regulated public spirit!

As we have seen, Inglis's rise marked the dawn of the era of reform, and he had prescience enough to forecast the ever-widening scope of legislative interference. But throughout what I may call the springtime of this era—the season when the seeds abundantly sown by political factions had been germinating—his life was an endless round of business. By 1845, however, it was obvious that he was a political possibility, and it was necessary for him thereafter carefully to scan the political situation and the manifold avenues through which legislation would be invoked to promote the public welfare.

When the excitement incident to the constitutional reforms of 1832 had subsided, there remained within the grasp of law reformers achievements in three distinct domains, namely, (1) the codification and amendment of existing law, (2) the enacting of new provisions to meet a vast variety of new conditions in social and industrial life, and (3) the reform of the judicature. Hale remarks, somewhat disloyally, "for the reformation of the law the sages thereof

are afraid to meddle with it, but let it live on as long and as well as it may in the state they find it." There cannot be a doubt that the mid-century lawyers who had outlived the troublous time in which reform was regarded as synonymous with revolution had the scope of necessary improvements in those fields more fully in view; and I am not sure that sufficient veneration has yet been paid to them for challenging the hostility of the timid, the vacillating, and the interested, by abolishing obsolete formalities in their efforts to abate the public inconvenience.

Codification has fascinated more legislators and lawyers than one cares to put upon a page. At the period here spoken of the law of Scotland was sought for, not merely in the statute-books, but through some 200 volumes of reports. The law of England had, and still has, to be learned from some 1100 volumes at least.[1] Yet the Queen's subjects are expected to know every word of it:—

> The lawless science of our law:
> That codeless myriad of precedent—
> That wilderness of single instances.

Is it not mockery to tell a man that he is bound to know the law and must pay the penalty of his ignorance of it, while, instead of giving him facilities for learning it, you surround him with almost insurmountable obstacles? The necessity and the demand for codification were undoubtedly greatest in England. Long and

[1] See the late Professor Muirhead's address to the Edinburgh Chamber of Commerce, 1863. But the Professor was under the mark. The law of England is contained in forty volumes of statutes and thirteen volumes of decisions in 100,000 cases. James Muirhead, born in 1831, was the eldest son of Claud Muirhead, a printer in Edinburgh, and a prominent member and secretary of a High School Club called the Irving Club, whose obsequies were celebrated when Mr. Adam Black, the last survivor, attended the funeral of the secretary. James Muirhead became a member of the Scotch bar in 1857, and was appointed to the Chair of Civil Law in 1863. After serving as Advocate-Depute he was made Sheriff of Chancery, and very soon thereafter Sheriff of Dumbarton and Stirling. Mr. Muirhead's fame, and he acquired a European reputation amongst scientific jurists, was won as a civilian. His edition of Gaius and Ulpian is a standard work. He died on 8th November, 1889.

dreary were the discussions there over the attempted condensation into four of forty volumes of English statutes, embracing 16,000 Acts of Parliament. There was some discontent in Scotland that the Lord Advocate of that day was not asked to assist Sir Fitzroy Kelly (afterwards the Chief Baron) and his eight "barrister boilers"—if one may borrow so ugly a name—whose only achievement it seems was to thicken the contents of the cauldron.

The Lord Advocate, however, had work enough in hand at home, and the necessity for advancement was as clearly manifest in Scotland as it was in England. But this and successive Lord Advocates looked upon codification as futile, and directed their attention to meeting the requirements of the times by completing or patching up the codes already in existence.

There were at the time of which I speak four men in Parliament House with whom the reform of the law was a dominating passion. They were Andrew Rutherfurd, James Moncreiff, Duncan M'Neill, and John Inglis. Among the first to see that law, as a progressive science, must bend to the necessities of society, through contact with other great minds they had from an early period been inspired to bring the law up to date, and to divest procedure of its many webs and burdens. Rutherfurd and Moncreiff as Whig law officers were on the popular side; M'Neill and Inglis on the side which was then so mysteriously obnoxious. But yet, although they were rivals at the bar, and members of two parties which wrestled with each other for acceptance with the growing democracy, there was wonderful unanimity among them as to the urgency of reform, the particular laws requiring reform, and the means by which reform was to be achieved. In many important ways the skill and common sense of contemporaries and subordinates were invoked, but in the main to these men is due the vast

body of legislation passed in the years between 1840 and 1870, and which—taken along with correlative enactments in England—it is believed embodies more numerous experiments in legislation than have been projected since the days of Justinian.[1]

It is difficult, perhaps impossible, to apportion praise amongst those four men. They had all of them the courage and capacity to originate, and some merit of origination belongs to each. Reform was with them often simultaneous in conception or suggestion if not in embodiment. But, after that, the situations they held made them part company with regard to new correctives and regulations. The functions they performed, though diverse, were all essential to the success of the experiments that were made. If I were to characterise them by their part in these experiments, I should say that in the future Rutherfurd will be associated with entails, M'Neill with poor law, Inglis with university reform, and Moncreiff with the reform of procedure and mercantile law. I speak here only of the reform of the statute-book, and not of the judicial function of interpretation in which Inglis bore the palm for thirty years. If comparisons are to be made—and dealing here only with reforms of the law, it is difficult to avoid them—Moncreiff's strong point was statesmanship, and there were few men in his day who could and did better adorn the platform and the senate. The great body of legislation was done by him and by Rutherfurd, who, it is known, was more of a lawyer than an orator. M'Neill partook of this legislative characteristic, as Moncreiff shared in the application of his own enactments. The obligation of posterity to M'Neill and Inglis is none the less in that their function

[1] See an address, "The Advances of a Generation," delivered by the Hon. Lord Trayner to the Glasgow Juridical Society, 10th February, 1886, from which I have derived some assistance.

was chiefly consultative and deliberative with regard to projected legislation, and administration after these projects had been realised.

Of these eminent men, Andrew Rutherfurd was an exceptionally strong character. His first public appearance was at a Reform meeting in Edinburgh in 1831. He had taken a keen interest in the exciting perturbations of that period. Lord Liverpool's death in 1827 had shaken the whole political fabric, and the Duke of Wellington had succeeded to the helm of state after Canning's death in August of the same year. It is probable that Rutherfurd was present with the Moncreiffs, Jeffrey, Chalmers, and other notabilities of both sides of politics, at the meeting in support of Catholic Emancipation, to which I refer in a subsequent page. He entered the Faculty in 1812, and by 1834 he is described by Cockburn[1] as the fittest man, by virtue of culture, eloquence, temperament, and power, for the President's chair. His first advance into public life was as Solicitor-General in 1837, when he succeeded Lord Cuninghame. He was made Lord Advocate two years later when Murray succeeded Corehouse on the bench; and with such acceptance was he deemed to have acted during the ecclesiastical upheaval that led to the Disruption that a public dinner was given to him on January 8th, 1841, at which Fox Maule made a notable contribution to the casuistry and polemics of the time. Rutherfurd continued at the head of his profession until 1852, when he was raised to the bench—the Whigs viewing it as a piece of uncommon ill-luck that he did not remain in Parliament until Boyle's resignation in May, 1852, when the "pear would have fallen on the right side of the hedge."

It was difficult in his case, as in Jeffrey's, and in the

[1] "Memorials," i. 77.

case of most Lord Advocates, to hammer a good politician out of a successful middle-aged or aged practising counsel, and Rutherfurd, it cannot but be said, did not quite fulfil the extravagant expectations entertained regarding him, that he would rival the great Dundas as a House of Commons man. Beloved by his constituents, by the public, and by his brethren, although he never rose to the height of taking a managing part even of Scotch affairs, yet before his elevation to the bench he contrived to make an ineffaceable mark on the statute-book.

Rutherfurd's first reforming measure was the Act 3 & 4 Vict. cap. 59, passed in 1840, extinguishing relationship as an objection to witnesses, and abolishing the preliminary examination, opposed no doubt by the Dean and the Faculty of the day, but supported by the Dean's own party in the Lords. Disqualifications on the ground of crime, interest, agency, or counsel, were removed by 15 & 16 Vict. cap. 27, which was followed next year, 1853, by an Act admitting the evidence of the agent acting in the suit, and that of husbands and wives under certain conditions, and always excepting suits affecting status—a limitation which was swept away in 1874 by 37 & 38 Vict. cap. 64. Of course, Rutherfurd did not pass all these measures, but he initiated the improved system of which they form the code. Rutherfurd's partialities, however, lay in another direction. He was, above all things, a lawyer and a feudalist, and his attention had early been engrossed by the anachronisms existing in our land laws, and which in times past had allured landed proprietors, especially the heads of the great families of the north, to the floor of the Parliament House, there to wage a war of words instead of a feud of arms. It was in this field that he gathered his laurels.

Lawyers are familiar with 11 & 12 Vict. cap. 36, the

most important Act passed in regard to property since 1685, when Sir George Mackenzie passed the statute which formed the basis of the law of entail. It broke the fetters that had for one hundred and sixty years rendered three-fourths of the soil of Scotland unsaleable and unattachable for debt. Towards the close of the seventeenth century the forging of those fetters marked the triumph of class interests. The system of entailing land had been abandoned in England fifty years before its institution in Scotland, and yet, in the face of its confessed ineptitude across the Border, such was the power of a proprietary enamoured of the perpetuity of their families on particular lands, that this anachronism was not only foisted on the people, but withstood the assaults during a century and a half of most of our great lawyers, including Kames and Dalrymple.

The Act of 1685 made it impossible for the heir in possession to sell, burden, or feu any part of his estate, and except for the Act of 1746, authorising the sale of entailed lands to the Crown for public purposes, it stood unaltered until 1770, when was passed the Montgomery Act, 10 Geo. III. cap. 51, which extended the heir's powers of granting agricultural and building leases, and authorised him to excamb—powers which were further enlarged by the Rosebery Act of 1836, 6 & 7 Will. IV. cap. 42—and as a creditor of the succeeding heir to improve the estate. These relaxations were highly prized. Further progress was no doubt retarded by the turbulence that prevailed during the next half century, and it was not till 1824 that the next instalment of reform, 5 Geo. IV. cap. 87, was placed on the statute-book. This (the Aberdeen) Act enabled each heir in possession to quarter his family on the next heir to the extent of two-thirds of the clear rents, a provision which, while it was meant to bolster up the entail system, really proved fatal to it, for it paved

the way for the Rutherfurd Act, or, as Lord Aberdeen himself said to Lord Campbell, who had charge of the Rutherfurd Act in the Lords, "It is my Act that made yours." These statutes, however, while they conferred certain powers on the heir, carefully guarded against anything being done which would prejudicially affect the fee.

It required liberal minds and strong wills to abolish the restraints upon the transmission of heritage, the baneful effects of which, graphically described by Rutherfurd's coadjutor Moncreiff, remained in operation for many years. "I should gladly," he says, "see entails in every sense,[1] and to every extent abolished. I believe they operate unmixed evil. They have no tendency, as has generally been supposed, to support or maintain old aristocratic families. They have a direct tendency to impoverish and bring them down. They hamper the proprietor, they fill him with doubt, they encumber his life with liabilities, they interfere with the improvement of the land. You can tell a strictly entailed estate frequently in this country when merely passing along the road by the look of its drainage and its fences. And what advantage do they bring? None of which I am aware, while at the same time they are productive of infinite embarrassment and discouragement to the philanthropist and the poor. What a practical satire it is upon the legislation of a free and enlightened country that an entailed proprietor, with thousands of acres and an enormous rent roll, should not be able to give you a few square yards on which to build a schoolhouse or church without the special and very stringent provisions of an Act of Parliament passed for the purpose. I don't expect," he added, "in the present state of public opinion, to carry

[1] Address on Jurisprudence and the Amendment of the Law, by the Right Hon. James Moncreiff, delivered at Glasgow in 1860, and published by Adam & Charles Black, Edinburgh.

out so comprehensive a view, but I think it is consistent with abstract and philosophical principle. I believe that landed proprietors or great families would not suffer, and the public would be better served if land were as free in commerce as anything else."

This Act, on the preamble that the law of entail in Scotland had been found to be attended with serious evils to heirs of entail and to the community at large, legalised the alienation of the estate provided certain consents were obtained, and the charging of improvements on the fee. Certain obstacles having been found to impede the working of the Rutherfurd Act, 16 & 17 Vict. cap. 94, piloted by Moncreiff, effectually took them out of the way. The code was practically completed by the Acts of 1875 and of 1882, by which the consents of the next and more remote heirs might be dispensed with on the actuarial value of their expectancy being ascertained and paid. These Acts probably embody the most elephantine process of repeal on the statute-book; at the same time, to their remedial effects unmixed praise must be given. The only pity is that the mere repeal of an obnoxious statute is the only or principal monument we have to the memory of a very great lawyer. It will not, however, be forgotten that five statutes were passed in this same session, each of which has done its share in disentangling us from the trammels of the feudal system. These followed in the wake of M'Neill's Acts, 8 & 9 Vict. cap. 31, for facilitating the transmission and extension of securities, and cap. 35 of the same year, which abolished the old ceremony, a relic of barbarism, of going to the lands conveyed and giving symbolic possession to the disponee. The five statutes I have referred to were, first, an Act about Services, 10 & 11 Vict. cap. 47; the Service of Heirs Act; Acts 11 & 12 Vict. cap. 49, about the transference of heritages held burgage and not held burgage, and heritable

securities; and an Act about Crown charters and Chancery precepts, 10 & 11 Vict. cap. 48.

Of those statutes, all passed with a view to the simplification of land titles, cap. 48 was the most important, since it introduced practically a new form of disposition, and divested conveyances of the painful verbiage by which they had been encumbered, and also, it must be owned, the conveyancer of fees which he had been entitled to exact for useless but compulsory redundancy and repetition. The clause of warrandice, for example, was reduced from over two hundred words to, "I assign the rents, and I assign the writs, and I grant warrandice." This Act prepared the way for Lord Moncreiff's Act of 1858, 21 & 22 Vict. cap. 76, by which sasine was declared to be no longer necessary; the Consolidation Act of 1868, 31 & 32 Vict. cap. 101; and Lord Advocate Gordon's Act of 1874, which made further sweeping changes in the direction of simplifying and cheapening the transfer of land.

In the session of 1847 Rutherfurd also introduced the Registration and Marriage Bills, the latter to make a gash in the Scots law about clandestine marriages, but they were defeated—the Marriage Bill singularly enough by the influence of presbyteries labouring under delusions which unaccountably seem from time to time to cling to them—and had to be handed over to Moncreiff, who got them passed later on.

Lord Moncreiff was Rutherfurd's junior in years, but, as I have indicated, more than his equal in statesmanship, and it was upon his shoulders that Rutherfurd's mantle fell. He succeeded to a large legacy of legislative projects which had been germinating for years in the minds of lawyers and in the halls of legal corporations. The merit of conception and suggestion might be with others, but the law officers of the day were clearly the

instruments by which ameliorations affecting almost every class were embodied in the law. When proposals have been subjected to public criticism for a time, a Lord Advocate may very well at his own hand proceed to enact them, and instruct his draftsman without communicating with any others. But it is well known that an established etiquette sanctions, if it does not exact, nameless communings between the executive as represented by the Lord Advocate and the heads of the profession on the bench and at the bar. Throughout the legislative eruption of the sixth and seventh decades, therefore, Moncreiff was ably seconded by Inglis, who was Dean during the first, and the head of a Division during the second, of these periods. The mention of this fact is not meant to detract from the brilliant part which Moncreiff played for twenty years, nor to suggest that the accomplishment of the multifarious reforms of that period was not almost exclusively due to him. For it can readily be conceived that, where the members of the Executive are active and inventive, it would only provoke criticism and hostility if their measures were to be submitted for revision to political rivals. As Dean of Faculty Inglis had to take cognisance of those and many other statutes which his political friends or opponents restlessly promoted, but beyond giving the benefit of his counsel where it was asked, he had no hand in the production of the measures. In regard to the Bankruptcy Act of 1856, we find him saying (*Raeburn's Trustees*, Jan. 12, 1888, 15 R. 742), "I cannot help thinking that whoever framed the 166th section hardly foresaw what, nevertheless, was the obvious result, that if it was to be carried into operation anything like generally, the administration of private trusts would be all carried out at the public expense. I do not think that was the intention of Parliament." I am informed by the highest authority that the man

who gave most aid to Moncreiff in such matters was the late John Clerk Brodie.[1]

Lord Moncreiff has neither deserved nor happily has he received the meagre acknowledgments of his antetype of 1696, whose very name has passed into the region of the unknown. He was the last Lord Advocate but one who was really a minister for Scotland. His high office and multifarious duties necessarily rendered him somewhat inaccessible, but he has the reputation of never having been guilty of a discourteous act, or of having denied attention to any of the numerous applicants whom duty or interest brought before him. I hope I may be pardoned an apparent transgression of the canon of taste which prohibits eulogium on the living, by anticipating in a memoir of Inglis some notice of one of his greatest contemporaries.

Moncreiff comes of an old and somewhat distinguished stock. His family dates from the thirteenth century. Sir John de Moncref did homage to Edward the First at Perth in 1296, and two other members of the family took the oaths to the English king in that same year. The

[1] John Clerk Brodie, W.S., was born on 20th May, 1811. He received his earlier education at Westminster, where he was a King's scholar for a period ending in 1827, after which he attended the university of Edinburgh. Admitted as a Writer to the Signet in the year 1836, Mr. Brodie placed himself at a comparatively early age in the front rank of his profession. At the age of 36, he received, on the nomination of Lord Advocate Rutherfurd, the appointment of Crown Agent for Scotland, which he held from February, 1847, to March, 1852; re-appointed to that office in January, 1853, he held it till March, 1858. In the year 1858, Her Majesty conferred on Mr. Brodie the office of principal keeper of the General and Particular Register of Sasines, &c., for Scotland. Mr. Brodie was elected by the Society of Writers to the Signet to the office of its treasurer, and this he held for several years till, in the beginning of the year 1882, the office of Deputy Keeper of the Signet was conferred on him, which latter post he held concurrently with his appointment as keeper of the Register of Sasines, &c., from that time till the beginning of 1888, when he retired owing to the state of his health. At the tercentenary of the University of Edinburgh, Mr. Brodie was made an LL.D. of that university; and in recognition of his services in the improvement of the public registers, the Queen in 1888 created him a C.B.

Moncreiffs thereafter increased in numbers, in opulence, and power—becoming proprietors in the valley of the Earn, and for a time dominating the lower reaches of that stream. They also acquired lands in Kinross. Tullibole, which gives a territorial designation to the present peer, is a romantic enough old place in the sequestered valley of the turbulent Devon. The acquisition of this property, however, was accomplished at a comparatively recent period. The earlier Moncreiffs did their duty on the field; they were valued advisers in the senate. So far as one can judge by the scanty materials now at command, they early preferred the more secluded employments of the state. In 1456, for instance, Malcolm of Moncreiff was a Lord Auditor. The Lords of Moncreiff sat in Parliament in 1596, and frequently in succeeding years. Nor were they slow to suffer for a losing cause. It is said that an ancestor in the time of the Charleses sold his estate to raise money for the king. The second baronet, Sir John, sold the barony of Moncreiff to an ancestor of its present proprietor, that ancestor being Thomas Moncreiff, a clerk of Exchequer, who had a Crown charter dated 24th May, 1667. The baronetcy of Scotland and Nova Scotia which vests in Lord Moncreiff goes back to 1626.

Without going into details, the Moncreiffs seem to have preserved their line without a superfluity of land. The sons of the family, like the sons of more opulent houses, were obliged to enter walks of life at home and abroad where they could reap competence and renown. It is a fact unexampled in the history of our old families that for six generations the eldest son of the Moncreiffs was a minister of the Church of Scotland. One of these was the grandfather of Lord Moncreiff, old Sir Harry Moncreiff, who remembered the '45, and a splendid type of the old self-reliant Scottish gentleman. He was

known throughout Scotland and beyond its borders before the century began. He was familiar with the intellectual coteries which filled the northern capital. He pursued with keen avidity the intellectual pursuits which marked that age. A loyal Whig, he was a welcome visitor in the larger capital in the south, and Cockburn's "Memorials" contain testimony alike to the political stature of the man and to the affection in which he was held by politicians and men of letters. For, although of a strict Calvinistic type, as circumstances compelled him to be, his theological asperities had been softened by extensive private reading, by contact with men, and by his innate humanity.

One mentions this old Gamaliel because it was at his feet that Lord Moncreiff first imbibed his political precepts and theological tenets. He was an old man of seventy-six when Lord Moncreiff was a boy of fourteen, and he used the boy as his walking-stick. I mention him also because he was the father of the first Lord Moncreiff, whose remarkable personality and auspicious surroundings must have had a powerful influence in the formation of his son's character.

In Moncreiff's youth there was, as we have seen, a circle of accomplished men in the northern metropolis, of whom the first Lord Moncreiff was one. Think of the band of youths who caught up the shafts of philosophical speculation thrown across the sea by the sceptics of France!—of Scott and the "Edinburgh Review"—of Jeffrey, Horner, Brougham, Cockburn, Sydney Smith, Dugald Stewart, and Thomas Brown, and of the smaller lights such as John Archibald Murray and George Joseph Bell! Every one of these men scaled the heights of fame, and the first Lord Moncreiff was friend, companion, and adviser to each of them. They

were constantly about him or he with them. He was at all their symposia and garden parties.[1] It is evident that without a keen and comprehensive mind, without polished diction and opulent fancy, he could not have been the favourite he was with the brightest intellects of his day. But he was greater as a lawyer than as a man of letters. By his grasp of legal principles, his faultless logic, and the force of his language, he became the first pleader of his generation. It is to be regretted that he lacked the courage to break the bonds which tied him to his profession. He was one of those who think that to succeed in forensic life the back must be turned on belles lettres, and this notwithstanding the brilliant examples to the contrary with which he came into daily contact. This may be the reason why, except in legal decision, he has left no hostages to literary fame. But be that as it may, so faithful was he to his profession that Henry Cockburn says he was known among the brotherhood as "the whole duty of man." He had a keen pleasure in polemics; and we have it on the best authority that he reached a great mastery in the art. His performances were as much admired by the lawyers of his day as are his precise language and sound judgment by posterity.

This was the man to whom we must mainly impute the liberal accomplishments of his distinguished son, whose dignity and eloquence, whose genial yet stately politeness, this generation will recall with pleasure when they too in the evening of life pass the crosses and cares, the smiles and the sunbeams, in review before them. From his venerated father, too, Moncreiff inherited his love for politics. That severe logician and man of much knowledge was ambitious like John Inglis to sit in the House

[1] See Lord Moncreiff's monograph on Craigcrook.

of Commons, then in its halcyon days of fame, and make a name for himself there. It is not too much to say that his subtlety and grasp of thought must have made him a formidable figure in that arena. He refused a seat on the bench two years before he accepted it (in 1829), with the object of getting into Parliament. Although unsuccessful in accomplishing what was a principal object of his ambition, it is clear that his taste for politics must have given the political bent to his son's mind.

The barriers that divide parties were very much greater then than now. The political camps were severely kept asunder. Nameless and numberless obstacles were opposed to the free interchange of thought. But the Moncreiffs and their brilliant compeers were amongst the first to clear away such obstacles to general conversation, and by banishing politics from mixed company, to make room for wit, reflection, anecdote, and reminiscence. And with such training and such society one might safely at the very outset have predicted a distinguished career for Lord Moncreiff in the three aspects in which the annalist may view him—namely, as an orator, a man of letters, and a judge. Born more than eighty years ago, he was admitted to the bar in 1833. By that time he had, so to speak, received his baptism in politics. His father, then Dean of Faculty, addressed a great Reform demonstration, at which Francis Jeffrey and Dr. Chalmers electrified thousands of hearers.

Moncreiff's practice was not of the largest. Between 1840 and 1851 he had a very large practice as a junior. As Lord Advocate his practice necessarily suffered, but when liberated from the toils of office, in 1858 for instance, he was in very large employment, as the reports attest. But he pursued politics with even a keener

avidity than that with which he followed law. His latent rhetorical power rapidly developed a style which made him popular wherever he spoke. He took great pains to develop that style upon correct and effective lines. He never allowed himself to be carried away by fervour of conviction or exuberance of language. Neither the one nor the other interfered with that selection and arrangement of words which constitute so great a charm in the finished orator. Early communion with gifted minds adorned his speeches with a splendour of lucid illustration. At the zenith of his power his voice was penetrating and well modulated. Who that remembers his electioneering speeches, or his lectures on subjects commanding a range of finer sympathies, does not recall his copious vocabulary of words which were never either too bold or bloodless, his resonant periods, his full and pleasant fancy? Those who have only heard him speak from the bench with diminished strength and duller voice will hardly believe that from 1850 to 1860 he was audible in the High Street from the well-remembered hustings in front of the Signet Library. No doubt he was fortunate in his parentage and friendships. Brougham was his father's friend, and Cockburn his own. The interest of these distinguished men must sooner or later have procured him preferment, but his own innate rhetorical genius, which made him the greatest Scottish orator of his day, was sufficient of itself to win him golden opinions. His power and fame became very great; and when he was but seventeen years at the bar—that is, in 1850—he was made Solicitor-General by Andrew Rutherfurd in Lord John Russell's Administration, and Lord Advocate in 1851 when Rutherfurd was raised to the bench. He went out of office in 1852, but came in with Lord Aberdeen in 1853. He was in office in 1855 and 1858 with Lord Palmerston. Lord Derby came in for a year, during which

Duncan M'Neill resigned the chair of the First Division, and made way for Inglis. Lord Moncreiff returned to power with Lord Palmerston in 1859, and remained in office until Lord Palmerston died, in 1865. After the Tories under Derby and Disraeli had had an innings, the Whigs returned in November, 1868; and in 1869 the Lord Justice-Clerkship rewarded Lord Moncreiff for nearly forty years of incessant political life, during which, it is needless to say, he had contributed more than any other man to the legislation under which Scotland has made enormous strides in educational and economic advancement.

In an election address of 1857, Lord Moncreiff claimed the credit of having passed the Mercantile Law Amendment Act of 1856, which, following upon the Bills of Lading Act of 1855, had for its object the assimilation of the laws of England and Scotland in matters of common occurrence in the course of trade, and there cannot be a doubt that the claim was just. This Act initiated the era whose culmination legal sciolists have desiderated for half-a-century, when our system, which is philosophic at least, and has the sanction of a great pedigree, shall give place to the most technical and the least intelligible of all the European codes—expounded throughout bewildering precedents which the poet somewhat ignorantly describes as broadening down to present perfection in a mixed jargon of bad Latin, Norman-French, and old English—and when Scotland shall become the northern circuit of England. In Scotland, sale without delivery passed no property, but although there is still a nominal difference between the law of England and the law of Scotland, for all practical purposes the law of Scotland, where there has been a contract of sale though no delivery, is made identical with the law of England in the actual result.[1]

[1] Lord Blackburn in *M'Bain* v. *Wallace*, 8 R. H.L. 112.

The freedom of his beloved city, conferred on Moncreiff in January, 1857, was a graceful compliment, not then too lavishly bestowed, and a fitting reward to one who had borne many public anxieties and stood the fire of public criticism unscathed. His high standard of professional and political character was recognised by the whole community of Edinburgh in matters quite distinct from the occasion of this particular honour. The Municipal Extension Act and the Registration of Voters Act seem hardly important enough achievements to warrant such a distinction, but in making the presentation, the tone the Lord Provost adopted in regard to them might well have been applied to a wide range of public service.

The Registration Appeal Court, established under the County Voters (Scotland) Act, 24 & 25 Vict. cap. 83, consisted, as it still consists, of the senior Lord Ordinary and the Lord Ordinary in Exchequer Causes. It is curious that, when the Act came into operation, the functions of both were united in the person of Lord Ardmillan. The question arose whether the Court had not been extinguished for want of a quorum. Appeals having been taken against the decisions of several sheriffs, certified copies of the cases were laid before Lord Ardmillan as the senior Lord Ordinary, and duplicate copies were sent to him as the Exchequer Ordinary. Ob majorem cautelam, copies were also laid before Lord Mackenzie as next senior Lord Ordinary. On 13th November, 1862, Lord Ardmillan went to the Inner House, being succeeded in the respective functions mentioned by Lords Mackenzie and Ormidale. Intimation having been given in the rolls of 12th December that they were to hold an Appeal Court, a note of suspension and interdict was presented by the respondents, because, at the date of the appeals, and indeed for more than ten days thereafter, the statutory tribunals for dis-

posing of them had no existence. The Ordinary on the Bills, Lord Barcaple, held that the note was competent, but that it must be refused. The First Division followed this judgment, the Lord President declaring that the jurisdiction was not annihilated, but its explication merely suspended.

It would exceed the limits which I have set for myself were I to do more than mention the Bankruptcy Act of 1856, a statute which attains to the completeness of a code; statutes affecting the administration of trusts; the Act of 1855, which introduced representation into moveable succession; and a host of other measures of grave moment, such as those transferring Crown business from the Court of Exchequer to the Court of Session, and bills about industrial schools, joint-stock banks, and the law of marriage and partnership, which Moncreiff piloted through Parliament.

After his elevation Lord Moncreiff filled the chair of the Second Division with dignity and acceptance. His brilliant rhetoric had always found a more fitting sphere in jury practice than in the stricter confines of ordinary debate. This style clung to him on the bench, so that with him even the trivialities of judicial remark were invested with a certain finish and dignity. In what may be called the drudgery of judicial work he spared neither pains nor thought, and his exposition of the law was invariably characterised by lucidity and picturesqueness.

Upon the termination of his political life it was natural that in the more abundant leisure of judicial employment his mind should revert to those liberal studies, the love if not the practice of which bridged over the intervening years between youth and age. The "Edinburgh Review" bears testimony to his research and style, fashioned on the brilliant models of half a century ago.

It is often said that in respect of letters and philosophy the lawyers of the present generation do not sustain the lustre of their predecessors. Comparisons are made with the long roll of eminent men who have adorned our bench. We are reminded of Kames, the distinguished lawyer and philosopher; of Dundas, who was a man of solid attainment in classics; of Miller of Glenlee, who read Horace every day; of Hailes, who himself produced some specimens of respectable Latinity; of Gardenston, Elliot, and Elliock; of Cranstoun, and many others distinguished as much for their Latinity as their law. But we are not yet without judges who can relieve the ennui of a somniferous harangue by a Greek epigram or a Roman idyll; and when posterity comes to award its verdict on the judge who still enjoys a learned repose, which neither single bills nor short roll disturbs, it will pronounce to have been a precious link connecting the all-too-utilitarian present with the scholarship and rhetoric of the past.

I have in the course of the preceding chapters had occasion to suggest that before Inglis's time, before even the Judicature Act, 6 Geo. IV., cap. 120, which resulted from the labours of two commissions, appointed in 1823 and in 1825 respectively, and which remained the ruling statute in regard to procedure for half-a-century, the Court of Session had descended very far below the standard of Bankton's eulogium applicable to Duncan Forbes's time, namely, that it was justly "admired for its contrivance in order to despatch of business." The different steps adopted to reform its procedure have been traced in other works, and I can only refer to them as elucidating the life's labour of the subject of this memoir.[1] By the well-known Judica-

[1] See in particular Mackay's "Court of Session Practice," i., introduction, and a brilliant article in the Edinburgh Review, ix., which appeared about the time when Granville's resolutions produced the Act 48 Geo. III., cap. 151, and the first Law Commission, which reported in 1810.

ture Act, the patching to which statesmen and lawyers had resorted for the improvement of the Court was put a stop to, at least for a time, all parties thinking it right to give the remodelled procedure a fair trial, especially after the suppression of the obnoxious Jury Court in 1830. After 11th November, 1825, the seven junior ordinaries were relieved from attendance in the Inner House, and the Divisions thereafter were constituted as at present.

But although since that statute little change has been made on the constitution of the Court, there have been periodic outbreaks of the old discontent about its tardy and costly procedure, and an annual crop of visionary schemes for removing its defects and abuses. It is remarkable that the stock cry should have been the same in the end of last century as in the middle of the present, namely, that a cause could never be decided in less than four years. A grievance of such magnitude was necessarily the subject of constant animadversion, because nothing, except perhaps tyranny, can be more destructive of the comfort and contentment of a nation than an old or rusty or worn-out machine for the administration of justice.

Progress for many years was unaccountably slow. For many reasons it was perhaps better that it should have been so. An old authority and great writing counsel, Forsyth,[1] who had a good practice along with the first Moncreiff, Greenshields,[2] Mackenzie,[3] Bell, Keay, and

[1] Robert Forsyth, student of law in July, 1792, and a probationer of the Church of Scotland; author of "Beauties of Scotland, &c." He died about 1845.

[2] John Greenshields, son of John Greenshields, merchant in Glasgow, was admitted 2nd March, 1795, and was afterwards of Drum near Denny. He seems to have practised until about 1845.

[3] Joshua Mackenzie, son of Henry, "The Man of Feeling," was admitted January, 1799, appointed Sheriff-Depute of Linlithgow, 1811, and was advanced to the bench 14th November, 1822, on the resignation of Sir William Macleod Bannatyne, and he died 17th November, 1851, soon after his resignation.

More, and others of that time, sensibly declared hasty and extraordinary changes bad, since they perplex the general community and harass the law-agents, on whom the responsibility of conducting business immediately rests. He shrewdly added that, though the advocate endures them with fortitude and resignation, "the perplexities of the community are never unprofitable to him." The reason against improvident or precipitate change of course is that no one can predict from the history of institutions how alterations may affect them; nor is the frame of society so elastic as to endure without danger the communication of great or sudden impulses. But be that as it may, no body apprehensive of the hazards of change could, or did, complain that it was brought about with precipitation in the matter of procedure.

From 1840 to 1850 business was fast approaching the climax of congestion. A great stimulus had been administered to commercial prosperity by the success of railway enterprise. Distant parts of the country had been and were being brought into closer contact. Ease and rapidity of locomotion made disputes practicable which formerly distance helped to prevent, and the Supreme Court was certainly busier than it had ever been before. The crowd of suits brought into relief the clumsy methods in vogue, particularly in the matters of pleading, of petitions, and of proofs. These really comprised the chief elements of everyday employment in the Courts.

The present generation can scarcely realise the anxieties and delays of that period. Bench and bar were trying to accommodate themselves to the transformation in the matter of pleading. While Boyle was President things went as smoothly as was possible with a complex system, but the time of the Appeal Court was sadly wasted in the apprentice work of petitions. Boyle had reduced this work

to a science, but nobody knew its secret except himself—at least, nobody knew it so well. The greatest living authority[1] has declared that a more complete and perfect judicial tribunal than the four judges of the First Division constituted at that time it would be impossible to conceive; but the petitions were largely discretionary matters, and the discretion was vested in the chair. When Boyle retired in 1852, and Duncan M'Neill succeeded to the chair of the First Division, petition procedure, for a time at least, became chaotic.

On Jeffrey's death in January, 1850, his successor was Lord Cuninghame, who had been thirteen years a Lord Ordinary in the Outer House, having succeeded Lord Balgray in 1837. Like some of his successors, his guiding principle was to do substantial justice, even though he might thereby outrage rules of law or process, and he certainly knew little about petitions. In May, 1851, the same year that Lord Moncreiff died, Lord Mackenzie left the First Division, soon to close a highly honourable career, and he was followed by Lord Ivory. Ivory had been absent eleven years from the Inner House, as an Outer House judge; and the practice he found on re-entering it is said by one critic to have surprised him as much as the portrait of George III. did Rip Van Winkle. Owing to frequent and long-continued absences on Parliamentary business, and to his position as head of the bar, Colonsay knew little about petitions and work of that kind. Cuninghame and Ivory were equally ignorant; and unwritten laws concerning factories and curatories, formulated by the old President, and as familiar as Erskine to practitioners who acted upon them daily, were flung aside. The bench no

[1] Lord Moncreiff.

longer acted as patres conscripti, as fathers of families, but as critical lawyers, throwing out petitions—even when these bore the signature "Ro. Blair" and "Geo. Cranstoun" —because they were not according to a taste or style they deemed correct. Lord Fullerton was the only judge who could have checked the procedure, but, mild and meditative, he merely twirled his spectacles, after the manner of the contemplative Gifford twenty years later. The new brooms performed their proverbial office, and the last shred of the rules elaborated by the old President was swept away.

Popular and professional opinion had declared against the time-worn chaos of procedure in other matters under which justice had been doled out for centuries. The application of a lifetime failed to master the arbitrary and inconsistent provisions in the hundred and one Acts of Parliament and of Sederunt. Great lawyers became impatient of such trifles, and desired to erase at least nine-tenths of these obstructive minutiæ. At the time Inglis was coming to the front there existed some dream of a Consolidation Act; but through ever-recurring apprehensions of conflicts between public necessities and private interests, this consummation was deferred for a quarter of a century. A few venturesome spirits, of whom Rutherfurd was the chief, nibbled for years at reform, even in procedure, but with little practical outcome, till irritation and indignation culminated about the year 1850. The Act of that year was intended to remove obstructions, and to a limited extent it did so. Many of its provisions were valuable improvements. Its 14th section as we have seen, abolished written pleadings. Rutherfurd had, it is known, a favourite notion—a relic of the previous half-century, when, owing to the growth of the commercial towns, the abundance of disputes in them, and the hopelessness of getting these settled by the courts of law,

a set of professional arbiters sprang up—that if litigants chose their arbiters, it would be desirable to afford legal sanction to their awards; hence the 50th section. But the Act of 1850—excellent enough as an instalment—only skimmed the surface and left the radical evils untouched. Of those evils two types may be selected for the sake of illustration—procedure in the matters of petitions and of evidence.

It is needless now to detail the numerous extravagances which led to the statute transferring petitions to the junior Lord Ordinary, and leaving the Divisions free for their proper work of review. But the irritation caused by the new practice produced something like a revolt in the profession. The ferment was intensified by differences in the practice of the Divisions. Each had its independent forms of process. In hoc igitur conflictu adstipulabimur? said the lawyers. In the First Division a petition for special powers, for instance, was intimated, which required the attendance of counsel and agent; it appeared in the summar roll—attendance the second; it was remitted to the Lord Ordinary — attendance the third; avizandum having been made, the case again appeared in the roll—attendance the fourth. Then there was a remit to a man of business, who reported to the Lord Ordinary, who reported to the Division, which decided the case. In the Second Division there was no remit to the Lord Ordinary.

The dissatisfaction of suitors was not confined to petitions or evidence. The same cases appeared week after week in the Outer House rolls. Barring accidents, a case was usually kept in the Outer and Inner Houses for some four years. Junior counsel might be heard, and then, at the request of anxious agents, cases were put off from day to day for the Court to hear leaders who could never

be got. "Each Lord Ordinary sits like an unhappy Theseus in lonely splendour, while macers call loudly in the Outer House and no man regards them." One suitor before Lord Mackenzie, rendered desperate by the increasing expense and the ever-recurring delay, laid a formal complaint before the Government regarding the conduct of business in the Outer House. The Inner House, which sat from 11 to 2, was never abreast of its work. Before 1865 the Outer House sat from 9 to 11. From 2 to 4 the Lords Ordinary did not sit.

These delays arose partly from the want of sufficient machinery, and partly from the waste of existing resources. The abolition of written pleadings even was to some extent responsible for it—or rather for the dissatisfaction which prevailed. Previous to debate, meagre records—which in many instances came in place of the time-honoured minutes—were read overnight by certain judges, who came up in the morning with clear opinions (frequently indicated to the counsel who opened) for or against either party, judgment often being given upon an insufficient hearing. It was the fault not so much of the men as of the system. The result of such a system follows as surely as effect follows cause. It followed here. First, the table of the House of Lords—and that at a time when no member of that tribunal was familiar with Scots law—bore more Scotch appeals than it had done before; and, secondly, the suitor went to the patient tribunal which preferred hearing his case out to giving rapid justice, and judicial work became unequally divided.[1]

[1] The fluctuations of business between the Divisions have been very great, and their cause mysterious even within living memory. Under President M'Neill and President Boyle the First Division became more popular than it had been at one stage of Hope's presidency. An anecdote is told of Hope's sensitiveness on this point. He asked his private clerk how it happened that so many cases went to the other side

At a subsequent stage of the congestion there was such a block in one Division, that the Faculty advocated a compulsory division of causes between the two Courts, but the principle of choice, insisted in by every class of agent since about 1838, was fatal to the proposal. Moncreiff was also importuned to form a Third Division to relieve the pressure on the rolls; and certainly it seemed as if that expedient alone could remove the scandal which had disgraced the country for many years. But Moncreiff and Inglis were against this proposal, their practical common sense effecting reform by a less cumbrous method. The men who argued for a Third Division did so in the interests of justice and of freedom of debate, without which there can be no justice, and year after year they insisted, with much apparent sense, that a patient hearing, such as one ought to get in an Appeal Court, is the only possible equivalent for written pleadings.

It is clear that, however tamely such grievances might have been borne at a former time, when the country had thankfully to avail itself of the machinery its rulers provided for it, they could not be endured now, when science and education were transforming the condition of the people, and the advance of commerce demanded the most rapid as well as the most accessible justice. Lord Chancellor Campbell, in deciding the Bute Guardianship, had a quiet thrust at the delays of the Court. "The judges," said he, "talked of the petitioners being disentitled to the relief claimed on account of the length of time the child had been in Scotland, their lordships not considering how slowly litigation may sometimes proceed in Scotland."[1] The Act of 1856, known as the

of the Court. "Well, ma lord, a great deal depends on having popular clerks—that is principal clerks; if your lordship could just bring over the clerks from the Second Division, maybe the cases wad come to!"

[1] 23 D. 907.

Distribution of Business Act, was the first statute that afforded real relief. It was the fruit of the sagacity, collaboration, and perseverance of the law reformers of whom M'Neill — notwithstanding his deficiences as a judicial neophyte—Inglis, and Moncreiff were, and continued for many years to be, the chief, and it paved the way for the fundamental improvements effected by the legislation of the seventh decade.

Permanent relief was only obtained on the passing of the Court of Session Act of 1868. For several years before it appeared this great measure had been germinating. The framing of the Bill in 1863 was attended with great difficulty. A judicial establishment, complicated enough in its parts, is a homogeneous and harmonious whole, and no part of it may be remodelled without the risk of impairing the principle of vitality which animates the entire structure. The Court of Session Act, like the other consolidated measures of the day, therefore called forth much diversity of opinion. Long-established traditions were shaken, prejudices had to be dislodged, the fears of honest unbelievers respected, and a jealousy of Anglican terminology humoured. There were outbursts from all quarters of the country at the anglicising of the Court, and Moncreiff and the Home Secretary, Sir George Grey, were assailed with invective for asserting, as they did with abundant reason in the preamble of the first edition, that the practice and mode of procedure required to be made more simple, certain, and expeditious. The speculative and inquisitive amongst the commercial classes swelled the criticism embodied in the law journals. As is pretty generally known, the guiding spirits of the movement were Moncreiff and Inglis. Subject to the qualification mentioned on a preceding page, their collaboration was promoted rather than interrupted by the vicissitudes of

their personal history at and subsequent to 1858. All the legal bodies, including the Faculty, the Societies of Writers to the Signet and Solicitors before the Supreme Courts, the Procurators of Glasgow, and the Juridical Society had something to say about the reforms, and a score or two of pamphlets were penned by miscellaneous critics.[1]

Moncreiff's first Bill contained an attempt at dual classification—actions being divided into two categories, first, according to the nature of the conclusions, and, second, according to the remedy sought. It was not concealed that the system of pleading at Westminster Hall was intended to be applied, and that therefore, in the first class, viz., petitory cases, proceedings should begin with a summons or writ devoid of conclusion, save that of merely

[1] Mr. Lancaster, for example, dealt in a pamphlet with the difficulties of delay and uncertainty. As a sample of his style I may cull these observations upon issues, in regard to which the legal world was ranged in two bitter hosts:—"How great soever may be esteemed the uses of issues, there cannot surely be two opinions as to the means by which we arrive at them. Never was any system so perfectly contrived how not to do it. The circumlocution office itself is thrown into the shade. The meetings before the Lord Ordinary, at which nobody can be forced to do anything, and at which, therefore, it is seldom thought anything can be done, are ingenious devices for wasting valuable time, and giving counsel unnecessary fees. It is absurd to allow discussions before a judge who has no power of determining the matter in dispute. Counsel, though sometimes rational, are not always reasonable animals. Secondly, the debates before the Lord Ordinary are for the most part altogether thrown away. In my view, this should be changed. But manage it as we will, so long as we retain issues at all we shall have that curse of all evils, discussion before proof, wasting time, spending money, disgusting litigants, and increasing their tendency to bear injustice rather than encounter a jury trial." At a celebrated meeting of the Juridical Society of Edinburgh in 1867, Lord Ormidale set the country ablaze by declaring that the discontent and dissatisfaction arising from the great expense, delay, and uncertainty attending the administration of justice in the Court of which he was a member amounted to a public scandal. Lord Justice-Clerk Patton was present. Lord Ormidale instanced the possibility of ten reclaiming notes being possible in a certain cause before final judgment. Prof. Norman Macpherson followed Lord Ormidale with an address before the same society in January, 1868, on juridical statistics, in which his lordship's remarks received some criticism. The kind of criticism to which the Court was subjected may further be gathered from this example: "We feel very little interest in it as we despair of any reform doing this Court any good. We are content to let it die a natural death to which it is fast hastening."

stating the amount claimed and the cause of action. In the second, the remedy sought was to be stated in the form of a bill or prayer addressed to the Court, and served on the defender at the same time as the writ, and along with a statement of facts and answers, which might be amended before closing. In the end, and after years of patching by means of verbal communings between the executive and the heads of law, and many officious memorials communicated privately by the reflective or critical sections of the community, from whom, in such a case, little illumination could be expected, the measure issued from Parliament with the approval of every law reformer.[1] It instituted an amended and expeditious procedure in the bringing of actions, in the making up of records, in the mode of taking proofs, and in appeals. Every practitioner knows more or less intimately the extent and importance of the changes effected by this statute, and how it touches more deeply than anything since the beginning of the century delicate questions in executorial jurisprudence. Any notice of the part necessarily taken by the head of the Court in embodying these numerous and complex reforms in Acts of Sederunt, and in everyday practice, must be deferred to the next section of this memoir.

I mentioned on a previous page the removal of certain disqualifications of witnesses. The way in which admissible evidence was recorded now became a source of just and never-ending complaint. It will be remembered

[1] It is generally admitted that the Act threw too much work on the junior Lord Ordinary in the shape of ordinary Outer House work, petitions of almost every class, and Bill Chamber applications. Lord Manor's health suffered in consequence. The third son of James Dundas of Ochtertyre, C.S., George Dundas was born 1802, called 1826, appointed Sheriff of Selkirk 1845, Vice-Dean 1855, and a Lord of Session 1869. He died shortly afterwards.

that up to about the beginning of the century the taking of depositions was part of the duty of the Lord Ordinary in his week of duty in the Outer House. But, of course, judges who found it impossible, in the growing necessities of their situation, to hear counsel plead, and therefore made them write all they would say, and print all they wrote, naturally voted the taking of proofs to be out of the question, and resorted to the device of having evidence reported to them by commissioners whom they appointed to hear witnesses, and write down the gist of their testimony. So absurd was the system then in vogue that neither commissioner nor judge gave any opinion upon the import of the evidence, or the credibility of witnesses, but these subjects, on which the most obstinate arguments are usually maintained, formed the theme of fresh written pleadings without a ray of light being got from the demeanour or tone of the deponents. This system of taking evidence remained after written pleadings were abolished. It continued till the last Law Commission reported in favour of evidence being led before the judge of first instance; and matters were put straight by 24 & 25 Vict. cap. 86, which abolished the commissaries before whom proofs in all consistorial actions were taken, and provided that in all such cases proof should be led before the Lord Ordinary; by 29 & 30 Vict. cap. 112, which made a similar provision in regard to ordinary cases in the Court of Session; and by the Act of 1876 which extended the advantages of the new system to the Sheriff Courts.

It is safe to say that these reforms would have been devoid of half their utility if there had not grown up alongside of them a certain confidence in the art of shorthand. The demand for improvements in the recording of testimony had, about the middle of the century,

directed the attention of the reformers to shorthand writing. In their alacrity to adopt it, and in the extent to which they have employed it, the Scotch Courts have really been an example to the world. So slow is progress, for example, in the sister country that the employment of this art, without which life in the Outer House would now be intolerable, is obligatory only in the Probate and Divorce Division. Its virtues in a court of law are very obvious. Without its aid the Outer House would probably have found itself unable to cope with the testimony which it must record from day to day. It has not only saved the time of everybody concerned, but it has enabled judges to concentrate their minds on the points at issue in a case without the drudgery of note-taking or the burden of dictation; and it has had an unmistakeable value in preserving the sequence and power of forensic examination, especially of cross-examination. In the reforms of this period, therefore, it seems to me to deserve special notice.

The first impetus it received in Scotland was from the extension of the railway system. The Lands Clauses Consolidation Act, 8 & 9 Vict. cap. 19, amongst other things, provided for the valuation of land taken compulsorily for railway companies by arbitration which it was thought, following out one of Rutherfurd's favourite notions, would be a more convenient mode of determining value than suits before the ordinary tribunals. In the numerous submissions which followed shorthand was employed. The counsel engaged in those submissions were the best employed men of their day, and included Rutherfurd, Inglis, Moncreiff, and others of that stamp. Therefore, while less busy men might have had a hostile feeling to shorthand as tending to diminish their incomes, gentlemen in the thick of work were affected by no feeling of this kind. They demanded the assistance it conferred, and in

the course of time desiderated its introduction to Parliament House. Its use had been found to be so great that both in jury trials and in proofs the parties consented to the employment of writers long before legislative sanction was accorded. The first proof taken in this way was before Lord Jerviswoode, and he was the first judge to entrust the shorthand writer with the wide discretion in editing evidence which in Scotland, and in Scotland alone, he has enjoyed since that time.

Shorthand remained in a transitional state for about ten or fifteen years, during which time the different grades of the College of Justice saw that its juridical position must, sooner or later, be recognised. Singularly enough, the first Act of Parliament which sanctioned the employment of shorthand was the Conjugal Rights Act of 1861, 24 & 25 Vict. cap. 86, the main purpose of which was to remodel the procedure in cases relating to adultery. Under the Act of 1861 such actions were directed to be called before a Lord Ordinary in the Outer House, who was empowered "to take down the evidence with his own hand, or dictate it to a clerk, or cause it to be taken down and recorded in shorthand by a shorthand writer, to whom the oath de fideli shall be administered.[1] And the Lord Ordinary may, if he think fit, dictate to the shorthand writer the evidence which he is to record, and the said shorthand writer shall afterwards write out in full the evidence so taken by him, and the notes of the judge, or the extended notes of such shorthand writer, certified by the presiding judge to be correct, shall be the record of the oral evidence in the

[1] The oath has been a kind of moveable feast. The late Lord Craighill made it a solemnity, and never once in the course of six years, a popular term of individual work in the Outer House, failed to put it standing:—"You swear that you will faithfully note and report the evidence about to be adduced in this case." Lord Curriehill was at the other extreme. He simply said, "Mr. Blank, you——," and held up his hand, while the official did likewise and began to write. Some judges omit the oath altogether.

cause." At first the judge did dictate the evidence much as Sheriff-Substitutes do, or are expected to do now, but as writers became accustomed to their work, and gained the confidence of the profession, dictation was found to be a waste of time, besides breaking the continuity of examination. Like longhand writing, therefore, it was unanimously cast aside. It became obvious that testimony was much more accurately placed on record when taken from the lips of a witness as the words were uttered than when judges repeated them even from instant memory. The system of condensing evidence, which had hitherto obtained, introduced the narrative form in the transcript. That form has clung to the Scotch system to this day, so that, except in the case of Royal Commissions and Government inquiries, although the question and answer are taken down, there is no such thing in Scotland as the literal reproductions which the shorthand writers of America and England have to furnish. The Scottish judges have been accustomed for centuries to their condensed narrative, and the only disadvantage of it seems to be that it abridges or obliterates peculiarities of expression which might indicate the character of a witness. On the other hand, it renders depositions into a coherent story, and divests them of superfluous or unimportant passages.

With its advantages constantly before them in the matter of divorce proofs, the legal profession were quite prepared for the Act which followed in 1866, 29 & 30 Vict. cap. 112, which made shorthand competent in the Court of Session in all civil cases. An optional provision was supplied by the Court of Session Act of 1868 with reference to jury trials. It is rather remarkable that in jury trials, where the largest calls are made upon the time of the public, the employment of shorthand should have been left optional. Several judges, of whom Lord Craighill was the

first, have insisted on a shorthand writer being employed in them. At the same time, it must be kept in mind that Inglis himself, the ablest jury judge of his time, far from ordering the employment of a stenographer, invariably took his own notes, and rarely missed a point. He took the great majority of the First Division trials for a period of over twenty years, and all the heaviest cases, such as the Anderston Foundry and other patent cases, the Shandwick succession trial, and dozens of others. His independence of shorthand may have delayed trials a little, but litigants were glad to pay this penalty to get the benefit of his clear, and above all, his impartial mind.

XIII.—Lord President.

It is undoubtedly a beneficent feature of the Scotch judicial system that all the judges of the Supreme Court, except the occupants of the Divisional chairs, ascend the bench in the Inner House through the portals of the Outer. The apprenticeship which has thus to be served in the Bill Chamber, in the sifting of evidence, in the ascertainment and the application of law, for a period which varies, according to the mortality of the judges, from two to fifteen years, supplies admirable and on the whole adequate training for the judicial office, even to advocates of slender experience or of slow aptitude. It is also fraught with manifest advantage to the public; for, while there is secured to the litigant a ready means of rectifying any errors in law or procedure which may be committed by lawyers new to the mistifying variety of a judge's life, the tribunal of last resort in Scotland is recruited as occasion arises by capable and experienced men, to whom the jurisprudence of the country becomes familiar.

As we have seen, the legislation of Rutherfurd, M'Neill, Moncreiff, and Inglis, in which it must be owned they were aided, if not stimulated, by some private members, marked an epoch in the law of the country. The measures then

impressed on the statute-book, combined with the reforming process at work upon forensic machinery, made it essential that strong men should occupy the chairs of both Divisions. Inglis attained the bench at this critical time. Great as was his renown as an advocate, it is as a judge and as Lord President when the Court was struggling to accommodate itself to a variety of departmental codes and to new forms that Inglis will be remembered hereafter. It was impossible to expect uniformity and expedition without a master hand at the helm.[1]

When Inglis abandoned his political career on its very threshold, in the summer of 1858, to fill the situation of Lord Justice-Clerk, it was expected that his serene mind would infallibly extricate his Division from the obscurity and confusion in which it had more or less been sunk since the days of Boyle. John Hope succeeded Boyle in 1841, but, although a man of very great weight, he had not that balance of mental qualities which best adorns the chair of a Division. He was impulsive, too, and provided many opportunities for the excess of individualism. Nor was Inglis the

[1] It may be convenient to list the Presidents and Justice-Clerks from 1800 to 1891 :—

LORD PRESIDENTS.

1789. Ilay Campbell of Succoth; aft. bt.; res. 1808; d. 1823.
1808. Robert Blair of Avonton; d. 1811.
1811. Charles Hope of Granton, res. 1841. On the death of the Duke of Montrose, Lord Justice-General of Scotland, in 1836, that office was, under 11 Geo. IV. and 1 Will. IV., cap. 65, united with that of the Lord President of the Court of Session. Died 1851.
1841. David Boyle, res. 1852; d. 1853.
1852. Duncan M'Neill of Colonsay, May 15; aft. Lord Colonsay in the Lords; d. 1874.
1867. John Inglis.
1891. James Patrick Bannerman Robertson.

LORD JUSTICE-CLERKS.

1799. David Rae of Eskgrove, aft. Sir D., bt.
1804. Charles Hope of Granton.
1811. David Boyle.
1841. John Hope.
1858. John Inglis.
1867. George Patton, Feb. 27.
1869. James Moncreiff of Tullibole, Aug. 14; aft. Lord Moncreiff; res. Oct., 1888.
1888. John Hay Athole Macdonald, Oct. 20.

immediate success his admirers had predicted. In this fact, however, reproach cannot be said to lie. Howsoever well suited by nature or equipped by training a man may be for the discharge, either by himself or in conjunction with others, of the judicial function, it requires one of rare knowledge, keen discernment, and perfect tact to assume at once and successfully the guidance or the control of other men accustomed till yesterday, it may be, to scrutinise him and sift his arguments. This was the position in which, as President of the Second Division, Inglis found himself. Hope was seemingly a robust man when he was suddenly cut down. M'Neill, at the same time, was as wiry in body as vigorous in mind. In the hidden calculations which all men make regarding the succession to living authority, the name of John Inglis had therefore hardly figured as more than a possible factor. Yet so odd are the turns of fortune that a day sufficed to bring him from St. Stephens, where distinction was perhaps doubtful, to enter upon a judicial career of undoubted brilliancy. He presided over a Court composed of Lord Murray (who died on 7th March, 1859, and was succeeded by Lord Benholme), Lord Wood, and Lord Cowan. The team was not, it is said, exceptionally manageable. Lord Murray had been one of the Jeffrey and Cockburn set. Lord Cowan's power as a sound lawyer and a strong personality had been felt before Inglis came to the front. Lord Wood was Inglis's father-in-law. Lord Benholme, a reticent man, had been a leader before Inglis left off writing. The idiosyncrasies of these men required to be humoured; and it was an evidence of Inglis's superiority that, instead of boldly assuming preponderance in the deliberations of that tribunal, to which his great practice would seem to have entitled him, he deferred to the weight of judicial experience which he found there. This must not be misunder-

stood to mean that, in a Division which comprised Cowan, Benholme, and afterwards Neaves, he was pusillanimous or timid. It was far otherwise. A judge's aptitude for the bench varies in different men, and, like their consciences and minds, it may be cultivated. Selden remarks on the conscience of a Chancellor that it was sometimes larger, sometimes narrower, being as uncertain as the size of the Chancellor's foot. Now, the notable feature of Inglis's conduct on his accession was the plastic as well as muscular character of his mind. The mastery he acquired over his multifarious duties was not the result of an inspiration, but a natural growth from the accumulated experience of many years. Had his mind been less flexible and susceptible, had he been conceited or obstinate, voluble or finical, he could never have attained to the true, firm grasp of his position which distinguished him. But probably he had as few judicial vices as any man who ever held such a position, and his virtues developed until he had the confidence of every practitioner in the kingdom.

By the time he was removed to the First Division his mind was really at its zenith. The probationary requisite, supplied in the general case by the Outer House, had now been acquired in the Inner, and a splendid opportunity awaited him. I have said, and I am fortified in this by a great authority, that the First Division—with which one is more concerned in speaking of John Inglis—rose to great repute when Boyle presided over Mackenzie, Fullerton, and Jeffrey, and that notwithstanding Jeffrey's ineradicable habit of interruption and volubility.[1] Within the subsequent period there have in the same Division been relays of equally eminent men. The Division had sunk in the public estimation during the first years of M'Neill's

[1] Jeffrey was the parent of forensic heckling. See Lord Neaves at Scots Law Society in 1871, in "Journal of Jurisprudence" for that year, p. 631.

tenure. His presidency began when the Court was in the throes of transformation. He had brought from his parliamentary life absolute ignorance of the forms which had been administered with exactness, promptitude, and fairness by Boyle. But when the inconveniences incident to a remodelled procedure had been conquered, and M'Neill presided over Ivory, Curriehill, and Deas, there could not have been an abler set of judges. M'Neill has been described as the head and substance of the Court while he was in it. The Court consisted of a quartette of giants, and by virtue of intellect, dignity, and age, he was Jupiter among the gods. He retained the presidency for fifteen years, ten of which made a period of undimmed lustre; and rarely, if ever, have there been more distinguished heads to the jurisprudence of Scotland than when M'Neill and Inglis presided over the Divisions. The transplanting of M'Neill to the House of Lords as Lord Colonsay, the outcome of a movement stimulated by Inglis when Dean,[1] no doubt strengthened the highest Court in a particular wherein it had been contemptible—although certain critics in London said he failed through lack of self-reliance—but the loss to the Scotch judicature was great. Fortunately it was not irreparable. On the contrary, during the period covered by Inglis's presidency, it is, I believe, the view of the profession that the First Division attained its palmiest days. Even those who could recall the times of Boyle or Blair remembered no bench that so thoroughly commanded public confidence, and at the same time endeared itself to all the branches of a profession not easily satisfied.

[1] The committee he selected to consider the subject of a Scotch appellate judge consisted of the Solicitor-General R. Thomson, Cosmo Innes, W. Penney, R. Macfarlane, G. Moir, D. Hector, G. Dundas, C. Bell, G. Young, and E. S. Gordon—Mr. Gordon convener.

The translation of Inglis to the First Division was opportune in the highest degree, and almost as unexpected by him as well as by the public as his appointment to the chair of the Second Division had been. It came about in this way. For at least a century there had been intense dissatisfaction in Scotland with the constitution of the House of Lords as Court of Appeal. Scottish lawyers in particular felt aggrieved because they had to plead before a foreign tribunal which had to be instructed in the elements of their system. The process, never pleasant, was often exasperating. Our grandfathers went before the House with the feeling that they were regarded as savages, and with the expectation that they would receive a treatment slightly more refined than that which was accorded to Hindoos and Hottentots. And indeed it was painful to note the travail of Scotch advocates instructing English lawyers in the rudiments of a code from which they have borrowed much that is acknowledged to be excellent, to the accompaniment of ejaculations of ridicule or disdain.

Before the elevation of M'Neill to the peerage, the House of Lords, as a bench of competent judges, had thus to a great degree lost the confidence of the profession in Scotland. Lawyers naturally thought the administration of Scots law in the Court of last resort could not be entrusted to men who were conversant only with a foreign system, and who showed little or no consideration for the opinions of Scotch judges—at least, not that deference accorded to them in the days of Mansfield and Erskine. There were other reasons for the discontent. In many cases—for example, the Douglas, the Roxburghe, and the Queensberry cases—property to the value of half a million had been involved. Those were great causes, and attracted wide notice. But

hundreds of others had stood in the same position as far as the feebleness of the House of Lords as the ultimate judicature, constituted without a Scotch judge, was concerned. It was esteemed a radical defect, as indefensible as absurd, that the judges knew little or nothing about the law they had to administer. Even the English members of the bench from time to time kicked against the pricks. Some of them, like Lord Redesdale, who officiated in the Queensberry cases (1819), openly confessed that they had to divest themselves of English prejudice before studying a Scotch case. Camden never concealed his dislike to sit in a Scotch appeal. He relieved himself by transferring the duty of advising upon Hardwicke or Mansfield, both masters of the Roman law. Mansfield and Loughborough, indeed, were conversant with the law of Scotland; and Campbell prided himself on his knowledge of the laws of his native country. As long as these three had a voice in the determination of appeals, there was perhaps little reason to grumble. But when no judge of this stamp adorned the highest Court, the matter became an unexampled anomaly in the history of jurisprudence. The Queen's subjects in Scotland are entitled to resort to Parliament in its judicial capacity. In that capacity Parliament has time and again played sad havoc with Scots law. Scottish lawyers have resented the interposition of an English mixture into the solid body of their Roman system. In the Ascog case a previous decision of the Scotch Court was confirmed by eleven Scottish judges to four. This finding was ruthlessly upset by one single English judge! In what other country would such an absurdity have been tolerated?[1]

[1] For a series of anomalies of this type one has but to read the evidence of the witnesses examined by the Royal Commission on the Amendment of Appellate Jurisdiction.

The existence of these anomalies, and the further fact that the Government had no one in the Upper House on whose professional knowledge it could rely for effective support in the management of public measures—for the Lord Chancellor, to whom they were entrusted, was in no way qualified to give weight to their advocacy—as it could in the case of the Lord Advocate in the House of Commons, inspired the movement before referred to; and its consummation was the raising of M'Neill to the peerage in order that he might sit as a Lord of Appeal, and the appointment of John Inglis as Lord President.

Inglis accordingly took the chair. While possessed of far-reaching powers, he was singularly humble-minded, and addressed himself to each new duty as seriously as if it and it alone were the business of his life, and as if he were afraid of failing in it through oversight or superficiality. Accordingly we find that when he was installed as Lord President on 26th February, 1867, he had prepared for himself an ideal which he did not think it unbecoming to submit to his brethren and the public.

The occasion was an interesting one. As usual, the judges assembled in the First Division. The Court-room was crowded, and as the Solicitor-General (Mure, the Lord Advocate elect) took his seat within the bar he was greeted with a cheer, as was also the Dean of Faculty (Moncreiff) in taking his place at the bar. Shortly after eleven, the judges—Cowan, Ivory, Curriehill, Deas, Benholme, Neaves, Ardmillan, Kinloch, Jerviswoode, Ormidale, Barcaple—took their places on the bench, the presidential seat being left vacant for a few moments until it was taken by Lord Cowan, the senior judge. Inglis entered after his colleagues, but stepped down to the table. He was attired in Court dress, and was followed by the robe-keeper bearing

the President's gown. The President-elect presented Her Majesty's letter of appointment, which the presiding judge called to be read with all due respect and ceremony. Mr. Currie, principal Clerk of Session, read the letter, which nominated, constituted, and appointed "our right trusty and well-beloved" John Inglis to be Lord Justice-General of Scotland and Lord President of the Court of Session. The letter was ordered to be recorded, after which Mr. Currie administered the oath of allegiance and Lord Cowan the oath de fideli administratione. The Lord President then ascended the bench, and, having shaken hands with his colleagues, took his seat at the head of the Court amidst the applause of the audience, after bowing to the bench on either side and to the bar. During the latter part of the ceremony the members of the Court and the audience stood.[1] The Lord President then said—

My Lords,—Having been promoted, by the favour of our gracious Sovereign, to the highest judicial office in Scotland, I trust it will be agreeable to your lordships, as I am sure it will be a relief and satisfaction to my own mind, that I should endeavour to express, however imperfectly, the deep feeling of responsibility with which I enter on my new duties. The responsibility is indeed most grave and serious, for I am persuaded that no man can occupy the position of President of this Court, even for a short time, without exercising a large and important influence for good or evil in the administration of justice, in the progress and development of the law, in the strength and consistency of our judicial system, and by necessary consequence in the happiness and well-being of the people. When I call to mind my predecessors who have gone before me in this chair, and their eminent characters and services, and particularly the three distinguished individuals who have within my own recollection and during the period of my professional life successively discharged its duties with so much dignity, ability, and public advantage, I own that I am oppressed

[1] I have described the ceremony so fully because it is an accurate record of all such incidents during the last half-century.

by most serious and painful misgivings as to my own competency to follow worthily in their footsteps. Of our venerable friend who has so recently left us I can scarcely trust myself to speak. The loss which we have sustained in this Court, I suspect, we are hardly even yet able fully to appreciate; for I believe there was no man more qualified by high intellectual gifts, by the integrity of his moral nature, and by the force of his character, to be President of a Supreme Court, and none ever filled that office who devoted himself with greater assiduity to cultivate and apply those talents with which he was blessed, so as to render them conducive to the public good. That he attained a great success in his judicial office I need hardly say, for I am addressing those who were present when he bade us farewell, and I am sure none who witnessed that scene will readily forget it. If I might be permitted on such an occasion as this to intrude for one moment my own private and personal feelings, I should desire to add that, having served under him and been associated with him during my whole professional career, and having been so long accustomed to resort to his wise counsel and to lean with confidence on his steady and generous friendship, his removal from office affects me with all the pain of a personal misfortune. Still there is much consolation in reflecting on the circumstances which have attended his resignation. His great public services have met with a suitable, but not more than an adequate, recognition and reward in the honours which Her Majesty has been graciously pleased to bestow on him; and we rejoice to think that the unabated vigour and energy of his great mind will still find scope for employment in a field of labour in which we know that he is eminently fitted to excel. Though he be no longer among us, I trust that his spirit will long continue to animate and pervade our deliberations, and to encourage and support us in encountering our judicial labours; and I feel certain that his bright example will serve as a great incentive and guide to the members of the legal profession to follow the path of honourable ambition with rectitude and integrity. My lords, whatever may be the ultimate fate or success of the performance of my judicial functions among you, I know that you will give me credit for a sincere and earnest desire to prove myself not unworthy of the great trust which has been reposed in me; and I am well assured that I shall not look in vain for that hearty co-operation

and generous support from all my colleagues without which any exertions of mine would indeed be altogether in vain. To the bar of Scotland, to the learning and ability and high honour of its individual members, and to the thorough organisation and independence of that body, I apprehend, must be ascribed a great portion of the credit that arises from the satisfactory administration of the law; and I feel perfect confidence—a confidence rested not only on the well-earned reputation and the great forensic power of the leaders of the bar, but on the promise of future excellence which we see daily exhibited among its junior members —I say I feel perfect confidence, for these reasons, that we shall receive in future all that valuable aid which in times past, so far back at least as my recollection reaches, the Court have derived from the bar. And now, my lords, I have but one word to say in conclusion, but it is a word expressive of somewhat mixed feelings. While I have acted for now upwards of eight years as President of the other Division of the Court, I have been necessarily thrown into daily converse and the most intimate familiar relations of friendship with the judges of that Division. I think I may venture to say for them, as well as for myself, that during the whole course of that period the cordiality of our intercourse was never marred by one untoward thought, and that we part now—if indeed a parting it can be called—with the most sincere and ever-growing sentiments of mutual respect and affection.

With this beautifully expressed ideal before him, Inglis re-embarked on his judicial labours. I do not stop to discuss further than I have already done his chairmanship of the Second Division. The elements of judicial conduct which characterised him there entered largely into his rule in the First. His conduct as head of the Court was from first to last worthy of the high aims embodied in that speech. It seems to me that he contemplated this standard with reference to every relation and duty. One of Inglis's colleagues[1] has said that it is perhaps too soon to form a true and impartial estimate

[1] Lord M'Laren, "Juridical Review," iv. 14.

of the influence of his mind on the contemporary law of the country. And yet it must be obvious that, while time may moderate enthusiasm, it is while the vivid impression remains that the greatness of the ideal can be measured. It is then and then only that the sources and characteristics of power can be seized upon, and their immediate, if not their ultimate, effects determined. It is therefore interesting, and may be profitable, to scrutinise the qualities which raised so just a standard of judicial excellence. Time would fail to recapitulate the personal virtues of training and manner as well as of heart and soul which endeared Inglis to a profession whose chief business is to weigh other men. The characteristics to which I will here refer more specially concern his administration of justice and the interpretation of the law.

The first requisite for a judge, of course, is knowledge, the second is logic, and the third is humanity in the most comprehensive sense of that term. I propose to enlarge for a little upon the perfect combination of these advantages which we find in Inglis. Of his erudition no one who has occasion to go through the world with Dunlop, Macpherson, and Rettie for companions can have a doubt. It need hardly be said that his notions regarding the pedigree of Scots law were well founded. Up to the time of the Reformation, Scots law was pretty much a skeleton which had derived its existence from the same composite sources —Teutonic and Norman chiefly—that had shaped the law of nature and positive law into crude codes and furnished the common law of England. Before and after the Reformation, clerical judges, educated at foreign seminaries and not fed upon their own precedents like the judges in England, stamped the leading features of the Roman law, which they saw met every requirement of the growing civilization of Europe, upon the crude and fragmentary law of

Scotland. Thereafter, until the beginning of this century, the Roman law as taught in France and the Low Countries formed the magazine whence material for the solution of legal difficulty in Scotland was drawn.

It has been said that Inglis came to the bench not fully equipped perhaps with the Roman and Scots law. There cannot be a greater mistake. From the profound study he bestowed on his minutes of debate he was nearly as familiar with these systems then as at any subsequent period. It was only in the application of principle—elementary or recondite—to the altered and transitory aspects of our era of change that he had to undergo probation. Moreover, he was as well read in the history as in the principles of the law. Despite the archaic language in which their learning is embedded, he had mastered Craig and Stair, and their expansion in the modern pages of Bell. No man not a civilian from youth could possess the firm grip of Scots law that he had. No man could have been so familiar with Stair without being at the same time an accomplished civilian. It is indeed to his Romano-Scottish learning that we trace a good part of Inglis's excellence as a judge.[1] He venerated the old text-

[1] Here is, for example, a classical passage in *Morris* v. *Riddick*, 15th July, 1867, 5 Macph. 1036, which authoritatively settled the question whether donation mortis causa is recognised in our law:—"Donatio mortis causa in the law of Scotland is not in all respects the same as in the Roman law. It answers the definition of the Institutes as being a gift to take effect in favour of the receiver on the death of the granter, and to have no effect if the granter repent of his gift, or revoke it, or survive the grantee. The motive and intention of the giver is also in both systems understood to be the same. He prefers the donee to his heir or executor, but himself to both. But in the Roman law there were three kinds of donatio mortis causa, while I think we have received only one in our practice, which does not precisely answer to any head of the Roman division. Donatio mortis causa in the law of Scotland may, I think, be defined as a conveyance of an immoveable or incorporeal right, or a transfer of moveables or money by delivery so that the property is immediately transferred to the grantee upon the condition that he shall hold for the granter so long as he lives, subject to his power of revocation, then for the grantee on the death of the granter. It is involved, of course, in this definition that if the grantee predecease the

writers and the precedents if they conformed to Justinian and Stair, and his attitude was one of hostility to the ingrafting of new or foreign law on the Scotch stem. His recognition of old authority was neither narrow-minded nor servile nor ostentatious—for of all characters he would have thought last of posing as a pundit—and the constitution of his mind resented the illumination of an argument by the vapid coruscations of erudition. The seriousness of the business he had in hand restrained him from recreative episodes of that kind. He had to harmonise the many and conflicting changes in commercial and family law with the spirit of our jurisprudence. In this process he gave English precedents a pretty wide berth, for he held the view that the legal result could be justly and accurately reached from our better system, and he worked out that result by pure reasoning from our own principles. He never allowed himself, nor did the seeming justice in particular cases of such a course permit him, to disregard the settled principles of law on some temporary or exceptional call. He would as soon have thought of speaking ill of his neighbour as of trying to get behind a statute or a decision, or even of calling a decision a bad one. He had a conservative scrupulosity in such matters, and rather than stigmatise or throw over a discredited opinion he would exercise some ingenuity to make it appear there was really no conflict. Such were the only occasions on which he indulged either in ingenuity or in the scrutiny of authority. He did a good deal in lopping old branches off and in engrafting modern shoots on the old tree. Considering his unfailing fidelity to the institutions and the civilians, he succeeded not merely in

granter, the property reverts to the granter, and the qualified right of property which was vested in the grantee is extinguished by his predecease. Such, I apprehend, is the doctrine laid down by Erskine (3, 3, 91), more largely expounded by Bankton (vol i. p. 230), and supported by the general tenor of the decisions of the Court."

bringing about a wonderful symmetry, but in permanently fixing our law upon the Romano-Scottish ground where he found it, and that notwithstanding the play of lights and shadows from the isolated system of England to which, or to many features of which, some Scotch jurists have desired to assimilate it. This love of the old, and striving to unite the new to it gracefully and consistently, as well as his horror of judicial indolence, preserved him from the English vice of judicial discretion. Judicial discretion has been differently viewed and variously described. Without an educated bench and bar the interpretation of law would be little other than the exercise of judicial discretion. The ends of justice—a loose and flexible expression—sometimes appear to require a decision at variance with strict law. Camden styled discretion "the law of tyrants, always unknown, different in different men, casually depending on constitution, temper, and passion—in the best often caprice, in the worst every vice, folly, and passion to which the human nature is liable." Inglis never yielded to the sentiment of discretionary law as, say, Cuninghame sometimes did. He sedulously adhered to determined principles; and posterity cannot be too grateful to him for the noble example he set in this particular at a time when our law was undergoing constant repair.

As to his method, it was severely logical. While the case was going on he employed himself in making it out in logical order, and he could not satisfy himself that his view was correct until he had reached the conclusion developed on these lines. While he enjoyed, and in a limited degree practised, refinement in reasoning, his logical characteristic may be best described by saying that he preferred the power of induction to mere subtlety.[1] His greatest

[1] With reference to this and what follows, see Lord M'Laren, Sheriff Mackay, and Sheriff Campbell Smith, *cit. supra.*

characteristic was that he never got mixed in reasoning or mystical in language. His mind was intensely and intuitively logical; it seemed as if every argument and illustration mechanically passed through this crucible of natural logic. And when he had, by care and patience, mastered the points of a case, then came to be acted that part in which Inglis was unequalled. His industry having exhausted preparation, he disposed of the case with every instrument in perfect order. His opinions usually began with a statement of salient facts, and his arrangement of these facts was simple and impartial. He amplified his narrative where the question was one of fact, but never so as to be tedious, and without any circuity or digression, and he went straight from his facts to his conclusions. His insight into the merits, always keen and unerring, enabled him readily to disentangle the essential point of a dispute from the integument or husk in which it lay hid, and this he did so simply that the wonder was the case had ever appeared difficult at all. Having presented his facts, the legal principles applicable to them seemed inevitable, and the skilful habitués of the Court were wont to predict the fate of a suit from his preliminary disposition of the facts concerning it. But he carried conviction as well as attention with him as he proceeded in his luminous exposition of the law. It was the persistent pursuit of this excellent method that imparted clearness and simplicity to his judgments.

The President, I repeat, was never mystical. He seemed by instinct to avoid everything except plain, convincing exposition. So conversant was he with affairs that the most tangled web of figures or of physics was unfolded with ease and sequence in his hands. His great powers never failed to call order out of chaos. More especially may this be said of his opinions on conflicting points of

procedure and upon the construction and interpretation of wills and statutes, often loosely and unskilfully drawn. Firmness, grasp, breadth of mind were constantly exhibited —sometimes, too, but not often, ingenuity. Only a head of perfect clearness could classify details of such complexity and number, and explicate them in such order.

These characteristics had many advantages in their effect upon litigants and the public. The litigant had evidence he could understand and appreciate that his case had been considered in every particular, and the exposition of the legal principles applicable convinced and instructed the lawyer. As a stater of legal propositions it is said he rivalled Lord Westbury. I venture to say he excelled him. He had none of Westbury's diffuseness or dogmatism, and, as became a Scot, he was infinitely more logical. It is said that Westbury's was the more finished style, and possibly this, which is true, is traceable to his gift of a superior imagination. But neither is imagination nor rhetoric a desirable element of legal style. And so great was Inglis's lucidity that no intelligent lawyer, no educated man, could listen to him advising a case without understanding it and acknowledging the reasonableness of the judgment. This is high praise, but that it is merited will be admitted by every frequenter of the halls of justice during the last quarter of a century.

Not less important or remarkable than his correct reasoning was his power of accurate expression. It has been said that before he went to the bench the reports contained few specimens of good writing. This is not quite so, because, although the writing in many cases does not come up to the judicial style developed by Inglis, no question can fairly be raised about the style, as diction, of Jeffrey, Cockburn, the Moncreiffs, Murray, and many others. There were in truth two rival schools in this matter of style—the legal and the

literary, or the learned and the epigrammatic. The legal style cannot be called pretty, but the reason is not far to seek. It is not that there is looseness of thought. But the pure Scots lawyer, trained in an erudite school, in style sacrificed everything to elaboration and to conformity with the antiquated models found in interminable minutes. The knowledge that his terrible pages must go down to posterity in full calf did not tend to abbreviate the erudition and irrelevancy displayed in those papers. Hope was a great sinner in this respect, but he sinned in good company, for no one seems to have been more diffuse than the literary judges Jeffrey and Cockburn, sparkling and picturesque though their style may be. The fattest volumes in the whole range of Session Cases —9, 10, and 11 D.—contain between 1500 and 1600 pages, exclusive of index, of the crowded wisdom of those giants, and of Boyle, Fullerton, and Moncreiff. The names I have mentioned embrace the stars among the literary judges; and although it must sorrowfully be admitted that it is as derogatory for a judge to indulge in tropes as for a prelate to dance, certainly one is justified in looking for models of expression amongst those great men. Nothing can have been lost in transcription,—two of the reporters were George Young and Patrick Fraser,—and yet, while the intellectual sense may be gratified by epigrams and cunning sentences here and there, one rambles in vain through the 45,000 pages of S. and D.[1] to find one example of that clear, even

[1] In 1842 the Faculty resolved to discontinue the printing the reports of decisions. The Faculty reports commence 1752 and continue down to 1841. Amongst the reporters are President Miller, President Campbell, Hailes, Swinton, Eskgrove, Dreghorn, Hermand, Craigie, Mackenzie, and Medwyn. In looking through the reports for the last fifty years one finds an average standard of length in Dunlop's time. His twenty-four volumes are all more bulky than Rettie's. In Dunlop's time there were several judges of great copiousness, and many whole-Court cases in which long opinions were spoken by ten or a dozen judges. In later years the Court has striven to follow the example of Lord Kings-

neat style to which Inglis may very well give his name. It is as simple as a psalm, and nearly as apt and pregnant as Bacon's. Yet it is impossible to enlarge upon the elements of its elegance. Inglis moved on that higher plane of literary excellence where art ceased to be apparent.[1] And yet he was a laborious artist. No man ever gave more attention to spoken utterances than he, except one judge whom I need not here name. Inglis wrote with his own hand most things to which he had to put his name—Acts of Sederunt, interlocutors, opinions, speeches, and the charming little vignettes in which he took farewell of brethren who had gone from "sunshine to the sunless land"; and the processes of extraction, distillation, condensation, to which the material, especially in recording evidence, was subjected before he put pen to paper, clearly brought out his powers in this particular. His diction in many instances moves neither with the dignity nor the finish which marked the compositions of the greatest of his later contemporaries; and readers of his judgments, not knowing the lips that uttered them, in after years may be inclined, perhaps, to question their superiority over the

town in a Scotch appeal, *Buchanan* v. *Angus*, May 15th, 1862, 4 Macqueen, 385. "My Lords," said he, I quite agree with your lordships as to the conclusion at which you have arrived, and the grounds upon which you have placed it. And as we are not desirous of encouraging the repetition of arguments at the bar, I think that perhaps I should set a good example to learned counsel by avoiding repetition in my judgment." Lord Deas was exemplary in this respect. In an assessment case in which he had given judgment as Lord Ordinary on 8th June, 1861, he had, in February, 1863, to pronounce an opinion in the Inner House. We have never yet heard of an Inner House judge finding himself wrong as an Outer House judge, but the reviewer has rarely put his opinion in terser language than this: —"Upon that occasion—8th June, 1861—I delivered my opinion upon the matter, having the parole and written arguments fully before me, and I entirely adhere to everything I then said. I don't think it necessary to say more than that my observations upon that occasion embraced my final opinion." I think the only instances of judges having the courage to overturn themselves are Lord Fullerton in *Fraser* v. *Dunbar*, 1 D. 883, and a Sheriff who, in 1888, became Sheriff-Principal and had to listen to an appeal against his own judgment.

[1] Lord M'Laren, *cit. sup.*

models of Jeffrey and the Moncreiffs. But no one can scan the numerous pages wherein Inglis's judicial sagacity is enshrined without seeing how each word fits its place like a piece in mosaic, and how as a judicial stylist he stands unsurpassed. We see the importance he ascribed to the use of precise language and his unfailing courtesy, in the following passage in a very important case in which the law as to the radical reversionary phases of a right in security is most learnedly discussed, first by the whole Court and then by the House of Lords, *National Bank of Scotland* v. *Union Bank of Scotland,* 13 R. 380:—"The importance of using precise language in dealing with such a question as is now before us can scarcely be over-estimated, and I therefore regret that one of my brethren whose felicity of expression in the exposition of legal principle I am accustomed to admire should have adopted and repeated the language of Lord Fullerton in *Robertson* v. *Duff* (Ross, L.C. ii. 726), describing an absolute disposition with backbond as a trust or security." Perhaps, after all, some of his weight, like the words of the preacher, was due to personality rather than to style. The remark is frequently made of the orator's speeches, how often does the printed page seem cold and formal when the words are deprived of the vivifying power of the thrilling tone, the impassioned gesture, and the kindled eye! The observation applies, perhaps with diminished force, to the pleader and the judge. Yet Inglis's judgments, deep, rich, and varied though they are, cannot picture for posterity the play of feature by which his power of simple and elegant diction was seconded, any more than can a picture of his countenance in repose give an adequate idea of the calm, concentrated force of expression when his mind was absorbed in forensic and judicial work.

It has been asserted that he did not enrich legal literature with any contributions. Those who make this statement must have forgotten that of the thirty-three volumes in which his name figures he contributed six or seven at the least. These volumes, it need not be said, are of the highest value. They are the equivalent in modern law to the institutional writings of preceding centuries. Apart from the magnitude of the interests involved, the decisions of which they form the leading feature settle the procedure of a tribunal reformed by the various statutes I have had occasion to notice.

It was Inglis's effort to relieve that procedure from the artificial trammels and empty forms wherewith years of servility, convenience, or chicanery had fettered it. He succeeded in placing the practice of the Court on its present sensible footing. Under his fostering care, and inspired by his lofty spirit, the Court rose to be the most rapid in its administration of justice of any in the world. When he ascended the bench, a case dragged its weary length over two, three, or four tedious years. Before he died, suits might be, and sometimes were, finished in a month. Yet not a case came into his own Division which was not fully and patiently heard, and thoroughly understood by every judge there—for opportunity enough was always allowed of testing, in silence and at leisure, the value of an argument. Sometimes the complaint has been made that interesting points in law, arising possibly out of cases which barely afforded a fee, have been decided upon fragmentary hearings, superficial impressions, or imperfect data: such complaints could never be, and in point of fact never were, made of Inglis.

Dignified in the chair, supported by deep learning and long experience, Inglis was an oracle to the profession—an authority before whom small and great instinctively became

respectful. Men who are now on the bench went into the First Division feeling like children in the presence of a lawyer so great and versatile. For he was first in every department. Jeffrey and Cockburn might be ornate, and Fullerton scholarly; Curriehill might glide securely among the mazes of the feudal system; Boyle might rattle through fifty petitions in a morning, and make no mistake; Moncreiff the elder might be conscientious and wise, and Moncreiff the younger stately and finished; Deas might be shrewd and far-seeing, as Ardmillan was incisive and Fraser encyclopædic; Neaves might be keen in penetration as in wit, and Gifford intense as Aristides: the President was admirable in all departments of personal manner, of learning, and of technical skill, and seniors knew that, howsoever recondite the case, no proposition was too refined to evade his appreciation. Yet no one was more ready to acknowledge a mistake. In *Colquhoun's Trustees* v. *Orr Ewing & Co.* he said, "Some reference was made to casual remarks which I made in charging the jury in the case of the *Duke of Buccleuch* v. *Cowan*, Dec. 21, 1866, 5 Macph. 214, and I am sorry to observe that those remarks were rather loosely made and that they suggested a view of the law in that respect which I am not by any means prepared to maintain, thinking, on the contrary, that the exposition which I have now given is a great deal more accurate than what I appear to have stated in the course of that trial."

Campbell, in his "Lives of the Chancellors," illustrates his pictures with the vapid materials furnished by Vesey and Ellis and the Law Reports. It was possible for him to do this with some effect, because the field he had to traverse was limited to a tenure of the woolsack extending in most cases to a Parliament. In the case of Inglis, a separate book would barely suffice to present fragments illustra-

tive of his judicial qualities. We have seen that from 1850 to 1891 the statute law was remodelled. The change was not the root-and-branch change which a code effects. By a code you get a clean sheet for your case-law, such as the Code Napoleon furnished. Reform took the shape of a vast scheme of legislative patchwork — elaborate provisions regarding shipping, commerce, education, the domestic relations, and municipal government. Of the effect of these upon pre-existing codes the Courts were necessarily the interpreters. There cannot be a doubt that to Inglis belongs the chief glory of grafting the new growths into the old trunk. It is not too much to say that his opinions guided the occupants of the bench in an age of superior judges in fixing the great principles of bankruptcy and mercantile law, and in giving the key-note to the modified relations of master and servant, of husband and wife, and of parent and child. These opinions, scattered over so many books, are not merely a lasting monument to Inglis's penetration, earnestness, learning, and language, but to his conspicuous fairness. It has been said that he excelled all his contemporaries as an exponent of Acts of Parliament. The reason was that he received a statute pretty much as a counsel receives a memorial. He felt it to be no part of his duty to approve or condemn the policy of a statute, but set himself to extract from it, according to well-known principles of construction, what its meaning was. In this labour, which the obscurity of operose draftsmen has not made short or easy, he was influenced neither by the design nor by the makers nor by the consequences of legislation, but only by our exegetical rules, by common sense, and by the settled principles of law which he regarded as the formulated common sense of centuries.

No attempt is necessary to particularise the many

great causes in which he has pronounced masterly judgments upon problems in the social and commercial life of the country. They are embalmed for all time in the dreariness of Dunlop, Macpherson, and Rettie. But it is interesting to select for special mention one or two topics in which he took a warm interest. Amongst the mob of subjects which he elucidated, mercantile law had for him, as it had for Lord Blackburn, a solemn fascination, due I think in the main to the tuition and influence of Bell, and to his predilection for finding the disentanglement of the web of human relations in the Roman law. Purchase and sale, and the many complexities that spring out of them, have exercised the minds of our lawyers from the time of Stair. More especially at the close of last century do we find writers complaining that delicate questions arising out of the law of sale were yearly multiplying from the large commercial towns with which the country was dotted. Yet the opinions of Inglis in the latter half of this century form a code on this one subject, and are very fairly typical of his breadth in other departments.[1] One readily understands to what intolerable shifts traders have been put by the existence alongside of each other within the same commercial area of two legal systems having repugnant tenets governing their intercourse. With us the risk only, and not the property, is transferred

[1] "These researches cover nearly the whole subject of sale, including, for example, the effect of securities granted in the form of sales; the criterion of risk where goods are in the possession of a warehouseman or third party; the necessity of specification where goods are transferred by delivery orders; the kind of transfer which will create a right effectual in bankruptcy; the doctrine of reputed ownership; the effect of the statute of 1696 on securities in the form of sales; the vesting of the subject of sale when payment is made by instalments as the work proceeds; the construction of the Mercantile Law Amendment Act with reference to goods sold but not delivered, and the seller's right of arrestment, the transfer of property by bills of lading, and the limitation of liability for short delivery; the influence of the law of principal and agent in contracts of sale; and the criterion of responsibility for company debts in the case of sales of stocks or shares."—Lord M'Laren, *cit. sup.*

by the contract of sale. It is otherwise in England. The Mercantile Law Commission took up the subject forty years ago, and subsequent legislation has removed some glaring anomalies; but the assimilation of our laws with those of England is far from complete or harmonious, notwithstanding Inglis's efforts in a variety of classical judgments to bring them into tolerable accord.

I do not stop to inquire into his partiality for private international law, in which we see the expansiveness of his mind at its best, and can estimate how great his reputation might have been as a House of Lords or Privy Council judge. Nor will space avail to point out the peculiar force of his prelections on the domestic relations, which in soundness, if not in learning, outrival those of Fullerton and Fraser. The traditions and constitution of his mind led him to view with alarm the destructive encroachments made in his day on a competing persona in the home, and on marital rule and prerogative; but any private views he might entertain on this vital subject he loyally subordinated to the plain meaning of enactments.

There was one subject with regard to which he displayed very great firmness and courage, namely, the maintenance of Scotch jurisdiction within Scotland. It was natural as well as patriotic that Inglis should resolutely guard his own forum. His love of Scots law was as conspicuous as, mayhap was a product of, his love of country; and it was when the authority of his Court and the independence of its laws were assailed, and then alone, that he became uncompromising, if not fierce. We all know that he had to defend his jurisdiction and his forum against encroachment upon several occasions.

The Yelverton case caused a great stir towards the end of 1862. It had the two chief ingredients of a sensational cause, romance and scandal. A young Englishwoman,

attractive and accomplished, who entered the Courts prepared to vindicate her rights with reference to her husband at the sacrifice of unmasking her whole life —its dearest objects, its most cherished desires, and the compromising situations wherein she had been a chief figure—was certainly a spectacle of chivalrous accessories. The country rang with her praises. So keen was the interest her case excited that towns and families quarrelled over her merits and the villainy of her seducer. It was an action of declarator of marriage at her instance against the younger son of an Irish viscount, and the grounds set forth were (1) interchange of matrimonial consent de presenti, and (2) promise of marriage subsequente copula. Major Yelverton and Miss Longworth assuredly had private transactions of the nature of marriage in Scotland, but whether or not there was actual marriage according to any of the well-known modes recognised by Scots law was the question the Courts in Scotland and Ireland had to try. So far as the Scotch Courts are concerned, the proceedings are sufficiently detailed in the reports. The debate alone occupied the First Division an entire week, and, in delivering judgment, Lord President M'Neill and Lords Deas and Curriehill spoke for six hours. The judgment was greeted with a feeble cheer, but "The Times" stigmatised it as sensational, and demanded Parliamentary interference with the Scots marriage law. For months that law became the subject of invective, condemnation, and agitation.[1] The Irish tribunals for a

[1] Mr. Muirhead, who was about to be appointed to the chair of Civil Law in Edinburgh University, wrote an excellent pamphlet, in which he traced the development of the systems of marriage in force in the different parts of the United Kingdom, and also of the doctrines of the Civil and Canon Law from which these had been derived. He formulated the discovery, which took many people by surprise, that there is no irreconcileable diversity of principle between the marriage laws of England and of Scotland, and that marriage could be constituted in both countries without a religious ceremony. Legislative sanction has since been given to this opinion.

time were turned into a bear-garden, as the judge, Chief-Justice Monaghan, declared.[1]

This case, which beguiled the tedium of the idle and the scandal-loving, together with the memory of the Douglas, the Pitt, and the Warrendar cases, awoke a dormant desire to encroach upon the jurisdiction of the Scottish Courts; and a determined attempt was accordingly made to do so when conjugal rights were under revision, about the year 1860. The English law lords had a little plan in their

[1] The Yelverton cause was further remarkable because of the summoning to Ireland of two members of the Scots bar to tell the lawyers and the public what the law of Scotland was on the point of marriage. They were strong characters, each in his own way, and especially in physical peculiarities. They were Pattison, the Sheriff of Roxburgh, and Henry Lancaster. Mr. Pattison had then been twenty-six years at the bar. He lived till he had been forty years a counsel, married a second time, and then died. His evidence in the Yelverton case reveals his mental complexion exactly. He confounded the constitution of marriage with its proof, but his twenty-six years were thrust in the face of the Irish jury, as contrasted with the small experience of Mr. Lancaster, who appeared on the other side. Mr. Pattison never figured prominently in public or Faculty affairs, except, perhaps, in 1862, when he stood for the chair of Scots Law along with such diverse individuals as Hamilton Pyper, George Ross, J. M. Bell, George Munro, George Skene, Frederick Hallard, Norman Macpherson, and Campbell Smith. Of these gentlemen only Mr. Ross and Mr. Bell went to the poll, so to speak. Mr. Pattison was a "rough tyke" all his days. He never acquired a grain of polish save during a brief period in middle life. The approach of old age witnessed a revival of his native character. His hair lay in great locks over his ears, and his grey eyes peered from deep sockets which were guarded by a stockade of eyebrows. And when deafness emphasised his other infirmities, it was sad to see him wrangling hopelessly with judge and witness, and misunderstanding both, while the distracted agent behind tried in vain to keep him right. Well does the writer remember a week of misery in the proof in *M'Elroy* v. *Tharsis Co.*, a case about beams, girders, and copper works in Spain, the last big case in which Pattison figured.—Henry Lancaster was a great contrast. The son of a Glasgow merchant, he received and retained some practice from the west. He was not a distinct speaker, but he was a man of real weight, refined mind, and literary power. Had he made literature his profession he would have attained eminence in it. Few as were the productions of his pen, they nevertheless won him the friendship of Thackeray, who made him his companion when he visited Edinburgh. Lancaster dipped occasionally into the literature of the law, and in 1863 published a pamphlet on reforms in the Court, from which I have already quoted. It was a revised edition of a series of articles contributed to an Edinburgh newspaper before it was known that a Bill for the reform of legal procedure was in contemplation. The pamphlet is written with vigour and lucidity.

heads, originated by Lord Chancellor Campbell,[1] to transfer our consistorial jurisdiction to Sir Cresswell Cresswell. Indignation was the sole result, so far as Scotland was concerned. But during the sittings of the Lords' Committee the newspapers were burdened with a great deal of discussion about the curtailment of the grounds of jurisdiction, the forum delicti, the forum originis, and the rapacity of the English Divorce Court, whose decisions on the subject of jurisdiction had never been "governed by principle nor restrained by tradition."

The proceedings relating to the Bute guardianship are now all but forgotten, but they received marked attention in England and Scotland when the Marquis of Bute was a ward of Chancery. General Stuart, the tutor-at-law, was the first legally-appointed guardian, but the ward was within the territory of the Court of Session, which therefore had priority of jurisdiction and power to enforce its decrees. When General Stuart presented his petition on the last day of the summer session of 1860, the Court gave him a preference over other suitors, never conceded save in cases of extreme urgency. The petitioner, however, failed to convince the Court that it could then, with propriety and safety, make any order in an application of an entirely unprecedented kind, apparently involving the gravest consideration. On the reassembling of the Court in November,

[1] A terrible Turk was "plain John Campbell," as he once styled himself on the hustings at Edinburgh, and often did he fall foul of Scotsmen and Scots law. He would teach the barbarians of his native land a lesson, and he would begin with Henry Brougham! We all know that he was the son of a clergyman at Cupar. He died at the age of eighty-two, the day after he had dined a company of friends, and the announcement of his death appears in the "Times" alongside an intimation of his attendance at a Cabinet Council. Bethell, who had been leader against the English claimant for the guardianship in the Bute case, was made Lord Westbury and Chancellor. The deliberations of the Select Committee of the House of Lords—embracing all the law lords except Lyndhurst—appointed, on his motion in 1861, about jurisdiction in divorce cases, were cut short by his death. They have not been revived since.

answers had been lodged for the Scottish tutor-at-law, and for his opponent, Lady Elizabeth Moore, showing the parties to be at issue on matters of fact of essential importance to the determination of the question raised by the pleadings. They were at variance as to the priority of the title to guardianship, and as to whether the Marquis was a Scotsman or an Englishman. The Scotch Court appointed a proof for the 21st November, but this was stopped by an injunction of Vice-Chancellor Stuart prohibiting General Stuart from proceeding further with his petition to the Court of Session. The conflict of jurisdiction was then taken to the House of Lords, and there Lord Chancellor Campbell, following the cue of his Vice-Chancellor, and wroth at the loss of his ward, indulged in some highly unjudicial language with reference to the Second Division, over which Inglis presided.

The learned Vice-Chancellor had approached the question from this proposition—the Great Seal is the seal of the United Kingdom, therefore the Keeper of the Great Seal has jurisdiction in Scotland, and Chancery has authority over the Court of Session. The Second Division ignored the premiss and the conclusion. The Chancellor himself gave a more accurate view of the jurisdiction or no jurisdiction of Chancery in Scotland, for he said that, although the Lord Chancellor might have a few administrative duties to perform with regard to Scotland—the appointment of magistrates and the sealing of writs—as a judge his jurisdiction was limited to the realm of England. But in regard to the proceedings in the Court of Session, he proceeded to say—"On the 18th, 19th, and 20th days of July, 1860, this case came on to be solemnly heard by the judges of the Second Division of the Court of Session. There has been laid before us a full account, taken by shorthand writers and allowed to be accurate, of all that

was said during these three days at the bar and from the bench. I am grieved to say, my lords, that I can by no means read this account of the interlocutor at last pronounced with the satisfaction and pride generally excited in my mind when I am called upon to examine the judicial proceedings of my native country."

The House ordered the Marquis to be given up by the Earl of Galloway, and this order had to be applied by the Second Division on 25th May, 1861. The Court was filled with an audience curious to hear in what manner the Division was to vindicate its position. Inglis added to the lucid exposition which he had already given of the sovereign authority of his own Court by saying, "It is our constitutional duty to give implicit obedience to these directions [of the House] without any consideration of the grounds on which they proceed, and this is a duty which the Court always performs promptly and cheerfully. But the present case is distinguished by one peculiarity which I believe to be entirely unexampled, and which makes it indispensable that the performance of our duty should be accompanied by a few words of explanation." Then he proceeded—

For the singular position of the case this Court is in no way responsible. In what has been laid before us as an authorised report of the observations of the Lord Chancellor in moving the judgment of the House of Lords it is stated that the refusal of the Scotch Court to interfere without inquiry was rested on the decision of the House of Lords in *Johnston* v. *Beattie*. The noble and learned lord is reported to have said, "I do sincerely believe that this decision was the true cause why the Court of Session in this case refused to interfere." And in another place, "I must use the freedom to observe that whatever opinion the Scotch judges may justly form of the decision of this House in *Johnston* v. *Beattie* they would have acted with more dignity and more magnanimously as well as more judicially if they had calmly and promptly considered what was for the benefit of the infant." I feel sure that in noticing this passage I shall at once be acquitted

of any want of courtesy or deference towards one whom both officially and personally I regard with the highest respect and esteem. But I must say it is truly lamentable that the Court of Session and the rules and principles which guide and regulate its proceedings should be so little appreciated or understood in a Court of Appeal. The judgment of the House of Lords in *Johnston* v. *Beattie* being pronounced on an appeal from the English Court of Chancery is not an authority binding in Scotland; and when it was brought under the notice of the Scotch judges and the legal profession in Scotland incidentally some years ago, it was universally felt that, however sound an exposition it might furnish of the rules of English Chancery law, it involved a violation of the principles of international law recognised in Scotland and all the States of the Continent of Europe so direct and unequivocal that I believe the very last thing that would ever enter into the mind of a Scotch judge would be to follow the authority or adopt the principle of *Johnston* v. *Beattie*. If it was cited to us in the course of the arguments, it must have been for some collateral purpose merely; and so far from giving rise to any spirit of antagonism or retaliation on the part of the Court, it did not in the slightest degree influence or affect the mind of any member of the Court in deliberating on the proper course of procedure to be followed in this case. The Court therefore can hardly have sacrificed any of its dignity by following *Johnston* v. *Beattie*. Indeed, I am quite at a loss to understand how the dignity of this Court can have been truly involved—either compromised or enhanced—by its proceedings in this case. We are not in use to seek the promotion of our dignity except by a simple and unpretending discharge of our duty. We have no opportunity for the display of magnanimity. We must be content to rest our reputation on a faithful observance of our oath of office, which binds us to administer the law of Scotland, and we strive to do so with the lights we have to the best of our ability. We have also another duty occasionally to perform, which is to carry out the orders of the House of Lords adversely to our own original opinions, and to this duty we address ourselves most cheerfully and with the fullest reliance on the wisdom of that most honourable House. And we are now (I think for the first time) required to execute a judgment of the House of Lords without the possibility of knowing whether,

if we had been allowed to consider and decide the case, our judgment would or would not have been in accordance with that of the Court of Appeal.

In this conflict the English Court and the English claimant had the best of it, and perhaps in the interests of the Marquis, as evidenced by the merits, into which the Court of Session could not go, the decision was right. But as regards the maintenance of the jurisdiction of his own Court, time brought round something of the nature of revenge for Inglis. He rescued the Orr Ewing succession[1] from Chancery. "His judgment in favour of the jurisdiction of the Court of Session was lucid and powerful; but he felt that it was not enough to vindicate the authority of his Court on paper, and so, in the consciousness of right, and with perhaps some trace of the self-assertion of the Roman pontiff, he proceeded to secure the estate by laying all England under an interdict! There can be little doubt that the resolute action of the Lord President in this memorable case, supported as he was by his colleagues, was the means of saving the Scottish judicature from an encroachment which threatened its existence. The claims of the English jurisdiction had been distinctly formulated to attract to itself every cause which had a traceable relation to England, whether in respect of the residence of any of the parties interested or in respect of the local situation of the most inconsiderable part of the property in dispute. Under such conditions, and in view of the wide spread relation of the Queen's subjects, English and Scottish, every case of importance would have been transferred to London, and the Court of Session would have passed through the phase of historical survival into extinction."[2]

I now pass to attributes in Inglis of a more personal

[1] 11 R. 600, 682.

[2] Lord M'Laren, "Juridical Review," iv. 21.

kind, which are equally essential with knowledge and judicial virtue to the effective working of Courts of law. I speak of his relations with the bar. It is the part of any man to discern intellectual gifts in the generations of young, sanguine, ambitious lawyers that come before him, but it is the prerogative of a judge to encourage them. While the judge has occasionally to endure the afflictions of incapacity, it will be admitted that he more often enjoys the pleasure of stimulating the talent of his successors. None but the pleader knows how refined was Inglis's touch. None but he is sensitive or informed enough to feel the check imposed or the license imparted by the judge's voice. The nervous steed obeys the impulse of the rider's mind communicated electrically along the reins; and the illustration conveys an impression of the power of Inglis over those before him. He was firm, considerate, and affectionate in this his humane function —how humane can never be known by an outside world insensible to the anxiety and sensitiveness of counsel groping in jungles of fact darkened by a mist of law. It was Inglis's habit to infuse kindliness and reasonableness into his intercourse with all men; or rather these traits were part of his being, and were never more apparent than when he encouraged the young or conciliated the old. In the earlier part of his presidency, as while he ruled the Faculty, he was affable and accessible to young men. Immersed in the anxieties of an enormous and lucrative practice, unlike Patrick Robertson for example, he was unable to keep himself youthful by contact with the wit and sparkle of the rising generation. At the same time, he never, as some Deans and some Presidents are said to have done, viewed the period of bright illusion and wild ambitions with only a gracious tolerance or visible constraint.

It cannot be denied that on the bench of every country there is ample scope for the exercise of patience and sympathy with the bar. These qualities fortunately seem to predominate over their opposites. It is well that it should be so, because their opposites when indulged, instead of correcting or repressing or suggesting, as doubtless they are intended to do, serve to increase the confusion and pointlessness of inexperienced, or naturally poor pleaders. Most advocates, especially young ones, have more or less difficulty in presenting consecutive and coherent views of a case, and there have been judges in this country and in England who have seemed to imagine that, by a running fire of questions, reasoning is concentrated, diffuseness abridged, and the time of the Court saved. It is not so. The discursive vagaries of some pleaders occasionally require the judicial bridle, but these are exceptions; and at one time in the history of the First Division—that is, when Jeffrey, for one, sat in it—the judges spent more time and temper in arguing with such speakers than would have been required to let them run dry through natural exhaustion.

Now, during the thirty-three years he occupied the chair, the President was never guilty of much interruption. If he interrupted or questioned counsel, this was not from impatience, but from a desire to aid in arrangement or expression, and so to contribute towards the desired result. His instinctive dignity revolted especially against making sport of or taking sport from the crude, the nervous, or the peculiar. He felt that his function was to listen with gravity, often with sympathy, to trite and elementary, as well as to close and recondite prelections by the bar. Be the counsel, young or old, ever so dry or prolix, Inglis did not show himself impatient or displeased or unsympathetic. If he ever had to correct or repress — his

rule rather was to guide—his words were gentle and his manner reassuring, and to his memory be the fact inscribed that he never sent a litigant from his bar with the bitter regret that his case had not been fully heard. And clearly such is the attitude which will always be most popular with the bar, as it must commend itself to every thinking observer, because by this patient sifting process is secured that impression or resultant, from the comparison of known, proved, or probable elements, which constitutes the doing of justice between man and man. Thus also Inglis's tolerance and repose inspired the bar with a confidence they did not feel before all tribunals. To the junior especially, Inglis, ever gracious and urbane, was the incarnation of patience, tranquillity, kindness. While, from his reticence and sometimes coldness, he obviously was not a man to fascinate youth, there was not a junior at the bar by whom he was not revered as the father of his profession.

It need hardly be pointed out that the President of a Court is brought into close and sometimes embarrassing contact with the diverse elements composing it. As President he owes a duty to his brethren on the bench. It is the duty of reciprocal deference. Courts are, in the nature of things, kaleidoscopic—ever changing both in their personalities and in their views—and it requires no ordinary man to accommodate himself to this continuous alteration. Think of the host of brethren Inglis saw rise and pass away, with foibles and eccentricities that had to be studied and humoured, or virtues and excellences that had to be incorporated into the efficient body of the tribunal—the accomplished Moncreiff, the brilliant Neaves, the learned Curriehill, the keen Ardmillan, the nervous Gifford, the conscientious Craighill, and that trio of muscular Scots, Sir George Deas, Robert Macfarlane (Ormidale), and

Patrick Fraser. These all went down to the grave before him. Inglis had to rule the whole of them, as well as other able men still living, in the solemn deliberations of the Court, and in the secret though not less important conclaves of the robing-room, where Acts of Sederunt are formulated. As president of this hidden chamber, no less than in his expositions from the chair, he won the respect and admiration of a distinguished order of men, one of whom has recorded that "in the consulting-room, as on the bench, he was a good listener, anxious, if possible, to come to an agreement in matters of opinion, and where that was impossible, always treating the views of his dissentient colleagues with ceremonious respect."[1]

There was some disappointment at the meeting of the Court in October, 1876, that no mention was made by the President of Lord Ardmillan, who had died on 6th September. For Ardmillan was distinctly popular. His nature was ardent, open, generous, and few judges so delicately yet so efficiently aided the junior on his first circuit, who speaks with "pride on the lip, and a quivering in the heart." He was the eldest son of Major Archibald Clifford Blackwell Craufurd of Ardmillan, Ayrshire, by Jane, daughter of John Leslie; was born at Havant in Hampshire, educated at Ayr Academy, and at the Universities of Glasgow and Edinburgh. Born in 1805, he was admitted in 1829, and after acting as Advocate-Depute for some time, became Sheriff of Perthshire in 1849, Solicitor-General in 1853, and a judge in 1855. In civil cases his practice was small, but he distinguished himself in criminal work at an early date. At Stirling, 1833 (Spring Circuit), a stonebreaker named Henderson

[1] Lord M'Laren, *cit. supra.*

killed a surveyor with his stone hammer, and was indicted for murder. Gillies was judge, and Craufurd defended. His speech to the jury was something remarkable from one so young. There being no actual witness of the murder, he imputed the death to many alternative causes. The prosecutor put in evidence the hammer with several grey hairs attached to the heft with blood. The young advocate, taking the instrument in his hand, asked if they would send a fellow-creature to the gallows on so slender evidence as these hairs. Gillies in his charge remarked that surely his young friend, although from Ayrshire, had forgotten the line of the favourite poet, "The grey hairs yet stack to the heft." The man was convicted. Ardmillan, although successful as a criminal counsel, as I have said, never attained a very great practice, but he was an undoubted success as a judge, and made up for having got off many malefactors by emulating Deas in the severity of his sentences. He sometimes lectured on literary subjects and also on ecclesiastical dogmas. Of his lectures it is said "they bear the cardinal merit of sincerity, and are not without literary polish." In civil matters his best remembered judgment is that in the Yelverton case, where he pronounced against the legality of the marriage between Miss Longworth and Major Yelverton.

At the meeting of the First Division on 17th February, 1885, Inglis announced the resignation of Lord Deas in these words—

My Lords, I have received a letter from the Secretary of State which I think it right to communicate to your Lordships. It is as follows:—"Whitehall, 13th February, 1885.—My Lord, I have to acknowledge receipt of your Lordship's letter intimating on behalf of Lord Deas his resignation of the office of Judge to the Court of Session and Lord Commissioner of Justiciary. I

have learned with great regret the causes which have led to his Lordship's retirement from the bench, and in accepting his resignation, I have written to Lord Deas to convey to him my sense of the admirable manner in which he has discharged the duties of his high office, and of the loss which will be sustained by the public service by his Lordship's retirement." My Lords, the resignation of our distinguished brother, Lord Deas, the oldest occupant of the Scottish bench, after a judicial career of upwards of thirty years, is an event which cannot be passed over in silence. As the next oldest Judge of the Court, I have had perhaps the best opportunity of any man now living of estimating the value of his long public services, but his great qualities are known to and honoured by the whole profession of the law. The vigour and keenness of his intellectual powers, the conscientious labour and untiring energy with which he applied himself to the study of every cause that came before him and to the formation of his judgments, and the manly confidence and firmness with which he adhered to and vindicated opinions thus elaborately and conscientiously adopted, secured the admiration and respect of all who witnessed the exercise of his judicial functions. He has left his mark on the law of Scotland perhaps as much as any man who ever sat here, and his name will be permanently associated with most of the remarkable decisions of his time. His useful and distinguished career has not prematurely, but in the ordinary course of nature, come to an end. Our best and kindest wishes attend him in his retirement.

When Lord Moncreiff retired and Lord Craighill died in the autumn of 1888, Inglis, on taking his seat on the bench of the First Division in the following October, made this appropriate reference to these events—

My Lords, we begin the winter session in circumstances unusually serious and impressive. We lament the death of Lord Craighill as of a highly esteemed colleague and friend, who secured the respect and confidence of the profession and the public by his talents and acquirements as a lawyer, and by his honourable and upright conduct as a judge, while to those who knew him intimately, he was endeared by his amiable disposition and the purity of his life. But we have to face another and still more important

event in the resignation of Lord Moncreiff. His long and distinguished career, as well in private as political life, is known to all men. For nearly twenty years he exercised a powerful and beneficial influence in the legislation affecting Scotland, and for the same period his active, intelligent, and vigorous administration of Scottish affairs in the office of Lord Advocate was watched by the people of this country with approval and satisfaction. It is no small praise that he should have passed through this long ordeal with a reputation so high and so well sustained. He brought to the discharge of his judicial functions a mind well stored, not only with professional learning, but also with the fruits of more extensive and liberal studies which are equally essential to complete the character of a great advocate or a great judge. Of my personal feelings on this occasion I find it difficult to speak. An unbroken friendship of nearly seventy years' duration is a bond of union of no ordinary kind. And the many relations in which Lord Moncreiff and I stood towards one another, alternating alliance and opposition, both forensic and political, combined with constant social intercourse, have given us singular opportunities of judging one another, and I fondly believe that the result has been mutual respect and affection. He retires from active life full of years and of honours, in the enjoyment of all that which should accompany old age. Among his "troops of friends," I am sure he will believe that none are more sincere in their wishes for his happiness in retirement than those who have been his colleagues on this bench.

Every lawyer at some time or other has a lunatic or a minor for his client, and, down to 1847 at least, no part of professional business was more troublesome. Of necessity the discretionary element bulked considerably, and suitors were largely at the mercy of the caprice, the vaccillation, or the timidity of the bench. In the days of Hope and Boyle the administration of estates involved as little trouble as could reasonably be expected. Important warrants were obtained from the Court upon the mere presentation of petitions. The way in which Inglis managed these details after he was translated to the First Division, where the bulk

of this work had always been done, was admirable.[1] The disposal of such business is almost necessarily left with the President. Inglis, who had the strong head for responsibility which his early seniority attests, applied himself to it with energy and sagacity, and acquired as much facility in it as Boyle. Each morning, as soon as the Division bell[2] had ceased its clamour, he steadily proceeded from print to print, laying each neatly aside, as "Grant" or "Intimation" came in a low, distinct voice. If there were defect or inaccuracy to be corrected, it had been carefully noted overnight. While the chief was thus engaged, as he was day after day for full thirty years, what did the others do? Some of them would scan contemplatively the wild rush of juniors. Deas, smug and watchful, would busy himself writing the orders the President dictated. Ardmillan, with kindling eye, and Mure, pale and imperturbable, prepared for the coming fray; while Shand would take a preliminary sniff of the fragrant flowers which, following the pleasant habit of Jeffrey with his tea-roses, he had brought from the gardens of New Hailes. I here speak of times which the present race of juniors will hardly remember.

Inglis's Court was thus a pattern of agreeable decorum. He was master in his Court, but he was neither dogmatic nor supercilious; he neither indulged in nor permitted a sneer at the bar or at a brother judge. Except at the outset of his judicial career, when the little frictions incident to a new position had to be overcome, he had the

[1] Mr. Parker, an assistant clerk, mentioned in connection with the case of Livingstone, 3rd July, 1835, that it was then, and had for twenty years been, the practice of the Court to issue warrants to make up titles to heritage, to grant leases, and to do all the ordinary and necessary things incumbent on curators without intimation in the minute book, or service upon anyone.

[2] Until five or six years ago it was the bell hung on the rafters of the Hall, the same that is now used for Faculty meetings. About that time electric bells were placed above the macer's box. That box was erected some ten years ago.

hearty co-operation of his Division. His opinions once formed were so distinct and decided that it was a strange case indeed where he had not the support of his brethren, who during a quarter of a century looked to him for the lead. It was his place to guide the Court and if possible conduct it to unanimity, and he was rarely in a minority. Not that he feared a minority. Presidents there have been who could not brook a minority or being of it, who moreover have manœuvred themselves out of that position. No one can say that Inglis did anything of this kind. He would have been a formidable tactician had he descended to strategy; but not being perfunctory in his researches, superficial in his knowledge, or loose in his reasoning, his opinion was usually felt to be sound, and where diversity reasonably existed his efforts were directed to remove doubts rather than to accentuate differences.

So, if a case was too clear for argument, he courteously gave a hint which counsel might take or ignore as they pleased. His deference to his brethren on the bench was a constant delight. In the old days, when this century began, arrogant natures there were to whom the pronouncement of a contrary view was the signal for unseemly contention. Such was not the character of the President. To the venerable Deas and the vigorous Shand alike he was always courteous. There was a charm in the way he turned his head to listen to his rugged bar rival, Sir George Deas, when he barked some terse originality. He gravely consulted them even in transparent cases, although the decision were to be given at once.[1] Where, however, a case pre-

[1] Occasionally Deas and the President indulged in a bit of solemn banter. Once, when John Burnet was arguing a bankruptcy case, Inglis and Deas indicated opinions against and for him respectively. Burnet thereupon quoted an opinion of the President, as Lord Justice-Clerk, opposite in effect, as counsel contended, to the position he had just assumed. The President, "Well, I certainly did not intend that that opinion should be read in the sense in which you are now reading it." Deas, "Your lordship sails vera near the wind there!"

sented the least difficulty, avizandum was made, and the reproach avoided of a hurried hearing and hasty advising.

A Scottish jury consists of twelve men, eight or ten of whom are usually brought from the country districts within a radius of twenty or thirty miles of the capital. For six days of the week these men hold the plough, wield the hammer or the hatchet, or pursue some other respectable occupation. With them muscles receive more exercise than brains, for they read little except the Bible and the newspaper, and they are mostly innocent of the habit of thinking. Counsel make long speeches, numerous witnesses are examined, and complicated details with wire-woven deductions are presented in argumentative array. Cribbed in a box from morning to night, they are deprived of the air and exercise to which they are accustomed, and at last they retire to return a verdict disposing, it may be, of thousands of pounds. Such was the description of a Scottish jury by George Combe, the phrenologist; and while it may be granted that it was written to serve his own ends and with reference to his own day, yet it contains the germs of sound criticism, even from a lawyer's point of view, at the end of this nineteenth century.

The qualifications of jurymen have undoubtedly improved, but the jury of fifty years ago, quite as much as the jury who tried the case of, say, *Sexton* v. *Ritchie*, had the approval of the Lord President as the most efficient determinants of conflicting testimony. At an early stage of his career he was in favour of abolishing the system of reporting commissions and substituting jury trial in its place. He made some forcible remarks on the subject in *Moore's Executors* v. *Forbes* in 1866. This partiality for jury trial was due partly to his early successes in the Jury Court, but much more to the common sense with which contact with the wide and diverse elements of

society invested the judgment of Scottish juries, evidenced, in particular, by the reasonableness of their awards when contrasted with English verdicts.

In any estimate of Inglis's character, therefore, the labour he took upon himself as a jury judge must not be forgotten. The President of each Division is supposed to officiate at the Christmas, spring, and summer sittings. Faithfully did Inglis discharge this duty. The hope of getting the Lord President as judge attracted suitors to the First Division sittings in large numbers. As a jury judge, discriminating between his own functions and those of a jury, he was, in the estimation of the profession, a model. Here his power of luminous exposition conferred enormous benefit upon suitors. He had a large and settled influence with juries, and the balancing power which was part of his nature enabled him to apply it with absolute fairness. This influence was based upon his acknowledged intellect and character, his high position, the confidence he reposed in juries, and his charges.

Two commercial disasters—both the result of general flagrant, and unscrupulous speculation—occurred in the course of Inglis's career which involved the adjustment and development of trust, banking, and liquidation law, with which our Courts were comparatively unfamiliar until those deplorable occasions arose. The first was the failure of the Western Bank in 1857 already referred to, and the second the stoppage of the City of Glasgow Bank in 1878. Of the wide-spread ruin which the ensuing liquidations caused none had so vivid proofs as lawyers. Inglis's experience as a counsel and judge in connection with the first made his aid invaluable in the second; but I refer to them at this stage for the purpose of repeating what has frequently been said, that it was his charges in civil cases that stood between the Western Bank directors

and the ruin that threatened to overwhelm them—the sympathies of juries being not unnaturally enlisted in favour of those who had been deceived and beggared by delusive reports, and against the deceivers.

Having in jury trials noted the evidence in his own hand, he skilfully unravelled intricacies in a way at which jurymen sat aghast. Typical instances were the Shandwick succession, the Anderston Foundry case, and the Glass-blowing Patent case. While he found no fault with the juries that tried them, it was those cases perhaps that convinced him of the inappropriateness of juries for the decision of questions involving the balancing of scientific evidence. But in the details of patents or successions he himself was at home, and where he was judge there could be no danger of miscarriage. Peculiar indeed was the constitution of the mind which withstood the sequence of his charge. Time and again juries expressed their pleasure at Inglis's method. He took, they said, nearly all the trouble upon himself, not by cajoling them or dictating to them, but by his irresistible marshalling of facts. They were flattered also by his kindly, deferential manner, for he was as respectful to an ordinary jury as to the Dean of Faculty, and never transgressed upon their function nor confounded it with his own.

XIV.—Personal.

I HAVE said that this sketch is written for the lawyers of Scotland—the thousand or two of intelligent, critical men who spend plain lives in prosaic towns scattered up and down this ancient land. To them, as to every community, it is of the highest importance to have a man like John Inglis at the head of their jurisprudence. As the feeders of the judicial establishment in the capital, they have a more living interest in its fairness and capacity, perhaps, than the counsel and agent to whom the fate of a case is but the disappointment or exaltation of an hour. For them I have inscribed John Inglis's characteristics at such length on these memorial pages. And having thus aided them in forming an estimate of him as an advocate and as a judge, I presume they care little for a catalogue of the local employments and subsidiary interests in which his influence found a vent. But any view of the man would be incomplete without some reference, be it ever so brief, to certain of his private habitudes and partialities. These may be adequately surveyed as falling within two main divisions, namely, his public apart from his judicial life, and his home life and occupations.

On his accession to the bench he carefully freed himself

from any embarrassments of a political or contentious kind. While he continued to be a man of firm Conservative views, Inglis never had much liking for party warfare. His nature was moderate, and partizanship was foreign to it, and he probably welcomed the bench as a relief from party strife. As we have seen, he formed a lofty conception of the requirements of his position, but it was the outcome not of any senseless vanity or defective understanding, but of a just and deliberate estimate of their fitness. He realised that properly to sustain the weight and worthily to reflect the lustre of the judicial character he must forego not merely interference with everyday affairs, where the censure, the jealousy, or the discord of individuals might involve him in the betrayal of either, but also association with the commoner employments of men. From the year 1858, therefore, his conduct seems to have been dominated by instinctive care for the dignity of his office. This may be the explanation of the invincible spirit of retirement that possessed him. It was not that he was inaccessible, for to every member of the bar, for instance, he was the soul of courtesy and of kindness. But except as head of the University, he did not care to mingle with men or to identify himself with any of the public movements which convulsed or attracted society during those thirty years.

At the same time there is no reason to imagine that he did not follow with lively interest the progress of his country in arts and industries. His station and duties required that he should do so, and his sympathy with the spread of literature and of education was consistently steady. He had a great love for and a keen appreciation of art, and he aided Mr. George Patton (afterwards Lord Justice-Clerk) and Mr. Horn, who became Dean, in carrying into effect two exhibitions of art and manufactures

in Edinburgh, which tended greatly to improve the public taste. These exhibitions which followed on the great exhibition of 1851 were the very first effective efforts in Scotland in this direction. His taste was extremely good and pure, and educated as well as intuitive. He visited many German and Italian galleries in or about the years 1849, 1850, 1851, and 1852, and preserved a vivid recollection of the achievements of art which he had admired in Continental centres. The selection of Inglis therefore, in the year 1858, as a member of the Board of Manufactures was regarded by persons of knowledge as a very sound appointment. His influence in the matters over which that Board has jurisdiction was very extensive and continued down almost to the day of his death. His own home in Abercromby Place was a model of chaste and handsome decoration, the execution of which, with characteristic patriotism, he committed to local artists and workmen. It was said in some of the sketches which were written when he died, that he never collected. The contrary is the fact. He brought paintings and bronzes and other objects of art from all quarters for the ornamentation of his house. His collections of glass, china, and plate were above the average in costliness and variety, and he was fond of showing them to his visitors.

It need not be wondered at, therefore, that all national and local movements for the promotion of art, in the widest sense of that name, engaged his warm and lasting sympathy. Indeed, whatever tended to raise the standard of public and private life, or to ameliorate the lot of the people, found in him a staunch and steady supporter. He hailed with satisfaction the institution of a public library in his native city, and would have been present at the opening of it in 1889 but for his being "tortured with rheumatism," as he phrased it. His old

contemporary, Charles Scott, asked him, on behalf of the committee in charge of the arrangements, to make a speech at the opening ceremony, but for that reason he had to decline.

The monastic seclusion to which I have adverted doubtless contracted the area of influence wherein a weighty personality like his might have operated. Still, it seems correct to say that its authority was enhanced by the rareness of its exhibition. Inglis's example in this particular has been followed by nearly all his contemporaries.[1] Outside his duty as head of the Court, the avenues in which he permitted himself to walk were singularly germane to his lofty theory of life. These avenues were the University and the Church. Caring nothing for the ordinary motives of public applause or gratitude, he studiously shunned public meetings, even such of them as were for the promotion of harmless or useful objects. In the old days there were frequent public appearances of the judges at eleemosynary conventions. In 1841, for instance, on the platform where the claims of the Edinburgh Royal Infirmary were advocated, we find the Lord Justice-Clerk, Lord Moncreiff, Lord Jeffrey, Lord Cuninghame. Sir William Rae was also there, and Patrick Robertson made a characteristic speech, in which, as was not unusual with him, he invoked the aid of poetry to enforce his argument.

But to the day of his death Inglis retained a lively interest in the progress, the policy, and the ritual of the Church. Let me therefore gather up the strands of his

[1] Even at elections the judicial vote generally remains unrecorded. On recent occasions, it is true, when the issue involved the integrity of the Empire, or was thought by many people to do so, most of the judges discharged their constitutional duty. It is not usual, however, for them to do even this much; and, as a rule, the Scottish bench pursues the even tenor of its honoured way, oblivious of the pettinesses that mark and mar municipal and imperial strife.

connection with her. The struggle which led up to the secession of 1843 had reference to patronage, and I have already said something about it. There was a popular and a metaphysical side to it. The populace—tradesmen, farmers, artisans, men reared in the rigour of Calvinism—only saw the injustice of inflicting a distasteful presentee upon an incumbency. Lawyers and doctrinaires were engrossed with the question whether the Church had a jurisdiction independent of the civil magistrate. In effect, this was really a conflict between preferences for a tribunal composed of prejudiced, unbusiness-like, and incompetent clergymen—I mean incompetent as judges, especially judges in their own case—or one composed of men whose whole life had been spent in the exposition and application of legal principle and the rules of evidence. To intelligent minds there could be little doubt as to which was the proper choice. Spiritual independence is but another name for servility to priests. Instead of stemming the current of ecclesiastical faction and clerical ambition, the Disruption gave such pretensions to ministers of the seceding body as have never been sanctioned outside the Papal Church. Liberal-minded men were caught away by the seeming injustice of thrusting unacceptable ministers into the benefices of the Church. They threw aside the lessons of history and of practical life, and espoused, they said, the side of the wronged, overlooking the fact that the secession would place the supreme power of the Church in the hands of ecclesiastics. They adopted a metaphysical subtlety which has no substance and no real efficacy in the ultimate arbitrament of disputes, which must always be by appeal to the civil power. Of a thousand clergy about five hundred left the Church; elders and members left in almost equal proportions. All honour to these men for so great a sacrifice. But it cannot be denied that their

chief permanent work has been the duplication of churches all over the country, and a waste of intellectual energy and economical resource unparalleled in the history of churches. For every church that is really required we have now three or four. And, after all, the persons for whose benefit Christianity is said to have been sent into this world are left out in the cold unless they can pay seat-rents and appear respectably dressed in their pews.

Moreover, the metaphysical subtlety for which the non-intrusionists sacrificed themselves was only half achieved. They gained independence, but no immunity from civil jurisdiction. The Cardross case in 1862 went through a variety of phases. The parties fought with windmills for four years, and then, as the first Lord Curriehill said, "After years had been wasted in discussing and disposing of these pleas, the parties have at last met each other fairly on the merits of the pursuer's claim of damages." But it was on the preliminary pleas that the one great principle in the case was settled, the principle, namely, that a civil court can competently interfere and set aside the sentence of an ecclesiastical court, though it be the conventional tribunal of a voluntary association of Christians, if it can be shewn that such sentence was pronounced irregularly and in violation of the rules or constitution of the Church.

The Disruption, however, produced one notable effect, namely, the quickening of all Church life within the borders of the Establishment. A struggle went on for many years within her pale betwixt an apathy born of numberless discouragements and the obloquy of unpopularity on the one hand, and the desire to fit the institution for modern requirements on the other. Men were roused from an aimless self-satisfied torpor to vigilance and activity. Congregations which had lain dormant for a century were fired with emulation. The

sons of the Church who heard her despised and had for her sake submitted to be reviled, buckled on their armour to fight the men who were conspiring for her destruction. The qualifications of her ministers were raised. A scheme for the erection of a thousand new parishes was framed, and carried out triumphantly. Guilds for the deepening of religious life, especially in the young, were formed. In short a new life coursed through a rejuvenated structure. The result has been to rehabilitate the Church in the eyes of the country, and to make her the greatest moral agency at present working in it.

I may expose myself to the charge of digression when I say so much upon this subject. I do so because John Inglis played an effective part in the preservation of the Church and the revival of her energies. The part he took as a counsel in the Disruption struggle, and the traditional and historical affinities of his mind, made this interest a permanent one; and therefore, although he never actively countenanced ecclesiastical polemics, he was no silent spectator of the movement by which the envious hostility of the Church's enemies was checkmated. At the same time he had little sympathy with the adaptation of the Kirk to the shibboleths of party. In 1874 patronage was abolished by a Conservative government. Inglis did not altogether approve of that surrender—that "concession to the rancour which has been the bane of her ecclesiastical and her civil politics." Subsequent experience of the Act has shown that so far he was right, and that some body of patrons—popularly elected it might be—ought to have been interposed between the members of a congregation and their choice of a pastor. The object in view perhaps justified the experiment. That object was to gain over the Free Church, but the only reply which this body made was to demand that the Establishment should acknowledge

that the Seceders of 1843 were the true Church. Such a concession, of course, was impossible. Inglis foresaw this, and took no part in any movement towards reconciliation. He also entertained strong views about a truckling proposal, introduced into Parliament in 1879, to clothe church courts with independence, as if church courts governed by a few clergymen unacquainted with business ever could again—I mean after the Reformation—become a judicatory commanding public confidence.

While, however, Inglis had well-defined views about the stability and the reform of the Church, his position as a judge made it impossible for him actively to intervene. He said he had a certain repugnance to mixing in affairs ecclesiastical, and therefore he did not expose himself to the taunts or criticism of opposing factions, as Ilay Campbell had done in the end of last century. Yet it is, I think, an open secret that, while Inglis never openly figured in public assemblies—least of all in the Church Assembly, which is the most popular convention in Scotland—his experienced head and calm sagacity, exercised through the intermediaries with whom he was in frequent contact, dictated the solution of some of the knotty problems in church affairs. Nor was his attention by any means confined to the large concerns of her policy. Probably too intellectual to be what is usually called a pious man, he yet felt deeply the paramount importance of national religion as the ally of justice and the bulwark of morality. One may also safely say, without attempting to invade a sacred domain, that he had other hopes besides those which bound a pure ambition. His reason not merely did not disclaim immortality, like Cicero's, but he had a sincere faith in its existence. As we have seen, his faith was by no means dormant. Moreover, he possessed in effective intensity, if one may so say, the traditional Calvinism of

the Scot, but this only in its doctrinal as distinguished from its ritual phases; and had he figured in the tumultuary struggles of preceding ages, there can, I think, be little doubt as to the side on which he would have been found. Upon occasion, he dipped into theology as an intellectual pastime, and, after an attentive study of Bishop Lightfoot's essay on the early Church, declared in his quiet way that he thought the Bishop had proved his case for the doctrine of Presbytery as opposed to Episcopacy. He was one of a race of "elder" judges by which the bench until lately was manned. He adhered with singular fidelity to the habits of his father's manse. He stood at the plate at the door of St. Andrew's Church, and handed round the bread and wine in St. Giles. It is about ten years since his assistance was invoked for the latter church. During many years, however, he had been an elder in St. Andrew's. This was quite well known to the session of St. Giles, and when, by accident, a scarcity of available elders threatened them with inconvenience, and they requested Inglis's help, he cordially acceded to their wish, and acted as the senior elder at the subsequent celebrations in that building. One ventures to say that few sights were more touching, few proofs of the triumph of faith over intellect more striking, than the frail old judge threading his way among the oak pews serving the memorial bread to his fellowmen. He occupied the Lord President's seat on the south side of the choir every Sunday when in town; and as in the presidential chair in Court he was habituated to turning over the pages of his prints, so in the judge's pew he instinctively fingered the pages of the large Bible which lay before him while he listened attentively to the preacher.

Bigotry and intolerance were singularly foreign to his

nature. Hailing with satisfaction the growth of taste in what one may call her domestic concerns, he lived to see a remarkable change in the ritual of the Church. On the 19th of November, 1817, when the Princess Charlotte was consigned to the tomb amid the tears of the nation, the Scottish people testified their sympathy by services on a week day. A mighty son of Calvin—Dr. Andrew Thomson—bitterly condemned this departure from traditional rule as repugnant and dangerous to the Presbyterian system from its tendency to degenerate into sycophantish eulogy.[1] He kept the gates of his kirk closed, and published a pamphlet on the subject demonstrating that everybody was wrong except himself. The change from such narrowness to the everyday services in St. Giles which attracts 10,000 worshippers per annum, is hardly credible. Thus, although perhaps a doubter about the prudence or efficacy of hybrid rites, Inglis approved of the advances the Church is making towards beauty and symbolism, as well as of her efforts to provide spiritual nourishment day by day—always distinguishing, however, and that somewhat sharply, betwixt rational advance in such matters and clerical pretension, with which latter he had no sympathy whatever.

While, therefore, he took a warm interest in the improving services of the Church, his interest mainly centred around improvements on the fabric itself. In the restoration of St. Giles, and throughout the whole scope of its internal civil economy, he was a guiding spirit. None of the numerous improvements which succeeded the restoration were undertaken without his sanction. He had seen the General Assembly meet under the grey crown of the venerable fabric, and in the early part of the century had witnessed with horror the obliteration

[1] Cockburn's "Memorials," p. 290.

tion of its ancient shell. Throughout his whole life he deplored this and other injuries done to picturesque features of our old city. And when a generous restorer arose in the person of William Chambers, the publisher, no man grasped with keener ardour than Inglis the possibilities of the situation.

The details of Inglis's connection with St. Giles may be of some interest. As most Scotsmen know, the restoration of the Church was a thing upon which William Chambers had set his heart. Chambers formed a restoration committee and had plans prepared many years ago. These plans were submitted to Inglis and Patton, then Lord Justice-Clerk, with the view of enlisting the aid and influence of the heads of the Court. Inglis and Patton did not approve of them, and the proposal fell asleep. But as the dilapidation of the building and the attendant discomforts increased, the kirk-session made urgent representations to the Ecclesiastical Commissioners, and the Commissioners signified that, if a scheme for restoration were set afoot, they would prefer aiding it to patching up the fabric from time to time. The kirk-session then took the initiative. New plans were prepared and submitted to the Lord Justice-General, who warmly approved of them. Chambers came forward and said that, although his plans had been rejected, he wanted the thing done, and he handed a contribution to the fund which had in the first instance to be raised to buy out West St. Giles congregation. At the same time, he was induced to become chairman of the Restoration Committee, which included Lords Neaves and Mure. A Board was then appointed to look after the internal arrangements and monuments, and of this Board Inglis was an active member. From this time forward probably no object outside of law received so much of his attention as St.

Giles. When Chambers offered to restore the entire church on the keys of West St. Giles being handed over to him—a preliminary which involved the raising of some £10,000—this act of munificence was jeopardised by the pusillanimity of the Town Council of the day, and these magnates were only stirred into activity by a deputation, headed by Inglis, waiting upon the municipal committee who had charge of the matter. Inglis told the Lord Provost that they meant to have the thing done. Again, when the limit of time placed by Chambers upon his offer approached, with some £1500 still to get, Inglis, Lord Curriehill,[1] Mr. T. G. Murray, W.S., the Session-clerk of St. Giles, and Sir Douglas Maclagan met in the house of the last mentioned and agreed to interpose their personal security to the bank for the balance. Thereafter, during the next fifteen years, no one was more instrumental in guiding to its existing form of chaste and massive beauty the interior of this historic and memoried fane. Chairman of the Board of Management, and chairman of the Restoration Committee after Chambers's death, he took more than an official cognizance of everything that his subordinates proposed.

When the Queen visited Edinburgh in 1886 she spent an hour or two in St. Giles. The Lord President was there an hour or two beforehand and saw that everything was in order for Her Majesty's reception. For instance, he ordered the small wooden boards, which are hung here and there to indicate objects of interest, to be removed. When Her Majesty entered, and he was introduced to her by Sir H. Ponsonby, it was felt by him to be one of the

[1] One of Curriehill's last letters, if not the last, was written to the session-clerk in answer to his intimation that a donation of £500 by Mr. W. M'Ewan, now M.P., cleared the way for the restoration to begin. Lord Curriehill said that as that load was off his mind he would now proceed to put his affairs in order. He died in a few days.

most pleasing incidents of his life that he should have to conduct her over the building; and this he did, it was remarked, with courtly dignity. Next day he repaired to Holyrood.

It has been said that there was in Inglis one thing, and one thing only, which no man could understand, and that was his rooted dislike to stained glass; and it has been laid to his debit that the north transept window was not filled in by Cottier. The offer this artist made to do so was put off because Inglis feared — unreasonably as it is said — that pictorial fenestration would obscure the transept. Cottier died before his offer was accepted. The fact, however, is that Inglis had no dislike to stained glass. Indeed the large window in his own business-room was completely filled by an early effort of Ballantyne's; and the richest and most effective window in St. Giles—namely, the window which throws a mellow radiance about Montrose's superb memorial—would not have been accomplished so speedily if it had not been for the interest which Inglis took in the subject.

But stained glass apart, the interest Inglis manifested in the restoration was of an intelligent as well as an active and catholic kind. His aim, which was shared by the Board of Management and the session, was to make St. Giles a representative church. He prized the ceremonies to which these bodies have been partial, and in order to identify the various elements of society with the national church he insisted that pews should be dedicated to the judicature, to the incorporation, and to the university. With regard to the last, academic pride was at last conquered by the combined persuasiveness of the Chancellor and the Principal (Sir Alexander Grant), sworn life-long friends. Then, when it was proposed to insert in one of the pillars which sustain the crown of St. Giles an inscription to

Jenny Geddes, he said, "Well, I suppose the spirit—the old intolerant spirit—is dead." Doubtful for a time about its expediency, he at last concurred, and when Dr. Cameron Lees' draft of the inscription stating that "Near this spot" Jenny did that which earned for her an easy immortality, Inglis, with that finical regard for accuracy which contributed so much to his greatness as a lawyer, improved it by adding, "Constant oral tradition asserts," that "near this spot." When a tablet was proposed to commemorate Hugh Blair, he sent the minister of St. Giles a genealogical account of Blair's family. Amongst the other projects connected with St. Giles that enlisted his sympathy in a peculiar degree was the movement, brought to such splendid fruition, to raise in the Montrose aisle a monument to the enemy and victim of Argyll. Montrose, indeed, seems to have inspired him with more enthusiasm than any other character in history, and he had a corresponding loathing for the duplicity of his rival. For Stair also, it is hardly necessary to tell lawyers that he cherished an admiration which deepened till he died, and it was a source of bitter grief to him that the Faculty did not adopt his suggestion to place a monument to the great institutionalist in the church where his remains repose. Perhaps this may yet be done.

So much for the ecclesiastical side of his character. In one institution which may be said to have been a creation of his own he took a very deep and constant interest. I refer to Fettes College, a scholastic establishment, housed in a superb building on the north side of Edinburgh, the educational design of which was that by its aid there should be retained in Scotland, and educated on English lines, Scottish boys who, in the absence of such a school, might be expected to cross the Border. The two original trustees were Lord Wood, Inglis's father-in-law,

and a Mr. Corry, but for a long time they could do nothing for want of money. The money accumulated, and then Lord Wood assumed Inglis as a trustee. Additional trustees were subsequently assumed. In the main Inglis devised the scheme under which the school has been administered. Moreover he supervised the design and erection of the College—one of the finest buildings in Scotland, in which the architect Bryce has striven successfully to blend native features with the foreign styles, out of which the native architecture developed. The foundation stone was laid in 1864. During more than twenty years Inglis attended almost every meeting of the governors, presiding over the meetings sometimes for hours, and conducting the business in an expert, masterful, yet deferential way, for, although he generally carried his point as indeed he meant to do, yet he listened very respectfully to every view that might be urged against it. The college was embraced within the scope of the Endowment Schools Commission, but largely owing, it is believed, to the respect that was entertained for Inglis, the establishment was practically left untouched by the commissioners.

The work of the lawyer is severely technical, unrelieved by many gleams of outer sunshine. He has few opportunities of disporting himself in the region of imagination. Concentration of the mind is essential for the mastery of the complex principles which the Scots lawyer has to apply to the wide field in which he has to act. Yet it is conceived to be the misfortune, and also perhaps the fault, of many lawyers that they become wedded to the muck-rake —in this respect it is feared often resembling those cavernous fish which naturalists tell us inhabit underground pools and lakes, and lose the power of sight when in the glow and glory of the supernal world! One regrets such

engrossment. It has a narrowing effect upon the mind, and on the heart. Intellectual sympathies of necessity form part of the mental composition of most lawyers. The complaint here made is that they should, as a matter of caste prejudice almost, allow themselves in so many cases to become bounded by the professional horizon. Inglis is not quite free from this reproach. Even during the first few years he spent in the House, and when he had comparatively little to do, the resources of its splendid heritage of books remained untapped by him.

Lord Fraser, one of the greatest, if not the very greatest of contemporary producers, described the bar as the most pathetic instance that he knew of the waste of intellectual force. He said so with reference to the comparative sterility of the bar in fields outside its own domain. But the junior bar especially, for whom the reproach was meant, is exposed to intolerable hardships. Its members have, it is believed, a certain social prestige to maintain, which in other walks of life is the result of a life of industry and other merit. They require means to support that position, and they are debarred by self-respect and custom from engaging in the multifarious ways of eking out slender incomes that are open to workers in other fields. Cast upon what the world knows as their own resources, the surprise is that so few sink under the trial. Through a pitiless discipline of inaction and unappreciated power, extending in many cases over a quarter of a century, most of them survive to reap only a modest reward for unwavering trust in a providence which in their case rarely seems to be in a hurry.

Yet, is there any reason which commends itself to sane men why the blight of this period of probation—of watching and praying—should not be relieved by excursions into letters, poetry, music, and art? In the

past many distinguished men have deviated from the legal way, and won names for themselves in culling flowers from congenial by-paths. Others—as some living occupants of the bench attest—have made their first bid for popular approval and the patronage of the great in the pages of modest books or learned treatises. During three centuries of its history the Scots bar contrived to make its mark on the letters and philosophy of the times. How many stars glittered between the days of Sir George Mackenzie and those of Sir Walter Scott! About Sir George Mackenzie of Rosehaugh, who founded the Advocates' Library, it was said that his success as a legal officer of State "might not have been so great had he been as great a lawyer as Stair or Lockhart. Much law is not an essential quality of a successful Lord Advocate." Mackenzie, however, was a man of more than average literary power, in this respect excelling all his contemporaries of the seventeenth century. Glorious John Dryden acknowledged after the death of Mackenzie that he was indebted to the conversation "of that noble wit of Scotland, Sir George Mackenzie," for first seriously attracting him to the study and imitation of "the beautiful turns of words and thoughts" to be found in Cowley and Denham, whose style he afterwards improved to perfection.

Sir George Mackenzie was a type, and a great one, and he has had many successors, of men who attained high professional positions and bulked largely in contemporary history and literature. It was characteristic of Inglis's fairness, it may here be interjected, that he attached no importance to the popular superstitions or delusions about Mackenzie's character. He rather admired him. And by lawyers at all events it ought to be remembered that Mackenzie was ready to speak and speak boldly on either

side of any suit, criminal or civil, as appears from the records of the time. For example, in 1674, some men who were convened before the Privy Council for hame-sucken were defended by him; and Fountainhall says that Lauderdale aimed to have got him censured for freedom in pleading those causes, but did not succeed. When out of office in 1687 he was counsel for twenty-three feuars and wadsetters of Glasgow, who were tried for being at Bothwell Brig.

It has often been thought that devotion to law implies the neglect of the muses, and demands a life of seclusion and stern reflection. Although he did not share the delusion that the exercise of the mind in other departments than law unfits it for great excellence in it, Inglis attempted nothing of the lighter kind. When he came to it, the bar was at the zenith of its literary repute, and one might reasonably have expected from a mind so firm and muscular that it would be pervaded by the taste for letters that prevailed in the period of his adolescence. It is a feature, perhaps the least explicable of any, that he steadily eschewed production in letters and philosophy. They were attractive pastimes to him, like golf; but he took to them not as a producer at all, but only for the help he might borrow from them in fixing the more firmly the principles of our jurisprudence.

That Inglis had a pure, clear, literary style, pervaded by a modest tone, is obvious from the few fragments in the shape of epitaphs and addresses which he produced at wide intervals. His literary and artistic sympathies were for the most part self-contained. Apart from two articles in "Blackwood," he has left no hostages to fame in the walks of literature. These essays were, the one "On the Present Position of the Church of Scotland," and the other "On Montrose and the Covenant of 1638." It may be

enough to quote what a competent critic says about them :— "No one who reads these papers can doubt that he could have adorned more than one branch of literature. In the history of his own country he was specially well read, an acute critic, and a sound judge of men and events. The paper on the Church of Scotland is a learned historical statement of the law relating to patronage, and a closely reasoned defence of it, as modified by the veto of the parishioners on sufficient and stated grounds. Now that patronage has been abolished, it reads like ancient history. But in spite of the epigrams of Cobden and Disraeli, ancient as well as modern history has its value, and should not be neglected by politicians. His character of Montrose is a dispassionate sketch of a period which few Scotchmen can even yet approach without prejudice. He arrives independently at the same view of the conduct of the most gallant of the Scottish cavaliers as Mr. Gardiner, whom he describes as 'the most judicious of recent historians.' It may account for the singularly firm and temperate view he took of this as of other parts of Scottish history, that it was his habit as a young man, as we have heard from one of his contemporaries, to read the Waverley novels once a year."[1] With reference to the last statement, it may be assumed that Inglis had a profound knowledge of the periods of Scotch history depicted in Scott's novels. But he certainly did not read the Waverley series once a year. How great was his familiarity with Scott may be gathered from one of the most interesting advisings—from a literary point of view—in the whole series of session cases, namely, in *Black* v. *Murray & Son*, 9 Mac. 341, to which the reader is referred for the most entertaining judicial critique in the English language.

[1] Sheriff Mackay.

Unlike Moncreiff, Gifford, and other judges, Inglis never lectured. On one occasion he was asked to do so, and took the edge off his declinature by saying that if his epitaph were to be written it might suitably run, "Here lies a man who never gave a lecture." He never wrote, or even edited, a book. Perhaps this, the absence of effort in pursuit of letters as a subordinate domain, affords the only regret with which one surveys the varied field of his acquirements.[1] We have seen that he did not excel, or rather that he did not attempt to excel, in what honest Lydgate calls the flowers of rhetoric. His style was simplicity itself. Yet when, after he ascended the bench, he had anything to do outside the sphere of law he did not trust himself to extempore speech. He committed his thoughts to paper, and they were invariably embalmed in fitting phrase. The only exception I know of was his speech at the Scott Centenary, but it, like his eulogium of Sir Douglas Maclagan, which may be placed in the same category, was well thought out. A speech which he made at the meeting of Com-

[1] We have had many instances in the past of devotion to letters paralysiug the logical faculty as applied to law. There was the case of Sir Archibald Alison and his wonderful judgment about a horse and cart in 1857. A person who had been entrusted with the use of the horse of a gentleman in Glasgow was driving home one very dark night when he came into collision with a carrier's horse and cart, which were standing on the road alone and unattended. Both horses were killed by the shock. The owner of one of the horses sued the driver of his horse, but was met by the defence that the accident was due, not to negligence, but to the darkness of the night and the obstruction on the road.—Cf. "Journal of Jurisprudence," 1857, p. 121. The Sheriff-Substitute had no difficulty in decerning against the defender. The learned baronet on the case coming up to him thought it right to reverse. But the findings were so mysterious that the judges of the Second Division could make neither head nor tail of them. The Lord Justice-Clerk suggested that the wrong interlocutor had been printed. "I cannot," he said, "understand the confusion of facts which it manifests. It is an interlocutor altogether inapplicable to the facts of the case. The origin of it is to me perfectly incomprehensible." Lord Murray—"As to the interlocutor of the Sheriff, I confess his mind appears to me to have been engaged with some ancient historical matters and nothing so modern as this case. I cannot quite reconcile some parts of it." Dormitat aliquando Homerus!

missioners of Supply for Midlothian against Lord Advocate Gordon's proposals in connection with the double sheriffship had also been carefully weighed. It affords the only instance of his participation in controversial affairs.

As regards other departments of intellectual activity, he kept himself fairly abreast of modern advances in scientific discovery as well as in metaphysical speculation and theological research. In order to continue to be a great lawyer it is judicious, if not necessary, to do this. Science was not by any means a favourite study with him, but he investigated the science of every case which had science in it. Sir Douglas Maclagan, who, with Sir Robert Christison, figured as a skilled witness before the experts of the present generation were born, says Inglis could rarely be tripped up through ignorance of his subject, and it was a notable feature of him and significant of his cool-headedness that, however strange the topic which he had to get up, he never allowed his brain to get into a state of cram.

Any notice of his connection with science would be incomplete without referring to the circumstances of his connection with the Royal Society of Edinburgh, which was that of a loyal supporter and steadfast friend, but neither of a contributor to nor an auditor of its proceedings. On 5th February, 1855, when Dean of Faculty, he was elected a Fellow of the Society. After the death of Professor Kelland, its president, on 7th May, 1879, a meeting of the Council was held on 31st October to designate a successor, when it was stated that there was "a strong feeling among many of the Fellows that the next president should be a man of letters—the Society having been instituted for the promotion of literature as well as science." The name of the Lord Justice-General was unanimously adopted, and Sir Robert Christison and Professor Douglas Maclagan were deputed to obtain his

consent. In a letter, dated 3rd November, 1879, declining the nomination, he wrote:—"I need hardly say that I regard the appointment of President of that Society (the Royal Society of Edinburgh) as one of the greatest honours that can be bestowed on any Scotchman in Scotland, and I therefore appreciate the kindness of the Society in proposing to place me in a position of such importance. But I cannot help feeling, and the feeling grows stronger the longer I consider the matter, that it is a position for which I am in no way adequately qualified. Though a Fellow of the Royal Society, I have never hitherto taken any part in its proceedings, and at my time of life, with my judicial work, I cannot look forward to do so in the future. This might be of less importance if I were personally distinguished either by scientific acquirements or literary work. But you know as well as I do that of physical science I know next to nothing, and that a laborious professional life has left me no time for courting the Muses."

Regarding this matter, Sheriff Mackay, in the obituary notice of Inglis which he wrote for the Society, and from which I have repeatedly borrowed, says: "Although he did not take part in the proceedings of the Royal Society, the letter quoted shows his sense of its importance to the intellectual life of Scotland, and as an instrument for the advance of knowledge. He gave the Society the benefit of his influence in procuring an extension of its rooms, and a few weeks before his death he visited its premises to inform himself how the much-needed space could be secured for its rapidly-increasing scientific library. Without being the least of a bookish man, he had a keen interest in libraries, and in rare and good books. So, without being either a scientific or a literary man, he appreciated and, on proper occasions, expressed his

appreciation of the inventions and discoveries which during his lifetime enlarged the bounds of the physical or material sciences, as well as of the contributions to literature and philosophy, which have combined to make the Victorian as marked an era as the Elizabethan in the annals of thought. At a time when there was a risk that the absorbing cares of professional and mercantile pursuits and the rapid acquisition of wealth might lower the reputation of Scotland as a country knowing the value of science and literature, such an example in the head of a profession sometimes tempted to sink its character as a learned corporation created for the administration of justice in that of an interesting and lucrative business may perhaps be deemed an unwritten contribution to one of the objects for which the Royal Society exists."

Otherwise his sympathies were catholic. In historical and artistic objects and associations the conservative rather than the progressive instinct seemed to rule him. Apart from law, the study to which he was really attached was its twin-sister history. He was well read in Scotch historical literature. His knowledge of Reformation literature, too, was very exact, and embraced a knowledge even of the portraits of the characters who figured in Scotch history. When it was proposed to insert a portrait of John Knox in "The History of St. Giles," he produced a series of pictures of that eminent man, and pointed out that which from research he believed to be the most authentic. He knew all about the books that had been used in St. Giles from time immemorial, and presented the church with a copy of the Westminster Directory and the Episcopal canons that were in use before the Prayer-Book. Of such books and old historical works relating to Scotland he was in middle life an ardent collector, and he knew the longings, the transports, and never-

ending quests of the book-hunter. As to the importance of historical study, his address to the Juridical Society contains many precepts worthy to be borne in mind.[1] In the same address we have an epitome of the results of legislation in the century and an exposition of the political bearing of the changes effected in the statutes of the Scottish Parliament and of the Committee of Estates towards the close of the Stuart dynasty. Fond of the story of his own country, his sympathies were at least as much with the Cavaliers as with the Covenanters. He took a warm interest nearly forty years ago in protecting the monument erected on his estate to the victims of Rullion Green.[2] He contributed, as has been said, a sketch of Montrose to "Blackwood," and inspired the beautiful memorial to that great character in his favourite church of St. Giles. It is hardly needful to say that his information on archæological topics was accurate as far as it went, but in such matters he was more antiquarian than archæologic, and living as he did in a transition period, he viewed with no disguised concern the obliteration of individuality incident thereto. One of the few contributions he made to literature was a pamphlet on the spelling of Glencorse, when official ignorance proposed to alter it to Glencross.[3] In the same connection ought to be recorded the encouragement he gave to the Scottish Text Society, which was originated by some scholars and antiquarians for the preservation and publication of the early and characteristic literature of Scotland, its philological value having been repeatedly pointed out by

[1] Appendix C.

[2] It has been stated that Glencorse was one of the last parishes where tent preaching was observed at the communion season. That is not so. It was discontinued there in 1836, but tent preaching, or its equivalent, reached its fever stage after the Disruption, and may be seen even yet on the heather of some of our Highland parishes.

[3] Appendix J.

German scholars more familiar with its Teutonic elements than Scotsmen themselves.

Inglis was a domesticated man. He married a daughter of the Honourable Lord Wood,[1] a senator of the College of Justice, who bore him three sons, two of whom, Alexander Wood and Harry Herbert, are still alive. Not long after marriage his wife was laid down with an incurable spinal malady, from which she ultimately died, and Inglis's home life was thereafter tinged with the sombre hue which more or less coloured his intercourse with men. He is said to have tended this lady with unwearied solicitude. For a time she lived in Canaan Lane so as to benefit by the milder climate of the south side of Edinburgh. After a hard six hours work in Court her husband was in use to refresh himself by an afternoon at her bedside. Then he might be met wandering thoughtfully across the Meadows, with a cigar, or sometimes, it is said, a short Carlylean pipe in his mouth, back to the nocturnal mill at Abercromby Place. From this time forth he was perhaps a more melancholy man than if his wife had been able to preside over his household gods. He surrounded himself with his relations, and had but few outside friends. His children always lived with him; his brother Harry dwelt next door, in the house subsequently occupied by a well-beloved niece, Mrs.

[1] Wood, who was called in 1811, was promoted to the bench on the retirement of Lord Gillies in 1842. He was a patient, conscientious, hard-working man, who acquired a considerable practice by reason of his unremitting attention to every piece of business that was placed before him. He never filled any high Crown office, but he had been Steward of Kirkcudbright for some years. Lord Wood had the same faculty as Lord Craighill for incessant worming into a case until he got at the bone and substance of it. When he relinquished practice he found that the qualities he had shown as a pleader attracted rather more cases to his bar than he or anyone else at all anticipated. For the long period of twenty years he gave conscientious and careful attention to every duty as a judge in the Outer and Inner Houses. His mind was not one of the first order by any means, but what he lacked in intellect he made up in care and conscience. When he went into a well-earned retirement in 1862 he was followed by the esteem of his brethren and of the profession.

Leslie M. Balfour, who for a time at least did the honours of his table, and whose sudden decease in December, 1890, did not tend to prolong his days.

Inglis's town abode, as we have seen, was in Abercromby Place. In 1855, when Dean of Faculty, and when his lucrative practice had made him independent, he acquired House o' Muir and Rullion Green, an historic demesne on the south-eastern slope of the Pentlands, and twelve months later the estate of Glencorse. Some years afterwards he added the property of Bellwood, and by the death of his brother in 1883 he succeeded to Loganbank, which also adjoined. In this large and compact possession he took a Scotsman's traditional delight, emulating the example of Kames and Monboddo in the last century and of Jeffrey and Cockburn in the present. About the Loganbank homestead and the Glencorse mansion-house he began a series of improvements, the wisdom of which their present efficient and handsome aspect attests. His work as a heritor is perpetuated by a new church at Glencorse, and, consistently with his love of antiquities, a never-failing test of real culture, the old fabric was left standing.

These few details show the bent of his more intimate nature. From the centres of his private life his sympathies radiated into the well-defined although neither complex nor numerous channels which I have had occasion to notice. Inglis was not poetic or effusive. But the intensity of professional labour imparted wonderful keenness to his simple and healthy enjoyment of the country sights and sounds. His love of the picturesque was a growth from his acquisition of Glencorse. He had an intense fondness for the shade, the solace, and the beauty of trees. He planted his estate so well that now it is as well timbered as any on the wooded course of Esk. He received a diploma from the Edinburgh Forestry Exhibition; and when the

sulphurous fumes of his unlovely neighbour, the Shotts Iron Company, began to play havoc among his beeches and firs, who can forget the spirit and skill with which he successfully pursued his interdict, first before Lord Rutherfurd Clark, then before the Second Division, and lastly in the House of Lords?[1]

Into the diversities of his charitable acts this is not the place to enter, and only one or two touches are now wanting to complete the circle of his symmetrical character. I have said he was a Scot and a true son of the Scots' Kirk. And he had the Scot's appreciation of a good sermon. The Tercentenary was an occasion of surpassing interest to the Chancellor of the University, and he was naturally solicitous that the opening religious ceremony in St. Giles should be a conspicuous success. Inglis was solicitous about the ceremonial with which restored St. Giles was opened. Dr. Cameron Lees was the preacher. Dr. Flint preached on the connection between science and religion. A few days afterwards when walking in Princes Street he turned round on hearing hurried steps behind him, and was very cordially thanked for his excellent discourse by Inglis.

It is almost needless to say Inglis was a true friend. The fine and lofty calibre of his mind precluded effusiveness in friendship as well as boisterousness in mirth, but it was noticed that his attachments were strong and warm as well as leal and lasting, and that the kindly offices which friendship expects or demands were continued in Inglis's case to the second and third generations of those whom he loved. He was faithful and tolerant to the old cronies with whom in early days he played a rubber—to "Bob"

[1] This was the case in which a scientific witness, I think the late Prof. Dittmar, of Glasgow, designing himself as a Fellow of the Cryptogamic Society, was asked, "Is that a society for the promotion of secret marriages?"

Ainslie, W.S., Robertson, W.S., and Hay, a Leith merchant; and few who were present will forget his warm, kindly greeting of his schoolmate, Sir Douglas Maclagan, when this worthy gentleman was presented with his portrait by the Royal Society. "Dear old boy!" he said, as he finished one of his neatly put eulogiums. He made no new friends after he went to the bench, but his old friends were ever welcome at his board; and it may here be mentioned that the manner in which he assorted the guests at his dinners, official and private, never failed to evoke admiration.

Apart from the delight which rural life brought him, his recreations were few. In early years he was a keen card-player, as well as a good billiard-player and lover of the hunt, and his taste for a mild rubber continued into middle life. A frequent whist quartette was formed of Inglis, Robertson, a well-known Edinburgh character in his day, the Leith wine-merchant before referred to, and an advocate who is now a judge. But these were incidents, small and rare, in his earlier life; subsequently he passed almost half a century in anxious, incessant labour, relieved only by what may be called the staple delights of the Scots lawyer. First among these is golf—a game suitable to men of all ages as well as all conditions—to peer and to peasant. He acquired some skill in it, and filled a term as captain of the Royal and Ancient Club.[1]

[1] The chatty old gentleman known as A.K.H.B. in "Twenty-five Years of St. Andrews," says this:—"Just this morning I see Lord Advocate Robertson gazetted as successor to Lord President Inglis. Very warm is my interest in our new Chief Justice; for not only is he a brother of the manse, but my father christened him. The noble presence of his great predecessor comes very plainly back to-day. Through many autumns he spent several weeks here, an enthusiastic golfer. When president of the golf club, he said in one of many perfect speeches at the annual dinner that he found two things at St. Andrews as he never found them anywhere else, to wit, health and happiness. It was tremendous testimony. But among many quiet folks at the club fire late of an afternoon, when the day's work was over, one stands out. The Lord

He was a constant golfer before he got into practice, and even when the importunate demands of work left him little leisure, he stole away at infrequent intervals to Prestwick or Montrose as one of a party of six or eight, comprising George Thomson, his secretary when Lord Advocate, his brother Harry, Roger Montgomery, Frederick Pitman, and Tom Morris. When he went to the bench, he played in the judicial foursomes which used to mark Musselburgh on Mondays; but his interest in the game became lukewarm for some years, and during those years he and his whole family drove out on the Saturdays to Loganbank, and remained there until the Tuesday. His liking for golf was revived about 1868 when his sons took to it, and the Monday visits to Musselburgh were resumed. He derived great physical good from taking it up again, and also when he had to lay it down nearly ten years ago. Then he resumed the frequent excursions to his country seat to which I have already referred. To these moderate recreations may be added the enjoyment of the weed, which he habitually smoked till twelve each night.

I have adverted sufficiently to the outward tokens of honour by which his contemporaries signified their sense of Inglis's public eminence and private worth. Perhaps the greatest of these tributes was his funeral.[1] Few such occasions in the history of the College of Justice have been so distinguished. Eminent men go down to the grave, and their friends and some representatives of

President had been reading Bishop Lightfoot: he had read a vast deal beyond law. And he was an elder of the Kirk, whereof his father was leader in his day. But he summed up a long exposition in words not to be forgot: 'If you plead for hierarchy on grounds of expediency, its venerable associations, its social advantages in a country with great diversities of rank, I will take a Bishop to my arms to-morrow. *But* if you tell me that Episcopacy is a vital thing, and without it there is no church, and there are no sacraments, I snap my fingers at you.' Then with a grim look on the grand face, the President did snap his fingers."—Vol. i. 68.

[1] See Appendix N.

the community follow them and make a melancholy reminiscent pause in the unceasing conflict of life.[1] Then old shoes are filled, and the world goes on as before. But Inglis was too great a character to be thus dropped out of mind. Made a Privy Councillor in 1859, it is an open secret that he might at a subsequent date have been enrolled in the peerage of the realm had he so chosen. There were rumours of his succeeding Lord Blackburn and Lord Colonsay in the House of Lords when those great luminaries left the Court of Appeal, but these were rumours only. Inglis's heart was in his own country, and he felt that his vocation was to serve her to the end. The same common sense or rather sense of proportion that governed his decision here dictated his declinature of the peerage. One regrets that he did not see his way to accept of such a dignity if for no other reason than to revive the connection of the Scottish bench with the nobility of the land. Before the Union Scotch judges were frequently raised to the peerage. Since that time a few of them have been made knights; some have penetrated even to the baronetage. But, like the ancient jurisdictions, those very proper recognitions

[1] In 1736 the Court attended the funeral of Lord Newhall, Sir Walter Pringle, in their robes of office, or "Court formalities," as the Faculty Minutes call them. He is said to have been a distinguished ornament of the bar, and a conspicuously successful judge for eighteen years. A motion was made in the Faculty that members should attend the funeral in a body, with their Dean, and in their gowns. After a discussion, this resolution was come to, "The Faculty, considering that there is no precedent to their having attended at the funeral of any of the Lords of Session in the form now proposed, and foreseeing several consequences that may hereafter follow and draw them into inconvenience, and, particularly, bring them under the dishonourable necessity of paying extraordinary outward compliments in future times where equal merit may not call for the same inward respect, resolve, and have resolved, not to attend the funeral with any such transient formalities, but to give this more lasting testimony of their highest esteem and honour for so distinguished a merit and character." The testimony consisted of a glowing eulogium from the pen of the Dean, afterwards Lord President Dundas (Minutes of Faculty, i. 649).

of judicial worth for the most part have disappeared. Perhaps it is a greater distinction to remain to future ages The President, and nothing but The President. And it seems as if the supereminent amongst our lawyers prefer this dignity to any other. The greatest of Presidents are known to us, and will be to our children, as President Forbes, President Blair, President Hope, President Boyle, and President Inglis.

Honours unsought by him had been conferred by the Crown, by his own profession, and by the public. These have been referred to in their proper place. An honour that touched him deeply was a request by the Society of Solicitors that he should allow his portrait to form one of the medallion figures in the windows of their new library. His reply, dated in February, 1891, is characteristic:—

Dear Sir,—I have received your letter of the 12th, with accompanying drawing. I feel much honoured by the proposal made by you on behalf of the Society of Solicitors before the Supreme Courts.

But I trust you have not forgotten the wise counsel given by a great lawyer and a great law-maker, Solon, to Crœsus, King of Lydia, in the height of his prosperity—that no man's life could be pronounced altogether happy till its close.

The moral is, that whatever a man's eminence may be during the greater part of his life, it may be all blotted out and destroyed by some fatal lapse before he dies.

This is the principle on which men refrain from erecting monuments or permanent memorials to persons who are still living, and it is a sound principle confirmed and fortified by experience.

With this caution and protest, I leave myself in the hands of the Society.

I will not undertake to fulfil Solon's condition of becoming altogether happy by predecease of the execution of your stained-glass windows, though such an event is by no means unlikely.

As regards the most appropriate likeness, I think I had better

refer you to my son, Mr. A. Wood Inglis, Secretary of the Board of Manufactures, to whom I have handed the drawing which accompanied your letter.

It may be added that the Senatus of the Edinburgh University has commissioned a sculptor to execute in marble a bust of Inglis, which will be placed in the University. The bust in the Hall of the Parliament House is a lifelike representation of the original.

It only remains to say that, although throughout this sketch I have spoken in very high terms of its subject, as perhaps is unavoidable in the case of a professed éloge, these terms are not higher than the close observation and unanimous verdict of his contemporaries warrant. To posterity the impression may become dim, but it may here be placed on record that as a jurist and a judge John Inglis was undeniably the most venerated Scotsman of his time. It is as a judge and jurist that his memory will be cherished, and it was because of his eminence as a judge and jurist that, upon a leaden day in the waning season of 1891, which all will long remember who were present, his remains were accompanied to the grave by every outward token of the honour and the sorrow of his fellow-countrymen.

APPENDICES.

APPENDIX A.

The following is the poem entitled "Days of the High School," by the Rev. George M'Crie, from which I have quoted a few lines on p. 34. It was read at the annual meeting on 26th February, 1873, being communicated by Mr. Benjamin Bell. The meeting, which included Lord Moncreiff, Sir Douglas Maclagan, Thomas Constable, and others, "were of opinion that its merits were such as to entitle it to a place in the records of the Club":—

How rich a sense of life was then within us!
The spring-time of the blood—madness of dawn—
A tide of joy, swelling and overswelling,
Setting in from the great eternity
Of our mysterious birth! We were young gods
That walked the earth, and were ambrosia-fed,
Though porridge was our diet; neither care,
Sorrow, nor death, nor danger in our thoughts.
We went out without fear, and came again
Without consideration. When we waked,
It was as by the light of our own soul.
We slumbered in defiance of the stars.
Neither the heavens above us were regarded,
Nor Nature, in a sort; far less the world,
Shaking with great events; kingdoms might rise
Or fall—so might the Stocks! we were as minnows
Who sport it in the shallows of a stream,
Darting from out the stones, racing their joy
Upwards and downwards,—aimless arrows all,
With knowledge only of their flowery banks.

Infirmary Street! O name misnamed for us!
A name suggesting nothing to young health,

Laughter and strength! If any, passing down,
Ever looked up to that Infirmary,
And saw a bandaged head, it woke no sigh,
More than the Moon's wan visage seen by day!
Glorious High School! hadst thou been all of marble,
Thy pillars shafts of pearl blazing in front,
Thy roof a diamond roof bright to the sun
With one reflection of a thousand stars,
Had the walls running round thy ancient Yards,
Like Nineveh's, shown fifteen hundred towers
All sentinelled with angels of the sky—
Thou would'st not have been more a thing of splendour
Than, being what thou art, our young eyes made thee!
To boyhood's eye all is magnificent—
All is converted into marble, pearl,
And gold, and gianthood; its palaces
Are built from its own soul—on any site,
The Cowgate, or the Horse Wynd,—all the same!

How great unto our eyes, which conjured thus,
Was even Bowie's house, hard by the Gates!
Perennial fount of flowing waters, where
Our boyhood quenched of yore its blessed thirst
Out that iron sacramental cup!—
O for that thirst again! O for that draught!
O for a sight too of the man himself!
What though he wore a Tile upon his head
Which had seen days and service of its own,
(A Cowgate shovel which he must have borrowed),
What though he bore upon his back a coat
Of most tobacconist brown,—he had, even he,
The benefit of our hearts' adoring-time.
He seemed a being from another world,
Having the keys of this,—a messenger
Between the heavens themselves and boyhood's realm,
Our counsellor, and arbiter of wars!
Whene'er he issued from his mystic lodge
His form inspired a Rhadamanthus-fear,—
Had he not cocked the School for many a year?

How like to gods the Masters walked the Yards,
Holding their morning consult as they strode!
None of us knew their history—none inquired.
Enough—they were the rulers of our world;
All else as much a myth to every boy
As if they came from Greece and went to Troy!
Thrice-honoured Carson, wherefore art thou dead?

Why did not fate extend thee ninety years?
For then, as on a throne, we would have placed thee
With awe and joy in our Club-dinner's Chair.
Triumphantly once more we had surrounded
The Jove of our Olympus—only king
Whom boyhood knew or bowed to—and renewed
Allegiance to thee! Our own heads are gray,
But thine would far above them all have towered,
Even as the highest Alp holds in the midst
The sovereignty of whiteness, half in heaven!
Men, once thy Rectoral care, and debtors to thee
In every clime, from India would have come,
And farthest shores, inspired by pupil-love,
To do thee honour at the social feast.
There would we all have gathered round, to hail
The glory of thy venerable age,
Thus travelling past its limits, and (as meet)
Tarry behind all its cotemporaries—
A cloud still kept together in the sky
Down to the farthest sunset! Dear old man,
What feelings had been thine, throned there, to see
Even the white harvest of thy far back toils—
The boys themselves grown old, waiting the sickle,
When thou the Sower yet wert with them? And
How hadst thou smiled to see the very same
Who sat as Duxes on thy wooden forms
Lord President near thee, and Lord Justice-Clerk;
Yet wept to gaze upon their heads now crowned
With venerable wigs, recalling days
When these were bright with thee, with radiant hair.

But truce to this wild fancy of the brain!
It is not so; and best it is not so,—
And heaven forbid that so it should have been!
Who would have wished to see thy manly form
Made a love-spectre of infirmity?
This poor octogenarian truth of thee
Would only have confounded boyhood's dream.
Now (death be praised!) it is not ours to see
Time's travesty of such at least as thou—
The humiliation into wrinkled wreck
Of thy dark lion face and Afric strength—
Worse still, the lapse to imbecility
Of the mind that taught us knowledge! God forbid!
Better thy manhood in our memory
Than thy senility before our eye.
What? Could we even have known thee in this guise,

Or thou thy pupils in their patriarchal change?
And when thou thanked us in a palsy-speech,
Would we have *ruffed* thee with our aged feet?—
Wouldst thou have waved thy hand and said "*Hush! boys*"?
Nay, nay; 'tis gone! and let it not be mocked.
Let us not seek two victories over death,
Better that it should sweep our loved and great
Away in their appointed term; meanwhile,
It cannot tear their image from our soul!

Glorious High School! what Eden was to Adam,
Thy Yards, although unplanted, were to us!—
A place where at the outset we enjoyed
A charmed life of our own—a primal joy—
A mystic term of what essentially
Was life, for this is consciousness of life.
The other was a dream! how rich a dream!
As if even antecedently to birth
There had been some mysterious heavenly life
Which came along with us, and stayed a while
Before it died away to common life.
As if this first sweet life was what God gave,
While that again which has succeeded it
Was our own making or our own unmaking.

Glorious High School! in this too like to Eden,
That o'er thy Gates, once closed upon our boyhood,
There waves the dreadful sword of Cherubim
Forbidding entrance more. From these we went
Forth to the world whose wideness is its curse;
And when we would return, saying at heart
"The narrow bounds were best,"—behold! the Scythe
Of Time, which is God's angel, flames aloft
Between us and the bliss for ever lost.
For who of us can be a boy again?

Did I say *who?* For as I sing the words
The good Evangelist has plucked my ears!
"There is," he cries, "a High School higher yet—
Glorious High School of Christ, whose open gates
Whoever enters is a child again."
Blessed Evangelist, and this is true.
Be He then the great Rector of us all!
O glorious Teacher, better than the best!
For even Carson having found us boys
Trained us (what could he better?) to be men,

And men are miserable and doomed to die.
But He—the blessed Teacher of the taught—
Finding us men makes us all boys again!
Finding us dying men, He maketh death
Itself the gate of everlasting life!
Glorious High School! they are indeed schooled high
Who know that by death unto life they fly.

APPENDIX B.

Speech in Defence of Madeleine Smith,

July 8, 1857 (see p. 88).

Gentlemen of the Jury, the charge against the prisoner is murder, and the punishment of murder is death: and that simple statement is sufficient to suggest to us the awful solemnity of the occasion which brings you and me face to face. But, gentlemen, there are peculiarities in the present case of so singular a kind—there is such an air of romance and mystery investing it from beginning to end—there is something so touching and exciting in the age, and the sex, and the social position of the accused—ay, and I must add, the public attention is so directed to the trial that they watch our proceedings and hang on our very accents with such an anxiety and eagerness of expectation, that I feel almost bowed down and overwhelmed by the magnitude of the task that is imposed on me. You are invited and encouraged by the prosecutor to snap the thread of that young life, and to consign to an ignominious death on the scaffold one who, within a few short months, was known only as a gentle, confiding, and affectionate girl, the ornament and pride of her happy home. Gentlemen, the tone in which my learned friend the Lord Advocate addressed you yesterday could not fail to strike you as most remarkable. It was characterised by great moderation—by such moderation as I think must have convinced you that he could hardly expect a verdict at your hands; and in the course of that address, for which I give him the highest credit, he could not resist the expression of his own deep feeling of commiseration for the position in which the prisoner is placed—an involuntary homage paid by the official prosecutor to the kind and generous nature of the man. But, gentlemen, I am going to ask you for something very different from commiseration; I am going to

ask you for that which I will not condescend to beg, but which I will loudly and importunately demand—that to which every person is entitled, whether she be the lowest and vilest of her sex or the maiden whose purity is as the unsunned snow. I ask you for justice; and if you will kindly lend me your attention for the requisite period, and if Heaven grant me patience and strength for the task, I shall tear to tatters that web of sophistry in which the prosecutor has striven to involve this poor girl and her sad strange story.

Somewhat less than two years ago accident brought her acquainted with the deceased L'Angelier; and yet I can hardly call it accident, for it was due unfortunately in a great measure to the indiscretion of a young man whom you saw before you the day before yesterday. He introduced her to L'Angelier on the open street in circumstances which plainly show that he could not procure an introduction otherwise or elsewhere. And what was he who thus intruded himself upon the society of this young lady, and then clandestinely introduced himself into her father's house? He was an unknown adventurer; utterly unknown at that time, so far as we can see. For how he procured his introduction into the employment of Huggins & Co. does not appear; and even the persons who knew him there knew nothing of his history or antecedents. We have been enabled in some degree to throw light upon his origin and history. We find that he is a native of Jersey; and we have discovered that at a very early period of his life, in the year 1843, he was in Scotland. He was known for three years at that time to one of the witnesses as being in Edinburgh, and the impression which he made as a very young man, was certainly, to say the least of it, not of a very favourable kind. He goes to the Continent: he is there during the French Revolution, and he returns to this country, and is found in Edinburgh again in the year 1851. And in what condition is he then? In great poverty, in deep dejection, living upon the bounty of a tavern-keeper, associating and sleeping in the same bed with the waiter of that establishment. He goes from Edinburgh to Dundee, and we trace his history there; at length we find him in Glasgow in 1853; and in 1855, as I said before, his acquaintance with the prisoner commenced. In considering the character and conduct of the individual, whose history it is impossible to dissociate from this inquiry, we are bound to form as just an estimate as we can of what his qualities were, of what his character was, of what were the principles and motives that were likely to influence his conduct. We find him, according to the confession of all those who observed him then most narrowly, vain, conceited, pretentious, with a great opinion of his own personal attractions, and a very silly expectation of admiration from the other sex. That he was to a certain extent successful in attracting such admiration

may be the fact; but, at all events, his own prevailing idea seems to have been that he was calculated to be very successful in paying attentions to ladies, and he was looking to push his fortune by that means. Accordingly once and again we find him engaged in attempts to get married to women of some station at least in society; we have heard of one disappointment which he met with in England, and another we heard a great deal of, connected with a lady in the county of Fife; and the manner in which he bore his disappointment on those two occasions is perhaps the best indication and light we have as to the true character of the man. He was depressed and melancholy beyond description; he threatened—whether he intended or not—to commit suicide in consequence of his disappointment. He was not a person of strong health, and it is extremely probable that this, among other things, had a very important effect in depressing his spirits, rendering him changeable and uncertain—now uplifted, as one of the witnesses said, and now most deeply depressed—of a mercurial temperament, as another described it, very variable, never to be depended on.

Such was the individual with whom the prisoner unfortunately became acquainted in the manner that I have stated. The progress of their acquaintance is soon told. My learned friend the Lord Advocate said to you, that although the correspondence must have been from the outset an improper correspondence, because it was clandestine, yet the letters of the young lady at the first period of their connection breathed nothing but gentleness and propriety. I thank my learned friend for the admission; but even with that admission I must ask you to bear with me while I call your attention for a few moments to one or two incidents in the course of that early period of the history which I think are very important for your guidance in judging of the conduct of the prisoner. The correspondence in its commencement shows that if L'Angelier had it in his mind originally to corrupt and seduce this poor girl, he entered upon the attempt with considerable ingenuity and skill; for the very first letter of the series which we have contains a passage in which she says, "I am trying to break myself off all my very bad habits; it is you I have to thank for this, which I do sincerely from my heart." He had been noticing, therefore, her faults, whatever they were. He had been suggesting to her improvement in her conduct or in something else. He had thus been insinuating himself into her confidence. And she no doubt yielded a great deal too easily to the pleasures of this new acquaintance, but pleasures comparatively of a most innocent kind at the time to which I am now referring. And yet it seems to have occurred to her own mind at a very early period that it was impossible to maintain this correspondence consistently with propriety or with due regard to her own welfare; for, so early as the month of April, 1855—indeed in the very

month in which apparently the acquaintance began—she writes to him in these terms:—

"My dear Emile,—I now perform the promise I made in parting to write to you. We are to be in Glasgow to-morrow (Thursday), but as my time shall not be at my own disposal, I cannot fix any time to see you. Chance may throw you in my way. I think you will agree with me in what I intend proposing—viz., that for the present the correspondence had better *stop*. I know your good feeling will not take this unkind, it is meant quite the reverse. By continuing to correspond, harm may arise; in *dis*continuing it nothing can be said."

And accordingly for a time, so far as appears, the correspondence did cease. Again, gentlemen, I beg to call your attention to the fact that in the end of this same year the connection was broken off altogether. That appears from the letter which the prisoner wrote to Miss Perry in the end of September or beginning of October, 1855:—

"Dearest Miss Perry,—Many, many kind thanks for all your kindness. Emile will tell you I have bid him adieu. My papa would not give his consent, so I am in duty bound to obey him. Comfort dear Emile. It is a heavy blow to us both. I had hoped some day to have been happy with him, but alas! it was not intended. We were doomed to be disappointed. You have been a kind friend to him. Oh! continue so. I hope and trust he may prosper in the step he is about to take. I am glad now he is leaving this country, for it would have caused me great pain to have met him. Think my conduct not unkind. I have a father to please, and a kind father, too. Farewell, dear Miss Perry, and, with much love, believe me yours most sincerely,

"Mimi."

Once more, in the spring of 1856, it would appear—the correspondence having in the interval been renewed, how, we do not know, but it is not unfair to suppose, rather on the importunate entreaty of the gentleman than on the suggestion of the lady who wrote such a letter as I have just read—the correspondence was discovered by the family of Miss Smith. On that occasion she wrote thus to her confidant Miss Perry—"Dearest Mary,—M. has discovered the correspondence. I am truly glad that it is known; but, strange to say, a fortnight has passed and not a word has been said. I cannot understand it. Now, that it is known, I do not mean to give way. I intend to state in plain terms that I intend to be dear Emile's wife. Nothing shall deter me. I shall be of age soon, and then I have a right to decide for myself. Can you blame me for not giving in to my parents in a matter of so serious importance as the choice of a husband? I had been

intended to marry a man of money; but is not affection before all things, and in marrying Emile I will take the man whom I love. I know my friends will forsake me, but for that I do not care so long as I possess the affection of Emile; and to possess and retain his affection, I shall try to please him in all things, by acting according to his directions, and he shall cure me of my faults. . . . I am sorry not to be able to see you, as we are going to Edinburgh in a week or ten days." Now what follows from this you have heard from some of the witnesses. The correspondence was put an end to by the interference of Mr. Smith, and for a time that interference had effect.

But, alas! the next scene is the most painful of all. This which we have been speaking of is in the end of 1855. In the spring of 1856 the corrupting influence of the seducer was successful, and his victim fell. It is recorded in a letter bearing the postmark of 7th May, which you have just heard read. And how corrupting that influence must have been!—how vile the arts to which he resorted for accomplishing his nefarious purpose, can never be proved so well as by the altered tone and language of the unhappy prisoner's letters. She had lost not her virtue merely, but, as the Lord Advocate said, her sense of decency. Gentlemen, whose fault was that—whose doing was that? Think you that, without temptation, without evil teaching, a poor girl falls into such depths of degradation? No. Influence from without—most corrupting influence—can alone account for such a fall. And yet, through the midst of this frightful correspondence—and I wish to God that it could have been concealed from you, gentlemen, and from the world, and I am sure the Lord Advocate would have spared us, if he had not felt it necessary for the ends of justice—I say that, even through the midst of this frightful correspondence, there breathes a spirit of devoted affection towards the man that had destroyed her that strikes me as most touching.

The history of the affair is soon told. I do not think it necessary to carry you through all the details of their intercourse, from the spring of 1856 down to the end of that year. It is in the neighbourhood of Helensburgh almost entirely that that intercourse took place. In November the family of the Smiths came back to Glasgow. And that becomes a very important era in the history of the case; for that was the first time at which they came to live in the house at Blythswood Square, which you have heard so much about. There were many meetings between them in the other house in India Street in 1855; they met still more frequently at Row; but what we are chiefly concerned with is to know what meetings took place between them in that last winter in the house in Blythswood Square—how these took place, and what it was necessary for them to do in order to come together;

for these things have a most important bearing on the question which you are here to try. Now, the first letter written from Blythswood Square bears date November 18, 1856, No. 61. There is another letter also written in November, 1856, and plainly out of its place in this series. It is letter No. 57, and does not bear the day of the month, but must be subsequent to that bearing date the 18th of November, as it is written also from Blythswood Square, and the other letter is shown to be the first written from that house. In this second letter she gives her lover some information of the means by which they may carry on their correspondence in the course of the winter. She says—"Sweet love, you should get those brown envelopes; they would not be so much seen as white ones put down into my window. You should just stoop down to tie your shoe and then slip it in. The back door is closed. M. keeps the key for fear our servant-boy would go out of an evening. We have got blinds for our windows." This shows she had been arranging with him at that time in what manner their correspondence by letter was to be carried on; and I think you will soon see that it was by letter chiefly, if not exclusively, that the correspondence was, for a considerable time, maintained while she was in that house. The next reference to the matter is in a letter of the 21st November, No. 63, in which she says—"Now about writing, I wish you to write me and give me the note on Tuesday evening next. You will about eight o'c. come and put the letter down into the window (just drop it in, I won't be there at the time)—the window next to Minnoch's close door. There are two windows together with white blinds. Don't be seen near the house on Sunday, as M. won't be at church, and she will watch. In your letter, dear love, tell me what night of the week will be the best for you to leave the letter for me. If M. and P. were from home I could take you in very well at the front door, just the same way as I did in India Street, and I won't let a chance pass."

Now, you see the condition on which alone she understood it to be possible to admit him to the Blythswood Square house. That condition was the absence of her father and mother from home—an absence which did not take place throughout the whole of the period with which we have to do. "If M. and P. were from home, I could take you in at the front door, and I won't let a chance pass." But the chance, gentlemen, never occurred. Her father and mother were never absent.

Again, it is very important for you to understand—for the Lord Advocate spoke in such a way as may have left a false impression on your minds—it is very important, I say, that you should understand the means by which communication was made between these two at the window. The Lord Advocate seemed to say that there were some concerted signals by rapping at the

window or on the railings with a stick in order to attract attention. This, you will find, was an entire mistake. L'Angelier did on one or two occasions take that course, but the prisoner immediately forbade it, and ordered him not to do it again. In a letter which bears the postmark of December 5, 1856, she says—"Will you, darling, write me for Thursday first? If six o'clock, do it; I shall look. If not at six o'clock, why, I shall look at eight. I hope no one sees you; and, darling, make no noise at the window. You mistake me. The snobs I spoke of do not know anything of me; they see a light, and they fancy it may be the servants' room, and they may have some fun; only you know I sleep down stairs. I never told any one; so don't knock again, my beloved." Again, in the same letter, a little further down, she says in a postscript—"Pray do not knock at the window," earnestly repeating the same warning. About this time it is quite obvious that they had it in view to accomplish an elopement. It was quite plain that the consent of Miss Smith's parents to her union with the young Frenchman was not to be thought of any longer. That hope was altogether gone, and accordingly there are constant references in the letters about this time to the arrangements that were to be made for carrying her from her father's house and accomplishing a marriage either in Glasgow or Edinburgh. I won't detain or fatigue you by reading the repeated mention of these preparations; I merely notice it in passing as applicable to the period of which I am now speaking. But I beg you to observe, gentlemen, that in going through this series of letters passing in the course of last winter, I endeavour to notice as I pass everything that relates to their mode of correspondence and to proposals for meetings, or to meetings that had taken place. I shall not willingly pass by one of them, for I wish thoroughly and honestly to lay before you every bit of written evidence that can affect the prisoner in that respect.

In a letter which bears postmark "17th December," she says—"I would give anything to have an hour's chat with you. Beloved Emile, I don't see how we can. M. is not going from home, and when P. is away Janet does not sleep with M. She won't leave me, as I have a fire in my room and M. has none. Do you think, beloved, you could not see me some night for a few moments at the door under the front door? but perhaps it would not be safe. Some one might pass as you were coming in. We had better not." Now you will recollect that Christina Haggart told us that upon one occasion, and one only, that there was a meeting in that place, arranged in the way spoken of in this letter—a meeting, that is to say, at the door, under the front door, in the area, to which, of course, he required to be admitted through the area gate; and that was accomplished through the assistance of Christina Haggart. Then again, there is reference in the next

letter, which bears the postmark of the 19th, to a desire for a meeting—"My beloved, my darling,—Do you for a second think I could feel happy this evening, knowing you were in low spirits, and that I am the cause? . . . Oh, would to God we could meet. I would not mind for M.; if P. and M. are from home—the first time they are, you shall be here. Yes, my love, I must see you, I must be pressed to your heart. . . . O yes, my beloved, we must make a bold effort." Here, again, is the same condition, and the impossibility of carrying the meeting through unless in absence of the parents; but the first opportunity which occurs she will certainly avail herself of. Then in another letter, dated 29th, she writes—"If you love me you will come to me when P. and M. are away in Edinburgh, which I think will be the 7th or 10th of January." In the same letter also she says—"If P. and M. go, will you not, sweet love, come to your own Mimi? Do you think I would ask you if I saw danger in the house?" On the 9th of January she writes again a letter, in which you will find a repetition of the same warning, how to conduct himself at the window—"It is just eleven o'clock, and no letter from you, my own ever dear beloved husband. Why this, my sweet one? I think I heard your stick this evening (pray do not make any sounds whatever at my window)." Further, she says in the same letter—"I think you are again at my window, but I shall not go down stairs, as P. would wonder why, and only he and I are up waiting for Jack. I wish to see you; but no, you must not look up to the window in case any one should see me. So, beloved, think it not unkind if I never by any chance look at you, just leave my note and go away." In the next letter, dated the 11th, she says—"I would so like to spend three or four hours with you, just to talk over some things; but I don't know when we can, perhaps in the course of ten days. . . . . If you would risk it, my sweet beloved pet, we would have to kiss each other and a dear fond embrace; and although, sweet love, it is only for a minute, do you not think it is better than not meeting at all? . . . Same as last." Plainly that was the short meeting which Christina Haggart told us of as occurring in the area under the front door; and so far as I can see, there is not a vestige or tittle of written evidence of any meeting whatever, except that short meeting in the area, down to the time of which I am now speaking—that is to say, from the 18th of November till the date of this letter, which is the 11th January. Then, on the 13th January, she writes a letter, which is also very important, with reference to the events at this period, because at that time he had been very unwell. The 13th of January is the date of the letter—"Monday night." It is posted on the 14th, but as she almost always wrote her letters at night, you will easily understand that it was written on the night of the 13th. She

says—"I am glad you are sound. This is a great matter, I had a fear you were not, and I feared that you would die; but now I am easy on that point. I am very well." In the same letter she says—"I don't hear of M. or P. going from home, so, my dear pet, I see no chance for us. I fear we shall have to wait a bit." That may have reference either to the possibility of their meetings, or to the possibility of their carrying out their design of an elopement. It matters not very much. Then on the 18th of January we have this—"I did love you so much last night when you were at the window." Now, whether that last phrase indicates that there was a conversation at that meeting or not does not very clearly appear; but, at all events, it can have been nothing more than a meeting at the window. She says—"I think I shall see you on Thursday night"—I suppose the same kind of meeting that she refers to immediately after. Whether that meeting on Thursday night ever took place or not does not appear; but it is not very important, because, pray observe, gentlemen, that that Thursday night is a night of January; this being written on Monday the 19th, Thursday would have been the 22nd. In the next letter, bearing the postmark of 21st January, she says—"I have not got home till after 2 o'c. for the last two nights. If you can I shall look for a note on Friday, eight or ten, not six." In the next, dated 22nd January, she says—"I was so very sorry that I could not see you to-night; I had expected an hour's chat with you; we must just hope for better the next time. . . . I don't see the least chance for us, my dear love. M. is not well enough to go from home, and, my dear little sweet pet, I don't see we could manage in Edinburgh, because I could not leave a friend's house without their knowing of it; so, sweet pet, it must at present be put off till a better time. I see no chance before March." In the same cover there is another letter, dated Saturday night, where there is reference to a meeting; but my learned friend the Lord Advocate very properly admitted that that was a meeting at the window—nothing more; and therefore I need say no more of it. He was convinced of that by referring back to letter No. 93, and comparing them together. He admitted the meeting there was merely at the window.

Now, gentlemen, that concludes the month of January. There are no more letters of that month. There is not another, so far as I can see, referring to any meeting whatever in that house. Christina Haggart told you, when she was examined, that in the course of that winter, and when the family were living in Blythswood Square, they met but twice; and it is clear that they could not meet without the intervention of Christina Haggart. I don't mean that it was physically impossible; but when the young lady saw so much danger, so much obstruction in the way of her accomplishing her object, unless she could secure the aid of Chris-

tina Haggart, there is not the slightest reason to believe that without that assistance she ever made the attempt. I mean, of course, you must understand, meetings within the house. I don't dispute the existence of the correspondence which was carried on at the window, and I don't doubt that even on occasions they may have exchanged words at the window, and had short conversations there. But I am speaking of meetings within the house. The only evidence at all as to meetings within the house is confined to the meeting in the area under the front door, and the other meeting that took place on the occasion when Christina Haggart introduced L'Angelier at the back door. Now, I am sure you will agree with me that this is a most important part of the case; and I bring you down thus to the commencement of the month of February, with this, I think, distinctly proved—or at least I am entitled to say, without a shadow of doubt to the contrary—that they certainly were not in the habit of coming into personal contact. On the contrary, they had only met in this way on two occasions in the course of the winter.

But now we have come to a very important stage of the case. On the 28th of January Mr. Minnoch proposes; and if I understand the theory of my learned friend's case aright, from that day the whole character of this girl's mind and feelings was changed, and she set herself to prepare for the perpetration of what my learned friend has called one of the most foul, cool, deliberate murders that ever was committed. Gentlemen, I will not say that such a thing is absolutely impossible, but I shall venture to say it is well nigh incredible. He will be a bold man who will seek to set limits to the depths of human depravity; but this at least all past experience teaches us, that perfection, even in depravity, is not rapidly attained, and that it is not by short and easy stages as the prosecutor has been able to trace in the career of Madeleine Smith, that a gentle, loving girl passes at once into the savage grandeur of a Medea, or the appalling wickedness of a Borgia. No, gentlemen; such a thing is not possible. There is, and must be, a certain progress in guilt, and it is quite out of all human experience, judging from the tone of the letters which I have last read to you, that there should be such a sudden transition from affection to the savage desire of removing by any means the obstruction to her wishes and purposes, that the prosecutor imputes to the prisoner. Think, gentlemen, how foul and unnatural a murder it is—the murder of one who within a very short space was the object of her love—an unworthy object—an unholy love—but yet while it lasted—and its endurance was not very brief—it was a deep, absorbing, unselfish, devoted passion. And the object of that passion she now conceives the purpose of murdering. Such is the theory that you are desired to believe. Before you will believe it, will you not ask for demonstration? Will you be

content with conjecture—will you be content with suspicion, however pregnant—or will you be so unreasonable as to put it to me in this form, that the man having died of poison, the theory of the prosecutor is the most probable that is offered? Oh, gentlemen, is that the manner in which the jury should treat such a case?—is that the kind of proof on which you could convict of a capital offence? On the 19th of February, on the 22nd of February, and on the 22nd of March—for the prosecutor has now absolutely fixed on these dates—he charges the prisoner with administering poison. Observe, he does not ask you to suppose merely that by some means or other the prisoner conveyed poison to L'Angelier, but he asks you to affirm on your oaths the fact that, on these three occasions, she with her own hands administered the poison. Look at the indictment and see if I have not correctly represented to you what the prosecutor demands at your hands. He says in the first charge that she "wickedly and feloniously administered to Emile L'Angelier, now deceased"—again, in the second charge, he alleges that she did "wickedly and feloniously administer to him a quantity or quantities of arsenic"—and in the third charge, that she did "wickedly and feloniously administer to, or cause to be taken by, the said deceased Emile L'Angelier, a quantity of arsenic, of which he died, and was thus murdered" by her. These are three separate acts of administration, not, I pray you to observe, general psychological facts, which you may deduce from a great variety of moral considerations, but plain physical facts—facts which, if anybody had seen, would have been proved to demonstration, but which, in the absence of eye-witnesses, I do not dispute may be proved by circumstantial evidence. But then you must always bear in mind that the circumstantial evidence must come up to this—that it must convince you of the perpetration of these acts.

Now, then, in dealing with such circumstantial proof of such facts as I have been speaking of, what should you expect to find? Of course the means must be in the prisoner's hands of committing the crime. The possession of poison will be the first thing that is absolutely necessary; and on the other hand the fact that the deceased was, on the first occasion, ill from the consequences of poison; on the second occasion, was ill in the same manner from the consequences of poison; and on the third occasion, died from the same cause. But it would be the most defective of all proofs of poisoning to stop at such facts as these, for one person may be in the possession of poison, and another person die from the effects of poison, and yet that proves nothing. You must have a third element. You must not merely have a motive—and I shall speak of motive by and by—you must not merely have a motive, but opportunity—the most important of all elements. You must have the opportunity of the parties coming into personal contact,

or of the poison being conveyed to the murdered person through the medium of another. Now, we shall see how far there is the slightest room for such a suspicion here.

As regards the first charge, it is alleged to have taken place on the evening of the 19th February, and the illness, on the same theory, followed either in the course of that night, or rather the next morning. Now, in the first place, as to date, is it by any means clear? Mrs. Jenkins—than whom I never saw a more accurate or more trustworthy witness—Mrs. Jenkins swears that, to the best of her recollection and belief, the first illness preceded the second by eight or ten days. Eight or ten days from the 22nd of February, which was the date of the second illness, will bring us back to the 13th February, and he was very ill about the 13th February, as was proved by the letter I read to you, and proved also by the testimony of Mr. Miller. Now, if the first illness was on the 13th February, do you think that another illness could have intervened between that and the 22nd without Mrs. Jenkins being aware of it? Certainly that won't do. Therefore, if Mrs. Jenkins is correct, that the first illness was eight or ten days before, that is one and a most important blow against the prosecutor's case on this first charge. Let us look now, if you please, at what is said on the other side as to the date. It is said by Miss Perry that not only was that the date of his illness, but that he had a meeting with the prisoner on the 19th. Miss Perry's evidence upon that point I take leave to say is not worth much. She had no recollection of that day when she was examined first by the Procurator-Fiscal; no, nor the second time, nor the third time; and it was only when, by a most improper interference on the part of one of the clerks of the Fiscal, a statement was read to her out of a book which has since has been rejected as worthless in fixing dates, that she then for the first time took up the notion that it was the 19th which L'Angelier made reference to in the conversations which he had with her. And, after all, what do these conversations amount to? To this, that on the 17th, when he dined with her, he said he expected to meet the prisoner on the 19th. But did he say afterwards that he had met her on the 19th? The Lord Advocate supposed that he had, but he was mistaken. Miss Perry said nothing of the sort. She said that when she saw him again on the 2nd March, he did not tell her of any meeting on the 19th. Well, gentlemen, let us look now, in that state of the evidence, as to the probabilities of the case. This first illness, you will keep in view, whensoever it took place, was a very serious one—a very serious one indeed. Mrs. Jenkins was very much alarmed by it, and the deceased himself suffered intensely. There can be no doubt about that. Now, if the theory of the prosecutor be right, it was on the morning of the 20th that he was in this state of intense suffering; and upon the 21st, the

next day, he bought the largest piece of beef that is to be found in his pass-book from his butcher; and he had fresh herrings for dinner in such a quantity as to alarm his landlady, and a still more alarming quantity and variety of vegetables. Here is a dinner for a sick man! All that took place upon the 21st, and yet the man was near death's door on the morning of the 20th, by that irritation of stomach, no matter how produced, which necessarily leaves behind it the most debilitating and sickening effects. I say, gentlemen, there is real evidence that the date is not the date which the prosecutor says it is.

But, gentlemen, supposing, for a moment, that the date were otherwise, was the illness caused by arsenic? Such, I understand, to be the position of my learned friend. Now, that is the question which I am going to put to you very seriously, and I ask you to consider the consequences of answering that question in either way. You have it proved very distinctly, I think—to an absolute certainty almost—that on the 19th February the prisoner was not in possession of arsenic. I say proved to a certainty for this reason—because when she went to buy arsenic afterwards, on the 21st February and the 6th and 18th March, she went about it in so open a way that it was quite impossible that it should escape observation if it came afterwards to be inquired into. I am not mentioning that at present as an element of evidence in regard to her guilt or innocence of the second or third charges. But I want you to keep the fact in view at present for this reason, that if she was so loose and open in her purchases of arsenic on these subsequent occasions, there was surely nothing to lead you to expect that she should be more secret or more cautious on the first occasion. How could that be? Why, one could imagine that a person entertaining a murderous purpose of this kind, and contriving and compassing the death of a fellow-creature, might go on increasing in caution as she proceeded; but how she should throw away all idea of caution or secrecy upon the second, and third, and fourth occasions, if she went to purchase so secretly upon the first, that the whole force of the prosecutor has not been able to detect that earlier purchase, I leave it to you to explain to your own minds. It is incredible. Nay, but, gentlemen, it is more than incredible; I think it is disproved by the evidence of the prosecutor himself. He sent his emissaries throughout the whole druggist shops in Glasgow, and examined their registers to find whether any arsenic had been sold to a person of the name of L'Angelier. I need not tell you that the name of Smith was also included in the list of persons to be searched for; and therefore, if there had been such a purchase at any period prior to the 19th February, that fact would have been proved to you just as easily, and with as full demonstration, as the purchases at a subsequent period. But, gentlemen, am I not struggling a great deal too

hard to show you that the possibility of purchasing it before the 19th is absolutely disproved? That is no part of my business. It is enough for me to say that there is not a tittle or vestige of evidence on the part of the prosecutor that such a purchase was made prior to the 19th; and, therefore, on that ground, I submit to you with the utmost perfect confidence as regards the first charge, that it is absolutely impossible that arsenic could have been administered by the prisoner to the deceased upon the evening of the 19th of February. Nay, gentlemen, there is one circumstance more before I have done with that which is worth attending to. Suppose it was the 19th, then it was the occasion in reference to which M. Thuau told you that, when the deceased gave him an account of his illness, and the way in which it came on, he told him that he had been taken ill in the presence of the lady—a thing totally inconsistent with the notice, in the first place, that the arsenic was administered by her, and its effects afterwards produced and seen in his lodgings, but still more inconsistent with Mrs. Jenkins' account of the manner and time at which illness came on, which, if I recollect aright, was at four o'clock in the morning, after he had gone to bed perfectly well. Now, gentlemen, I say, therefore, you are bound to hold not merely that there is here a failure to make out the administration on the 19th, but you are bound to give me the benefit of an absolute negative upon that point, and to allow me to assume that arsenic was not administered on the 19th by the prisoner. I think I am making no improper demand in carrying it that length.

Now, see the consequences of the position which I have thus established. Was he ill from the effects of arsenic on the morning of the 20th? I ask you to consider that question as much as the prosecutor has asked you; and if you can come to the conclusion, from the symptoms exhibited, that he was ill from the effects of arsenic on the morning of the 20th, what is the inference?—that he had arsenic administered to him by other hands than the prisoner's. The conclusion is inevitable, irresistible, if these symptoms were the effect of arsenical poisoning. If, again, you are to hold that the symptoms of that morning's illness were not such as to indicate the presence of arsenic in the stomach, or to lead to the conclusion of arsenical poisoning, what is the result of that belief? The result of it is to destroy the whole theory of the prosecutor's case—a theory of successive administrations, and to show how utterly impossible it is for him to bring evidence up to the point of an actual administration. I give my learned friend the option of being impaled on one or other of the horns of that dilemma, I care not which. Either L'Angelier was ill from arsenical poisoning on the morning of the 20th, or he was not. If he was, he had received arsenic from other hands than the prisoner's. If he was not, the foundation of the whole case is shaken.

So much for the first charge. Gentlemen, before I proceed further, I am anxious to explain one point which I think I left imperfectly explained in passing—I mean regarding the meeting referred to in the letter of Sunday night in the envelope of the 23rd January. My statement was, that the Lord Advocate had admitted that that meeting which was there referred to was a meeting at the window. I think he did not admit it in this form, but he made an admission, or rather he asserted, and insisted on a fact which is conclusive to the same effect. He said that that Sunday night was a Sunday immediately preceding the Monday of letter No. 93. Now, then, if it be the Sunday night immediately preceding the Monday of letter No. 93, observe the inevitable inference, because on the Sunday night she says—"You have just left me." In the postcript to the letter of Monday she says—"I did love you so much last night when you were at the window." So that his Lordship's admission, though it was not made in the form that I supposed, was exactly to the same effect. It is proved that this was a meeting at the window, like the others.

I have disposed of the first charge, and in a way which I trust you won't forget in dealing with the remainder of the case, because I think it enables me to take a position from which I shall demolish every remaining atom of this case. But before I proceed to the consideration of the second charge more particularly, I want you to follow me, if you please, very precisely as to certain dates, and you will oblige me very much if you take a note of them. The first parcel of arsenic which is purchased by the prisoner was upon the 21st of February. It was bought in the shop of Murdoch the apothecary, and the arsenic there purchased was mixed with soot. Murdoch was the person who ordinarily supplied medicines to Mr. Smith's family, and she left the arsenic unpaid for, and it went into her father's account; I shall have something to say about these circumstances hereafter. I merely mention them at present. Now, on Sunday the 22nd it is said, and we shall see by and by with how much reason, that L'Angelier again had arsenic administered to him, and so far it may be that we have, in regard to the second charge, a purchase of arsenic previous to the alleged administration. I shall not lose sight of that weighty fact, you may depend on it; but, from the 22nd February onwards there appears to me to be no successful attempt on the part of the prosecutor to prove any meeting between these persons. He was confined to the house after that illness, as you have heard, for eight or ten days. There are letters written at that time which completely correspond with that state of matters—speak of his being confined, and of the possibility of seeing him at his window. But it is not pretended that there is any meeting during all that time, which lasted for eight or ten days after the 22nd. Now, suppose it lasted for eight days, that

brings you down to the 2nd of March. On the 5th March there is said to be a letter written by L'Angelier to the prisoner, and there is a letter from the prisoner to L'Angelier which is said to be written on the same day. But neither of these letters indicates the occurrence of a meeting upon that day, nor bears any reference to any recent meeting, nor any anticipated or expected meeting. In short, there is not, from the 22nd of February to the 6th of March, any attempt to prove a meeting between the parties. I think I am justified in stating the import of the evidence to be so. I shall be corrected if I am wrong, but I think I am quite certain that there is not an insinuation that there was a meeting between the parties from the 22nd of February to the 6th March. On the 6th March the prisoner goes with her family to the Bridge of Allan, and there she remains till the 17th; and on the 6th March, immediately preceding her departure to the Bridge of Allan, she buys her second parcel of arsenic, and that she buys in the company of Miss Buchanan, talks about it to two young men who were in the shop, signs her name on the register as she had done on the previous occasion; every circumstance shows the most perfect openness in making the purchases. Well, she goes to the Bridge of Allan on the 6th, and confessedly does not return till the 17th. Let us now trace, on the other hand, the adventures of L'Angelier. He remains in Glasgow till the 10th. He then goes to Edinburgh, and returns on the 17th at night. He comes home by the late train to Glasgow. On the 18th he remained in the house all day, and is not out at night. I thought, but was not quite sure that I was right in thinking, that the witness said so, and I am glad to find that my learned friend the Lord Advocate in his speech corroborates my recollection of this fact—that L'Angelier was in the house all the 18th. On the 19th, in the morning, he goes first to Edinburgh and then to the Bridge of Allan, from which he did not return till the night preceding his death, on the 22nd. I have forgot to follow the prisoner on her return from the Bridge of Allan. On the 18th, on her return from the Bridge of Allan, the prisoner purchases her third portion of arsenic at Currie's in the same open way as before.

Observe, gentlemen, that unless you shall hold it to be true, and proved by the evidence before you, that these two persons met on the 22nd of February, which was a Sunday, or unless, in like manner, you hold it to be proved that they met again on the fatal night of the 22nd March, there never was a meeting at all after the prisoner had made any of her purchases of arsenic. I maintain that there not only was no meeting—that we have no evidence of any meeting—but that practically there was no possibility of their meeting. I say that, unless you can believe on the evidence that there was a meeting on the 22nd of February, or again on the 22nd of March, there is no possible occasion on which

she either could have administered poison or could have purposed or intended to administer it. You will now, gentlemen, see the reason why I wanted these dates well fixed in your minds, for from the first alleged purchase of poison to the end of the tragedy, there is no possibility of contact or of administration, unless you think you have evidence that they met on one or other, or both of these Sundays, the 22nd February and the 22nd March.

Let us see if they did meet on the 22nd February. What is the evidence on that point of Mrs. Jenkins, L'Angelier's landlady? She says he was in his usual condition on the 21st, when he made that celebrated dinner to which I have already adverted, and when she thought he was making himself ill, and on that 21st he announced to her that he would not leave the house all the Sunday—the following day. He had, therefore, no appointment with the prisoner for the Sunday, else he would never have made that statement. On the 22nd, Mrs. Jenkins says she has no recollection of his going out, in violation of his declared intention made the day before. Gentlemen, do you really believe that this remarkably accurate woman would not have remembered a circumstance in connection with this case of such great importance as that he had first of all said that he would not go out upon that Sunday, and that he had then changed his mind and gone out? It is too daring a draft on your imagination. She has no recollection of his going out, and I am entitled to conclude that he did not. And when he did go out of a night and came in late, what was his habit? Mrs. Jenkins says he never got into the house on these occasions—that is, after she went to bed—except in one or other of these two ways; either he asked for and got a check-key, or the door was opened to him by M. Thuau. Mrs. Jenkins says there was no other mode. She says he did not ask the check-key that night. If he had done so, she must have recollected. Thuau says he certainly did not let him in. Now, gentlemen, I must say that to conjecture in the face of this evidence that L'Angelier was out of the house that night is one of the most violent suppositions ever made in the presence of a jury, especially when that conjecture is for the purpose of—by that means, and that means only—rendering the second administration of poison charged in this indictment a possible event; for without that conjecture, it is impossible.

Well, L'Angelier was not taken ill till late in the morning, and he did not come home ill. There was no evidence that he ever came home at all, or that he ever was out; all we know as matter of fact is, that he was taken ill late in the morning, about four or five o'clock. Only one attempt was made by my learned friend to escape from the inevitable results of this evidence. And it was by a strained and forced use of a particular letter, No. 111, written on a Wednesday, in which letter the prisoner says she is

sorry to hear he is ill; but the portion on which he particularly founded was that in which she added—"You did look bad Sunday night and Monday morning." My learned friend says that that letter was written on the 25th of February, and points out to you that the Sunday before that was the 22nd. And, no doubt, if that were conclusively proved, it would be a piece of evidence in conflict with the other, and a very strong conflict and contradiction it would indeed be, and one which you, gentlemen, would have great difficulty to reconcile. This, however, would not be a reason for believing the evidence of the Crown, or for convicting the prisoner, but for a very opposite result. But, gentlemen, in point of fact, the supposed conflict and contradiction are imaginary; for the only date the letter bears is Wednesday, and it may be, so far as the letter is traced, any Wednesday in the whole course of their correspondence. There is not a bit of internal evidence in this letter, nor in the place where it was found, nor anywhere else, to fix its date, unless you take that reference to Sunday night, which is, of course, begging the whole question. Therefore, I say again, gentlemen, that it might have been written on any Wednesday during the whole course of their correspondence and connection. But it is found in an envelope, from which its date is surmised. And, gentlemen, because a certain letter, without date, is found in a certain envelope, you are to be asked to convict, and to convict of murder, on that evidence alone! I say that if this letter had been found in an envelope bearing the most legible possible postmark, it would have been absurd and monstrous to convict on such evidence. But, when the postmark is absolutely illegible, how much is that difficulty and absurdity increased! Except that the Crown witness from the post-office says that the mark of the month has an R, and that the post-office mark for February happens to have no R, we have no evidence even as to the month. My learned friend must condemn the evidence of his own witness before he can fix the postmark. The witness said the letter must have been posted in the year 1857; but perhaps even on that point the Crown will not take the evidence of a witness whom they themselves have discredited. The whole evidence on this point is subject to this answer—that the envelope proves absolutely nothing. Again, to take the fact that a particular letter is found in a particular envelope as evidence to fix the date of an administration of poison, is, gentlemen, a demand on your patience and on your credulity which to me is absolutely unintelligible. The Lord Advocate said in the course of his argument that, without any improper proceedings on the part of the Crown officials, nothing could be so easily imagined as that a letter should get into a wrong envelope in possession of the deceased himself. I adopt that suggestion. And if that be a likely action, what is the value of the letter as a piece of evidence?—especially in opposition

to the plain evidence of two witnesses for the Crown, that the Sunday referred to in the letter could not be the 22nd of February, because on that Sunday L'Angelier was never over the door. Well, I do not think the Crown has succeeded much better in supporting the second charge. For if the instrument be indispensable to the administration of poison, it is equally evident that there must also be the opportunity of administering it. I should like to know whether my learned friend still persists in saying that, on the morning of the 23rd February, the deceased was suffering from the effects of arsenical poisoning; for, if he does, the inference recurs that the deceased was in the way of receiving arsenic from another hand than that of the prisoner's. And now, gentlemen, am I not entitled to say that, as regards the first two charges, step by step—tediously, I am afraid, but with no more minuteness than was necessary for the ends of justice and the interests of the prisoner—I have pulled to pieces the web of sophistry which had been woven around the case?

Well, gentlemen, time goes on, and certainly in the interval between the 22nd February and the 22nd March we have no event in the nature of a meeting between these parties. Nothing of that kind is alleged; and on the 22nd of March it is perfectly true that L'Angelier goes to Glasgow, and goes under peculiar circumstances. The events connected with his journey from Bridge of Allan, with the causes and consequences of it, I must beg you to bear with me while I detail at considerable length. He went to the Bridge of Allan on the morning of the 19th, or, in other words, he went first to Edinburgh and then from that to the Bridge of Allan. You recollect that upon the 18th—from the night of the 17th, after his arrival from Edinburgh, and in the course of the 18th—he had expressed himself very anxious about a letter which he expected. He spoke to Mrs. Jenkins about it several times; but he started to Edinburgh without receiving that letter; and I think it is pretty plain that the sole cause of his journey to Edinburgh that day was to see whether the letter had not gone there. Now in Edinburgh again he receives no letter, but goes on to the Bridge of Allan, and at the Bridge of Allan he does receive a letter from the prisoner. That letter was written on the evening of Wednesday the 18th—remember that there is no doubt about that, we are quite agreed about it, and it was posted on the morning of Thursday. It was addressed by the prisoner to the deceased at his lodgings at Mrs. Jenkins', the prisoner being ignorant of the fact that he had left town. It reached Mrs. Jenkins in the course of the forenoon, and it was posted in another envelope by M. Thuau addressed to L'Angelier at Stirling, where he received it upon Friday. I hope you follow this exactly, as you will find it immediately of the greatest consequence. It reached the post-office at Stirling, I think, about ten on the

morning of Friday. Now, gentlemen, there are two or three circumstances connected with this letter of the greatest consequence. In the first place, it is written on the evening before it is posted. In that respect it stands very much in the same position as by far the greater part of the letters written by the prisoner, which were almost all written at night and posted next morning. In the second place, it undoubtedly contained an appointment to meet the deceased on the Thursday evening. That was the evening after it was written—the evening of the day on which it was posted. But L'Angelier being out of town, and not receiving it until the Friday, it was of course too late for the object, and he did not come to town in answer to that letter—a very important fact too, for this reason, that it shows that if the tryst was made by appointment for one evening, he did not think it worth while to attempt to come the next evening, because he could not see the prisoner but by appointment. Remember how anxious he was about this letter before he left Glasgow; remember that he made a journey to Edinburgh for the very purpose of getting the letter that he expected. He was burning to receive the letter—in a state of the greatest anxiety—and yet when he gets it on the Friday morning in Stirling, seeing that the hour of appointment is already past, he knows that it is vain to go. She cannot see him except a tryst is made. Now, most unfortunately—I shall say no more than that of it at present—that letter was lost; and, most strangely, not merely the original envelope in which it was enclosed by the prisoner herself, but the additional envelope into which it was put by Thuau are both found, or said to be found, in the deceased's travelling-bag, which he had with him at Stirling and Bridge of Allan. But the letter is gone—where, no man can tell. Certainly it cannot be imputed as a fault to the prisoner that the letter is not here, for that it was received is without doubt. On the Friday he writes a letter to Miss Perry, in which he makes use of this expression—"I should have come to see some one last night, but the letter came too late, so we were both disappointed." He got the letter; he knew that it contained an appointment for that night, and the preservation of this letter to Miss Perry proves its contents so far. But the letter itself is gone, and I cannot help thinking, although I am not going to detain you by any details on the subject, that the Crown is responsible for the loss of that letter. If they had been in a position to prove, as they ought to have done, that these two envelopes were certainly found in the travelling-bag without the letter, they might have discharged themselves of the obligation that lay upon them; but, having taken possession of the contents of that travelling-bag, which are now brought to bear on the guilt or innocence of the prisoner, I say again, as the fact stands, that that letter is lost, and they are answerable for the loss.

Now then, the next day there is another letter which is sent to the Bridge of Allan through the same channel. It is addressed to Mrs. Jenkins' lodgings, and bears the postmark of 21st March —that is to say, Saturday morning. It reached Mrs. Jenkins' in the course of the forenoon; it was posted to Stirling by M. Thuau in the afternoon of the same day, and was received by deceased at the Bridge of Allan on Sunday morning. Here is the letter:— "Why, my beloved, did you not come to me? Oh, my beloved, are you ill? Come to me, sweet one. I waited and waited for you, but you came not. I shall wait again to-morrow night— same hour and arrangement. Oh, come, sweet love, my own dear love of a sweetheart. Come, beloved, and clasp me to your heart; come, and we shall be happy. A kiss, fond love. Adieu, with tender embraces. Ever believe me to be your own ever dear, fond Mimi." When was it that she "waited and waited?" It was upon Thursday evening—that was the tryst. The letter to Miss Perry proves conclusively that it was on the Thursday she waited, expecting him to come in answer to her previous invitation. When, then, do you think it was likely that she should write her next summons? I should think that, in all human probability, it was on the following evening—that is, on Friday. She almost always wrote her letters in the evening, and I think I am not going too far when I say, that when she did not write them in the evening she almost always put the hour to them at which they were written; and when she wrote her letters in the evening they were invariably posted next morning, and not that evening, for very obvious reasons. Now, then, is it not clear to you that this letter, this all-important letter, written upon the Friday evening, was posted on the Saturday morning, while she still believed he was still in Glasgow with Mrs. Jenkins, making the appointment for Saturday evening, and not for the Sunday—"I shall wait to-morrow night, same hour and arrangement." It is the very same amount of warning that she gave him in the previous letter written on Wednesday, and posted on the Thursday morning, when she made the appointment for Thursday evening. Here, in like manner, comes this letter written, as I say, upon the Friday evening, and posted upon the Saturday morning—fixing a meeting for the Saturday evening. The two things square exactly; and it would be against all probability that it should be otherwise. She was most anxious to see him; she believed him to be in Glasgow; and she entreated him to come to her.

Oh, but, says my learned friend, they were not in the way of meeting on Saturdays—Sunday was a favourite night, but not Saturday. Really, gentlemen, when my learned friend has put in evidence before you somewhere about 100 out of 200 or 300 letters, that he should then ask you to believe (because there is no appearance of a Saturday evening meeting in any of them

which he has read) that there is no such appearance in any that he has not read—would be a most unreasonable demand. But, unhappily for his theory or conjecture, it is negatived by the letters that he has read, as you will find. In one letter, No. 55, October, 1856, she says:—"Write me for Saturday if you are to be on Saturday night." That is, to meet her on Saturday. Again, in letter No. 111, she says—"I shall not be home on Saturday, but I shall try, sweet love, to meet you, even if it be but for a word"—alluding to her return from some party. Now, these are two examples selected out of the very letters that my learned friend himself has used, negativing the only kind of supposition that he has set off against what I am now advancing. Gentlemen, I think further, with reference to the supposed meeting on Sunday evening, that I am entitled to say to you that there is no appearance of their having ever met without previous arrangement. The very existence of that number of references in various parts of the correspondence, and at different dates, to meetings then made or that were past—the constant reference to the aid and assistance of Christina Haggart, whenever there was anything more than a mere meeting at the window required—all go to show that in meetings between these parties there always was and always must have been, in order to their being brought about at all, previous arrangement. If, indeed, as regards the Blythswood Square house, the theory of the prosecutor had been correct, that the deceased had it in his power at any time to go to the window in Main Street and call her attention by some noisy signal, the case might have been different. But I have already shown how constantly she repeated to him her warning that he was on no account to make the slightest knocking or noise of any kind—that when she wanted to see him she would watch for him and tell him when to come. But a signal at the window was to be avoided of all things, because it was sure to lead to discovery. Therefore, without previous arrangement, it does not appear to me to be possible for these parties to have met on the occasion the prosecutor says they did.

And now let us see what the condition of Blythswood Square house and its inmates was upon this all-important Sunday the 22nd March. If I am right in my reading of the letters, she expected him on Saturday evening, and she waited for him then—waited most impatiently; waited and waited as she had upon the Thursday, but he came not. On the Sunday evening she did not expect him—why should she? When he did not come on the Thursday evening, she did not expect him, and he did not come on the Friday evening—when he did not come on the Saturday evening, why should she expect him on the following evening? Having broken his appointment of the Thursday, he did not understand he could procure an interview on the Friday. Having broken

it on the Saturday, why should he expect that the meeting was transferred to the following evening? Well, then, that is the state in which her expectations were on that occasion, and her conduct precisely squares with these expectations. She is at home in the family, with her father, mother, brother, and sisters. They are all at prayers together at nine o'clock. The servants came up to attend prayers along with the family. Duncan Mackenzie, the suitor of Christina Haggart, remains below while the family are at worship. The servants afterwards go down stairs after prayers, and go to bed as usual—one after the other, first the boy, then Christina Haggart, and lastly the cook, who gets to bed about eleven o'clock. The family then retires to rest, and the prisoner with her youngest sister descends from the dining-room to her bedroom between half-past ten and eleven. They take half-an-hour to undress; they both get into bed about the same time; the prisoner apparently is undressed as usual; goes to bed with her sister; and, as far as human knowledge or evidence can go, that house is undisturbed and unapproached till the prisoner is lying in the morning, side by side with her sister, as she had fallen asleep at night. Do you think it possible that, if there had been a meeting between these two parties, no shred of evidence of that meeting would have been forthcoming? The watchman was on his beat, and he knew L'Angelier well, and he saw nothing. As you must be aware, this is a very quiet part of the town; it is not a bustling thoroughfare, but a quiet west-end square of buildings, about which the appearance of a stranger at a late hour on a Sunday evening would attract attention. The policeman, whose special charge was, on such an evening, and in such circumstances, to see every one passing there (and there is no charge against him of not having been upon his beat, and nothing in the least to detract from his evidence), sees nothing. Neither within the house, nor without the house, is there the slightest vestige of ground for suspecting that that meeting, of which they had been disappointed on Saturday, took place on the Sunday.

But now, let me turn to L'Angelier. It is said that he came from the Bridge of Allan in answer to the invitation sent him by the prisoner in the course of Saturday. I don't think that is altogether a reasonable presumption. But even if you assume it, it won't advance the prosecutor's case one step. But, I say it is not a reasonable presumption. I say for this reason, because, to say that he came into Glasgow on a Sunday, at such great inconvenience, to keep an appointment, the time for which was already past, is to suppose him to contradict on Sunday what he did, or rather omitted to do, on Friday, under precisely similar circumstances. If he had wanted to have a meeting on an evening subsequent to that for which it was appointed, he could have been in on Friday; and the circumstances were the same. And yet,

on Sunday, when there was far less facility for putting his purpose into execution—when he required to walk a considerable part of the way, instead of going by rail, as he could have done on Friday—he is represented as having done this on purpose to keep a meeting which had been appointed for the previous night. I say that is not a reasonable supposition. We do not know what other letters he received at the Bridge of Allan on the Sunday morning. There is no evidence of that. The prosecutor might have given it; but he has failed to do so. Then, there is surely a great deal of mystery attending the prosecution of this journey from the Bridge of Allan to Glasgow on that Sunday. But, before I go into that, let me remind you, with reference to the correspondence between him and M. Thuau, as to the forwarding of his letters, that we have this in his letter of the 16th March, 1857. He says:—"I have received no letters from Mr. Mitchell; I should like to know very much what he wants with me." Now, we don't know anything of Mr. Mitchell, and the Crown has not told us; but apparently L'Angelier was expecting letters from this Mr. Mitchell when he was in Edinburgh. He was anxious to receive them, and anxious to know what Mitchell wanted; and who can tell what letters be received at Bridge of Allan on Sunday morning? Who can tell whether there was not a letter from this Mitchell? and, if so, who can tell what it contained?

However, L'Angelier came to Glasgow, and, as I said before, there is a certain degree of mystery, and a very great obscurity thrown over this part of the case—I mean the course of his journey to Glasgow. I refer to this part of the evidence, because, I think, everything that bears on the proceedings of L'Angelier on the Sunday is important to the case. It is most essential that everything should be laid before you; and it is for that reason, rather than because I attach any great importance to the thing itself, that we brought before you the evidence of the three apothecaries to which I am going to refer. But observe, in the first place, what the evidence of the Crown is. They call the guard of the mail-train by which he travelled from Stirling to Coatbridge; and that guard says, that a gentleman travelled with him from Stirling to Coatbridge on a Sunday, and set out to walk to Glasgow in company of the witness Ross. Now, Ross did not describe the person of L'Angelier, or his conversation, or anything about him, in such a way that anybody could possibly identify him from his description. And Ross was not shown the photograph—a very remarkable omission on the part of the Crown, and of course done for some good reason. They did show the photograph to the mail-guard, and the mail-guard recognised and identified the deceased man entirely from the photograph; and yet, when we proposed, on the part of the prisoner, to identify him in the same way, the Crown seemed to think that we were relying on very imperfect means of

identification. Why, it was of their own making and suggestion. It was the very medium of identification on which alone they relied, only that they relied on the exhibition of that photograph to a single witness, and if he was mistaken, Ross' evidence is worthless; for Ross told us nothing particular about him, except that he walked with a gentleman to Glasgow. But there are some things connected with his conversation with Ross, while on the way to Glasgow, that certainly startle one very much. After they had the refreshment at the inn at Coatbridge, none of the other parties connected with which have been called as witnesses to identify or describe L'Angelier—after they left that inn—they fell into conversation; and while the conversation was at first of indifferent matters, it afterwards turned, among other things, on the place from which the supposed L'Angelier had come; and what was the account that he gave of himself? That he had come from Alloa. It seemed to me at first that there might be some misunderstanding or misstatement on the part of the witness in calling Alloa the Bridge of Allan, or something of that kind; but no. Ross was quite sure about it. He said there was not a word spoken about the Bridge of Allan between them. I asked him, Did he tell him how far it was from Alloa to Stirling, and he said, It was eight miles, which is just the distance of Alloa; while, as we proved to you, the distance between the Bridge of Allan and Stirling is only between two and three; and yet it is on this evidence that the Crown asks you to believe this was L'Angelier who came in with Ross. It might have been possible for the Crown to identify him further. In the course of his conversation with Ross he said that he had come to Stirling the day before, or on Friday; that he had endeavoured to cash a cheque at the bank and had been refused, because they did not know him. No attempt has been made to show that L'Angelier did this; no attempt to show that he had a cheque with him; no attempt to show that he had occasion to cash a cheque, having no money with him. All these things were open to the Crown to have proved. Not one of them have they tried.

Now, on the other hand, observe the condition in which the witnesses for the defence stand in regard to this Sunday. Ross, you know, said that the man never parted with him from the time they started till they reached Abercromby Street in the Gallowgate; and, therefore, if it was L'Angelier who was with him, he gave a perfectly false account of the place where he had come from, and the distance he had walked; and then his evidence —Ross' evidence—would be in direct conflict with that of the witnesses whom I am now about to refer you to. If L'Angelier was not with Ross, then there is no difficulty in reconciling the evidence, and no difficulty in believing the witnesses, Adams, Kirk, and Dickson. Adams, the first witness, speaks to the 22nd as the day

of a gentleman passing along the road from Coatbridge to Glasgow bearing a very strong likeness to L'Angelier. Adams is not so clear about the likeness as the others; but he is perfectly clear about the day. And when you come to the witness Dickson at Baillieston, he is clear about the likeness; and what he says to the date is this, that it was a Sunday at the end of March. Miss Kirk is equally clear about the likeness. She is very strong on that; and, besides, she identified the purse from which he took out his money, and which was found on the person of L'Angelier after death. And she also states the occasion to be the evening of a Sunday at the end of March. Now, gentlemen, I need not tell you it could not have been any later Sunday in March, because the poor man died the next morning, and it could not be the Sunday before that, for he was then in Edinburgh; and, therefore, if it was a Sunday in March at all, and, above all, if it was a Sunday in the end of March, it could be no Sunday but the 22nd. Now, if these three witnesses are correct in what they stated to you, observe these important results. He was ill on the road from Coatbridge to Glasgow; he was taking laudanum in the apothecaries' shops as he passed; and, finally, in Miss Kirk's shop he purchased, but did not consume in the shop, some white powder, of which Miss Kirk could not tell what it was. Well, he came to Glasgow. He is seen by Mrs. Jenkins at his lodgings on his arrival, at about eight o'clock. He remains there till nine, and then goes out. He is seen in different streets. He calls about half-past nine on his friend M'Allester, who lives some five minutes' walk from Blythswood Square. He calls there, but finds that M'Allester is from home. Again, I ask, why have we not here M'Allester to tell us what he knew about him, or whether he expected him? Could M'Allester have told us anything about Mitchell of the letter? Could not M'Allester have explained what was the errand on which he had come from the Bridge of Allan? Why do the Crown leave all these different things unexplained on this the last and most important day of his history?

Now, gentlemen, from half-past nine till half-past two o'clock—at least five hours—he is absolutely lost sight of; and I am startled at the boldness of the manner in which my learned friend the Lord Advocate met this difficulty. He says, it is, no doubt, a matter of conjecture and inference, that in the interval he was in the presence of the prisoner. Good heavens! Inference and conjecture! A matter of inference and conjecture whether, on the night he was poisoned, he was in the presence of the person who is charged with his murder? I never heard such an expression from the mouth of a Crown prosecutor in a capital charge before, as indicating or describing a link in the chain of the prosecutor's case. It is absolutely new to me. I have heard it many a time in the mouth of a prisoner's counsel, and I daresay you

will hear it many a time in mine yet before I have done; but for the prosecutor himself to describe one part of his evidence as a piece of conjecture and hypothesis is to me an entire and most startling novelty. And yet my learned friend could not help it. It was honest and fair that he should so express himself if he intended to ask for a verdict at all; for he can ask for this verdict on nothing but a set of unfounded and incredible suspicions and hypotheses.

Let us now look at this third charge in the light of probabilities, since we must descend to conjecture; and let us see whether there is anything to aid the conjecture which the Crown has chosen to consider as the most probable one. If you believe the evidence of the Crown, L'Angelier suspected the prisoner of having tried to poison him before. But then, says my learned friend, his suspicions were lulled. She had become more kind to him before he had left town, and his suspicions were lulled. But, I think, my learned friend said, in another place, that he was brooding over it when he was in Edinburgh, and spoke of it in a very serious tone to Mr. and Mrs. Towers at Portobello. That was the 16th of March, after which he had nothing to change his mind in the shape of kindness or confidence from the prisoner; and, therefore, if he did once entertain the suspicion, however unfounded, there was nothing, so far as the prisoner was concerned, to remove it from his mind anterior to the evening of Sunday the 22nd of March. A man, whose suspicions are excited against a particular person, is not very likely to take poison at that person's hand. I am merely uttering a very commonplace observation when I say this, —but the circumstance of its being a commonplace observation makes it all the stronger here,—it is a thing so plain and obvious on the face of it, that nobody can fail to see it; and yet what are we asked to believe that he did that night? We are asked to believe that he took from her hand a poisoned cup, in which there lurked such a quantity of arsenic as was sufficient to leave in his stomach after his death 88 grains—such a dose, indicating the administration of at least double—ay, I think, as Dr. Christison said, indicating the administration of at least half-an-ounce—240 grains—and this he took that evening from the hand of the prisoner, with all his previous suspicion that she was practising on his life. It is a dose which, as far as experience goes, never was successfully administered by a murderer. There is not a case on record in which it has ever been shown that a person administering poison to another succeeding in persuading him to swallow such a quantity. There is the greatest improbability of such a thing being ever done; it is a most difficult thing to conceive a vehicle in which it could be given. Yet, with all these extraordinary circumstances attending the character and quantity of the dose, this gentleman swallowed it, having had his suspicions previously

excited that the prisoner was practising on his life. Nay, more, even supposing he did swallow all this arsenic in a cup of cocoa, as suggested, it is at least next to impossible that, with all that undissolved gritty powder passing over his throat, he should not become aware that he had swallowed something unusual. And yet, instead of immediately seeking medical aid, or communicating his alarm or suspicions to anybody, he staggers home in great pain; and, through the long dreary hours of that fatal morning, amidst all his frightful sufferings, neither to the landlady, nor to the doctor, does he ever suggest that he may have been poisoned, or breathes a suspicion against her whom he had previously suspected of an attempt to poison him.

But, gentlemen, here comes again another point in which the evidence for the Crown is very defective, to say the least of it. They knew very well when they were examining and analysing the contents of this poor man's stomach, and the condition of his intestines generally, what was the arsenic that the prisoner had bought. They knew perfectly well, from her own candid statement, disclosed the moment she was asked, that the arsenic that she bought was got partly at Murdoch's, and partly at Currie's. Murdoch's arsenic was mixed with soot, Currie's arsenic was mixed with waste indigo. If that arsenic had been swallowed by the deceased, the colouring matter could have been detected in the stomach. I confess I did not expect to have it so clearly proved, when the witnesses for the Crown were originally in the box; but you recollect what Dr. Penny said when he was recalled by my learned friend on the other side, and I think a more clear or precise piece of evidence I never listened to. He said he tried the experiment with animals. He gave one dog a dose of Murdoch's arsenic, and found the soot in its stomach after death, notwithstanding constant vomiting. He gave another dog a dose of Currie's arsenic; and, said Professor Penny, after the dog had vomited and died, "I found particles that might correspond with the colouring matter in Currie's arsenic." But I asked him whether they did precisely correspond, and he said, Yes. I asked him whether they were identical, and he said, Yes. Now, gentlemen, there was one means of connecting the prisoner with this poison which was found in the stomach of L'Angelier—and a very obvious means. It may be very well for Professor Penny and Professor Christison to say now that their attention was not directed to this matter. Whose fault is that? The Crown, with the full knowledge of what was the arsenic which the prisoner had in her possession, could have directed their attention to it; they must have seen the importance of the inquiry, or, if they did not see that, they must suffer for their omission. Plainly, there can be no fault on the part of the prisoner, for, observe, she had no means of being present, or of being represented, at these *post-mortem* examinations

or chemical analyses. The whole thing was in the hands of the authorities. They kept them to themselves—they dealt with them secretly—and they present to you this lame and impotent conclusion.

Such is the state of the evidence on this third and last charge upon the 22nd of March; and I do venture to submit to you, that if the case for the Crown is a failure, as it unquestionably is, upon the first and the second charges, it is a far more signal and radical failure as regards the third. The one fact which is absolutely indispensable to bring guilt home to the prisoner remains not only not proved—I mean the act of administration—but the whole evidence connected with the proceedings of that day seems to me to go to negative such an assumption.

I might stop there, for nothing could be more fallacious than the suggestion which was made to you by the Lord Advocate, that it was necessary for the prisoner to explain how the deceased came by his death. I have no such duty imposed on me. His lordship in the chair will tell you that a defender in this Court has no further duty than to repel the charge and to stand upon the defensive, and to maintain that the case of the prosecutor is not proved. No man probably will or ever can tell—certainly at the present moment I believe no man on earth can tell—how L'Angelier met his death. Nor am I under the slightest obligation even to suggest to you a possible mode in which that death may have been brought about without the intervention of the prisoner. Yet it is but fair that, when we are dealing with so many matters—matters of mere conjecture and suspicion on the part of the Crown, we should for a moment consider whether that supposition upon which the charge is founded is in itself preferable, in respect to its higher probability, to other suppositions that may be very fairly made. The character of this man—his origin, his previous history, the nature of his conversation, the numerous occasions upon which he spoke of suicide—naturally suggest that as one mode by which he may have departed this life. I say, gentlemen—understand me—that I am not undertaking to prove that he died by his own hand. If I were doing anything so rash, I should be imitating the rashness of the prosecutor—but I should not be stepping a hairsbreadth further out of the beaten track of evidence, and proof, and demonstration. For I think there is much more to be said for suicide than for the prisoner's guilt. But I entreat you again to remember that that is no necessary part of my defence. But, of course, I should have been using you very ill—I should have been doing less than my duty to the prisoner—if I had not brought before you the whole of that evidence which suggests the extreme probability of the deceased dying by his own hand at one time or another. From the very first time at which we see him, even as a lad, in the year 1843, he talks in a

manner to impress people with the notion that he has no moral principle to guide him. He speaks over and over again in Edinburgh, Dundee, and elsewhere of suicide—ay, and the prisoner's letters show that he had made the same threat to her, that he would put himself out of existence. The passages were read to you, and I need not now repeat them. And is it half as violent a supposition as the supposition of this foul murder, that upon this evening—the 22nd of March—in a fit of that kind of madness which he himself described came over him when he met with a disappointment—finding, it may be, that he could not procure access to an interview which he desired—assuming that he came to Glasgow for the purpose—assuming, even, that he mistook the evening of the meeting, and expected to see her on the Sunday—can anything be more probable than that in such a case, in the excited state in which he then was, he should have committed the rash act which put an end to his existence? I can see no great improbability in that. It is said, no doubt, that his death-bed scene is inconsistent with the supposition of his having taken poison for the purpose of self-destruction, because he willingly received the services of Dr. Steven. What is the evidence as to this? He refused most of the remedies suggested. He rejected the blister as useless. And he also rejected laudanum, and assigned a false reason for doing so. And, finally, he told his landlady after Dr. Steven's departure, "The doctor does not know how ill I am," which seems to indicate his own knowledge of a cause for his illness, which was unknown to others. But even supposing that he had taken the treatment of the medical man with more appearance of a reliance on its efficacy, this would not be at all inconsistent with suicide. The cases mentioned by Dr. Paterson, and the still more remarkable case of which Dr. Lawrie gave so interesting an account, establish as matter of medical experience, that persons who take arsenic for the purpose of self-destruction, may, and do conceal the fact during the intense sufferings which precede death, and submit to medical treatment as if they expected and hoped that it might save their lives. This is the fair result of experience. But what experience is there to support the wild hypothesis, that one who has drunk poison in such quantities as to ensure detection, and that poison administered by a suspected hand, should yet die after hours of bodily torture, without suggesting poison as the cause, or hinting a suspicion against the administrator of the dose?

But whether he met his death by suicide, or whether he met his death by accident, or in what way soever he met his death, the question for you is—Is this murder proved? You are not bound to account for his death—you are not in the least degree bound to account for his death. The question you have got to try is—Whether the poison was administered by the hands of the prisoner?

I have shown you from the indictment that that is the fact which you are asked to affirm. I pray you to remember that you are asked to affirm that on your oaths—to affirm on your oaths as a fact, that the arsenic which was found in that man's stomach was presented to him by the hands of the prisoner.

Gentlemen, I have spoken of the improbabilities which belong to this story—to this charge. But surely you cannot have omitted to observe how very unnatural and extraordinary a crime it is to impute to a person in the prisoner's situation. I stated to you before, and I state to you again, as a piece of undoubted experience, that no one sinks to such a depth of depravity all at once. And now I ask you to remember at what period we left this correspondence. At a period when she desired to break off with L'Angelier no doubt—at a period when she desired to obtain possession of her letters. The return of them was refused. I am most unwilling to intersperse my address with severe remarks upon the character of a man who is now no more. But picture to yourselves the moral temperament—paint the feelings of a human being who, having received such letters from a girl as you have heard read in this Court, would even preserve them. He must have been dead to all feelings of humanity or he would never have refrained from burning those letters. But he not only preserves them, he retains them as an engine of power and oppression in his hands. He keeps them that he may carry out his cold-blooded original design, not merely of possessing himself of her person, but of raising himself in the social scale by a marriage with her. That was his object from the first, and that object he pursues constantly, unflinchingly, to the end. He will expose her to her friends and to the world—he will drive her to destruction, or to suicide itself, rather than let her out of his power. It may be said that I am only describing the great provocation which she received, and therefore enhancing the probability of her taking this fearful mode of extricating herself from this embarrassment. I don't fear that, gentlemen. I want you to look now at the picture which I have under her own hand of her state of mind at this time—not for the purpose of palliating her conduct—not for the purpose of vindicating her against the charge of either unchasteness or inconstancy, or of impropriety as regards Mr. Minnoch, but for the purpose of showing you in what frame of mind that poor girl was at the time—the very time at which she is said to have conceived and contrived this foul murder. There are two or three letters, but I select one for the purpose of illustrating what I now say. It is written on the 10th February, and it is written after she has asked for the return of her letters and been refused:—

"Tuesday evening, 12 o'c. Emile, I have this night received your note. Oh, it is kind of you to write me. Emile, no one can

know the intense agony of mind I have suffered last night and today. Emile, my father's wrath would kill me, you little know his temper. Emile, for the love you once had for me, do not denounce me to my P/. Emile, if he should read my letters to you - he will put me from him, he will hate me as a guilty wretch. I loved you, and wrote to you in my first ardent love - it was with my deepest love I loved you. It was for your love I adored you. I put on paper what I should not. I was free because I loved you with my heart. If he or any other one saw those fond letters to you what would not be said of me. On my bended knees I write you and ask you as you hope for mercy on the Judgment day do not inform on me - do not make me a public shame. Emile, my life has been one of bitter disappointment. You and you only can make the rest of my life peaceful. My own conscience will be a punishment that I shall carry to my grave. I have deceived the best of men. You may forgive me but God never will - for God's love forgive me - and betray me not - for the love you once had to me do not bring down my father's wrath on me. It will kill my mother (who is not well). It will for ever cause me bitter unhappiness. I am humble before you and crave your mercy. You can give me forgiveness - and you oh you only can make me happy for the rest of my life. I would not ask you to love me - or ever make me your wife. I am too guilty for that. I have deceived and told you too many falsehoods for you ever to respect me. But oh will you not keep my secret from the world. Oh will you not for Christ's sake denounce me. I shall be undone. I shall be ruined. Who would trust me. Shame would be my lot - despise me, hate me - but make me not the public scandal - forget me for ever - blot out all remembrance of me. I have
you ill. I did love you and it was my soul's ambition to be your wife. I asked you to tell me my faults. You did so, and it made me cool towards you gradually. When you have found fault with me I have cooled - it was not love for another, for there is no one I love. My love has all been given to you. My heart is empty cold - I am unloved. I am despised. I told you I had ceased to love you - it was true. I did not love as I did - but oh till within the time of our coming to Town I loved you fondly. I longed to be your wife. I had fixed Feb^{y}. I longed for it. The time I could not leave my father's house I grew discontented, then I ceased to love you—Oh, Emile, this is indeed the true statement. Now you can know my state of mind. Emile, I have suffered much for you. I lost much of my father's confidence since that Sept. And my mother has never been the same to me. No she has never given me the same kind look - for the sake of my mother - her who gave me life, spare me from shame. Oh, Emile, will you in God's name hear my prayer. I ask God to forgive me. I have prayed that He might put in your heart yet to spare me from

shame. Never, never while I live can I be happy. No, no, I shall always have the thought I deceived you. I am guilty it will be a punishment I shall bear till the day of my death. I am humbled thus to crave your pardon. But I care not. While I have breath I shall ever think of you as my best friend if you will only keep this between ourselves. I blush to ask you. Yet, Emile, will you not grant me this my last favor? If you will never reveal what has passed. Oh for God's sake, for the love of heaven hear me. I grow mad. I have been ill, very ill, all day. I have had what has given me a false spirit. I had resort to what I should not have taken but my brain is on fire. I feel as if death would indeed be sweet. Denounce me not. Emile, Emile, think of our once happy days. Pardon me if you can, pray for me as the most wretched guilty miserable creature on the earth. I could stand anything but my father's hot displeasure. Emile, you will not cause me death. If he is to get your letters I can not see him any more. And my poor mother I will never more kiss her - it would be a shame to them all. Emile will yot spare me this - hate me, despise me - but do not expose me. I cannot write more. I am too ill to-night. "M."

"P.S. I cannot get to the back stair. I never could see the to it. I will take you within in the door. The area gate will be open. I shall see you from my window 12 o'c. I will wait till 1 o'c."

Is that the state of mind of a murderess, or can any one affect that frame of mind? Will you for one moment listen to the suggestion that that letter covers a piece of deceit? No! The finest actress that ever lived could not have written that letter unless she had felt it. And is that the condition in which a woman goes about to compass the death of him whom she has loved? Is shame for past sin—burning shame—the dread of exposure—what leads a woman not to advance another step on the road to destruction, but to plunge at once into the deepest depths of human wickedness? The thing is preposterously incredible; and yet it is because of her despair, as my learned friend called it, exhibited in that and similar letters, that he says she had a motive to commit this murder. A motive! What motive? A motive to destroy L'Angelier? What does that mean? It may mean, in a certain improper sense of the term, that it would have been an advantage to her that he should cease to live. That cannot be a motive, else how few of us are there that live who have not a motive to murder some one or other of our fellow-creatures. If some advantage resulting from the death of another, be a motive to the commission of a murder, a man's eldest son must always have a motive to murder him, that he may succeed to his estate; and I suppose the youngest officer in any regiment of her Majesty's service has a motive to murder all the officers in his regiment—the younger he

is, and the further he has to ascend the scale, the more murders he has a motive to commit. Away with such nonsense. A motive to commit a crime must be something a great deal more than the mere fact that the result of the crime might be advantageous to the person committing it. You must see the motive in action—you must see it influencing the conduct before you can deal with it as a motive; for then, and then only, is it a motive in the proper sense of the term—that is to say, it is moving to the perpetration of the deed. But, gentlemen, even in this most improper and illegitimate sense of the term, let me ask you what possible motive there could be—I mean, what possible advantage could she expect from L'Angelier ceasing to live, so long as the letters remained? Without the return of her letters she gained nothing. Her object—her greatest desire—that for which she was yearning with her whole soul, was to avoid the exposure of her shame. But the death of L'Angelier, with these letters in his possession, instead of insuring that object, would have been perfectly certain to lead to the immediate exposure of everything that had passed between them. Shall I be told that she did not foresee that? I think my learned friend has been giving the prisoner too much credit for talent in the course of his observations upon her conduct. But I should conceive her to be infinitely stupid, if she could not foresee that the death of L'Angelier, with these documents in his possession, was the true and best means of frustrating the then great object of her life.

So much for the motive. And if there is no assignable or intelligible motive, in any sense of the word, see what another startling defect that is in the case for the prosecution. Shall I be told then that the motive might be revenge? Listen to the letter which I have just read. Tell me if it is possible that, in the same breast with these sentiments, there could lurk one feeling of revenge? No; the condition of mind in which that poor girl was, throughout the months of February and March, is entirely inconsistent with any of the hypotheses that have been made on the other side—utterly incredible in connection with the perpetration of such a crime as is here laid to her charge. It is of importance, too, that we should keep in mind the way in which her spirit was thus broken and bowed down with the expectation of an exposure of her unchastity; for, when the death of L'Angelier was made known to her, can you for a single moment doubt that her apprehensions were keenly awakened—that she foresaw what must be the consequences of that event; and, dreading to meet her father or her mother—feeling that, in the condition of her family, it was impossible she could remain among them—she left her father's house on the Thursday morning? I really don't know whether my learned friend meant seriously to say that this was an absconding from justice, from a consciousness of guilt? An

absconding from justice by going to her father's house at Row! Oh, he said, all we know is, that she left Glasgow early in the morning, and that she was found, at three o'clock in the afternoon, on board of a steam-packet going from Greenock to Helensburgh: the interval is unaccounted for. If my learned friend were only half as ingenious on behalf of the prisoner as he is in supporting the prosecution, he could have very little difficulty in knowing that one who starts by water from Glasgow to Helensburgh in the morning, may be easily overtaken by others travelling by railway to Greenock in the afternoon. She was on board a steam-packet, but its destination no further than Helensburgh and its neighbourhood. And that he calls absconding from justice. Gentlemen, it is no fleeing from justice, but it is fleeing from that which she could as little bear—the wrath of her father, and the averted countenance of her mother.

But she came back again without the slightest hesitation; and upon the Monday morning there occurred a scene as remarkable in the history of criminal jurisprudence as anything I ever heard of, by which that broken spirit was altogether changed. The moment she was met by a charge of being implicated in causing the death of L'Angelier, she at once assumed the courage of a heroine. She was bowed down, and she fled, while the true charge of her own unchastity and shame was all that was brought against her. But she stood erect, and proudly conscious of her innocence, when she was met with this astounding and monstrous charge of murder. You heard the account that M. de Mean gave of the interview that he had with her, in her father's house, on the Monday. That was a most striking statement, given with a degree of minute and accurate truthfulness that could not be surpassed. And what was the import of that conversation? He advised her as a friend—and that was the very best advice that any friend could have given her—if L'Angelier was with her on that Sunday night, for God's sake not to deny it. And why? Because, said M. de Mean, it is certain to be proved. A servant, a policeman, a casual passenger, is certain to know the fact, and if you falsely deny his having met you that evening, what a fact that will be against you? Gentlemen, the advice was not only good, but most irresistible in the circumstances, if that meeting had taken place. But what was her answer? To five or six suggestions she gave the same constant answer, and at length she said—"I swear to you, M. de Mean, I have not seen L'Angelier for three weeks." Is this not proved to be true? If it is true that she did not see him on the 22nd March, then she did not see him at all for three weeks. M. de Mean was in doubt whether she said three weeks or six weeks, either of which would have been practically quite true. Immediately after, she was brought before the magistrate and interrogated on the circumstances implicating her in the sus-

picion which had come upon her. What does she say? She tells the truth again with a degree of candour and openness which very much surprised the magistrate, and which you too must be struck with. Listen to the words of her declaration; for, though these must lose much of their effect from being read by me, I must ask you to look at two or three particular passages which it is of the utmost importance that should mark.

"I learned about his death on the afternoon of Monday, the 23rd of March current, from mamma, to whom it had been mentioned by a lady named Miss Perry, a friend of L'Angelier. I had not seen M. L'Angelier for about three weeks before his death; and the last time I saw him was on a night about half-past ten o'clock. He was in the habit of writing notes to me, and I was in the habit of replying to him by notes. The last note I wrote to him was on the Friday before his death—viz., Friday the 20th March curt. I now see and identify that note and the relative envelope, and they are each marked No. 1. In consequence of that note I expected him to visit me on Saturday night, the 21st current, at my bedroom window, in the same way as formerly mentioned; but he did not come, and sent no notice. There was no tapping at my window on said Saturday night, or on the following night, being Sunday. I went to bed on Sunday night about eleven o'clock, and remained in bed till the usual time of getting up next morning, being eight or nine o'clock. In the course of my meetings with M. L'Angelier he and I had arranged to get married, and we had at one time proposed September last as the time the marriage was to take place, and subsequently the present month of March was spoken of. It was proposed that we should reside in furnished lodgings, but we had not made any definite arrangement as to time or otherwise. He was very unwell for sometime, and had gone to the Bridge of Allan for his health; and he complained of sickness, but I have no idea what was the cause of it."

My learned friend, the Lord Advocate, said that this showed that she knew he had gone to the Bridge of Allan. Certainly it showed she knew it then, for she had been told it by M. de Mean. But it does not show—it does not in the least degree tend to show—against the real evidence of her own letter, which was addressed to Mrs Jenkins'—that she knew at the time. She says—

"I remember giving him some cocoa from my window one night sometime ago, but I cannot specify the time particularly. He took the cup in his hand, and barely tasted the contents, and I gave him no bread to it. I was taking some cocoa myself at the time, and had prepared it myself. It was between ten and eleven P.M. when I gave it to him. I am now shown a note or letter and envelope, which are marked respectively No. 2, and I recognise them as the note and envelope which I wrote to M. L'Angelier and

sent to the post. As I had attributed his sickness to want of food, I proposed, as stated in the note, to give him a loaf of bread; but I said that merely in a joke, and, in point of fact, I never gave him any bread." And it is perfectly plain from her letters that it was merely a joke. "I have bought arsenic on various occasions." No hesitation about the buying of the arsenic—"The last I bought was a sixpence worth, which I bought in Currie the apothecary's in Sauchiehall Street; and, prior to that, I bought other two quantities of arsenic, for which I paid sixpence each—one of these in Currie's, and the other in Murdoch the apothecary's shop in Sauchiehall Street." And then she goes on to specify the use she intended to make of it, and did actually make of it, after she got it. She is also asked about who was present when she purchased the arsenic; and she states this with perfect precision and accuracy, as has been proved; and she says that she entered her name in the book when she was asked to do it; and gives a particular account of everything that took place when she made these purchases, so far as she recollected —all which is precisely in accordance with the evidence now before us. Then, she admits her engagement with Mr. Minnoch, and makes various other statements, with regard to which my learned friend was not able to say that any one has been contradicted by the evidence. Such openness and candour of statement, under such circumstances—first to M. de Mean, a friend, and next to the magistrate interrogating her on the charge, and who had, as was his duty, informed her that whatever she said might be used to her prejudice, but could not possibly be used to her advantage—I leave to speak for themselves.

But I have now to request your attention to one particular point in connection with this declaration—the different purchases of arsenic. With regard to the purchase from Murdoch, I will not trouble you with any further observations after what I have already said on this subject; but the occasion of the second purchase is too remarkable to be passed over without some further observations. It was made on the 6th of March, the day the prisoner went to the Bridge of Allan. For what purpose was it made? She had been doing everything in her power, as you see from one of her letters, to dissuade and prevent L'Angelier from going to the Bridge of Allan at the same time with herself, and had succeeded in persuading him to abstain from going; and yet, when she is going away to the Bridge of Allan, she buys this arsenic,—when she is going away from the supposed object of her murderous attack, and when, therefore, she could have no possible use for it. She carries it with her, it is to be presumed; it could not have been bought for the purpose of leaving behind her;—she carries it with her; and my learned friend says, whenever she found, either that she had some left over after the administration

of a dose, or that she had got arsenic which for the time was of no use to her, she put it away. And it is in this way my learned friend accounts for none of the arsenic being left or found in her possession. But what is this she does on the 6th as connected with what she does on the 18th? She bought arsenic when she was going away from the man she wanted to murder, and when she could have no opportunity of administering it to him; and then, I suppose, we must take it for granted, on the Lord Advocate's theory, that, finding she could not administer it, she threw it away. What on earth could she mean by that? He says—that is his theory—she kept it at the Bridge of Allan in case he should come there. Well, then, she kept it down to the 17th. Why did she throw it away on the 17th, and buy more on the 18th? Can anybody explain that? Why did she throw away the arsenic when she was coming back from the Bridge of Allan to be in the immediate neighbourhood of her victim? and why, above all, having thrown it away, did she forthwith purchase more the very day after she came back, with those circumstances of openness, and exposure, and observation, that are perfectly inconsistent with the existence of an illegitimate purpose? Why expose herself to the necessity of a repeated purchase, when she could get or had got enough at once to poison twenty or a hundred men? Her conduct is utterly unintelligible on any such supposition as has been made by the prosecutor.

Let us now look at what was her object at this time in another view. She wanted L'Angelier to go away; she was most anxious that he should go the south of England—to the Isle of Wight—for ten days. Oh, says my learned friend, her object was to marry Mr. Minnoch in the meantime. Why? There was no arrangement up to that time of the day of her marriage with Mr. Minnoch. She was going away herself for ten days upon a casual visit to the Bridge of Allan; and if L'Angelier had followed her advice and gone to the south of England for ten days, while he would in the meantime have been absent and beyond her reach, he would have returned only to find matters where they were—Minnoch her suitor, but not her husband. No time for the marriage had been fixed—nothing more definite than had been in the month of January; so that L'Angelier's absence could be no advantage to her, but the greatest disadvantage if she wanted to administer poison to him; rendering the further prosecution of her murderous enterprise for the time impossible. And, therefore, all the suppositions that were made in reference to this particular point plainly show that she had no object in view except it may to get rid of him for the time—that is to say, not to have him at the Bridge of Allan; for that certainly was one particular object, and any other object she

had in view was probably nothing but a regard for his health, such as she professed in her letters.

But the possession of this arsenic is said to be a very unaccountable thing, so far as the use of it by the prisoner herself is concerned. Again, I must take leave to say that that may be so, and yet it won't aid the case for the prosecution if not otherwise proved. But you see the account which she herself gives of it. She tells you that she used it as a cosmetic. Now, however startling that statement may be at first sight to a person who has not previously heard of the extraordinary use to which arsenic is put, I really think, after the evidence you have had upon this trial, it cannot be so very amazing to you now. You have seen that as regards what occurred at school when she was there, her statement is so far borne out, that the pupils in the course of their reading stumbled upon an account of the way in which the peasants of Styria used arsenic, no doubt, internally, and not externally, for the purpose of bettering their wind; and one consequence of it was stated to be, that it improved their complexion, and gave them a certain plumpness of appearance. L'Angelier was very well aware of the same fact. He stated—and if it was false, it was only one of his numerous falsehoods—but I presume he stated truly, that he was in the habit of using arsenic himself. He stated so to more than one witness. He stated it to two witnesses whose names I forget, persons from Dundee. He stated it to Mons. de Mean, and he contended, in argument with him, that it was a thing that might be used with perfect safety, if done discreetly. It is nothing very surprising, if L'Angelier knew this peculiar use of arsenic himself, that it should be communicated by him to the prisoner. It is not in the least degree surprising, that from an internal use, which everybody must think would be attended with great danger, it might be suggested to try it externally; and there is not the least reason to suppose that, assuming it to have been used externally in the manner in which the prisoner says she used it, it would be productive of any injurious effects, or to suspect, upon that ground, the truth of the statement she made. We have no doubt seen medical gentlemen coming here and shaking their heads, and saying they could not recommend it—that they should think it a very dangerous practice. Well, so do I, and so do we all, think it a dangerous and foolish practice; but that is not the question. The question is, whether she could use it without an injurious effect; and that has been made matter of demonstration to you by the experiment of Dr. Lawrie, fortified by the opinion of Dr. Maclagan. The publication in "Chambers' Journal," in "Blackwood's Magazine," and in Johnston's "Chemistry of Common Life," of the information about the use of arsenic, had reached not the prisoner alone, but a multitude of other ladies, and had incited them to the same kind of experiments. You have

heard the evidence of the two druggists, Roberton and Guthrie, that they had been visited by ladies in order to obtain arsenic for the very purpose suggested in these publications; and, therefore, you cannot think it at all surprising that, at the time and in the circumstances when the prisoner bought the arsenic, she might fairly intend to use it, and did, in point of fact, use it, for the very purpose which she assigned in her declaration.

Gentlemen, my learned friend, the Lord Advocate, said that, great as was the courage which the prisoner displayed when charged with this serious crime, it was not at all inconsistent with the theory of her guilt. He said that a woman who had the nerve to perpetrate such a murder, would have the nerve also to meet the accusation calmly when it was made. I doubt that very much. I know of no case in which such undaunted courage has been displayed, from first to last, by a young girl confronted with such a charge, when she was guilty. But our experience does furnish us with examples of as brave a bearing in as young a girl when she was innocent. Do you know the story of Eliza Fenning? She was a servant-girl in the city of London, and she was tried on the charge of poisoning her master and his family by putting arsenic into dumplings. When the charge was first made against her, she met it with a calm but indignant denial. She preserved the same demeanour and self-possession throughout a long trial, and received sentence of death without moving a muscle. According to the statement of an intelligent bystander, when brought upon the scaffold, she seemed serene as an angel, and she died as she had conducted herself throughout the whole previous scenes of the sad tragedy. It was an execution which attracted a great deal of attention at the time. Opinion was much divided as to the propriety of the verdict, and the angry disputants wrangled even over the poor girl's grave. But time brought that to light which explained the whole mystery. The true perpetrator of the murder confessed it on his deathbed—too late to avoid the enacting of a most bloody tragedy. That case, gentlemen, is now matter of history. It happened at a time beyond the recollection of most of those whom I now address; but it remains on record —a flaming beacon to warn us against the sunken rocks of presumptuous arrogance and opinionative self-reliance that lie imbedded and hid in the cold and proud heart. It teaches us, by terrible example, to avoid confounding suspicion with proof, and to reject conjectures and hypotheses when they are tendered to us as demonstrations. I fear, gentlemen, that this is not a solitary case. Either the recollection or the reading of any one of us may recall other occasions

> "When, after execution, Judgment hath
> Repented o'er his doom;"

but I pray God that neither you nor I may be implicated in the guilt of adding another name to that black and bloody catalogue.

I have thus laid before you what I conceive to be all the important branches of this inquiry separately, and as calmly and deliberately as I could; and I now ask your judgment—I ask you to bring the whole powers with which God has endowed you to the performance of this most solemn duty. I have heard it said that juries have nothing to do with the consequences of their verdicts, and that all questions of evidence must be weighed in the same scale, whether the crime be a capital one or only penal in a lower degree. I cannot too indignantly repudiate that doctrine. It may suit well enough the cramped mind of a legal pedant, or the leaden rules of a heartless philosophy; but he who maintains it is entirely ignorant of the materials of which a jury ought to be and is composed. Gentlemen, you are brought here for the performance of this great duty, not because you have any particular skill in the sifting or weighing of evidence—not because your intellects have been highly cultivated for that or similar purposes—not because you are of a class or caste set apart for the work; but you are here because, as the law expresses it, you are indifferent men—because you are like, not because you are unlike, other men; not merely because you have clear heads, but because you have also warm and tender hearts—because you have bosoms filled with the same feelings and emotions, and because you entertain the same sympathies and sentiments, as those whose lives, characters, and fortunes are placed in your hands. To rely, therefore, upon your reason only is nothing less than impiously to refuse to call to your aid, in the performance of a momentous duty, the noblest gifts that God has implanted in your breasts. Bring with you, then, to this service, I beseech you, not only your clear heads, but your warm hearts—your fine moral instincts, and your guiding and regulating consciences; for thus, and thus only, will you satisfy the oath which you have taken. To determine guilt or innocence by the light of intellect alone is the exclusive prerogative of infallibility; and when man's presumptuous arrogance tempts him to usurp the attribute of Omniscience, he only exposes the weakness and frailty of his own nature. Then it is that

> "Man, proud man,
> Dressed in a little brief authority,
> Most ignorant of what he's most assured,
> Plays such fantastic tricks before high Heaven
> As make the angels weep."

Raise not, then, your rash and impotent hands to rend aside the veil in which Providence has been pleased to shroud the circumstances of this mysterious story. Such an attempt is not within your province, nor the province of any human being. The time

may come—it certainly will come—perhaps not before the Great Day in which the secrets of all hearts shall be revealed—and yet it may be that in this world, and during our own lifetime, the secret of this extraordinary story may be brought to light. It may even be that the true perpetrator of the murder, if there was a murder, may be brought before the bar of this very Court. I ask you to reflect for a moment what the feelings of any of us would then be. It may be our lot to sit in judgment on the guilty man. It may be the lot of any one of you to be empanelled to try the charge against him. Would not your souls recoil with horror from the demand for more blood? Would not you be driven to refuse to discharge your duty in condemning the guilty, because you had already doomed the innocent to die? I say, therefore, ponder well before you permit anything short of the clearest evidence to seduce or mislead you into giving such an awful verdict as is demanded of you. Dare any man hearing me—dare any man here or elsewhere, say that he has formed a clear opinion against the prisoner—will any man venture for one moment to make that assertion? And yet, if on anything short of clear opinion you convict the prisoner, reflect—I beseech you reflect—what the consequences may be. Never did I feel so unwilling to part with a jury—never did I feel as if I had said so little, as I feel now after this long address. I cannot explain it to myself, except by a strong and overwhelming conviction of what your verdict ought to be. I am deeply conscious of a personal interest in your verdict, for if there should be any failure of justice, I could attribute it to no other cause than my own inability to conduct the defence; and I am persuaded that, if it were so, the recollection of this day and this prisoner would haunt me as a dismal and blighting spectre to the end of life. May the Spirit of all Truth guide you to an honest, a just, and a true verdict! But no verdict will be either honest, or just, or true, unless it at once satisfy the reasonable scruples of the severest judgment, and yet leave undisturbed and unvexed the tenderest conscience among you.

APPENDIX C.

ADDRESS TO THE JURIDICAL SOCIETY ON THE "HISTORICAL STUDY OF LAW" in May, 1865 (see p. 100).

It is more than five-and-twenty years since I took any active share in the ordinary business of the Juridical Society. But I have never forgotten that I continue to be a member of the body, and

that, as a student of law and a candidate for the bar, I derived from its dialectic and rhetorical exercises great and permanent benefits.

A request, therefore, that I should take a part in the proceedings of the first meeting of this session, accompanied by an assurance, that I might perhaps thereby do good service, and in some degree promote the interests of the Society, was not only a great honour, but, in my estimation, equivalent to a command; and I now gladly descend into the old arena—though no longer as a gladiator, no longer with the sanguine temper, the ardour for intellectual conflict, and the bold indifference to defeat, which youth alone can inspire—with nothing indeed to recommend me to your attention, but a very sincere desire to present to you some reflections and materials for thought, which may be useful to my younger brethren at least in the prosecution of their legal studies.

The subjects, which may be appropriately and usefully treated on such an occasion, are so numerous and so various in kind, that the difficulty of selection is great; and the complete and satisfactory treatment of any one branch of legal education is so far beyond the ordinary, or endurable length of any spoken discourse, that I cannot hope to do more than throw together a series of desultory observations, without any approach to that clear logical method which ought to distinguish all legal composition, and which it is one great end of this Society to teach.

If, then, I fail to practise what I have every inclination to preach, or if, from other causes, my style should appear somewhat more didactic than would be suitable in your debates, or likely to be adopted by the essayist of the evening, I trust to your kindness to excuse these unavoidable blemishes, to give me credit for good intentions, and accept what may be profitable, without subjecting me to the test of too severe or fastidious criticism.

I propose to offer you some observations, on a subject which appears to me to be of great importance to students of law, and particularly to those who aspire to the profession of an advocate—on a department of legal education, which—notwithstanding the greatly improved standard both of general scholarship and legal knowledge now established in testing the qualification of candidates for the bar—notwithstanding the full and complete curriculum which is now afforded by the Faculty of Law in our metropolitan university—remains to a great extent neglected and forgotten, though its cultivation is indispensable to every one whose ambition is to attain and merit the reputation of an accomplished lawyer.

Lord Kames, in the preface to his Law Tracts, complains, that in this country "Law is taught, like geography, as if it were a

"collection of facts merely; the memory is employed to the full, "rarely the judgment. This method," he proceeds to say, "were "it not rendered familiar by custom, would appear strange and "unaccountable. With respect to the political constitution of "Britain, how imperfect must the knowledge be of that man, "who confines his reading to the present times! If he follows "the same method in studying its laws, have we reason to hope "that his knowledge of them will be more perfect? Such neglect "of the history of the law is the more strange, that in place of a "dry, intricate, and crabbed science, law treated historically "becomes an interesting study; entertaining not only to those "whose profession it is, but to every person who hath any thirst "for knowledge."

I venture to inquire, whether the complaint of this learned author is not, in some respects, applicable to our own times. Thanks to the labours of our great institutional writers, to the academical prelections of our professors, and to the genius of the Scottish law itself, our legal knowledge does not consist of a bare collection of facts, taxing the memory only, without calling in the aid of the other intellectual powers. To a certain extent law has always been cultivated in Scotland in a scientific method. But, conceding all this, I still venture to inquire whether, in the study of Scots Law, we are not too much content to receive and store up, as matters of fact, the statutes, and the rules and principles of the common law, as they at present exist, without inquiring into the sources and gradual development of our system of municipal jurisprudence—whether we have not too much neglected the history of the Law of Scotland, and thus failed to prosecute the study of the law in one of its most interesting and instructive aspects.

There is something in the national character both of Scotchmen and of Englishmen, that tends to induce an unphilosophical mode of approaching professional studies—that peculiar disposition which is best described by the term *practical*, a quality or habit of mind most usefully influential within proper limits, but which, when found in a state of degeneracy and exaggeration, is inconsistent with the cultivation of science or the attainment of intellectual greatness.

There is, however, another feature in the intellectual organisation of Scotchmen, that has in a great degree counteracted this evil influence. It would be impossible for a nation, so addicted as we are to metaphysical inquiry and ethical studies, to neglect the *science* of jurisprudence, or to study law in a manner so entirely loose and unmethodical as Lord Kames's complaint would imply. But while we have not failed either to theorise or to methodise in our study of law as an abstract science, I still venture to say that we have never devoted sufficient attention

to studying the history either of jurisprudence generally or even of the Law of Scotland.

Before the publication of Gibbon's great historical work, there was no writer in the English language who had treated the Roman law historically; and much of the admiration which was immediately bestowed on the portion of his book devoted to this subject, was owing, in part at least, to the novelty of the undertaking and the surprise which that novelty naturally produced. But the service which Gibbon rendered to his countrymen was very great; and no one now will be heard to doubt that, without an acquaintance with the history of Roman jurisprudence, the student will be constantly wandering through mazes of learning which he can neither understand nor digest—gathering every here and there an acquaintance with some great principle or some important fact, but unable to generalise with safety, or to acquire a comprehensive knowledge of the system, because altogether unfurnished with the means of discriminating between what belongs to one and what to another of the great periods of the growth, development, and maturity of the Roman law.

No man can be an adept in any science without a knowledge of its history; and this is especially true of the science of jurisprudence. To illustrate and enforce this proposition in its widest application, might furnish the materials of a very useful and instructive treatise; but my object on the present occasion is, to attract you to a historical study of the Law of Scotland in particular, as forming not only a natural branch of legal education in this country, but as being an indispensable qualification to the due discharge of the duties either of an Advocate or of a Judge.

How then, let me ask, can any one be a safe or intelligent interpreter or administrator of either our statute or our common law who is content to receive the one and the other equally as mere matter of fact, or even to regard them as component parts of a consistent and harmonious system of modern law adapted to the present times, without any inquiry into their sources and origin, or any knowledge of that gradual process by which they have attained their present form?

Until legal composition comes to be distinguished by a precision and accuracy of expression that it is perhaps beyond the reach of frail human nature, and towards which, at all events, we seem at present to be making no perceptible advances, statutes will present ambiguities for the solution of professional lawyers. But how shall he undertake to suggest or settle what is the true construction of an ambiguous enactment, who knows nothing of the times in which it was made, of the character of the monarch, the constitution of the parliament, the circumstances of the country, the immediate mischief intended to be remedied, the motives of its framer?

Again, in handling the great principles of the Common Law, and applying an ancient rule to a modern case, is it not of the last importance to know, when and how the rule was established, or from what source it was derived, lest in blind deference to the letter of an admitted rule we violate its spirit, from ignorance that it arose out of, and was designed for, a condition of society, a state of commercial dealings, or a class of cases, to which there is no parallel in the present day?

In the administration of the laws relating to the tenure of land, and in the practice of conveyancing, historical knowledge is even more clearly indispensable. The whole tendency of modern legislation in this department of law is to simplify and abbreviate. But so long as the relation of superior and vassal is the basis of our system of land rights, no simplification of the deeds of conveyance will dispense with a study of the feudal system on the part of the practical conveyancer; for however simple the existing forms may be, they still represent generally rights of the same kind as were formerly represented by more elaborate and verbose deeds; and the very introduction of the new and simple form of conveyance presupposes a full knowledge of all that it expresses in a species of shorthand, and which in old conveyances was stated in full.

No more, surely, need be said to show the practical utility of a study of the History of Scottish Law, particularly to professional lawyers. But I would gladly also persuade you of the justice of Lord Kames's recommendation of this study, as interesting and entertaining, not only to professional men, but to all who have a genuine thirst for knowledge.

It has been said by one eminent writer, that the most important part of the history of any civilised nation is to be found in the Statute-Book; and by another, that the true method of historical study is to elucidate and illustrate law by history, and history by law. It would seem, therefore, that no man can be well read in the history of his own country, who has not acquired some knowledge at least of the history of its jurisprudence. But surely the student who looks forward to law as his profession, may be expected, more than any other, to study the history of Scotland in the light of the Statute-Book, and thus to make himself thoroughly acquainted with its constitutional and legal history.

I have, in the course of my professional life, met with lawyers of great talent and distinction, who undertook to expound and interpret Scottish Statutes, but who, nevertheless, received with some surprise the information, that the Scottish Parliament consisted of one Chamber and not of two; who had never heard of the distinction between a Parliament and a Convention of the Estates of the Realm; and who had no more definite idea of the Lords of the Articles, than a vague surmise, that probably the

Articles had some connection with the Confession of Faith. I do not say these men were either Scottish lawyers or Scotchmen. But I cannot contemplate, without nervous apprehension, the possibility, that through continued neglect of the historical study of Scotch law, ignorance somewhat akin to this may some day suddenly appear among us, and fright us from our propriety.

The portion of Scottish History that has been most frequently written, embraces the latter half of the sixteenth and the whole of the seventeenth century, and it will be found that in the department of law, the nation was during that period passing rapidly through radical and important changes. We are accustomed to regard this period chiefly from an ecclesiastical point of view. But amidst the convulsions of civil war, and the storms of religious persecution, even in spite of the blighting influence of judicial corruption, the municipal law of Scotland was undergoing a course of improvement, both in form and substance, unexampled either before or since.

Recall for a moment the legislation of the seventeenth century. It embraces the great Statutes of Prescription; the completion of our unrivalled system of Registers; the New Constitution of the Justiciary Court on its present footing, a great step in the progress of freedom; the Law of Entail; the New Regulations for the Conduct of Business in the Court of Session; the settlement of the whole Law of Tithes on so sound and satisfactory a footing as to have ever since secured us an immunity from the social troubles with which the administration of this department of Law has been attended in other countries; the Rules for the Division of Commonties and Runrig Lands, a fitting complement of the series of Statutes for the encouragement of agriculture and the improvement of the soil, which is one of the most striking features of our earlier legislation; the Statutory recognition and enforcement of the fundamental principles of Bankrupt Law, in Acts which still form the most valuable part of our Code of Bankruptcy; the Process of Ranking and Sale, which anticipated by more than a century and a half not the principle merely, but the practical working, of the Irish Encumbered Estates Acts, which are thought to be a masterpiece of modern legislation; and numerous other changes of the most important and beneficial character, which will readily occur to your memory.

Can any one be content to receive these as bare facts without caring to know what was the parliamentary history of a period productive of such measures, and who were the men by whose wisdom they were devised, and by whose energy they were carried into successful execution?

Such an inquiry will be found, I think, highly instructive, and perhaps even so slight and imperfect a sketch as I can undertake to lay before you now may furnish the most useful and

convenient illustration of the real benefits, and the intellectual enjoyment, to be derived from a study of the history of our law.

The constitution of Scotland, as it existed at the beginning of the seventeenth century, however excellent in theory, was, under the influence of King James VI. and his advisers, practically so administered as to be hardly consistent with any amount of either political or personal liberty. The King's love of arbitrary power, and extravagant notions of the prerogative, combined with his undoubted ability and learning, and a disposition to use these advantages, selfishly and unscrupulously, for the promotion of his personal objects, reduced both the parliament and people of Scotland to a condition of almost helpless dependency on his will; and it was no idle boast that James made to the English Parliament in his celebrated speech at Whitehall in 1607: "This I "must say for Scotland, and I may trewly vaunt it: here I sit "and governe it with my pen: I write and it is done: and by a "clearke of the counsell I governe Scotland now, which others "could not doe by the sword."

The agency, by means of which the independence of the Scottish Parliament was at that time more immediately held in check was an abuse of an institution, or form of procedure, peculiar to Scotland. The Committee of Parliament, called "The Lords of the Articles," or more shortly, "The Articles," may be traced back to an early period—probably as far back as the reign of David II., and was, beyond doubt, originally introduced and long continued, only as matter of convenience, and with no design to enhance the power of the Sovereign. However great the delegated authority of this body might be, it did not seem likely to become an engine of oppression or tyranny so long as its appointment remained in the hands of the Parliament itself, and the Committee consisted of a fair representation of the different estates. But experience showed, that such unlimited power, as was possessed by the Lords of the Articles, to determine what should and what should not form the subject of parliamentary deliberation, could not, in any country, be vested in the hands of a small number of persons, without the greatest danger to public liberty, however jealous might be the precautions taken to insure a fair and impartial selection of men to discharge the trust. Nor will this appear at all surprising to any one who will consider the immense difference which exists, both in theory and practice, between what may be called a preliminary veto, enabling the King to stifle the discussion of every obnoxious subject, and that constitutional power of rejection after discussion, which is implied in requiring the royal assent to all acts of the parliament. It must be obvious, that if the King could ever secure a preponderating influence in the Committee of the Articles, his control over the proceedings of parliament would be almost unlimited.

The Act 1594, c. 218, was the result of a characteristic stratagem of James, to place the appointment of the Lords of the Articles entirely in the King's hands. It provided, that a committee, consisting of four of each estate, should meet twenty days before the assembling of the parliament, "to receive all articles "and supplications concerning general laws, or touching particular "parties," "to the effect that things reasonable and necessary "may be formally maid and presented in ane buik to the Lords "of the Articles in the parliament time, and all impertinent, "frivolous, and improper matters rejected." The Act contains no provision for the manner of appointing the small committee; and as they were to meet twenty days before the meeting of the parliament, it was impossible they could be appointed by the estates, whose representatives they nominally were. The necessary result was, that the whole body fell to be named by the King, there being no other authority in the State capable of exercising such a power.

It is true, that this bold and unscrupulous device to give the King the absolute power of determining beforehand what should be considered by Parliament, and what should be rejected as "impertinent, frivolous, and improper," provoked so serious discontent, that the Act was soon allowed to go into desuetude. But other and less direct means were found to secure the same result; and the King's influence in the Committee of the Articles was as great as if the rule of the Act 1594 had continued to be carried into practice. The best authority for this statement is the King himself, in the speech already quoted, when, describing to his English subjects the form of procedure in the Scottish Parliament, he says: "I can assure you that the form there is "nothing inclined to popularity. About twenty days, or such a "time, before the parliament, proclamation is made throughout "the kingdom to deliver unto the King's Clerk of Register (whom "you here call the Master of the Rolls), all bills to be exhibited "that session before a certain day; then are they brought unto "the King, and perused and considered by him, and only such as "I allow of are put into the Chancellor's hands, to be propounded to "the parliament, and none others. And if any man in parliament "speak of any other matter, than is in this form first allowed by "by me, the Chancellor tells him, there is no such bill allowed by "the King."

This overwhelming influence of the King in parliament continued unabated, not only during the reign of James VI., but also in Charles I.'s time, until the King's second parliament, which met in 1640, reflecting faithfully the feelings of the whole educated and thinking portion of the people of Scotland, refused to surrender its constitutional power into the hands of the King, and passed an Act, providing for the choosing of the Committee of

Articles by the Estates of Parliament themselves, each estate choosing its own representatives; and another Act repealing the Act 1594, and appointing "all grievances and other matters, that "are to be handled and treated of in parliament hereafter, to be "given in and presented in open and plaine parliament in all "time coming."

These Acts were rescinded at the Restoration; the former mode of appointing the Lords of the Articles was again resorted to, with the same effect, of course, in promoting, and rendering paramount the influence of the King; and it was not till the Revolution, that this intolerable grievance—which indeed stood first in the list of grievances submitted to King William by the Convention of Estates in 1689—was for ever swept away as utterly inconsistent with parliamentary government.

I have entered into these details for the purpose of showing what was the constitution of this Parliamentary Committee during the reigns of the Stuarts in the seventeenth century; because I think it is impossible rightly to understand the history of the Law of Scotland during this period without being fully impressed with the nature and extent of the parliamentary influence possessed by the King, and the inability of the parliament, by its own independent action, to originate any measures, either for the improvement of the law, or for any other beneficial public purpose. This subservient and powerless condition of the parliament might be illustrated and explained by reference to other co-operating causes; but the existence of so formidable an engine in the hands of the King, as the Committee of Articles, constituted as it then was, is of itself sufficient for this purpose.

The question then occurs, how it came to pass that the Scottish Parliament, degraded and trammelled as it was, and incapable of independent action, yet produced measures for the improvement of the law of the wisest and most beneficial character? To this question, I apprehend, but one satisfactory answer can be given. The advisers of the Crown and the leading lawyers of the time must have been men endowed with great sagacity and profound knowledge of law, and animated by a strong desire to improve the jurisprudence and the judicial institutions of their country.

I am aware that this assertion may conflict with the opinion, which is generally entertained, of the leading statesmen and lawyers who served the last four princes of the Stuart dynasty; and I am far from dissenting from the general estimate, which students of history have formed of these men. But experience has proved, that men may be zealously, and even fanatically, attached to doctrines and opinions inconsistent with true liberty, relentless persecutors of those who differ from them either in religion or civil politics, and yet in other departments may be

almost as zealous, in the promotion of the true interests of their country, and of the well-being of the people.

If, in a historical review of the progress of the law in the seventeenth century, it can be shown that men, whose place in general history is not such as to command respect, but rather to expose them to obloquy and reproach, were yet instrumental in building up and perfecting that admirable system of municipal law under which we live,—were the authors of some at least of the legal institutions which are the most valued by ourselves, and the most admired by foreign nations,—it is surely a becoming task, and at the same time a most useful occupation, for their successors in the profession of the law to rescue their memories from undiscriminating censure, and secure them that measure of praise to which their good deeds entitle them.

The lawyers of the seventeenth century, beginning with Craig and ending with Stair, furnish a list of names as remarkable as is to be found in the annals of any nation. There were among them men of great learning and accomplishment, both in classical scholarship and in philosophy, deeply skilled in the study of human nature, of acute and powerful intellects, laborious and honest students of jurisprudence, subtle and strong in dialectics, and rhetoricians after the ancient models of Greece and Rome. Such men could not fail to be great jurists. And what though some of them were also cruel bigots in religion, fanatical supporters of despotism, faithless friends, or corrupt judges? Shall we therefore altogether cast aside the study of their characters and their work? Or is it not the part of a philosophical student of history to eliminate what is unquestionably bad, to ascribe it, in part at least, to the times in which they lived rather than to the natural dispositions of the men, and fairly to estimate what is good and valuable, and trace to this cause the strong and beneficial impress which they have left on the body of our laws?

In the early part of the century, embracing the years 1617, 1618, and 1621, so well known in connection with great legislative improvements in the Scottish jurisprudence, the leading lawyers were men whose characters and lives are worthy of much more attentive study than they have ever yet received.

This observation, however, does not so strongly apply to the first and one of the greatest names among them. The events of Sir Thomas Craig's life, and the course of his professional career, have been fully preserved by Baillie, the editor of his great work; and a just and impartial estimate of his character will be found in the elegant and interesting biography of Mr. Tytler. There may be room for difference of opinion as to Craig's ability and soundness as a legal antiquary; but his great natural capacity as a lawyer, his unbounded powers of application, the elegance and clearness of his style as a writer, the unrivalled eminence which he

attained as a practising advocate, the integrity of his character, the earnestness and purity of his religious convictions, and the mild steadfastness and consistency with which, through a long life, he continued to reconcile a faithful attachment to the party of the Reformers with loyalty to the Crown and the performance of great personal services to the King—these together make up a character, in which Scotch lawyers may well feel an honest pride, and the study of which cannot fail to be at once delightful and improving.

It was in the defence of the six Presbyterian ministers who were tried for high treason at Linlithgow in 1606 that Sir Thomas Hope first displayed those great abilities and that thorough knowledge of the law which afterwards gained for him so high a place. This first prominent act of his professional life sufficiently indicated, not only his great moral courage in braving the displeasure of the Court, but also the decided convictions which he entertained, and on which he acted throughout his whole career, in the conflict between the crown and the Reformed Church. When it is borne in mind, that notwithstanding his unflinching attachment to the party of the Reformers, he filled the office of King's Advocate for many years, and enjoyed at the same time a most lucrative practice at the bar, there can be no doubt that he must have exercised a very considerable influence both on the legislation and the practice of the law in his time.

Thomas Hamilton, the first Earl of Haddington, entered life with all the advantages of an ancient and honourable descent, valuable political connections, and an education of the highest class. His natural temper was ardent and impetuous; but a vigorous and highly cultivated intellect, a deep knowledge of human nature, habits of constant and laborious study, and a strong feeling of self-reliance, had the effect of restraining his natural keenness, and made him one of the most remarkable and influential men of the age in which he lived. That his great talents were constantly employed on the side of arbitrary power was perhaps inevitable; at all events, looking to the character and early personal history of the man, this need cause no surprise. But it is matter of surprise that, having been personally concerned in some of the most oppressive acts of James's reign, his memory has escaped, so well as it has, from the reproaches of the historians of the oppressed and suffering party. He filled at various times the offices of King's Advocate, Clerk-Register, Secretary of State, President of the Court of Session, and Lord Privy Seal. But the cares of state, the pressure of public business, unceasing variety of toil, could not divert him from a zealous and constant study of his original profession, as is proved not only by the reputation he enjoyed among his contemporaries,

but by the valuable collection of law cases and decisions which he left behind him.

Sir Robert Spottiswood was distinguished, not only by great personal qualities, but by high office, and enjoyed the singular distinction of being President of the Court of Session at the same time that his father was Lord Chancellor and Primate of the Church. That he was an evil counsellor to his unfortunate master Charles I., and that in political affairs he was not over scrupulous, may be readily admitted; but he was at the same time a man of rare accomplishments, both as a lawyer and a man of letters, sincere in his religious convictions, and undaunted in maintaining them. In his office as President of the Court of Session he enjoyed the reputation of an upright judge, and if his name is not directly associated with any great legislative improvement in the law, he seems to have been at much pains to reform abuses in the Court over which he presided. It was the custom of those days for the Lord President, at the commencement of the session, to call the whole advocates before him, and admonish them of their duty. We owe it to the care of Sir Robert's affectionate and admiring biographer, that one of those annual orations has been preserved to us. Its style is somewhat pedantic, and its tone, as an address to the members of a learned profession, is strange; for it reminds one of nothing so much as what is familiarly called a good scold. But the topics which the Lord President handles are, for more reasons than one, worth enumerating. The great delay produced by keeping up processes, a disposition to be too late in the morning, so that business cannot be begun till half-past nine, constant applications to put off cases on the ground of want of notice and preparation, tediousness and idle repetitions in argument, an uncivil practice of the advocates interrupting one another in debate, and a tendency to question the justice of the Court's judgments, and ascribe them to unworthy motives. It is amusingly characteristic of Sir Robert's political principles and personal feelings to find him conclude by representing the whole sum of an advocate's duty to consist "in "three words only, *in a willingness, a sense of shame, and a ready* "*obedience to superiors.* Have but us that are set over you in "that reverence and regard that ye should, and we shall not be "much troubled to admonish you of your duty. This is the first "and strictest obligation that ye are tied to, *To honour and* "*respect the judges*, wherein if you fail, you transgress one of the "first principles of your profession, which is *Suum cuique* "*tribuere.*" Not one word of the privileges of the bar, the dignity, the honour, or the independence of the profession, the delicate confidence of the relation of counsel and client, the exuberant and almost sacred trust that is reposed in a great advocate, and by consequence the magnitude of his responsibility.

No. Three words only sum up the whole duty of the advocate, a willingness, a sense of shame, and a ready obedience to superiors. The Faculty of Advocates, in the present day, would reject such doctrine with scorn. They would not tolerate, and have no need of, such remonstrance or advice. But if the Lord President were now in use to make an annual oration to the bar, it would be a curious speculation, whether some of the topics handled by Sir Robert might not find a place there. The labours of Sir Robert as President to improve the practice of the law, were not confined to admonition and reproof; he compiled an excellent book of Practicks, which was of high authority in our Courts till it came to be superseded by more recent and greater works, and remains even now a most instructive record of the forms and practical working of the law in his day.

Such were a few of those men, who, in the early part of the seventeenth century, were the chief ornaments of the legal profession in Scotland. The list might be greatly extended; materials are not wanting, and the study is full of interest. But I must pass on to another period.

Omitting all notice of the times of the Civil War and the Usurpation, I invite your attention to the condition of the law and the legal profession after the Restoration, taking the year 1672 as a central point. We are again in the days of arbitrary power and religious persecution. Both students and writers of history are too apt, I think, to under-estimate the difficulties which beset the Government of Charles II. in Scotland, and never make sufficient allowance for the distracted condition of the country, the multiplicity of subordinate factions into which the two great parties were divided, and the apparent impossibility, from these causes, of taking any step, or acting on any principle, without risking the hostility of a great majority of the people. Still it must be admitted that nothing could be more unsatisfactory than the conduct of the Government of Scotland under the King's Commissioners; while, as I have already shown, the Parliament was powerless and utterly dependent.

And yet the improvement and amelioration of the law went on with vigour and success.

It seems strange, that at such a period the practice of the Criminal Court should have undergone changes, almost all in favour of the accused. But by the legislation of this year, or by alterations of practice introduced by the Lord Advocate as public prosecutor, the panel was for the first time enabled to compel the attendance of unwilling witnesses, and the panel's counsel obtained the privilege of the last word, except in cases of treason. The jury, too, were no longer named by the King's Advocate as of yore, but the panel was allowed to strike off any thirty of the forty-five who were summoned on his trial; and when the jury

retired to deliberate, they were no longer attended by the Clerk of Court, who was a dependant of the Crown, but were left to their own uncontrolled consideration of the pleadings and evidence.

The Act of Regulations of 1672 also introduced many important changes in the practice of the Court of Session. It is not easy, in the present day, to appreciate the value of all these; because we can hardly realise to our minds the mischiefs that were intended to be removed or remedied.

One which engaged the attention of contemporary writers more than any others was the provision, that all cases should be called on and heard in the order of a roll, which was thought so beneficial, and, at the same time, so great a change from the former practice, that Lord Stair devotes a considerable portion of the 2d Title of the 4th Book of his Institutes, to discussing its merits and expounding its effects. But when we learn, that formerly no litigant could tell when his cause was to be heard, and that the calling of any cause was entirely in the discretion of the Court, without previous notice, we can understand how great a boon this change was both to the profession and to the litigants, as preventing the necessity of constant attendance, avoiding surprise, and putting an end to any risk or suspicion of the order of calling causes being regulated, so as to secure the attendance of particular judges, and thus favour one party to a cause at the expense of his opponent.

It was an attempt, or supposed attempt, to evade the force of this new regulation, that led to one of the most remarkable occurrences in the history of the Court of Session and of the Bar of Scotland, popularly known as "The Secession of the Advocates."

At this time the President of the Court was the great Lord Stair; but the other judges were not men of any peculiar eminence, with the exception of Sir John Nisbett of Dirleton, who combined the somewhat incongruous offices of Lord Advocate and an Ordinary Lord of Session. But the Bar was never before so strong. Sir George Lockhart, Sir John Lauder, and Sir George Mackenzie, were all in the height of their fame, and engaged in most lucrative practice; while Sir Robert Sinclair, Sir John Cuninghame, Alexander Spottiswood, the son of the former President Sir Robert, and many others, by their talents, station, and personal character, honourably distinguished the ordinary walks of the profession.

The suit between the Earl of Dunfermline and the Earl of Callender involved no question of public interest, so far as its own merits were concerned, depending merely on the construction of a clause in a marriage contract. But the Earl of Dunfermline, the pursuer, was the uncle of the Duke of Lauderdale, while the Earl of Callender, the defender, was son-in-law to the Duke of Hamilton; and one is constrained to confess, that litigants in those days

could hardly be possessed of such political influence as these relationships imply without attempting at least to make use of it in guiding or perverting the course of justice. Scandal says, that the cause was appointed to be heard and advised out of its proper order, that Lauderdale might have an opportunity of being present as an extraordinary Lord of Session, and exerting the weight of his influence on the side of the pursuer. That this may have been intended by Lauderdale and the friends of the Earl of Dunfermline is not at all unlikely. But I see no evidence to inculpate the President, or to prove any connivance on his part in this corrupt design. Lord Stair's own report of the case rests the interlocutor of the Court, repelling the objection taken to the cause being proceeded with out of the course of the Rolls, on a very intelligible, and, as it appears to me, a sufficient ground. The cause had come before the Lords on a report from the Outer House, and their Lordships intimated that they would hear parties *in præsentia*. The cause was then delayed several times, that the Earl of Callender might be present, and "the last diet, at which "the advocates undertook to answer without further delay, being "come," they objected, that they were not bound to answer at all, except in the course of the roll, according to the terms of the Act of Regulations, 1672. But to this it was answered that, "Diets "being given and taken to answer the points proponed, they "could not now return to this Dilator, which might have been "proponed the first day, and required not Callender's presence to "inform,"—in short, that the defender was barred by acquiescence from taking the objection. On this ground "the Lords repelled "the defender's allegeance, and declared that if they (the defender's "advocates) would not debate in their presence, they would advise "the dispute reported from the Outer House, and allow to either "party time to give their informations, and thereby to enlarge "the debate as far as they pleased." There does not seem anything very startling or unconstitutional in this proceeding. The objection overruled was a mere technicality, founded on no substantial ground of want of notice or preparation; and the defender, if he chose to stand on this technicality and refuse to be heard, had surely no reason to complain, seeing that the judgment then to be pronounced would not be final, but might again be brought before the Court in a formal and deliberate shape by informations. The truth is, that the parties were both engaged in a series of manœuvres—the one to accelerate the hearing of the cause while Lauderdale was in Edinburgh, and the other to postpone it till he should have returned to London. But the evidence on which the judges, and especially the President, have been charged with a corrupt leaning to the side of the pursuer, seems to me utterly insufficient.

The next stage of this litigation, however, raised a question of

far higher importance—a constitutional question which divided the lawyers and politicians of those days, and which is peculiarly interesting to us, because of its permanent consequences and effects on Scotch law and practice.

If Lauderdale was all-powerful at Court, and too influential in the College of Justice, the Duke of Hamilton was at least far stronger in Parliament; and accordingly an appeal was presented, in the expectation, as Sir George Mackenzie informs us, "that "Parliament would be glad to draw to itself the last and supreme "decision of all causes."

The simple question of Constitutional Law thus raised might have been easily enough disposed of; for I cannot help thinking that any one who seriously and impartially considers that question, with the aid of the elaborate arguments which have been preserved, will come to the conclusion, that no appeal lay from the decisions of the College of Justice to the Scottish Parliament, and that the attempt of the Earl of Callender to transfer his cause from the one tribunal to the other was unprecedented and unconstitutional. But this aspect of the question was soon lost sight of in the heat of controversy—the great object of one party being to establish a right of appeal from the Court of Session to the Parliament (whether justified by the Constitution or not) as a remedy for judicial partiality and corruption, and an important step in promoting rational liberty and circumscribing the undue and indirect influence of the Sovereign; while the Court party were fighting, not only for the existing law and practice of the country, but for the maintenance and defence of the King's power and prerogative. Sir George Mackenzie informs us that "This "appeal displeased most sober men, who considered that by this "method the nobility, who always governed Parliament, would "thereby too much influence private causes; and that ignorant "members of Parliament would have an equal vote in the subtilest "cases of law, with those whose breeding and experience rendered "them fit dispensers of justice. Nor did the tediousness and "expense that necessarily attended this new way please any "who were indifferent." This is a fair summary of the reasons, that might be plausibly and forcibly urged against the introduction of a Right of Appeal. But in the next sentence Sir George discloses the secret motives, by which both parties in the struggle were truly actuated:—"To which reasons Lauderdale, in his "representations to the king, added, that in the Session the king "had the sole nomination of all the judges, whereas the Parliament "was not of his election."

The Court of Session, of course, declined to take any notice of the appeal, and proceeded with the cause *Dunfermline* v. *Callender*. The Privy Council in the meantime called the Earl of Callender before them to answer for his conduct; and he, acting on the

written advice of his counsel, Lockhart, Sinclair, Cuninghame, and Mackenzie, explained that all he intended by his appeal was to protest for remeid of law, a course not unknown in former times, by means of which a litigant who lost his cause was understood—not to complain of the sentence of the Court as being unjust or against law—but to address himself to Parliament for relief in any form in which Parliament might be pleased to afford it, whether acting in an administrative or legislative capacity. The lawyers who gave this advice were also brought before the Privy Council, and unhesitatingly took their stand on the ground they had thus previously agreed upon.

But the King, acting on the suggestion and advice of Lauderdale, wrote a letter to the College of Justice, declaring his dissatisfaction with, and abhorrence of these appeals, and signifying his royal pleasure, that special care be taken to prevent the practice for the future. The King further desires, that the Court should proceed no further against the advocates who had advised the appeals, provided they solemnly disowned those appeals, and every other form of charging the sentences of the Lords with injustice; but if the advocates refused to take this course, the Lords are then authorised and strictly commanded to debar them from any part of their function as advocates in time coming. Whatever opinion may be entertained, either of the merits of the original dispute, as to the bearing of the cause *Dunfermline* v. *Callender*, or of the question respecting the constitutional legality of the appeal made to the Parliament, no one can hesitate to denounce this act of the King as in the highest degree tyrannical and unjust. To debar a lawyer from the exercise of his profession because he has advised his client that he has a right to appeal from one tribunal to another may be in strict harmony with the doctrines and practices of an age of religious intolerance and persecution, but is inconsistent with the first principles of constitutional government. It has been represented that this letter of the King was written with the full knowledge and concurrence of the judges, and particularly of the Lord President; that the King was only supporting the Court in their quarrel with the Bar. But this, I am satisfied, is an entire misrepresentation. Such an invasion of the privileges and independence of the Bar was alien, alike to Lord Stair's natural disposition and to his political tendencies, and is inconsistent with his conduct on all occasions, when the interests of the Bar were concerned. A few years before, he opposed the separation of the advocates into two classes, one to practise in the Outer and the other in the Inner House, and a proposal made about the same time to require an oath from the advocates, that they would not take larger fees than such as should be fixed by the Court, and for his services in opposing these innovations he had received the thanks of the Faculty.

Accordingly, Lord Stair, in his apology, disclaims all participation in this proceeding, and not obscurely hints his entire disapproval of it.

To this arbitrary exercise of power Lockhart and Cuninghame resolved that they would not yield; and still maintaining the right of their client to protest for remeid of law they submitted to be disbarred, in terms of the King's demands, and retired from Edinburgh. This was no more than might have been expected from men of firmness and independence. But what followed is of far greater significance and historical importance. Fifty advocates —a number which, it has been reasonably conjectured, must have included the great majority of those in practice at the time— judging the proceedings of the King to be an unconstitutional invasion of the independence of the profession and of the liberty of the subject, refused to be separated from their disbarred brethren, resolved to make common cause with them, and followed them into a voluntary exile, which cut them off entirely from the exercise of their profession and their ordinary means of living.

It is needless to trace the particulars of this remarkable controversy further. The quarrel continued unappeased, and the Bar in a singularly crippled state, for nearly two years, at the end of which time a compromise was effected, and the advocates returned to the exercise of their profession.

This passage of history is suggestive of many curious and important reflections.

It is obvious, that some very great change must have taken place in the tone and spirit of the Scottish Bar since the time of Sir Robert Spottiswood, and that its members were now animated by aspirations after professional independence and personal liberty, which were scarcely dreamt of in the previous generation. The intervening period had witnessed the birth and the extinction of a political freedom, the child of violence and wrong, naturally doomed to a brief existence. But the restoration of the monarchy, without any constitutional checks on the prerogative, while it had to all appearance recalled the despotism of James as it existed in the worst period of his reign, had yet been insufficient to destroy all recollection of those doctrines of constitutional liberty which had such a charm, not for the mass of the people only, but still more for the learned and the thoughtful; and it is not, therefore, surprising that a body of highly educated and able men, united by the ties of professional interest and personal friendship, should have been the first to show themselves in an attitude of firm and deliberate resistance to an act of tyranny and injustice. It is true that the advocates were not then successful in the attainment of their immediate object—the establishment of a right of appeal to Parliament. But they at least made a gallant protest for freedom and independence, which, after a season, bore good fruit. It is a

most gratifying reflection, that, as the lawyers of Scotland, including both advocates and judges, have, in every age, been the authors of the best measures for the improvement of the law,—so the advocates of Scotland took the lead in asserting and vindicating the independence of their profession in an age when the true relations between the Bench and the Bar, and their important bearing on the general interests and liberties of the community, were but imperfectly understood in other countries.

Whether an appeal from the Supreme Civil Court to Parliament is, in the abstract, expedient and desirable, is a question on which there may be room for difference of opinion. But the demand for such a power of control over the judgments of the Court of Session, occasioned as it was by an anomalous and unwholesome condition of the Court itself, and maintained and fostered by the best lawyers of the time of Charles II. and James VII., had become so associated, in the minds of Scotchmen, with all their hopes of deliverance from misgovernment and tyranny that at the Revolution it formed a prominent article in the list of grievances to be redressed, and its ultimate concession by King William shows the strength of the national feeling which had been enlisted in its support. The Convention of Estates in 1689 declared the banishment of the advocates in 1674 to be a grievance; and in the Claim of Right they asserted it to be the privilege of all the subjects of the realm to appeal to Parliament from the decrees of the Court of Session. Thus was laid the foundation of that privilege of appeal, which ever since the Union has existed, to the Upper House of the Parliament of the United Kingdom, and has, particularly in later times, exercised so powerful an influence on the law of Scotland.

You must be satisfied, from what I have already said, that this constitutional change, like almost all the great improvements in the law during the seventeenth century, is ascribable mainly, or at least owes its origin, to the personal convictions and opinions, and to the energy and perseverance, of professional lawyers. Certainly the influence of such men, as were the leaders of the banished advocates, was not likely to be less felt or less successfully exerted, than that of their predecessors in the early part of the century.

Sir George Lockhart was the son of a judge, and was afterwards himself promoted to the office of President. It would be difficult to say whether he was more distinguished by his talents or his courage. If he be liable to the imputation of changing his side, no one will ascribe this to want of nerve or fear of consequences; for it is not on the single occasion of the rupture between the Bar and the Court that he displayed his love of justice and independence. The records both of the Privy Council and the Justiciary Court afford many examples of his talents

being exerted on behalf of those, to support or defend whom was regarded as a political offence. The trials of Mitchel and the Earl of Argyll were occasions to test the true strength of such a character; the masterly and uncompromising manner in which the defence, in both instances, was conducted, must have insured success before a less prejudiced tribunal; and though his exertions were fruitless so far as concerned the accused, they established his fame among his countrymen, and by their very boldness and honesty disarmed the hostility of the Government. His violent death by the hands of a relentless enemy, while he filled the high office of President of the Court of Session, was a cause of general mourning and regret, and was a serious loss to his country, occurring, as it did, in the very dawn of the great revolution which was permanently to establish those principles of constitutional government, for which he had exhibited so strong a predilection.

Sir John Lauder of Fountainhall was a remarkable example of consistency and independence, maintained in most trying times and throughout a long life. He was the contemporary and personal friend of Lockhart, and was associated with him, not only in the struggle of 1674, but in most of the great causes of their time. His voluminous manuscripts contain treasures of historical information, which have never yet been thoroughly explored. But the two printed volumes of collected decisions, which are in every one's hands, abound in instructive and entertaining matter, containing, as the title-page of the book bears, not only the Decisions of the Court of Session, but "The Transactions of the Privy Council, of the Criminal Court, and Court of Exchequer, and interspersed with a variety of historical facts, and many curious anecdotes."

The greatest name, beyond question, among the advocates of 1674, is that of Sir George Mackenzie. To form a true estimate of his character is a matter of extreme difficulty; for his life still remains to be written. To the imaginations of one-half of his countrymen he always presents himself as "The Bloody Advocate," while others have magnified his personal qualities, and justified the rigour of his State prosecutions by the necessities of the times, representing him as being by nature kindly, amiable, and forgiving, and only by the exigencies of his office appearing to be the reverse. He began life in Parliament as an opponent of the Government, and evinced a spirit of independence very uncommon at that time. He lived to be not only the instrument in carrying out the King's most arbitrary and despotic measures, but one of the greatest, as he was almost the last, of the controversial writers in support of divine right and unlimited prerogative. He had a great ambition, and both courage and energy in action. And yet, that he was fond of retirement and literary occupation is

proved by the nature and extent of his published works. He is charged, and apparently not altogether without cause, with straining and perverting the law to accomplish unjust political ends; and yet it is admitted, even by his enemies, that he never let slip an opportunity of introducing practical improvements into the jurisprudence of Scotland. On many occasions he showed himself a generous friend and a magnanimous adversary. But the bitterness of invective, with which, in his Memoirs, he assails his great rival Lockhart, would rather argue a littleness of mind and a rancorous and unforgiving temper. And yet even this hated rival he elsewhere describes as a man of most cultivated intellect, a consummate lawyer, an orator of the highest order. A character so full of contradictions is hard to be understood, but is well worthy of a more patient and impartial study than it has yet received. His professional merits are beyond all dispute. And though most of his legal works are now of comparatively little value, his Observations on the Statutes still deservedly hold a place of high authority among us. The contemporaneous, or almost contemporaneous, exposition of Statutes, by a man of great legal ability, must always be highly valuable. But the Observations of Mackenzie exhibit so full and accurate an appreciation of the precise aim and purpose of a new law, so thorough a knowledge of the mischief to be remedied, and so nice a discrimination between that part of the former law which is intended to be altered and that which is left untouched, that no one can become familiar with the book without forming the highest opinion of the writer's capacity, not only as a lawyer, but also as a legislator, without recognising the hand of the great law reformer that from other sources of information we know him to have been.

I have had occasion to mention incidentally the name, which, by universal consent, stands highest in the annals of Scottish jurisprudence. But I dare not now venture on a theme so large and so inviting as the character and works of Lord Stair. Indeed, I am conscious that this address has already extended beyond its due limits.

The kind attention with which you have listened to me leads me to hope that the subject which I have been endeavouring to illustrate, in a very crude and imperfect way, is calculated to attract and interest you. If, by what I have now said I shall succeed in inducing any of you to a more faithful and laborious study of the history of our law I shall be satisfied that my reappearance among you, as a member of the Juridical Society, has not been altogether in vain, but that I have thereby been enabled to make some slight contribution to the improvement of legal education in Scotland.

APPENDIX D.

SPEECH TO THE ELECTORS OF ORKNEY AND SHETLAND on the occasion of his Nomination, 19th July, 1852 (see p. 142).

Electors and friends,—I may well call you friends now, for short as my time has been among you, and limited as have been my opportunities of conversing with the electors, I may safely say I have not only formed friendships with individuals which must endure during the remainder of life, but that there has grown up between myself and the population of this county a cordial sympathy founded on an entire concurrence of sentiment and opinion, and a mutual good understanding which, I think, it is not the language either of metaphor or exaggeration to designate by the name of true friendship—a friendship which not even the envenomed tongue of slander and misrepresentation, busy as it has been, has the power to destroy.

When I first proposed to myself the gratification of offering myself to you as a candidate I was told by some of my prudent, sagacious friends in the south that it was needless to come here with independent opinions; that this was a place so ridden over by great dominant county influence that it was in vain for any man to present himself to the constituency who had not that influence. (Hear, hear, and hisses.) Gentlemen, I disbelieved that statement. I disbelieved it because I knew, from sources of information on which I could place entire reliance, that the people of this county were distinguished by energy and industry, perseverance and enterprise, aye, and above all, by a high tone of moral and religious feeling, which I know to be, above all things in the world, the most inconsistent with the character of slaves. (Loud cheers.) Therefore it was I came here, and have I not been fully rewarded for my adventurous spirit? (Cheers and counter cheers.) Have I not found my anticipations fully realised as to the true character of this people? Yes, gentlemen, I have found the strongest evidence of the total absence of that servile feeling that was imputed to you in the conduct even of my opponents themselves. (Hear, hear.)

But let me recall to you that the last election was a triumph against that influence. That was the first blow that was struck, but it shall not be the last. (Cheers, counter cheers, and hissing.) You rejected on that occasion the honourable gentleman who is now opposing me; we shall see what claims to your confidence he has earned since then when we come to discuss them. But, having

rejected him then, what was the next step? There appeared another candidate in the same interest in the field at the present election—a worthy and respectable gentleman, Mr. George Loch, but you would have none of him, and he withdrew. Did he do so because he was going to win or because he was going to lose, may I ask? I think I may assume the latter. But he, being out of the field, you have now the rejected of the former election trying, I must say by very judicious arrangements and by wise and suitable policy, to re-establish the dormant influence again in spite of all your efforts. (Loud cheers and hisses.) He professes, indeed, not to be Lord Zetland's nominee. I believe that to be true, and I give him credit for the entire sincerity of the declaration. For I believe that that excellent and amiable nobleman has abandoned the intention of putting the collar on your necks again. (Cheers and hisses.) But will it be better that you should be in the leading strings of the Earl's cousin than that you should be under the control of the Earl himself? Choose you between the two; say which is the better bondage. (Laughter and cheers.)

Now, with regard to my honourable opponent himself, I may assure you that I should be the last man in the world to say one word disrespectful of him. He has spoken of me in very handsome terms indeed, and I give him credit for the most honourable intentions in his conduct in this election as well as in every other part of his career, but he will permit me to say to him at the same time that, as a public man, he has very little claim on your gratitude, very little claim in so far as the future is concerned on your suffrages. (Cheers and disapprobation.) He is an amiable Whig gentleman, but when I have said that much I think I have said all. But amiable qualities in private life are not all that is necessary to make up a useful public man, and as to his Whiggery, we shall see by and by what it has done for you in times past, and we shall conjecture, if you please, what it is likely to do for you in times to come. (Hear, hear.)

If I have one fault to find with the hon. gentleman on the other side, it is that he is afflicted with a little too much credulity. He is apt to believe every silly story which his zealous (and some of them unprincipled) supporters choose to retail to him. (Clamour.) He comes here to lecture to you to-day on the subject of a story which he says has been repeated to him as to a certain imaginary compact that has been made between the Government of this country and the late member for this county, the romance being that a contract is given to the Oriental Steam Packet Company by Government in consideration of the leading partner of the company handing over his county in return. This is so ludicrous a romance on the face of it that I confess I doubted for a moment whether I should take any notice of it or no. But, on further consideration, I cannot allow such a consideration to pass without

observation, and I pray the honourable gentleman on the other side of the hustings to notice me when I tell him this, he has given me credit for being a man of honour, and has said that I had nothing to do with such a compact; but I cannot let him escape thus. I stake my personal honour that I know, from my own personal knowledge, that the whole affair is a wicked and monstrous lie—(loud cheers)—and let me tell my honourable opponent that the next time he mentions that subject or gives countenance to that report I shall ask him, as one gentleman is entitled to ask another, to give me his authority. (Cheers.)

Now, my honourable opponent has one great advantage over me undoubtedly on the present occasion, and I beg you will consider it fully for his sake. He has great experience of electioneering in this county; he has also had great experience of parliamentary life, and, I may add, you have had experience of him. (Laughter and ironical cheers.) He has served you as your representative for nine years, and when he came down here after the lapse of that period to give an account of his stewardship, what was the reception you gave him? You turned him to the right-about because you were not satisfied with his account. (Cheers.) Now, I want to know what is there that has happened since that last accounting between you and him that can give him the slightest prospect of obtaining your suffrages now? Has he done anything, either in public or in private, to redeem the errors you condemned in him then? Has his name been great in public life? Have you received any favour at his hand? What is the ground of his expectation that he will now obtain a reversal of the verdict you deliberately pronounced against him in 1847? (Hear, and cheers.) I know very well further that I labour under this disadvantage, that I am a stranger in this county, and further, that I am a man hitherto untried in public life. But we are come here not to discuss individual merits, but to explain our sentiments on the great questions that now agitate the public mind, and I think my honourable opponent would have done better if, instead of devoting so much attention to the little scandals which his supporters have been getting up, he had delivered his sentiments on some of those questions which I know interest every man in this county. (Hear, hear.) I have chosen my part in the struggle now going on in the country for reasons which I desire to state to you candidly and distinctly. I have given in my adherence to and accepted office under the present administration, because, in the present aspect of public parties and public measures, I believe that administration to be the only one that was possible to be formed in this country which could safely be trusted with the maintenance of our Protestant institutions. (Cheering and hissing.)

Let us look for a single moment to the composition of the last House of Commons, and we shall find that it was, like the country

which it represented, divided into three great parties. You had, in the first place, the Whigs, a miserable minority, but still in office. You had Lord Derby, who, in the House, had a much stronger and more compact and consistent party, and, as it turned out, the only party to whom Her Majesty could turn for forming an administration when Lord John Russell resigned—(cheers and clamour)—and you had, in the third place, a motley crew—too strong, unfortunately—composed of Radicals of all schools, of the Irish Papal party, and of the men of the Manchester school, whose heads are so filled with their favourite theories of finance, reform, and the like, that they have no time to attend to practical matters of legislation at all. Now, I suppose that the party I last mentioned, composed, as it was to a great extent, of Roman Catholics, is hardly the party to whom you would have been willing to entrust the Government of this Protestant country. Then, if so, what have you? Lord John Russell and his friends, opponents, it is said, of the aggressive policy of the Church of Rome—ay, opponents—opponents that can speak well when nothing is to be done, whose chief can write Durham letters, full of the most admirable sentiments, but whose followers in the House of Commons are unable to carry out measures to give effect to these sentiments in the way of practical legislation. What did they do? When they met Parliament after the great insult offered to the Crown and the country, and which their chief denounced in unmeasured language, they brought in a bill which was the laughing-stock of the whole country, a bill intended, it was said, and not only intended but calculated, to put down the aggressions of the Church of Rome, but which they knew to be, as everybody now sees it to be, nothing but a mock and a pretence, and they resisted with the whole force of the ministry every proposal that was made in both Houses to give vigour and efficiency to the measure. They resisted all the proposals of my friends in the House of Commons, and resisted the proposals of Lord Derby in the House of Lords to introduce clauses into the bill which would make it a real instead of a pretended repulse of the aggression of the Pope; and having carried through their milk-and-water, slipshod Ecclesiastical Titles Bill, they would seek to stand on it as another claim to the gratitude of the country!

Now, that is not the Protestantism that meets my view, and these are not the kind of men to whom I can consent to entrust those valuable institutions which we so much regard. (Hear, hear.) I must look elsewhere for friends. I will not look to Lord John Russell, whatever his following may be, for it is well known that that noble lord's private opinions are in favour of the endowment of Popery, though he has never had the candour to speak it out. (Hear, hear, and clamour.)

Now that brings me to the question which I think is, of all

others, the most important in the present day. How are we to deal with our Roman Catholic fellow-subjects, and in what way are we to secure our Protestant religion and to maintain our Protestant institutions consistently with their civil liberty? I think one grand duty of the State, not at this time only, but at all times and under all circumstances, is to attend to the education of the people, and to devote the public money to this as a most essential part of the public service. My honourable opponent is very much mistaken indeed if he thinks that I belong to a class of politicians who will fail in their duty in educating the people. There is nothing I have more seriously at heart than a desire to see a complete system of national education on the most liberal and extensive basis introduced into this country and into England. Now, what is necessary to the introduction of such a system? I want nothing but a perfect security that in all the schools which shall be established in this country, we shall have no teachers in them but men of good sound Protestant principles. (Hear, hear.) I cannot consent to leave it as a matter of perfect indifference whether the teachers in these schools shall or shall not teach the truths of the Bible, because I think there is no kind of education that can ever succeed or be attended with good results in any country that is not founded on a religious basis. Banish the Bible from our schools and you banish the only sure standard of morality and religion, and I should like to know what you are going to substitute in its stead. (Hear, hear.) But it is not merely a religious education that is required. I wish to take great care to provide a true and sufficient security that those who are entrusted with the giving of the education to the young should be men of undoubted and unsuspected principles themselves. I am not one of those narrow-minded persons who would confine the benefits which are to be derived from this system of education to any one religious denomination in this country. (Hear, hear.) I am not one of those who would ask in the schools which I wish to see established to confine the teachers entirely to members of the Established Church. (Cheers.) By no means. I wish for nothing but that the teachers should be sound Protestants. Give me this and you give me all. (Cheers.) But I cannot consent that there shall be that total absence of all test of qualification which would allow the masters in our schools to be of any denomination of character whatever—to be Roman Catholics or Unitarians, or even of no religion at all. To that I will never consent. These schools must be endowed on principles which shall put into them men of tried Protestant principles, and when we have that we shall be sure of having a sound education for our youth. In like manner, I take leave to say, in regard to these more advanced seminaries of education, of which we have heard so much lately, I mean our universities, that there also I would

carry out the very same principles. I do not want to confine the lay chairs in these universities to members of the Established Church, and I do not want to stand on the existing tests, which are supposed to have that effect, but I will do the utmost in my power to resist any proposal to abrogate these tests altogether, because the effect of that would be not only to let in our Protestant brethren along with ourselves, but to throw the chairs open to men of all kinds and denominations—to the Roman Catholic, to the Unitarian, to the infidel, and to the atheist. (Hear, hear.)

Having thus explained my opinions on this subject, observe to what results it leads me in antagonism with my honourable opponent. He has told you in his published address that if he had been in Parliament he would have voted for Mr. Moncrieff's Bill for the Abolition of University Tests. That is a point on which we differ; I would not have voted for it, and I will tell you the reason why. It is because the abolition of these tests without any security in their place would have exposed our universities to the inroads of persons of the description I have spoken of, and because there would have been nothing to prevent these chairs being filled with professors who were opposed to the leading doctrines of Christianity. But I desire to see a measure introduced which shall secure for these chairs men of undoubted Protestant principles, I care not whether they are Established Churchmen, Free Churchmen, United Presbyterian, or Church of England men. It is all one, for, provided they agree with me in the great essentials of the Protestant faith, I will open the arms of the universities to them all.

So again I gather from the opinions of my honourable opponent on this and kindred subjects that he would have voted for Lord Melgund's Education Bill, and on the same ground again we differ, because Lord Melgund's Bill makes no provision for the maintenance of the Protestant religion in the schools he proposes to establish, and that I hold to be indispensably requisite. Therefore, I say, test me and my opponent by these two measures. He is for Lord Moncrieff's Bill, I am against it; he is for Lord Melgund's Bill, I am against it; and the result seems to be that I am the only man who has presented himself to your suffrages on this occasion who is pledged to maintain the Protestant institutions of this country, and my honourable opponent, I think, savours very much of the opposite. (Loud cheers and hissing, and a voice, "No Romans.") Oh, I have not quite done with the Romans yet. We have heard a great cry and seen a great deal of nonsense published on the subject of Maynooth College, and, what is more, we have heard a great many ingenious falsehoods propagated in this country respecting my opinions on the subject. But I beg to state to you distinctly and explicitly what it is I think and what it is

I will do. I did not hear my honourable opponent venture upon the topic at all. He has got a word or two about it in his address. I will tell you what he says—"I think the policy which lay at the foundation of the Maynooth grant was mistaken"; that this mistaken policy has now been found out, and ought accordingly to be abandoned. That is a very delicate way of dealing with the matter, certainly. If it were a matter of policy merely that we were dealing with, I do not think we should have had so much talk on the subject. It is not a matter of policy, but a matter of principle. My opinion is that that grant, for which, by the by, my honourable opponent voted in 1845—(cheering and laughter)—was not wrong in policy merely but was wrong in principle, and that which is wrong in principle, let me tell you, can never be right in sound policy; that you may depend on. (Hear, hear.) Therefore it is that policy has failed, but whether it has failed in point of policy I care not; I am against it in point of principle. I will vote for its repeal; I will resist every attempt to extend it. (Loud cheers.)

And now, gentlemen, let me ask you a question. After hearing this explanation from me, will you not agree with me in holding that that placard (pointing to a painted board in Mr. Dundas' possession with the inscription "John Inglis and Maynooth") is a scandalous walking lie? (Loud cheers.) It is fit for nothing but to have the finger of scorn pointed at it, and is a mere emanation of malignant spite on the part of some of the subordinates of my honourable opponent's company. (Cheers.) My honourable opponent's friends have said that a great deal of information as to a man's principles is to be gathered from the company he keeps. (Laughter.) I am not ashamed of my company. (Loud cheers.) I am not ashamed of having all the leading gentlemen in the county, with two or three trifling exceptions, behind me. I am not ashamed of seeing the honest faces of the whole agricultural population before me. I rejoice in my company; I love them with all my heart. (Cheers.) Can my honourable opponent say as much? If he can he is the most forgiving man that ever lived. (Laughter and cheers.) If he take the hand of good fellowship from those who at last election, only five years ago, run him down as the most contemptible of the scum of the human race—(laughter)—why, then, I do think the amiable qualities which I have always heard that the honourable gentleman possessed exceed human nature altogether. (Loud cheers and laughter.) So, gentlemen, I think the less said about bad company the better.

But now let me go on from this digression to deal with some other questions of very great public importance. I beg you to observe that I go through these subjects for this reason, among others, that I desire to have no mistake or misunderstanding in

anything. I desire to be perfectly explicit and distinct in the statement of my principles on the points which I think can interest you. I want to have no complaints hereafter that there has been any misunderstanding as to whether you or I agree or no. Let us have the matter determined now. And as this morning auspiciously begins this contest, which I trust will terminate ere long in the triumph of sound Protestant principles —this morning, I say, is a very fitting time for us in the interchange of our ideas to see whether we cannot come to one on most subjects. (A voice—"Are you a Whig or a Tory?" and another voice—"He does not know the difference.") No, gentlemen, I do not know the difference; and I do not know whether any of these vociferous gentlemen there know the difference. (Cheers.) And what is more, I do not think that any man attaches any very definite idea to the name of a Whig at all except in so far as that represents the little nucleus of family statesmen who lately occupied the position of Her Majesty's councillors. (Cheers.) But, apart from all party name, for names are often very deceptive things, I deal with things as they are, not with mere names or words. I have been telling you as plainly and distinctly as it is in the power of any man to do what are my opinions on subjects of general interest, and, following out the same plan with the same perfect candour as I have hitherto exhibited, I proceed to deal with the subject which my honourable opponent thinks so ticklish a one—I mean the subjects of free trade and protection. (Hear, hear.) And once for all let it be understood that I will never, under any circumstances, or in any combination with any class of statesmen, consent to impose a tax on the food of the people. (Cheers, and a voice—"What says Christopher?") I care not what any other man says. I am giving you my own deliberate, sincere convictions, and if my honourable opponent is right in saying that I am a man of honour, at least I am entitled to credit in the meantime for what I say. I tell you this, that the re-imposition of a tax on corn is a thing that I never will support, and I may venture to say further that I think it is a thing not only impossible but a thing undreamt of in the councils of the ministry. (Hear, hear.) But there are some very strange people in the ranks of these so-called Free Traders—very strange people indeed—who think that the single word free trade, as embodying a set of ideas and principles, must be quite as intelligible to everybody else as they think it is to themselves. Now, free trade is a perfectly right and good thing in point of theory; it is also a perfectly right and good thing in point of practice, and nothing can be more important for the statesmen of this country to direct their attention to them to see how they can carry out the principles introduced by the late Sir Robert Peel—a name I can never pronounce

without feelings of the most profound respect—into all the different branches of trade and commerce in this country. But this is not such an easy matter as people now-a-days suppose. It is not a thing that can be gone about as rashly as was the case with a certain recent application of this principle to the navigation laws by an act not foreseen or dreamt of by those who proposed it. That is not the way to apply this principle to trade or commerce. No; it must be on a due and full consideration of all the conflicting rights, interests, and claims of the various classes of the community, for, depend upon it, there is no maxim of statesmanship more perfectly true than this, that the depression and suffering of one class is sure to end in the depression and suffering of all. (Cheers and disapprobation.) It is only by attending equally and fairly to the claims and interests of all classes of the community that any Government can hope to promote the real prosperity of the country, or a prosperity which there is any prospect of making permanent. That is a task to which Her Majesty's ministers have to direct their attention; and it is a strange thing indeed to see men of honour and education and principle coming forward and saying that the Government is a Government which will not explain its policy. (Hear, hear.) I tell you Government has explained its policy; it has explained it on these two great subjects I have been treating of, and in nothing that I have said to-day—strong and candid as I think you must admit it to be—have I gone a single step beyond what I believe to be the intentions of the Government. Now, if a party cry or badge is necessary, and if there must be a choice between free trade and protection, why, then, I am a free trader. (Cheers.) I am a free trader in the only sense in which the word has any national meaning. I am a free trader in respect of my determined purpose to preserve the food of the people untaxed, and in respect of my determined resolution to carry the same principles into active operation in all the different branches of commerce and industry. I am a free trader in this respect also, and that is perhaps the most important of all, that I think there is no free trade without reciprocity, and that free trade without reciprocity is something like suicide. (Cheers and disapprobation.)

These are my views, which I have endeavoured somewhat more fully, and I hope somewhat more satisfactorily, than my honourable opponent, to make intelligible and distinct. I will not imitate his delicacy in evading the topics on which I know you are most interested. On the contrary, I have dealt with them all, and I hope I have done it to your satisfaction. I assure you that, standing here this day and entering public life with this profession of my creed, I have the complete sanction of my own conscience, and I believe I have the approbation of the great majority of my fellow-countrymen, an approbation which I believe will carry

the present Government up to the next Parliament with a decided majority to carry out those great measures of public benefit and relief which I know they have in contemplation. (Cheers.)

Something has been said on the other side on the subject of elections. Now I am not very long from the south, and I have brought with me such a budget of news as must have been singularly distasteful to those who stand over the way. What do they say to the glorious triumph that was achieved at Liverpool, and what do they say to the way in which that triumph was followed up in Dublin, two of the chief cities in the kingdom; and what do they say to the Government candidate standing at the top of the poll in the city of London? Will they tell you after that that the Government has not the confidence of the country? (Cheers.) I will tell you how it stands. The Government party came out of the last House of Commons, not, indeed, with a majority, but with by far the greatest number that any party had in the House, and they will return to the next Parliament with a triumphant majority, and will, I am sure, be thereby enabled to carry into effect those great principles and policy which I have announced to you to-day. (Cheers, and a voice—"Edinburgh.") Edinburgh is mentioned, and it is thought a vast triumph, forsooth, that Edinburgh has returned so distinguished a Whig—for that was the description given of him—as Macaulay. You were told that that was a bright example that you might imitate, that this was a grand precedent for restoring your disgraced and rejected member —(cheers, laughter, and hisses)—that this was the banner under which you were to fight this day and throughout this election, and that you were to achieve as great a triumph as the artisans of Edinburgh had already done. Now, gentlemen on the left, be kind enough to answer me. Is your Dundas equal to the Edinburgh Macaulay? (Laughter, cheers, and some cries of "Yes.") Macaulay is a man of distinguished genius, a man who labours not to a party so much as he does to his country. (Cheers.) I don't call that man a Whig. My honourable opponent takes that name to himself. I believe it aptly distinguishes him. (Laughter.) That is the difference I perceive between the two cases, and therefore I cannot but think the electors of Edinburgh made a wise choice in taking him in place of a man of less estimation of the same politics. I have little fear that you, with the principles you hold, and with the experience you have had, and with the views which you know are entertained by the other candidate before you, I have little fear indeed that you will swerve from your principles for the purpose of making amends to the late defeated candidate, and that you will sacrifice those great interests in which you all feel so deep concern for the mere personal consideration of wiping away the affront which you advisedly did to that gentleman at the last election. (Hear, hear.)

Now, gentlemen, I have done, and I trust I have been explicit and frank in the explanation of my opinions. (Loud cheers.) If the opinions I have professed and if the principles on which I take my stand are those of the great majority of the constituency of this county, as indeed I know they are—(cheers and counter cheers)—we undoubtedly shall achieve a great and important triumph in this distant county, but it is a triumph which will form only a part of the great national success which will place at the command of Her Majesty's Government such a majority in the House of Commons as will put out of all danger and out of all difficulty those noble and glorious institutions which it is our sacred duty to preserve. (Loud and protracted cheering.)

APPENDIX E.

Speech on Scottish Universities Reform Bill, 22nd April, 1858 (see p. 178).

The Lord-Advocate rose to move for leave to bring in a Bill to make provision for the better government and discipline of the universities of Scotland, and improving and regulating the course of study therein, and for the union of the two universities and colleges of Aberdeen.

The learned lord commenced his observations in a tone so low as to be inaudible to members, even within a few yards of him, and cries of "Louder" and "Speak out" were raised in all parts of the House.

He was understood to say that it was a distinctive peculiarity of the Scottish universities that they sought to provide a liberal education for a larger proportion of the inhabitants than any similar institutions in this country or in Europe, and it was possibly owing to this distinguishing peculiarity, which had gained for them the high character they had obtained, that they had in some measure lost sight of the main objects of universities, and that were to be attributed some of the defects which the proposed measure was calculated to remove. The admission of students into these universities had never been trammelled with any religious distinctions, and though it had originally been the policy of the universities to require every professor to be a member of the Church of Scotland, a measure had been passed about four or five years ago for relaxing that rule, and the consequence was that any

one perfectly qualified to be a professor might be admitted to a chair without regard to the religious community to which he belonged. The result of this was that these universities had been opened to the whole youth of Scotland, and that the scope of education imparted there had been very liberal. At the same time he was bound to say that certain imperfections had arisen in the system which it was indispensable to remove. From this it resulted that great excellence in any department of science was no longer one of the distinctive characteristics of the students of these universities. That which appeared to him to lie at the root of the existing evil was the want of value which was attached to the degrees of art; and any measure which should have the effect of enhancing the value of these degrees and of creating an intelligent body of graduates would prove very advantageous. He was bound to say, however, in justice to the professors, that within the last ten years a great improvement had taken place. The bill which he proposed to introduce was founded upon the report of the commissioners which had been presented to Parliament so far back as 1830. That commission was appointed in 1826. The commissioners conducted a most elaborate inquiry into the whole system of the universities. They were persons of the highest weight and ability, and the report they presented contained a mass of valuable and instructive matter upon this important subject.

The learned lord here read some passages from the report of the commissioners, the purport of which we were unable to gather.

The Bill which he was about to introduce was in accordance with the spirit of the report. He was very much obliged to his honourable and learned friend, the member for Leith, Mr. Moncrieff, who, having had himself a measure on the subject in preparation, had furnished him with the materials and the sketch of his plan; and he (the Lord-Advocate) had endeavoured to put in the form of a Bill such provision as he thought would introduce into the Scottish universities those improvements which were desirable, without in the least degree interfering with the distinctive peculiarities to which he had just referred, and to which he must say he attached great importance. In the first place, in order to enhance the value of the degree in art, and at the same time to create a body of enlightened men in connection with these universities, he thought it essential that some improvement should be adopted to associate the graduates more intimately with the universities, by conferring on them a certain share in the administration of their affairs, and thereby to attach them to the universities after their course of education there was brought to an end. That was one of the main objects of the bill. He trusted that by these improvements it would be possible to improve the standard of qualification and greatly to increase the aggregate amount of learning in the universities, without interfer-

ing with what was a most important element in respect to the efficiency of the universities—the instruction and education of what were called "occasional students," who went to the universities, not for the purpose of going through a regular course, but only for instruction in those particular branches of education which might be valuable to them. The raising of the qualification of degrees in art—the raising of the standard of excellence in all departments would not prevent universities from affording instruction as heretofore to that class of occasional students. It seemed indispensable that some change should be made in the government and administration of their affairs. As the matter stood at present, the whole administration, as well as regarded property and revenue and other matters, was vested in a body composed of the principal and professors of the university. A single exception from this arrangement was in the University of Edinburgh, where a great deal of power, if not the whole, was lodged in the Town Council of the city, a body of whom he would venture to say that they were not better qualified for the purpose than the governing bodies of the other universities. He thought that the way to improve the administration of the universities was to adopt another most valuable suggestion contained in the report to which he had already referred, and to institute what might be called a University Board. It was important that a considerable amount of control should be placed in the hands of such a board, when it was considered what kind of questions were likely to come before a body of that kind for determination. In the first place, there must be many cases in which the professors of the university had different interests. He did not mean to say these cases frequently occurred, but when they did, they were at present productive of inconvenience on account of the soreness and heart-burning they occasioned, the professors themselves having the power to decide them. In the second place, there might be a question arising up between the professor and the students, particularly in regard to rustication, and it was extremely desirable with respect to such questions there should be a board of appeal from the body composed entirely of professors. He also conceived that the control and disposal of the property and revenues of the university might more safely be entrusted to other hands than those of the professors. It was necessary also that there should be somebody whose duty it would be to regulate from time to time the course of study; to introduce improvements into it, and to institute fresh subjects, and all these matters might be beneficially placed in the hands of a body differently constituted from the existing governing power. He would now say what he thought most likely to lead to the attainment of the end in view. He proposed that the University Board should be composed, in the first place, of the rector of the university, who would be the

president—an officer who was found in all universities of Scotland at present, and whom he thought it was desirable to retain under the same name; the principal of the university would also be a member of the board, and the court would further comprise a body of persons to be called the assessors, who would be nominated partly by the professors and partly by graduates. By its means, among others, the graduates would be able to exercise a considerable influence over the university. Of course it was not necessary for him to enter on that occasion into an explanation of all the power which would be exercised by the proposed board; and he had therefore contented himself with sketching generally the nature of the functions which would have been discharged if the Bill should become law. He had now, in the first place, to consider what defects existed and what improvements were desirable with regard to the position of the professors; and here he felt bound to say that the professors had, in many cases, very just and well-founded causes of complaint. There could be no doubt that the endowments of some of the chairs, more especially some of the smaller ones, were singularly inadequate. This arose from various causes. It arose, in the first place, from the circumstance that the salaries were fixed by money payments at periods now long past, these payments having remained stationary while the relative value of money had very much altered. In the second place, a very large proportion of the revenue and funds belonging to the universities arose from teinds or tithes, and were subject to a diminution in value from time to time by the augmentation of the payments of the clergy, which formed the primary charge on them. Thus, as the necessities of the time required an augmentation of the stipend of the clergy, just in the same proportion were the revenues of the universities diminished.

The honourable and learned lord here read a statement on the subject in reference to the University of St. Andrews.

He proposed that such a stipend should be allotted to the professors as would secure the services of able and learned men. He also proposed that moderate and reasonable retiring pensions should be awarded to aged and infirm professors, which would prevent them from continuing to keep their chairs when they were disqualified from the active performance of their duties. In some of the universities also additional chairs were absolutely required, and the Bill would provide for meeting that necessity. He further proposed that professors should, where necessary, receive the assistance of tutors and lecturers to such an extent as may be deemed expedient. He proposed the appointment of what he might call an Executive Commission. For the purpose of carrying out the details of the measure, he had adopted this system from the precedents of the recent bills relating to the universities of Oxford and Cambridge. He might add that he did not think it

would be necessary to interfere to any extent with the patronage of the chairs, and he thought that such a scheme as this would not be perfect or satisfactory if did not provide for the union of the two universities of Aberdeen. Clauses would therefore be inserted in the Bill providing for the union of these universities, and all who were acquainted with the subject had come to the conclusion that such a union was not only desirable but necessary. He had only further to say that the entire subject was one of great importance. He claimed no merit for originality; but he trusted that the Bill would be found adequate to an object so much desired as the improvement of the Scottish universities. The right hon. gentleman concluded by moving for leave to bring in the bill.

APPENDIX F.

INAUGURAL ADDRESS DELIVERED TO THE UNIVERSITY OF GLASGOW on his installation as Lord Rector, March 22, 1866 (see p. 189).

Mr. Vice-Chancellor and Gentlemen,—It is with feelings of no slight diffidence that I this day enter upon the duties of the high office to which I have been called. The illustrious roll of my predecessors, which reflects the highest honour on the University, and especially on the students of the University, would of itself be sufficient to inspire such diffidence. But there is to me something still more affecting in the associations inseparable from this place; in the reflection that to this venerable school of learning I owe my earliest instruction in literature and philosophy—that from the same bounteous hand I received the means of prosecuting my studies at another and still more ancient university—that in the days of my student life, forty years ago, such a meeting as this was adorned by the presence of many eminent men who have since passed away, to whom I was wont to look up with confidence, admiration, and esteem.

I can never forget with what delight I listened in those days to the prelections of Sandford, whose reading of Greek poetry conveyed to his hearers the highest intellectual pleasure—so correct was the taste, so spirited the delivery, so discriminating the knowledge, and so enthusiastic the love of his subject. It seemed, indeed, to be his special mission to make men familiar with the character and history of the most intellectual and civilised people of the ancient world, through the medium of their

wonderful language, at once the most copious, the most musical, and the most susceptible of adaptation to every species of literary composition.

Every one who had the good fortune to receive his first lessons in philosophy from Buchanan must, I am persuaded from my own experience, have carried about with him in after life an ever-present sense of the benefits he derived from that accomplished and most successful teacher. In the more advanced stages of scientific study—in every intellectual exercise or pursuit—in the business of life, or in the labours of literary leisure—reference must always be made back to those leading principles, which he first taught us thoroughly to understand, and thus enabled us with certainty to retain in our memory. Of all the professors of that time, which I now fondly recall, this venerable gentleman alone remains among us, in the enjoyment of a dignified repose, well earned by his long career of useful toil, but still willing and ready, in the councils of the University, to contribute his judgment and his experience to the promotion of her best interests.

The learned and distinguished Professor of Moral Philosophy, whose recent death we are all now mourning, was another link in the chain of my associations with the past; for though he did not, while I was a student, hold any professorial chair, he was a resident graduate, and a valued office-bearer of the University. It was my good fortune, at that early time, to secure the personal friendship of Dr. Fleming, which has in after years been to me the source of much pleasure, as well as profit; for he had a rare capacity of imparting the stores of his erudition without pedantry or display—unconsciously, with no design or effort, embellishing the ordinary intercourse of society with the fruits of his own solid and elegant accomplishments.

But while such retrospective feelings and reflections induce a natural misgiving of my being in any adequate degree worthy of the trust reposed in me, you will readily believe that it is, at the same time, with pride and gratification I resume my intimate acquaintance with the University and its affairs, in a character and position so conspicuous and so honourable. With the utmost sincerity then, and in a single word, I tender you the expression of my most grateful thanks.

I have had occasion, from various causes, to form some acquaintance with the system and working of most of the universities of the United Kingdom. But whether it be from the prejudice of early associations, or for more solid and satisfactory reasons, this University, as I remember it in former days, has always appeared to my mind to make a nearer approach than any other, to the true ideal of academic organisation and life.

By strangers to Scotland and Scottish institutions I have often been told, that a great city is not the proper site for a university,

because it furnishes so many disturbing elements to destroy the characteristic tranquillity, and to interfere with and defeat the discipline necessary to a well-regulated course of academic study. Dr. Johnson says, in his own sententious and weighty manner,[1] that a "capital city" and a "town of commerce" are both "places naturally unpropitious to learning; in one the desire of knowledge easily gives way to the desire of pleasure, and in the other is in danger of yielding to the love of money." But these arguments, plausible though they be, and supported by such authority, never effaced from my mind the impressions I had received, and the conclusions I had drawn, from my own recollections and experiences here.

An ancient seat of learning, placed in the heart of a great commercial city, is indeed a spectacle of striking interest, suggestive of curious and instructive speculation.

The University of Glasgow, considered from this point of view, stands in marked contrast to the other ancient universities of the United Kingdom. Oxford and Cambridge have created the greater bulk of the urban population by which they are surrounded. St. Andrews, and King's College, Aberdeen, present the appearance rather of that tranquil and contemplative seclusion which the Muses are thought best to love. Dublin and Edinburgh owe their connection with the cities in which they are placed to the metropolitan and not to the commercial character of these cities. Here alone for centuries learning and commerce have dwelt side by side, and made progress hand in hand, without any other apparent bond of union than the accident of juxtaposition.

Academic and municipal institutions differ widely as regards their immediate and professed objects. Manufacturing and mercantile enterprise has for its end the creation and increase of individual and national wealth; but the ancient University proposes to itself the teaching and diffusion of sound learning and true religion for their own sake, and with no ulterior object, in the firm and constant belief, that man is thereby best fitted and prepared both for the duties, the struggles, the cares, and the temptations of this life, and for the enjoyment of the life that is to come.

But though thus widely different in their ends, there is much that is common to universities and municipal corporations in their history, their organisation, and their social and political influences.

The *studium generale*, founded for the cultivation of theology, literature, philosophy, and the laws, but delegating its functions in details to minor bodies within itself called Faculties, each specially charged with some one branch of education and study, presents a remarkable analogy to the *municipium*, or free town,

[1] "Journey to the Western Islands." Works, vol. viii. p. 214.

enfranchised and incorporated for the promotion of trade and commerce, but creating and fostering within itself minor corporations or guilds, each representing and watching over the interests of some particular trade or branch of industry.

These two great classes of national institutions must in their origin have proceeded from the same source and authority. Four or five hundred years ago no corporation could be founded or endowed but by kings and emperors, popes and prelates; for the supreme civil and ecclesiastical power alone could confer special or exclusive privileges and immunities, and provide the means of maintaining and enforcing them. Universities, accordingly, were for the most part founded by the King and the Pope jointly intrusted with the exclusive care of the higher education of the country, and empowered to affix the stamp of learning and merit on those whom, in its judgment, it should approve and think fit to accredit; while emoluments were provided out of the estates and possessions of the Sovereign or the Church, aided or afterwards supplemented by the munificence of individual benefactors. Municipal corporations, again, were vested with trading monopolies, which, however odious in the light of modern political economy, were in the infancy of commerce neither inexpedient nor unnecessary; and these exclusive privileges were accompanied with either direct pecuniary grants, or such powers of levying customs and taxes as produced a revenue sufficient to maintain the dignity of the corporation, and to enforce and defend the rights of its members and of the people under its government and protection.

But in nothing do universities and municipal corporations more resemble each other, than in the social and political influence they have always exercised; throughout their whole existence they have alike been nurseries of freedom. In the struggles for religious and civil liberty, not in this country only, but all over Europe, universities and corporate towns have, with few exceptions, been ranged on one side of the conflict.

When men are once united in bonds of common interest, and are in their collective capacity possessed of rights worth fighting for, they immediately offer a formidable obstruction to the policy expressed in the despot's maxim, *Divide et impera.* They become accustomed to act in concert for worthy objects, to resist encroachments on their property and privileges; and this discipline adds constantly new strength and courage to cement and consolidate their natural union, and to generate a sentiment of loyalty to their own body, which is the first germ of public spirit and national energy.

The surprise, therefore, which may at first sight be produced by observing the growth and prosperity of such a noble seat of learning as this University in the heart of a great city, may

perhaps be diminished by considerations which, though they do not lie on the surface, are yet not far to seek. There are more reasons for friendly relations and sympathetic feelings between commerce and learning—between the doctors of the University and the merchant princes of the Exchange—than are constantly or even generally present to the thoughts of either the one class or the other.

The nature and effects of the alliance between the University and the city may, I think, be proved by a reference to their common history; and if you will bear with me for a short time, I shall make an attempt to illustrate this proposition.

When the University was founded in 1450, Glasgow had already for nearly three centuries possessed the privileges of a royal burgh, having derived its Charter of Constitution from William the Lion. It was, however, little known except as the seat of the ancient bishopric of St. Mungo, the town having in the fifteenth century a population of only about 1500 souls, which had grown up under the shelter of the Cathedral walls and the fostering influence of the Episcopal palace.

The new University seems to have been carried into effective and energetic operation immediately upon its erection. There was a complete Faculty of Arts, and provision was made for the teaching of theology, and of canon and civil law; and our ancient muniments show that a considerable body of students, and also of graduates in arts, were resident at the University, or otherwise connected with it, during the earlier years of its existence. The effect of this establishment on the town was, according to the authority of the city annalist, Dr. Cleland,[1] of the most beneficial character. It contributed, he says, more than anything that had been previously done, towards its enlargement, so that ere long the buildings, which had hitherto been confined to the upper part of the High Street and the neighbourhood of the Cathedral, were extended down to what is now the Cross, and eastward along the Gallowgate; while the erection in 1484 of the Collegiate Church, dedicated to the Virgin, called in modern times the Tron Church, had the effect of immediately inducing a continuance of the new buildings in that direction also.

During the first century of its existence not much is recorded of the history of the University; and at the era of the Reformation, or rather in the preceding storms and troubles, this noble foundation fell into a state of decay, which threatened to end in its total extinction. But better days were at hand, and the University was destined to a great and permanent revival, under the able and energetic government of Andrew Melville as its Principal.

[1] Cleland's "Annals of Glasgow," vol. i. p. 6.

That Andrew Melville was a man of great ability and indomitable energy and courage, and that he was at the same time a profound and accomplished scholar, no person of competent knowledge and ordinary candour will now deny. But the prominent part which he played in the ecclesiastical conflicts of his time, and, above all, his prevailing influence in the introduction of the Presbyterian form of government into the national Church of Scotland, have naturally enough made him the mark of malevolent calumny on the one hand, and of indiscriminate eulogy on the other. *Non nostrum est tantas componere lites.* Let us look back on him only as one of our academic worthies—one who probably did more for the University, and that in her time of greatest need, than any other man in any age.

Before he became Principal in 1574, the doors of the University were literally closed. The few remaining persons who represented the corporate body held occasional meetings in the Chapterhouse of the Cathedral. But, as a place of education or study, the institution was to all appearance extinct.

Melville had become well acquainted with the system and practice of university teaching on the Continent, having been a student in the University of Paris, and having had many and favourable opportunities, both there and elsewhere, of intimacy with some of the best scholars of the age. He addressed himself to his task of restoring the academical life of Glasgow with enthusiasm, but also with judgment and forethought. He took counsel beforehand with the most eminent scholar that Scotland ever produced, George Buchanan; and it may be fairly presumed that he derived from him valuable advice and encouragement. He found himself, however, absolutely alone in deserted halls; and wisely concluded, that before students could be efficiently taught, he must provide an adequate staff of teachers. By his own unaided efforts he selected a set of promising young men, and carried them through a course of study, the full detail of which, I fear, would put to the blush many scholars of the present day. Having completed this preliminary task, he was provided with a sufficient number of well-qualified regents, who immediately attracted a large body of students. But even then the Principal continued to be the centre of the system, delegating, indeed, the greater part of the actual instruction to those well-trained pupils of his own, upon whose attainments and zeal he could place full reliance, but himself taking a large share in the teaching of theology, and making his spirit and his influence to be beneficially felt in every department of instruction and of University administration.

One important change on the ancient manner of carrying students through the curriculum of arts is attributable to Melville, while Principal of this University, which has been so

approved and confirmed by subsequent experience, and by weight of opinion, that it has for a long time been adopted in all the universities of Scotland. It had hitherto been the invariable practice for each regent to take charge of a certain number of pupils, and to instruct them or superintend their studies in all the different departments of learning necessary to prepare them for the important step of laureation at the end of four years. To this plan it is obvious that Melville must of necessity have adhered during the earlier part of his career as Principal. But the valuable experience which he had enjoyed in preparing his own chosen band of regents, who were to constitute thenceforth the teaching power of the University, had convinced him that such is the diversity of men's natural gifts and inclinations, that a division of labour which shall assign to each the task of instruction in the art or science which he knows and loves the best, is the surest way to provide the student with trustworthy and attractive teaching, and the ancient system is in a corresponding degree an obstruction to the progress of learning and a waste of time.

The history of this University from the days of Melville to the present time—its constant and increasing prosperity, even through the period of the Civil War and the troubles of the succeeding reigns—when contrasted with its decadence and prostration at the time of the Reformation, carry us back with admiring gratitude to the great work of revival accomplished by Principal Melville.

But what were the relations in his time between the University and the city? Glasgow, as a centre of urban population, was still a place of small importance according to modern ideas. It did not number above four or five thousand souls. Its foreign trade was undeveloped, and its native vigour lacked objects for exercise. But it seems to have been a resort of persons distinguished by various kinds of intelligence and learning.

While, therefore, the material interests of the town, small as it then was, were naturally, to a great extent, dependent on the University, and promoted by the influx of students gathered from all quarters by the greatly altered tone and character of the teaching, the Principal himself was the life and soul of the educated society of the place. "He was" (in the language of his learned biographer[1]) "of a communicative disposition, and equally qualified and disposed for imparting knowledge by private conversation. This appeared in his intercourse with his colleagues and at the College table, to which such individuals of education as resided in Glasgow and its neighbourhood frequently resorted to partake of a frugal meal, that they might share in the literary

[1] M'Crie's "Life," vol. i. p. 72.

dessert that was always served up along with it. His conversation was enlivened by amusing anecdotes, smart apophthegms, and classical quotations and allusions. He was fond of discussing literary questions, and had a singular faculty of throwing light on them in the easy and unceremonious form of table talk."

But however interesting the theme, a consideration for the value of your time restrains me from dwelling longer on these early passages of history. It would be pleasing to tell, and not unprofitable for you to hear, how the fame of the University was maintained in the seventeenth century by such men as Strang, and Cameron, and Baillie, and the two Boyds, and Burnett, and Dunlop. And yet it must be confessed that Glasgow, both city and University, suffered much, as did indeed all Scotland, from the effects of the civil wars and the religious persecutions, which are the most distinguishing features of Scottish affairs during that century.

I prefer to pass on to the time when Glasgow began to rise into importance as a place of commerce, though it is no part of my purpose to trace the extraordinary rapidity of its growth in population and wealth. I wish rather to inquire how it fared with the University during this later period, and whether there be any foundation for the reproach that is sometimes thrown out, that our ancient schools of learning do not keep pace with the advancement of scientific knowledge, or accommodate themselves to the progress of society.

Of all sciences there is none so entirely of modern origin as Political Economy. The natural laws which govern the production and distribution of wealth, as well as the relations of capital and labour, and the successful pursuit and extension of commerce, are themselves necessarily coeval with the constitution of human society. But it was only in the last century that the operation of these natural laws became the subject of philosophical inquiry, and that the laws themselves were at length so digested and systematised as to assume the character and position of a science. The principles thus evolved have exercised to a wonderful extent the most beneficial influence on trade and commerce, and have in later times revolutionised our whole legislation on these subjects. But when the doctrines of free trade were first promulgated by Adam Smith, from a professorial chair in this University, they secured little attention. Their acceptance as a sound theory in his own time by the smaller and more enlightened portion of the community, after the publication of his "Enquiry into the Wealth of Nations," was, I think, mainly owing to the intimacy which subsisted between the author and many of the distinguished merchants of Glasgow—a fact which demonstrates in a very convincing way the benefits of the alliance between the University and the city. Dugald Stewart in his biography of Smith,

fully confirms this view.[1] "His long residence in one of the most enlightened mercantile towns in this island, and the habits of intimacy in which he lived with the most respectable of its inhabitants, afforded him an opportunity of deriving what commercial information he stood in need of from the best sources; and it is a circumstance no less honourable to their liberality than to his talents, that notwithstanding the reluctance so common among men of business to listen to the conclusions of mere speculation, and the direct opposition of his leading principles to all the old maxims of trade, he was able, before he quitted his situation in the University, to rank some very eminent merchants in the number of his proselytes."

To some of you Adam Smith may be better known from his contributions to ethical philosophy. The leading theory on which his system of morals rests has not been generally adopted; but the character and style of his teaching in the "Theory of Moral Sentiment" is so instructive, and at the same time so attractive, that I should be sorry to learn it has lost its place among the books of ordinary reading for students of ethics.

To do justice, however, to this delightful book, I cannot trust my own critical judgment or powers of expression. I prefer to borrow the language of an eminent Professor of Ethics, Dr. Thomas Brown,[2] himself a great master of style, who, while he rejects Smith's theory, thus speaks of the merits of his work:— "Profound in thought, it exhibits, even when it is most profound, an example of the graces with which a sage imagination knows how to adorn the simple and majestic form of science. . . . In its minor details and illustrations, indeed, it may be considered as presenting a model of philosophic beauty, of which all must acknowledge the power, who are not disqualified by their very nature for the admiration and enjoyment of intellectual excellence, so dull of understanding as to shrink with a painful consciousness of incapacity at the very appearance of refined analysis, or so cold of heart as to feel no charm in the delightful varieties of an eloquence that, in the illustration and embellishment of the noblest truths, seems to live and harmonise with those noble sentiments which it adorns."

It is as a political philosopher, however, that Adam Smith has earned a world-wide reputation, and lent such powerful aid to refute the allegation that our ancient University has not in modern days been progressive. In the department of political economy the University, through its great professor, was the pioneer of a new commercial philosophy, and may claim the whole mercantile community of the British empire—the most progressive of all classes—for its followers and disciples.

[1] Stewart's "Biographies." 4to edition, p. 61.

[2] Brown's "Lectures," vol. iv, p. 105.

Next to political economy, there is no science so distinguished in modern times by novel and startling discoveries as the science of Chemistry, and no discoveries have been attended by more important practical results. It is difficult to say, whether they have contributed more to the progress of the science and art of medicine, or to the improvement and economy of manufactures.

What share had our University in the progress of chemical discovery? The name of Joseph Black is of itself a sufficient answer. He is universally admitted to have done more and earlier good service in this department of science than any other of the great chemists of the last century, insomuch that he has been described by an eminent French philosopher as "the illustrious Nestor of the chemical revolution."

It is surely a significant fact, that in the two departments of scientific investigation and discovery that have the highest interest for mercantile men, the University of Glasgow should have taken so prominent and so useful a part. This can hardly be the result of accident. On the contrary, I think it is fairly attributable to the long, close, and friendly alliance between the University and the city, and to the influence exercised mutually by the higher intellects of both. Juxtaposition in such a case will not only generate reciprocal esteem and regard, but lead to the communion of minds very differently trained and exercised, approaching every subject in a different way, and regarding it from a different point of view, and each contributing either experience, or careful thought, or erudition, or inventive genius, to achieve one common end. Such, in my humble judgment, is at once the origin and the pervading principle of that alliance between the city and the University, which has hitherto so long and so steadily subsisted.

To the same or analogous considerations, I apprehend, we must appeal, for an explanation of another event in the same period of University history: I mean the support and assistance which were given to James Watt, while he was but a young man and known only as a skilful and clever mechanic. M. Arago, in his celebrated and elegant Eloge,[1] thus describes his connection with the University: "Watt had scarcely reached his 21st year when the University of Glasgow attached him to itself. His patrons were Adam Smith, the author of the famous work on 'The Wealth of Nations;' Black, whom his discoveries, with regard to latent heat and the carbonate of lime, raised to a distinguished place among the first chemists of the eighteenth century; Robert Simson, the celebrated restorer of the most important treatises of the ancient geometers. . . . The students in the University shared also in the honour of being admitted to the intimacy of Watt: in short, his shop became a sort of academy, whither all

[1] Arago's "Eloge," translated by Muirhead, p. 13.

the learned of Glasgow resorted, to discuss points of the greatest nicety in arts, science, and literature."

There is something inexpressibly pleasing in the picture of this wonderful practical mechanician and rare inventive genius thus growing up under the fostering care of the first speculative philosophers of the age. But its most important aspect is that it affords another proof of that sympathy which prevailed between the studious and contemplative life of the University and the intelligence and enterprise of the world without.

I should be doing less than justice to the cause of truth, and to my own settled convictions, if, in an estimate of the mutual influences of the University and the city, I should forbear to refer to those branches of study, and that kind of learning, which has a less direct and practical bearing on the interests and pursuits of mercantile men. Here, indeed, we cannot expect the same active co-operation of the two classes of this community, which we see manifested in those sciences and investigations, where the objects of both are identical or kindred; but I feel sure, that the judgment of the highest and best class of merchants will coincide with that of the profoundest thinkers and most eminent writers on what may be called the science of education, in holding that the study of classical learning, of moral and intellectual philosophy, and of general literature, is of infinite value to a mercantile community. The very devotion of the members of such a community to an occupation which makes constant and engrossing demands upon their time, creates the necessity for some rival and widely-different object of interest. It is notorious that all strong impulses have a natural tendency to excess; and the energetic and successful prosecution of mercantile enterprise may for this reason be justly expected to generate a feeling of undue attachment to material wealth. To persuade men that there are better and nobler pursuits, and objects of loftier ambition, than the acquisition of money—that the development of the higher powers of the intellect, the refinement of the moral nature, and the cultivation of elegant tastes, are productive of truer and more lasting enjoyment than all the material pleasures that money can buy—is one of the great ends of classical and philosophical culture. The man who has been prepared by such means for the trials of a life of incessant commercial activity, will not only experience throughout all his labours and cares a powerful counteracting influence against the temptation to a blind worship of Mammon, but, when the sunset of life approaches, he will possess resources within himself, the value of which no one can justly or fully estimate till he has been thrown back upon them by the occurrence of periods of leisure, to which in the vigour of manhood he is altogether a stranger. Whether it be in the first or second or third generation of a family of prosperous merchants,

leisure will come, as the necessary consequence of large realised fortune, extensive connection, and the power of delegating hard work and imposing it on the shoulders of a younger and a needier generation; and with leisure will come its invariable concomitants, indolence and sensual gratification, if the mind, from its early training, has not been fitted to find solace and employment in literary and philosophical pursuits. Then, more than ever, such studies prove their value, for they are at once the ornament and the safeguard of social life. Wealth and leisure without letters or intellectual culture are dangerous gifts, and may prove fatal snares.

Yet, on the other hand, it is surely a manly and noble object of ambition, first to acquire princely wealth by a life of enterprise and integrity, and then to employ it under the guidance of a generous spirit, an enlightened judgment, and a cultivated taste. There can be no greater public blessing, and no nobler sight, than to see a commercial aristocracy, animated by such principles and feelings as I have feebly endeavoured to shadow forth, blending and harmonising with another no less illustrious class, whose devotion to letters and to speculative science has led them into a different path of life, attended with fewer rewards of worldly wealth or external honour, but who feel a just pride in the influence and power which their genius and their learning command. The cordial union of these two classes affords the surest guarantee for the wellbeing of this great community.

By such reflections as these I have been induced, on the present occasion, to bring into prominent notice what I conceive to be the primary and most important office of the University—its greatest and most beneficent work—in the education of young men for all conditions and pursuits in life requiring the active exercise of the intellectual and moral powers.

Let no man beguile you by the jargon of a vain utilitarian theory. The chief end of primary, as distinguished from proper professional education, is not the acquisition of knowledge for its own sake. It is the development and purification of the moral nature, the training and strengthening and energising of the intellectual powers; or, in other words, the formation of the character and the culture of the mind. When, therefore, shallow men prate of the uselessness of classical and philosophical study, and invite you to substitute for that invaluable training the acquisition of what they call "useful knowledge," tell them boldly that the effect of the studies in which you are engaged, in liberalising the mind, refining the taste, and purifying the heart, arises very much from their so-called "uselessness,"—that is, their inapplicability to any direct object of pecuniary or mercenary advantage,—that their "uselessness" is, indeed, one of their excellencies, because it is inseparable from their elevating and ennobling influence.

In every retrospect of university history, in every passage that we recall of university life, the interest is much enhanced by the reflection, that the scenes of former days were enacted in the very place, and under the shadow of the same venerable walls which surround us in our everyday academical occupations; and therefore I must confess, it is not without a severe pang, that I reluctantly yield to a conviction of the absolute necessity that the University should desert her ancient dwelling, and seek for tranquillity and health in a purer air and a less stirring neighbourhood. I believe I am by no means singular in these feelings. Indeed, my experience is, that every Glasgow student retains through life a vivid recollection and a fond love of those quaint old quadrangles which his young footsteps often trod—of the halls and class-rooms where most of his earliest and best friendships have been formed—of that grand old tower, which, marking by its clock the flight of time, and summoning him by its bell to the performance of his ever-recurring round of intellectual toil, seemed to exercise a sort of despotic control over his actions. Such a one may be pardoned if he drop a tear over the approaching demolition of the old college.

But there is a brighter side to this picture. The present buildings were erected at various times throughout the long period of nearly two centuries, by means of occasional benefactions, occurring at uncertain intervals. The irregularity of architecture thence arising is perhaps not ill-suited to the production of picturesque effect, though it may be doubted whether it is in equal degree conducive to comfort or convenience. But the greatest difficulty is, that pious benefactors do not always make their appearance just at the time they are most needed.

The necessity, therefore, which recently became painfully apparent, of removing the University to another and a better site, gave rise to financial questions of no little embarrassment; for it was found, that to provide, in a favourable locality, a home worthy of this great school of learning, with its four fully-equipped Faculties, its 25 professorial chairs, and its 1200 students, involved the expenditure of a sum of money far larger than the University possessed, or could hope to derive from any resources of her own. In these difficulties she betook herself for aid to her old ally, the City of Glasgow. And most nobly has the appeal been answered. The subscription which is now in progress among the citizens, and under their auspices, is quite unparalleled in munificence. I am well aware that, to meet some sudden emergency, like the famine of 1846, or the Lancashire distress of a later period, even larger sums of money have been given by individuals, and that in the promotion of purely charitable or religious objects it is difficult to over-estimate the liberality of our countrymen. But for an object like the rebuilding of a college, I venture boldly to say,

that nothing on such a scale was ever done by the comparatively modern machinery of a local subscription. A hundred years ago it was made the subject of no unjust reproach against Scotland, by one who was vigilant to detect and expose our shortcomings, "that a nation of which the commerce is hourly extending, and the wealth increasing, denies any participation of its prosperity to its literary societies, and while its merchants or its nobles are raising palaces, suffers its universities to moulder into dust."[1] Had the writer of this pithy denunciation lived to the present day, I venture to think that even his southern prejudices would have been overcome, and that the work in progress among us would have secured his admiration and applause.

But gratifying as this movement is in a merely financial point of view, I conceive that it is of infinitely greater importance and value as a proof of the ancient, well-founded, and ever-increasing attachment of the city to the University. During the long period of four centuries they have grown up together, and, as I have endeavoured to show, have in various ways been reciprocally beneficial to each other. But many as are the benefits which the citizens have received from this great seat of learning, they have fully repaid them all, not only by the material aid they are now furnishing, but still more by proclaiming thereby to the world the sincerity and the depth of their gratitude and affection.

This auspicious event will, I trust, be the means of extending and strengthening more and more the bonds of that ancient and most honourable alliance which has in times past been productive of such rich and precious fruits.

APPENDIX G.

SPEECH AT EDINBURGH UNIVERSITY TERCENTENARY BANQUET, 17th April, 1884 (see p. 190).

In such an assemblage as this, I think it would be out of place to make special reference to those institutions, domestic as well as national, and to those departments of the public service, to which we are accustomed to do honour in our ordinary festive gatherings, and I therefore pass to what is a much more appropriate toast upon the present occasion—I mean, "Our Tercentenary Guests." I had occasion this morning to bid them welcome in name of the University, and I have now a Royal command to repeat that

[1] Johnson's Works, vol. viii. p. 213.

welcome. Nothing could be more gratifying to any one than to be charged with a toast which is certain to meet with an enthusiastic reception; but the gratification may be marred by the presence of a certain consciousness of inability to do it justice, and such, unhappily, is my position. If you reflect for a moment how very comprehensive this toast is, and how suggestive of most varied and interesting topics of discourse, I think you will be inclined to agree with me that within the limited time at my command no man could do it justice.

Viewing the toast geographically, I feel as if I had undertaken to "put a girdle round about the earth in forty minutes," for have we not representatives and delegates from every corner of the civilised world, the area extending from Bologna to St. Petersburg, from Harvard, Cornell, and Pennsylvania, on the west, to Calcutta, Bombay, and Madras, Sydney and Melbourne, New Zealand and Japan—from the Canadian Universities to those of Cracow and Pesth, from Aberdeen to the Cape of Good Hope, and from Rio Janeiro and Santiago to the universities of Scandinavia? And this imperfect and irregular outline requires to be filled up by the names of all the venerable universities and modern schools of learning on the continent of Europe, in France and Germany, in Austria and Italy, in Holland and Belgium and Switzerland, not to mention the universities and schools of learning of the United Kingdom of Great Britain and Ireland.

Viewed in another aspect, the toast appears to me to be still more difficult to handle, for it embraces names rendered illustrious by their possessors in every field of intellectual activity, in every walk of literature and learning, in every department of science, and in the cultivation of art, with all its ennobling and elevating influences.

Such being the difficulties with which I am beset, and such the embarrassing richness of my subject, I bethink me of the prudent maxim that discretion is the better part of valour. And, therefore, I hope I shall stand excused if I shrink from attempting an impossible task, and only repeat what I said in the morning, but which I now repeat in the name of her Majesty the Queen, whose authority I have for so doing, that we cannot sufficiently express our gratitude to our guests for their affording us the honour and the delight of their company on this occasion.

I desire to associate with this toast the names of two very distinguished men now present, representing respectively the New World and the Old. I mean his Excellency the Baron de Penedo, the worthy and fitting representative in this country of a monarch so enlightened and so devoted to scientific pursuits as the Emperor of Brazil, and M. Louis Pasteur, whose profound investigations and brilliant discoveries require no words of eulogy from me. I give you the toast—"Our Tercentenary Guests."

APPENDIX H.

INAUGURAL DISCOURSE DELIVERED TO THE GRADUATES OF KING'S COLLEGE, ABERDEEN, on his Installation as Lord Rector, October 14, 1857 (see p. 190).

Through your kindness I this day occupy a place of much dignity and honour. As the immediate successor of a nobleman—distinguished not more by his exalted station than by his many virtues, whose elegant scholarship and rare and varied accomplishments gave him a title to academic distinction which few men could rival—I despair of ever being able to justify your choice. But I enter on the duties of my office, with an earnest desire and a firm resolution to discharge them to the best of my ability—for thus, and thus only, can I hope to convince you of the depth of my gratitude, which words are inadequate to express.

I understand it to be in accordance with ancient usage, that, on this occasion, I should address you on some topic of interest to the University; and in the performance of this my first duty, I prefer to use the form of a written discourse, rather than of an unpremeditated address, because I should not feel satisfied in presenting to so learned an audience, what did not bear the impress of mature thought, and because I may thus give some slight proof of the sincerity of my desire, to merit your approbation and secure your confidence.

The Genius of the place, in which we are assembled, directs our thoughts to the past history of the University, and to the services she has rendered to the cause of learning and religion. This is a retrospect of which you may well be proud; for, while no other seat of learning in this country can boast of greater names in the catalogue of professors and of students, I repeat only what is notorious throughout Scotland, when I say that King's College has nobly fulfilled the great end of its institution by conveying to the youth of the northern provinces the blessings of civilisation, which the two elder universities had already to a great extent been the means of diffusing in the south.

The foundation of this University may be said to be coeval with the revival of learning in Scotland, or rather to be a most important event in the progress and development of that revival; for, while it was in those days but too true that "the inhabitants (of the north of Scotland) were ignorant of letters, and almost

uncivilised,"[1] it is yet cheering to reflect, that the same age produced such men as Gavin Douglas, William Dunbar, John Mair, Bishop Elphinstone, and Hector Boece; and that the two last named—one as the founder of this College, and the other as its first Principal—were foremost in the ranks of the learned and enlightened men, who, in the end of the fifteenth and beginning of the sixteenth century, set themselves to the work of reclaiming and fertilising the great moral and intellectual waste.

Although the erection of the University in 1494 was not immediately followed by any very apparent beneficial results, the institution of the College in 1505 was of much greater practical utility.

The appointment of Hector Boece as Principal reflects the greatest credit on the discrimination of Bishop Elphinstone. He was one of the most distinguished students of his time in the University of Paris, the early and constant friend of Erasmus, described by his contemporaries as a man of singular erudition and eloquence, and, if we may trust his own testimony, both zealous and successful in his academical office. Writing certainly not later than 1522, he speaks of himself and his faithful fellow-labourer, William Hay, the sub-Principal, and of the fruits of their early labours, with excusable and pleasing complacency. I give you the passage in his own not inelegant Latinity: "Aberdoniæ itaque sedere ubi cœperam, ut commodius adolescentes disciplinis formarem, Wilhelmum Hayum, quocum philosophiæ Parrisiis operam dederam, accivi in socium laboris. . . . Is magna in me charitate ductus, uti necessarius, mecum Aberdoniæ consedit. Literarium laborem animo subiit constanti, in dies magis delectatus in adolescentibus erudiendis, comes fidissimus. Exacta inde et perseveranti diligentia effectum est, ut brevi tempore præstantes disciplina viri ex Aberdonensi universali Academia prodirent, in divinis literis et utroque jure multi, permulti in philosophia."[2]

King's College, like all other seminaries of learning, has had its periods of decline as well as of revival. But if we select any important epoch in the history of the country, and examine the existing condition of this College for the time, we shall still find its chairs for the most part occupied by men of distinction in the republic of letters, maintaining the high reputation which had been achieved for it during its very infancy.

The stormy period of the Reformation was not favourable to the cultivation of learning; and yet the Reformation gave King's College Alexander Arbuthnot as Principal—a man who fills a

[1] "Rudes, et literarum ignari, et fere indomiti."—Bulla Papæ Alex. VI., de data iv. Id. Feb. 1494.

[2] Boethii Episcoporum Murthlacensium et Aberdonensium Vitæ. Paris, 1522, folio 28.

distinguished place in the history of his time—who, to his professional attainments as a theologian and an ecclesiastic, superadded the accomplishments of a mathematician, a lawyer, a physician, and a poet—whose death drew from the pen of one of the most eminent and learned of his contemporaries such eulogistic strains as these :

> "Deliciæ humani generis, dulcissime rerum :
> Quem musæ et charites blando aluere sinu
> Cujus in ore lepos, sapiens in pectore virtus,
> Et suadæ et sophiæ vis bene juncta simul ;
> Cui pietas, cui prisca fides, constantia, candor
> Et pudor et probitas non habuere parem."[1]

Nor, in connection with the era of the Reformation, can I omit the name of so famous an alumnus of King's College as John Lesley, Bishop of Ross, the faithful and unflinching partisan of a falling cause, but also a profound scholar, an elegant writer, and an able diplomatist.

In the following century the civil wars, and the long and fierce strife of Presbytery and Prelacy, were disturbing elements quite as obstructive to the advancement of learning. And yet, on one side of the conflict at least, the most eminent and learned controversialists were supplied by King's College: "When the troubles in that Church broke out," writes Bishop Burnett, "the Doctors there were the only persons that could maintain the cause of the Church, as appears by the papers that passed between them and the Covenanters. And though they began first to manage that argument in print, there has nothing appeared since more perfect than what they writ. They were an honour to the Church, both by their lives and by their learning ; and with that excellent temper they seasoned that whole diocese, both clergy and laity, that it continues to this day very much distinguished from all the rest of Scotland, both for learning, loyalty, and peaceableness."[2] And the Presbyterian historian candidly admits that their arguments, "though then branded as trifling or fallacious," yet, "when coolly examined, are seen to reflect much credit upon the judgment and the moderation of those with whom they originated."[3] We may differ from the "Aberdeen Doctors" of 1639 on questions of church government and discipline, and our sympathies, and even our judgment, may be enlisted on the side of Henderson and Cant ; but no member of this University can rise from the study of that controversy, without feeling proud, that the names of Principal William Leslie, and Professor John Forbes, stand in the roll of King's College worthies.

[1] Per Andream Melvinum.—Deliciæ Poetarum Scotorum, vol. ii. pp. 120, 121.

[2] Burnett's "Life of Bedell," Pref. pp. 16, 17.

[3] Cook's "History of the Church," vol. ii. p. 419.

Time would fail me, should I attempt even a bare catalogue of those who, during three centuries and more, have shed lustre on this University, and carried the fame of her learning to the bounds of the civilised world. But what need have I, in this presence, to speak of the eminent lawyers whom she has sent forth, to adorn the bar and the bench—of Whitehill, and Westhall, and Kemnay —of Sir George Mackenzie, the profound jurist, the accomplished orator, the able statesman—and of the ancestor of our noble Chancellor, who held in succession the great offices of President of the Session, and Lord Chancellor of Scotland? In Medicine, it is sufficient to mention the name of Gregory, and in Philosophy, that of Reid; while the great fame of the school of Divinity in the seventeenth century, under such professors as Forbes, and Strachan, and Douglas, and Scougal, has been amply sustained in modern days, by the profound learning, the sound and careful teaching, and the instructive writings of the two Gerards, father and son, and of their immediate successor, whose name I cannot pronounce in these halls without emotion. Whoever has been so highly privileged, as to have enjoyed the friendship of the late Dr. Duncan Mearns, will cherish his memory with affection and reverence, as of one who combined the highest intellect with the purest heart, whose learning was only equalled by his goodness, whose unaffected piety and earnest zeal were the characteristic graces that marked his long and useful academic career.

Such and so great is this University—venerable from antiquity, adorned by illustrious names, famed for its achievements in the work of civilisation. Be it our care, each of us in our station, so to administer its concerns, so to promote its material prosperity and to extend its usefulness, that it may ever remain, as of old, Alma Mater—a bounteous mother, to nurture and train our children's children in polite learning, good morals, and true religion.

But shall we rest content with preservation only, or shall we aspire to renovate, to extend, to improve? This is a momentous question, and one which, at the present time, demands, if not an immediate answer, yet anxious and candid consideration. While the subject of education generally engages so much of public attention, it is neither to be expected nor desired, that the condition of the Scottish Universities should escape criticism. But it is a strong proof of the confidence which the people of Scotland repose in these venerable institutions, that the suggestion of change and improvement is made in no spirit of disparagement, but points rather to the extension and reinvigoration of the Universities on the existing system.

This is not the time or place to discuss any particular scheme of University Reform. But I may be permitted to say, that I cannot suppose any patriotic Scotsman would object to a

proposal, to strengthen the hands of the Universities, and enable them more efficiently to discharge their great trust as national seminaries of learning, provided the proposal did not carry with it conditions, subversive of the fundamental principles of our University system, or inconsistent with their maintenance and efficiency for the peculiar work, which they have hitherto successfully accomplished.

But the introduction of such changes can be safely intrusted only to the hands of those, who know the Scottish Universities experimentally, and who are fully alive, to both the existence and the value of the peculiarities which distinguish them from those of other countries. Any attempt, on the one hand, to restore or create in our academic halls a University formed on a perfect model or idea, or, on the other hand, to assimilate our Universities to those of England, or any other country, would either be a mere failure or a great calamity.

Reform or improvement may be directed, either to the mode of administering the government of the University, or to the regulation of the course of study.

Of the former, I shall only say, that in my opinion, no new settlement or reconstruction of the administrative body will be satisfactory or beneficial which does not give to the graduates at large some influence and weight.

But I am persuaded, that great good might be effected by attaching the graduates to the University by closer ties,—by teaching them to feel, that the completion of their education is not the termination, either of their duty to the University, or of their privileges as its members. Thus the great body of non-resident graduates, while they are removed from the influence of academic prejudices and conventionalities, would still retain all their reverence and affection for the University, and would be ready, in a spirit of love, and yet with a habit of discrimination, to detect faults where they exist, to recognise and foster excellences, to be the medium of communication between the University and the world without; and thus at once to bring the power of enlightened public opinion to bear directly on the government of the University, and to secure to the University a firmer hold on the confidence and affection of the people.

I need hardly point out, as necessarily coincident with such a change, a great enhancement of the value of University degrees. At present, these distinctions carry with them nothing but honour; but if the honour were accompanied by privileges, degrees would be more sought after, and the graduates would become a more numerous, a more united, and a more self-reliant body. Whatever contributes to add lustre and influence to academical honours, will also justify the University in raising the standard of qualification for the attainment of such distinc-

tion,—the result of which would be, not merely an elevation of the average amount of scholarship among graduates, but a great increase in the aggregate of scholarship in the University at large. By these concurrent causes, I am satisfied, that the ultimate consequence of this change would be in the highest degree beneficial—enabling the University to promote, and at the same time to keep pace with the march of intellectual progress, to increase its reputation, and extend its just influence and authority.

Alterations on the curriculum of study in the Faculty of Arts, I confess, I should contemplate with much greater jealousy. In speaking of the present course of general, as contradistinguished from mere professional education, I do not say it is unsusceptible of improvement. I would only remind you that the subject is one of vital importance, to be handled with caution as well as with candour.

What is, or ought to be, the great end and aim of this part of education? Certainly not the mere acquisition of knowledge. That is more particularly the business of professional education, and, indeed, of the whole after life. But one great end of education, properly and strictly so called—of what I may here denominate *primary* education—is the culture, development, and purification of the moral nature, the training, strengthening, and energising of the intellectual powers; or, in other words, the formation of the character and the culture of the mind. Such is the full meaning and truth of these lines of Horace's noblest ode (often quoted, but not always well understood):—

> "Doctrina sed vim promovet insitam,
> Rectique cultus pectora roborant:
> Utcunque defecere mores,
> Indecorant bene nata culpæ."[1]

What I have now advanced seems so plainly and demonstrably true, that it would be quite unnecessary to insist on it farther, were it not that ignorance or forgetfulness of this truth is the efficient cause of all those vain and pernicious theories of university education, which would, to a greater or less extent, substitute what is called "useful knowledge" for literature and philosophy.

The acquisition of knowledge cannot, of course, be separated from the exercise and training of the mental powers, even if it were desirable. But in the work of *primary* education, I should almost be disposed to say, the acquisition of knowledge is an incident, while mental culture is the essence and the end. Still the success of the mental training will necessarily depend, in a great measure, on the selection of subjects of study; and those

[1] Od. iv. 4, 34.

subjects will best subserve the end in view, which are best fitted to exercise the mind, without exclusive reference to the ultimate utility of the knowledge, which is in the mean time acquired.

In this view, it is plainly desirable, that the minds of our academic youth should be engaged on subjects of study, which they are, to a certain and defined extent, able to master, and to feel that they have mastered. For the constant encountering and overcoming of difficulties engenders a modest confidence and generous enthusiasm, which give the student, what has been happily called "a habit of victory." But if the attention be distracted by too great a variety of subjects, nothing will be completely mastered, and the mental training will be in a proportionate degree imperfect or useless.

Again, the study of any subject ought to be minute, and the knowledge acquired accurate. And without minuteness there is no accuracy. It sometimes becomes matter of necessity, in the business of life, that one should be content to acquire a mere smattering of knowledge on some particular subject; but this is a hurtful mental dissipation, which nothing but necessity can excuse, and which is therefore, of all things, to be avoided in the early training of the mind. Let the young student, then, never think that he can be too minute, or blush when an ignorant and presumptuous utilitarian sneers at his familiarity with the doctrine of the Greek particles, or with the technical rules of the Aristotelian Logic. For I do verily believe, that the student who has thoroughly mastered the Latin Grammar, has been better employed than if he had read half the Corpus Poetarum Latinorum, with only an imperfect acquaintance with the structure and genius of the language; and that any man, no matter what his age or calling, who reads one Book of the Nicomachean Ethics, or any work of similar weight and value, with such scrupulously honest diligence, as not merely to be able to analyse its reasoning and appreciate its dogmatic teaching, but perfectly to comprehend every sentence and word of it, has done more to advance himself in the study of philosophy than if he had skimmed through a hundred treatises on metaphysics and morals. What Quinctilian has elegantly said of grammar, is substantially true of all the subjects of rudimentary teaching: "Quo minus sunt ferendi, qui hanc artem, ut tenuem ac jejunam, cavillantur; quæ nisi oratori futuro fundamenta fideliter jecerit, quicquid superstruxeris, corruet: necessaria pueris, jucunda senibus: dulcis secretorum comes: et quæ vel sola omni studiorum genere plus habet operis, quam ostentationis. Ne quis igitur tanquam parva, fastidiat Grammatices Elementa; non quia magnæ sit operæ, consonantes a vocalibus discernere, ipsasque eas in semivocalium numerum mutarumque partiri; sed quia, interiora velut sacri hujus adeuntibus, apparebit multa rerum

subtilitas, quæ non modo acuere ingenia puerilia, sed exercere altissimam quoque eruditionem ac scientiam possit." [1]

Minute accuracy of study, no matter what the subject be, so far from being obnoxious to ridicule or censure, possesses a certain dignity and elevation—for whatever is worth learning at all, is worth learning well; and it is as unjust to blame the student for precise and close acquaintance with the nicest and most intricate details of grammar and logic, as it would be to chide the naturalist for too minute a knowledge of the physical conformation and habits of the creatures of God's hand, or to object to the landscape-painter, that he has made himself too painfully familiar with the constituent parts of that glorious face of nature, which he aspires to represent on his canvass. It has been beautifully said, by one of the most original thinkers and eloquent writers of the present day, that "to handle the brush freely, and to paint grass and weeds, with accuracy enough to satisfy the eye, are accomplishments which a year or two's practice will give any man; but to trace among the grass and weeds, those mysteries of invention and combination, by which Nature appeals to the intellect—to render the delicate fissure, and descending curve, and undulating shadow of the mouldering soil, with gentle and fine finger, like the touch of the rain itself—to find, even in all that appears most trifling and contemptible, fresh evidence of the constant working of the Divine power 'for glory and beauty,' and to teach it and proclaim it to the unthinking and the regardless—this, as it is the peculiar province and faculty of the master mind, so it is the peculiar duty which is demanded of it by the Deity." [2]

If, then, as I have said, the study of many subjects at a time be inconsistent with due attention to the training and cultivation of the mind, which is the end of *primary* or non-professional education, it becomes a most interesting inquiry, What course of study best conduces to the desired result? For an answer to this question, I would confidently appeal to all past experience, for confirmation of the opinion which I most firmly hold, that classical studies are, of all others, the best foundation of what is commonly called a liberal education—by which I mean, an education for the learned professions, and for public or political life.

In so speaking, I must not be suspected of seeking to place the defence of classical learning on too low a ground, for I am not at present concerned directly with the defence of classical learning at all. Were I engaged in a general argument on the utility of such studies, I should not forget to urge that these are inseparable from the successful cultivation and progress of

[1] Inst. Orator. lib. i. c. 4.

[2] "Modern Painters," vol. i. p. 312.

sacred literature, and that the advances which have been made since the Reformation, in biblical criticism and other departments of theological study, are to be ascribed in a great measure to the general and more diligent prosecution of classical learning. I should contend, farther, that if the noblest study of man, apart from religion, is his own nature, and the history of his species, he will be casting aside the most instructive chapter in that history, if he neglect to familiarise himself with those people, who, in the ancient world, attained the highest pitch of civilisation, and whose sages, through the mists of popular superstition, and in spite of the misleading influences of their own hearts, approached the nearest that unaided reason can do to an adequate conception of the Deity. And I should counsel the student that if he attempt to study the character and history of the people of ancient Greece without a competent knowledge of their language—the most copious, the most musical, the most susceptible of adaptation to every species of literary composition—or if he seek to trace the history of Rome, from its first beginnings till it becomes the history of the civilised world, and then merges in and gives place to the history of modern Europe, and yet fail to bring to the study a thorough acquaintance with that language which is to so great an extent the foundation of the modern languages of Europe, and was for so many ages the sole vehicle of thought for learned men—he is only wasting his time, and may at once and for ever abandon the ambition of solid learning. I should insist, farther, on the liberalising influence of classical studies, on the benefit to be derived, especially to the youthful mind, from the noble tone of sentiment which pervades the great orators, historians, and poets of antiquity, and on the enlargement of mind, and extended knowledge of human nature, consequent on intelligent contemplation of the temper and spirit of men living under circumstances so different from our own—the combination of pagan superstition with republican institutions affording a striking and most instructive contrast to Christian habits and styles of thought, for which no study of modern history or literature could compensate, or find a parallel. The effect of such studies in liberalising the mind, refining the taste, and purifying the heart, arises very much from what is called their "uselessness"—that is, their inapplicability to any direct object of pecuniary or mercenary advantage. Their "uselessness" is indeed one of their excellences, because it is inseparable from their ennobling and elevating influence. These topics, and such as these, might be appropriately and usefully employed, in defence of classical learning, in another place, and on a different occasion. But within these walls they can hardly be urged without impertinence, for this University has recorded its constant opinion of what is essential to the education of a gentleman, by inserting

classical studies in its curriculum, under the name of "Humanity." Here, therefore, instead of doing battle with the enemies of learning, I am disposed to dismiss them with the caustic remark of that great scholar Graevius: "Nulli sunt hostes eruditionis nisi ineruditi, qui fumos suos, licet videantur ἀεροβατειν, non, nisi suæ sortis hominibus, possunt venditare."[1]

I have been led into what may seem a misplaced episode, by a desire to express my conviction, that any interference with, or curtailment of, the time and attention now given to the study of Greek and Latin in the curriculum of arts, would be most unwise and inexpedient. I do not believe that any course of study could be substituted, so beneficial in that discipline and training of the mind, on the importance of which I have insisted, I fear, at tedious length.

It may be, however, that without interfering with the cultivation of classical learning, other subjects of instruction might be added to the University course. I am far from saying that this is impracticable, or even inexpedient. But, in considering such a proposal, much caution is required.

In the very outset, we meet with a practical difficulty of a very formidable kind; for we must, of all things, beware of rendering a University education more costly, than it has hitherto been in this country. A large proportion of those, who now enjoy that advantage, are barely able to afford it, and therefore the slightest addition to the actual expense might exclude many of a class, who, in times past, have conferred honour on the University, corresponding to the benefits which they have derived. And it must not be forgotten, that a prolongation of the time required to pass through the curriculum necessarily aggravates the expense; so that, if any addition is to be made to the course, it must not be accomplished by making the ordinary and indispensable period of residence and study longer than it is.

As may be anticipated from what I have already said, I entertain equally strong objections to any attempt, to introduce greater diversity of studies, within the present prescribed period; and therefore I think that as little facility for introducing new subjects of instruction is to be gained from mere economising of time.

But it seems to me that, without departing in any degree from the fundamental principles of our academical system, and without at all aggravating the difficulties which beset the poor student, the Universities might undertake, either within the period now assigned for the curriculum in arts, to afford to those who come to College so well advanced in their studies, as to be able to dispense with much of the elementary instruction required by others—or,

[1] Grævii Præfatio in Bern. Ferrarii de Ritu Sacrarum Ecclesiæ Veteris Concionum, p. iii.: Ultraj. 1692.

after the lapse of the ordinary period, to provide for those, whose pecuniary means are more ample—the opportunity of prosecuting their University career, so as to attain to a much higher position of excellence as general scholars, before they betake themselves to one special line of professional study.

To such students the Universities at present hold out too little encouragement. The amount of classical learning to be acquired, in the ordinary course, is limited not merely by time, but by the necessity of occupying a large portion of the time actually devoted to this branch of study, in such elementary teaching, as is suited to the condition of the least advanced student who enters the University. But among the general body of students, there must be many to whom that elementary instruction is unnecessary, and who might therefore occupy the time which is thus lost, by making great advances in classical scholarship, or betaking themselves to some other department of learning.

It is also much to be regretted, that there are so few temptations held out to prolong the period of University residence, even to those who are well able to afford it. For I imagine it will not be disputed, that, in the present day, most men enter on the business of life at an age, when they might be much better employed in preparing themselves for its duties; and though this be in many, perhaps in most cases, matter of necessity, there is no reason why, for the favoured few, though they may be but a few, who can afford to dispense with, or postpone, the earning of their livelihood by their own exertions, the University should not be able, by its own resources and attractions, at once to excite and gratify the ambition of earning the name of great scholarship and erudition. It is at least well worthy of consideration, whether the Scottish Universities, in their tenderness for the poor student, and their scrupulous performance of duty towards him, have not too much forgotten to do justice to the comparatively rich.

I am well aware, that, to accomplish such objects as I have been suggesting, considerable additions must be made to the working power of the Universities. It is hardly to be expected, that the same professor who teaches the younger and less advanced students the rudiments of Greek and Latin, should be able, without any assistance, also to conduct and guide the more advanced in the higher walks of classical learning; and still less is it possible, to introduce new branches of study, without founding new professorial chairs. But I cannot regard these as by any means insurmountable difficulties; nor can I believe, that institutions so thoroughly national in their character as the Scottish Universities, and which have been instrumental in conferring inestimable blessings on the country, will ask in vain for such aid and support as the exigencies of the time may demand, in order to insure their continued prosperity and efficiency.

I anticipate a bright future for our old schools of learning, and trust that, in our own day, much may be done in the way of improvement and extension. But in all schemes of reform, in every attempt to beautify and adorn the ancient fabric, may we never forget that the foundation on which it was built at the first, and on which alone it can ever safely stand, is the teaching of religion, without which no education in a Christian country deserves the name. "The end of learning," says Milton, "is to repair the ruines of our first parents, by regaining to know God aright, and out of that knowledge to love Him, to imitate Him, to be like Him, as we may the nearest, by possessing our souls of true vertue, which, being united to the heavenly grace of faith, makes up the highest perfection."[1]

Let no one think, that, in touching on this topic, I am seeking to enter the field of controversy, or that I would risk the exciting of discord, where all should be harmony and peace. On the contrary, I believe that there is no enterprise, in which men of different churches and religious persuasions may so happily labour together, as the extension and improvement of our Universities, with an especial view to the religious character of their teaching, if they will but observe the rule, enjoined by Lord Bacon, of avoiding both extremes—latitudinarian indifference on the one hand, and sectarian bigotry on the other—"which will be done," he says, "if the league of Christians, penned by our Saviour himself were, in the two cross clauses thereof, soundly and plainly expounded: *He that is not with us is against us;* and again, *He that is not against us is with us*—that is, if the points fundamental and of substance in religion were truly discerned, and distinguished from points not *merely* of faith, but of opinion, order, or good intention."[2]

Among those who hear me, I am persuaded there is none, who does not sincerely and heartily desire the advancement of learning and religion, or who does not believe that our Universities are, as they have ever been, the most efficient instruments in the accomplishment of the great work. Above all, I cannot permit myself to doubt, that the graduates and alumni of King's College regard their University with affectionate reverence, and will at all times be prepared to maintain her rights, to extend her reputation, to enlarge her resources, and, if need be, to devote their talents and their energies to her service.

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[1] "Of Education." Prose Works, vol. ii. p. 381—Pickering's edition.

[2] Essay: "Unity in Religion." Works, vol. i., p. 10—Montague's edition. See also, "Advancement of Learning," vol. ii. p. 305.

APPENDIX I.

INAUGURAL ADDRESS DELIVERED TO THE UNIVERSITY OF EDINBURGH on his Installation as Chancellor, April 21, 1869 (see p. 187).

Mr. Vice-Chancellor, Professors, and Gentlemen of the General Council,—I desire to acknowledge with heartfelt gratitude the great honour which has been conferred on me by my election to the Chancellorship of this University. I accept it not as an honour merely, but also as an office of trust, the duties of which I hope I may be enabled to discharge with zeal and fidelity.

Nine years ago we were assembled for the Installation of the first Chancellor of the University of Edinburgh. It was a ceremonial of great interest, not only because it was necessarily unprecedented in the history of the University, but still more because the newly-enfranchised Members of the General Council had selected to fill the highest academic office one of the most remarkable men of this century, a native of the city of Edinburgh, an alumnus of our University, returning, after a lifelong absence, with a name renowned in every literary and scientific society of Europe, to render thanks to his Alma Mater for those first lessons in philosophy and literature and wisdom and virtue which formed the basis of his wonderfully varied and extensive accomplishments —thus carrying us back to a period of University life which scarcely any man but himself could recall, and forming a chain of connection with an earlier period still, by his relationship, which he was proud to remember, with one of the most eminent literary men of the last century, who for many years filled the Principal's Chair, adorning the office by his learning and his eloquence, and elevating it by the force of his high personal character.

It was natural and appropriate in such circumstances that Lord Brougham's address should be in some measure devoted to a review of the past history and services of the University; but for reasons, which will readily occur, I abstain from attempting to tread in the same path, and desire, with your permission, to speak of the present and the future rather than of the past.

Addressing myself specially to Graduates and Members of the General Council, who are privileged and accustomed to deliberate on the affairs of the University, and to express their opinions on every question that concerns its good government and wellbeing, I find the subjects which present themselves for consideration so numerous and important, that the difficulty lies chiefly in selection. But I am sure I shall best consult the wishes of such an audience,

and do what I can to justify the choice of those by whose favour I occupy this place, if, dispensing with all preliminary observations, and casting aside every attempt to engage your attention by rhetorical declamation, I proceed at once to offer you some suggestions, which may be available in carrying on that liberal and comprehensive course of improvement, which has already done much to promote the usefulness and enhance the reputation of our University.

The great principle which lies at the foundation of every sound theory of University education in this country is so obvious as almost to amount to a truism, and yet requires to be kept constantly present to the mind. It is, that *the Professors are made for the Students, and not the Students for the Professors.* Were we possessed of wealth sufficient for such an extension of the professoriate as would furnish a complete and effective body of teachers, and yet enable others to devote themselves more to the pursuit of scientific research, and the cultivation of the highest scholarship, it would indeed be well both for the University and for Scotland; and the day may not be so far distant, but that some of our younger Graduates and of our Students may live to see an adequate portion of the rapidly accumulating wealth of Scotland applied to the noble purpose of securing not only the highest and best education for our youth, but places of literary leisure for our matured scholars and leaders of scientific inquiry. But we must deal with existing facts; and while we confess, with regret, that no such provisions form, for the present, any part of our academic system, we may yet console ourselves with the reflection, that by perfecting and completing the teaching powers of our professoriate, we are doing good work in the meantime, and by gradually and certainly raising the standard of attainments among our students, and in the same proportion increasing the aggregate of scholarship and scientific acquirement, both in the University and in the country, are laying the surest foundation for that full recognition of the claims of learning, which will in the end attract to the seats of our universities all who are most renowned for their erudition, and who desire the repose of an academic life, with an assured competency, and the command of their own time for the farther prosecution of their favourite studies.

In our day the Professors of our University must all devote themselves chiefly to practical teaching; and therefore the first and leading question will always be how to find the best Professors —that is, the Professors who will make the best Students—who will impart the greatest amount of instruction of the best quality, in the most acceptable and useful form—guiding and counselling the clever, the ardent, and the ambitious Student, exciting and encouraging the timid and the backward.

The first pre-requisite to the constitution of such a body of Professors as will most efficiently discharge these duties plainly is, that the patronage of the Chairs should be administered with a single view to fill every vacancy by the election of the best qualified person that can be procured. But to this end in what hands ought academical patronage to be placed? This is the subject of an old controversy; but it is a theme of paramount importance to the wellbeing of our University, the consideration of which, in a calm and candid spirit, seems to me neither inopportune nor unappropriate to this occasion.

When Sydney Smith published his tract against the Ballot, men said the controversy was at an end, and the battle fought and won then and for ever, for he had disposed of the whole question, driving his enemy from the field by sheer force of ridicule. When Sir William Hamilton wrote his celebrated article in the "Edinburgh Review" on the subject of University patronage, it was said in like manner that the controversy was for ever closed, for he had shamed his opponents into silence. But since that time a new generation has come into existence, who do not hold themselves bound by the verdict of their fathers; and he would be a bold or an ignorant man, who should maintain, in the present day, either that the Ballot is dead and buried, or that all men are at one as to the best depositaries or trustees of University patronage.

Sir William Hamilton ventured on a definition, proverbially a perilous undertaking, especially in controversial writing; and perhaps it would not be difficult to detect technical flaws even in the definition of so great a master of Logic. But it contains truth so wholesome, and so tersely expressed, that I venture to quote it as the foundation of the observations which I mean to offer on this subject:—"Universities are establishments founded and privileged by the State for public purposes: they accomplish these purposes through their Professors: and the right of choosing Professors is a public trust confided to an individual or body of men, solely to the end that the persons best qualified for its duties may be most certainly procured for the vacant Chair."[1]

That University patronage is a trust and not a right—a trust for the promotion of a great public object, and not in any degree for the benefit of individuals or of classes; and, consequently, that those who rightly administer the trust cannot derive from it any selfish advantage or even any personal gratification, except what may arise from the consciousness of pure, intelligent, and successful discharge of duty—are propositions which, stated in the abstract, cannot be seriously impugned. The burden which such a trustee

[1] "Discussions on Philospohy," &c., second edition, p. 363.

undertakes is a high responsibility; his reward the approval of his own conscience.

If any man covet such an office, or if any class or body of men claim it as a privilege, it is plain that they have not realised the first and most essential condition of the faithful discharge of the duty they are so ready to undertake. Such men may not deliberately contemplate an abuse of the trust for the promotion of selfish ends; their thoughts and expectations may be only confused and vague, and the anticipated advantage impalpable, assuming no definite form even to themselves; they may be unconscious of any special motive underlying their ambition,—yet they are justly liable to suspicion; and probably the least unworthy source to which their desires can be traced is love of power for its own sake, or a craving for the gratification of personal vanity.

There are three great qualifications for the exercise of patronage —honesty, firmness, and the capacity of making a discriminating choice; and it will be found that the men who possess these gifts, and who know best how indispensable is their use in the administration of such a trust, are, generally speaking, the most apt to shrink from undertaking its duties. It is no easy task, at least for most men, sternly to disregard the claims of kindred, the appeals of friendship, the pressure of influence; to cast aside political and politico-religious prejudices and sympathies; to wade, it may be, through a morass of faithless and verbose testimonials in the almost vain hope of gathering a few modest blossoms of truth; to exhaust all other available and trustworthy materials for forming a sound judgment; and at last to address one's self to the task of selection with a single eye to the fitness of the person selected for the special office to which he is to be appointed. And yet such are the qualities, and such the amount of honest labour, indispensable to the right administration of University patronage.

How intimately the prosperity and reputation of a University are dependent on an honourable and wise administration of patronage may be further illustrated by the consideration, that much of the dignity and repute of an office arises, in the estimation of scholars and gentlemen, from the high character of those who have the power of appointment. To be selected, out of a large number of men recommended by their proved abilities and great attainments, as the one person best qualified for a Professor's Chair, is a gratifying distinction and an object of honourable ambition, provided the choice be made by persons whose character and qualifications afford a guarantee that it is a just, a pure, and a discriminating choice. But reverse these conditions, and the value of the distinction is lost. The emoluments and the duties of the office may continue the same; but its attractiveness will be

sadly impaired in the eyes of those who would fill it with the greatest advantage to the University. The more honourable and worthy the patron, the more honourable and the more honoured will the office always be.

On the other hand, it is difficult to exaggerate the evil effects of even one or two bad or indifferent appointments. For such misfortunes are apt to repeat themselves; and that from two causes—the University, injured and waning in its reputation, will gradually fail to attract men of the best stamp as candidates; and the patrons will become by habit familiarised and satisfied with mediocrity.

I do not propose to detain you by any detailed exposition of the various reasons assigned by Sir William Hamilton—in which, however, I entirely agree—for preferring a small plurality of patrons to either an individual or a numerous body, and for condemning the practice of vesting the appointment to Chairs in the hands of the existing body of Professors. The Universities Act of 1858, by transferring the patronage previously administered by the Senate to the University Court in all the Scottish Universities, except Edinburgh, came very near—as near perhaps as was practicable—to the constitution of the Small Board projected by Sir William Hamilton, which should combine the exercise of patronage with a direct influence and control in the administration of University affairs. Since the new Courts entered upon their functions, nine appointments have been made by them —four in St. Andrews, four in Glasgow, and one in Aberdeen; and I believe it will be generally conceded that, so far as experience goes, the change has operated beneficially.

Of that large portion of University patronage which is vested in the Crown, and of its exercise by the Secretary of State for the time, it would be unbecoming to speak otherwise than with caution and respect. But as I entertain an opinion on the expediency of the existing arrangements, I do not see why I should withold the expression of it from you.

I think there are cogent reasons for objecting to the Crown— or, in other words, to the Government of the day—as the depositary of University patronage, at least to so large an extent as at present. It is impossible that in this or any other country similarly situated, where the existence of opposing political parties affords one of the practical securities for the maintenance of free institutions and of personal and political liberty, patronage vested in the Crown should be exercised independently of political considerations or of the political tendencies of candidates for office. There are, no doubt, important exceptions; but I fear it is in vain to attempt to classify Professorships as falling within the exceptions and not within the rule. If, then, these appointments are influenced by political considerations at all, I conceive that an

element is introduced which is entirely alien and irrelevant in the inquiry, Who will make the best Professor, in the department either of classical learning, of mental philosophy, or of physical science; and still more, in the faculties of divinity, law, and medicine? The consequence is, that many men of acknowledged distinction in literature and science, who have no natural inclination either to mingle in political strife or to proclaim themselves the disciples of any political leader, are seduced from their more congenial and more useful occupations and studies, and taught to rely, not on their own merits as scholars or philosophers and teachers of others, but on their connection with one or other of the political parties in the country. This creates a relation between the patron and the class from whom he is to select, which impairs if it does not destroy that freedom and purity and highness of purpose which, I have said, is indispensable to the right administration of University patronage.

Though a Minister be animated by the most honourable desire to discharge this duty aright, he has neither the time nor the opportunity to make himself master of the subject; therefore he must either rely on his own imperfect information, or he must trust to testimonials; or, lastly, he must take advice from better-informed persons. Practically, the last course is the one which will be followed, as being the best attainable. But this involves a delegation of judgment to persons of local information or special means of knowledge, and thus the choice comes in the end to depend on the suggestions of persons who, being exempt from the influence of public opinion, and sensible of no direct responsibility, are liable, unconsciously to themselves, to be swayed by motives which, in the public and direct exercise of patronage, the very same persons would entirely discard; while the Minister who is directly responsible loses to a great extent his sense of responsibility, and contents himself with the reflection that he has taken the best advice he could command.

Notwithstanding these disadvantages, I am bound to confess that there are some compensating advantages (chiefly, perhaps, of a material kind, but not on that account to be despised or overlooked) in maintaining the intimate connection between the University and the Government which the Crown patronage of Professorships, perhaps as much as anything else, is calculated to secure. It would, therefore, be a dangerous experiment, even if it were practicable, to abolish the whole of the Crown patronage and transfer it to the University Court or any other body; but it may at least be fairly asked, whether the amount of such patronage in the hands of the Crown be not excessive? For if this question be satisfactorily answered in the affirmative, though it may not lead to a diminution of the present amount, it may tend to prevent its increase in the event of the institution of new Chairs.

The Crown is patron of five Chairs in St. Andrews, seventeen in Glasgow, seventeen in Aberdeen, and eleven in Edinburgh—fifty in all. Further, the Chair of Ecclesiastical History and the Chair of Biblical Criticism are in the patronage of the Crown in the whole four Scottish Universities. The Chair of Practical Astronomy and the Chair of Engineering are in the patronage of the Crown both in Edinburgh and in Glasgow. The whole Chairs in the Medical Faculty in Glasgow are in the patronage of the Crown, and the same is the case in Aberdeen, with the exception of the two Chairs of Chemistry and Medical Jurisprudence. It is not necessary to pursue this analysis so as to make it exhaustive, for enough has been said to show, not only that the Crown possesses a large amount of patronage in each of the four Universities, but also that in many cases the appointment to Chairs of the very same or corresponding denominations, in more Universities than one, is vested in the Crown.

Now it appears to me that, in addition to the selection of well-qualified persons to constitute a Board for administering University patronage, no better incentive could be found to a zealous and painstaking exercise of this important function than a generous emulation and rivalry, not among the Universities merely, but among the Boards who, in the different Universities, are charged with the appointment of Professors. But unless there be a separate Board or set of patrons for each University, if the same individuals or bodies of men are intrusted with the patronage of more Universities than one, this wholesome rivalry is destroyed. The Crown patronage is obviously liable to this objection, as long as it continues so extensive as it is at present, and the objection will be aggravated by any future addition. For there cannot be the same zeal and anxiety to procure the very best man for a vacant Chair, where the spirit of rivalry is entirely wanting, and the patron may be called on within a few weeks or a few years to fill up a Chair in another University devoted to the teaching of the same science or branch of learning.

I ought to apologise for detaining you so long on this topic, and still more, perhaps, for the boldness with which I have expressed my opinions. But I trust to find my excuse in the unquestionable importance of the subject, on which, I think, it becomes all lovers of our national University system to exchange their ideas—not rashly, indeed, nor without anxious reflections beforehand, but frankly and unreservedly.

Let me now pass on to consider the position and prospects of our own University, with a sincere desire to promote every proposal for improvement and progress, provided only it be consistent with the maintenance of the peculiar character of our national University system. This is surely no severe or stringent condition; for the principles which lie at the foundation of that

system are in the highest and best sense liberal and expansive. I shall endeavour to state them in as few words as possible.

The Scottish Universities are, and ever have been, teaching bodies. In conformity with the true theory of a University, and with all the ancient models, we hold it to be the condition of our right to confer Degrees, that we should furnish a full course of instruction in every Faculty in which such honours are bestowed. And this teaching is the public and primary function of the University itself through its Professors, never delegated either to separate or affiliated colleges, or even to private teachers within the University, though private tuition is recognised as an important and useful auxiliary. It follows that one of the great distinctive features of our system is the Professoriate,—an active, efficient, and, so far as our resources permit, a complete Professoriate.

Again, the Scottish Universities have, without interruption in the course of their history, opened their gates freely to Students of all classes and creeds and countries without distinction, the one qualification for admission being a healthy thirst for learning.

Nor has this large and comprehensive invitation to all who desire the blessings of the highest education been coupled with any serious condition of a pecuniary nature. On the contrary, these advantages have always with us been attainable, not by the more wealthy classes of society only, but by the great bulk of the middle classes also; the consequence of which has been the formation of a body of Students of a singularly manly and independent spirit; early trained, many of them, in the school of adversity, or, at least, of poverty and thrift, unsparing in their assiduity to profit to the utmost by that University career which has been procured for them, it may be with difficulty and sacrifice, and bearing with them out into the world all the natural fruits of these academical experiences,—a stout heart and a well-trained mind, with such stores of knowledge as form the best foundation for the larger, more extensive, and more varied education which is the proper business of the whole after-life. No proposal of change can be listened to which shall shut out this body of Students, or any part of them, from the University. We cannot spare such Students as these. They are the very heart's blood of our nation, the men who have carried the name of Scotland and Scottish education to the uttermost parts of the earth; who are everywhere known and recognised as true representative Scotchmen—brave and self-reliant, acutely observant, and yet deliberate, upright, energetic, and constant.

To the production of this national character, probably nothing in the University system has contributed more than the catholic tone and spirit of our teaching. Some philosophers of the present day may perhaps look back with a feeling of pity allied to contempt to the days when our Professors were all nominally of one Church

and one creed. But surely, even in those days, we were in the enjoyment of great freedom of thought. Could the Scottish School of Mental Philosophy have ever been founded, or could it have attained its great eminence, if there had not been scope for the unfettered expression of speculative opinion?

The test which was at one time imposed as a condition of the induction of Professors, was abolished by a statute which was carried through Parliament by our learned Rector, much to his honour; for the test was an anachronism. It was imposed at the Revolution, and renewed at the Union, for a great political object —the security of the Protestant religion. The occasion of the enactment was gone, and it was fitting that the enactment should itself also disappear from the statute-book. But though I approve of the removal of an invidious and useless statute, I cannot admit that the Professors who, before that time, carried on the teaching business of our Universities, either those who have since departed or those who still survive, were, or are, in any respect inferior to the younger men we see around us adorning and illustrating the various departments of learning which they teach. The instruction of twenty, thirty, or forty years ago, not to speak of earlier periods in the history of the University, was as liberal, as catholic, and as well adapted to attract Students of all classes, and from all places, as it is at present, saving the advance which the world has since made in physical science, and in every other department of learning.

These peculiarities of our University system are well understood among ourselves, and within Scotland. But much misapprehension has prevailed elsewhere, both about what we profess and what we achieve. When, fifteen or twenty years ago, the first serious attack was made on the two great Universities of England, and some rather unfavourable points of contrast were suggested between those magnificent foundations and our poor establishments in the north, a stout champion of the old Oxford and Cambridge school thus expressed himself:—"The Scotch Universities are, indeed, institutions for all classes; they give a professional education to the medical man, and the curtailed general education to the tradesman. But Scotland is not on this account better off but worse off than England. . . . We have Scotch University education in our Grammar Schools and our Medical Schools, and we have also what Scotland has not, that which is called University education."[1]

A great deal of the truth or falsehood of a statement depends on the precise sense in which terms are used. In the English sense the English had, at the time of which I am speaking, a University education which we had not. But the true question

[1] "Quarterly Review," vol. xciii. pp. 175, 176.

was, Whether the education the English youth received at Oxford or Cambridge was, upon the whole, more worthy of the name of University education than that which was to be obtained at a Scottish University? The writer whom I have quoted seems to revel in the idea of the venerable English Universities rejecting professional studies and instruction as vulgar and grovelling. These Universities, according to him, had practically abolished all teaching in two if not three of the faculties, Law, Physic, and Divinity, and devoted themselves exclusively to the Faculty of Arts. Such, too, was the conception that Professor Huber of Marburg formed of the English Universities of that time, when he represented them as charged with the duty and vocation, not to form divines, jurists, and physicians, but "gentlemen," whom he describes as "a necessary and honourable element in the national existence." [1]

While the men of the English Universities were imbued with such ideas, it was no wonder that they should misunderstand our position. While they thought themselves entitled to confer Degrees in Law and Medicine, without giving any efficient instruction in these sciences, though they had foundations and professorships in both, they might naturally believe that we were throwing away our time in educating men to professions. But now that a better spirit prevails, and the old Universities of England have become alive to the larger and more important duties that belong to them as national institutions—now that they are endeavouring to restore the just influence and action of the University as the proper teaching body, and to render the professoriate efficient for its original and proper purpose—they may be expected to have more sympathy with what we have been doing for centuries, and to acquire a more accurate knowledge of what we accomplish with our slender means.

A desire of better acquaintance with us will also be enhanced by the conviction now spreading among them, that, even in general education in the amount of instruction necessary to the attainment of an ordinary Degree in Arts, the standard of qualification is higher with us than with them. This important fact was confidently stated by my lamented friend the late Principal Forbes of St Andrews in 1861, when, as a Professor of this University, he was addressing such a body of young Graduates as I am happy now to see before me. "We know (he says) and have long known that the honours of a degree, such as you now bear, and such as your predecessors have in smaller numbers for many years borne before you, are only to be obtained by a struggle more varied, arduous, and prolonged than that which is required for the

[1] "The English Universities;" by V. A. Huber. Newman's Translation, vol. ii. p. 381.

ordinary degrees of Oxford and Cambridge—which yet practically bestow a passport to most professional and official dignities. This important fact is only now becoming apparent to many educated persons at home. It is then hardly surprising that the knowledge of it has not yet penetrated to a distance." [1]

No one will charge a man so scrupulously honourable, and so strict an investigator of truth, as Principal Forbes, with any tendency to exaggeration or loose statement; and therefore his authority standing alone would carry with it the greatest weight. But he lived to see his statement confirmed by the opinions of unprejudiced and highly qualified judges, and nowhere more unreservedly than in a report recently presented to the English Schools Enquiry Commission by a very competent judge (Mr. Feron), who says: "The Scotch 'pass' degree in arts is, at least in two of the Universities (Edinburgh and Aberdeen), one which implies a much more real amount of reading and thought than the Oxford and Cambridge pass; and this not purely on account of the nature and number of the subjects prescribed by the course, but still more on account of the difference in habits and character between the Scotch and English students." [2]

But let us not attach too much importance to such admissions or testimonies. Above all, let us avoid that complacent self-satisfaction which would lead us to believe, or lead the world outside to think that we believe, that there is not before us a serious struggle which it will require all our energies to sustain. We must not rest satisfied with sending out our Graduates in Arts no better furnished than to compete successfully with the passmen of Oxford and Cambridge; for we must remember that, while we thus beat them upon the average, we have not yet succeeded in producing scholars of such accomplishments as those who carry away the highest honours of these Universities, and that much is in the course of being done, in an enlightened spirit, to improve their course of study preparatory to graduation, as well as largely to extend the area of English University teaching, both as regards the classes of society from whom their students are drawn and the subjects and departments of instruction.

We shall always have powerful and worthy rivals both at home and abroad. We have also watchful critics, who will be satisfied with nothing short of constant progress and expansion. But, what is better than all, we have within our own walls an ardent and ever-growing spirit of jealousy for the honour of the University, which regards increasing activity and advance as the essential condition and proof of academic vitality.

It is no part of the duty of those who hold any share in the

[1] Forbes's Address, p. 13. Edinburgh, 1860.

[2] Schools Enquiry Commission Reports, vol. vi. p. 45.

government of the University to repress (even if they could) such honourable aspirations. They are the wholesome fruits of that change in the constitution of our Universities, which gave a collective existence and privileges to the great body of the graduates. Attached to the University by closer ties than formerly, the Members of the General Council feel a deep and personal interest in its welfare; and the very fact of their not being directly engaged in the government of the University makes their opinions the more valuable, because they are removed from the immediate influence of academic conventionalities.

But even those who contemplate with unmixed satisfaction a constantly progressive career of University Reform, may accept my friendly words of warning, not to dissuade from immediate action, but rather to counsel a more close attention to those fundamental principles of our system, to which, in times past, Scotland has owed all the higher culture she possessed. Let us build on the old foundations, whose stability has been well tried, and if we extend our lines, and add to the ancient structure, let us at least not depart far from the original style, lest in the end we find ourselves, as the result of our labours, in possession of nothing better than a tasteless and incongruous pile without unity or cohesion.

The architecture of Scotland is chiefly of foreign origin. But the rich turreted chateau and the church of flamboyant Gothic, when transported from France to our own more rugged shores and sterile moorland, adapted themselves, under the hands of our ancestors, to the necessities of their new position, and underwent a series of almost imperceptible but useful and inevitable changes, which suited them better to the available materials, to the climate, and to the tastes and habits and wants of the people of Scotland.

So it was with our Universities. Founded on Continental models, they have yet grown to be essentially distinct, not only from the parent institutions, but from all Universities of modern times. They have become Scottish and National. Possibly in some things they may have degenerated even from what Scottish Universities were; and if it be so, no task can be more agreeable than that of restoration. But the work must be done by a careful and loving, as well as a skilled, hand, guided by a discriminating knowledge of those peculiarities which are essential characteristics, and one on which the utility of the Institution mainly depends.

I shall not be suspected of such narrow-minded prejudice as would disdain to borrow from the Universities of other countries what has been shown in their history to be practically beneficial, and is capable of being adapted to the improvement of our own system. On the contrary, it appears to me, that no one can successfully address himself to this subject, who has not obtained some acquaintance with the constitution and practical working of other universities.

From the ancient Universities of England we have not hitherto borrowed much; nor, indeed, was it expedient, or possible, while the principles on which they were conducted were so repugnant to those on which our own system was founded. But we can never forget that to them we owe some of the most distinguished men and most successful teachers that have ever occupied our Chairs, and that the very dissimilarity of their training and of their feelings and habits of thought to those of our native Professors, has been an element of much practical utility, tending by friendly conflict to enlarge and liberalise the opinions and to stimulate and guide the energies of both the one class and the other.

From Oxford and Cambridge too we have borrowed the idea of providing rewards for high attainments among our Graduates, not only by the system of class honours in the different departments of classical literature, mental philosophy, mathematics, and natural science, but also by the endowment of scholarships, which serve the same purpose with the fellowships of England, by holding out substantial inducements to the cultivation of more advanced learning, and affording to those who obtain them the means of prosecuting their studies after their University education has formally come to an end. The benevolence of our ancestors was for the most part exhibited in the foundation of bursaries, to enable young men to obtain a University education who could not otherwise have afforded it. These foundations have been productive of much good in times past, and within moderate limits they are calculated still to be beneficial. But there is, I believe, little difference of opinion now among those qualified to judge, that in some of the Scottish Universities at least they had become too numerous, and were in their excess productive of no good, or even positively mischievous. I am happy to think that the views propounded and the example set by the Universities Commissioners appointed in 1858,[1] have been received with favour, and have led, among other useful results, to the formation of an Association for the Better Endowment of the University of Edinburgh, which proposes as its first object the foundation of additional scholarships open to competition by all Graduates in Arts. The success hitherto achieved by this Association, though it may not satisfy the sanguine expectations of some of its supporters, seems to me to offer encouraging promise for the future.

The most essential, probably, of all the distinctions between the English and Scottish University systems is, that in the former the Undergraduates have hitherto had access to the University only through the medium of the colleges, and that within the colleges they have received their whole education and training, with slight exceptions. I need not disclaim any intention of

[1] Report of Scottish Universities Commissioners (1863), p. 37 *et seq.*

recommending, even if it were practicable, an adoption of the English system in this respect. But while we are here, I presume, all agreed that the delegation by the University to colleges of its own proper function of teaching is a reprehensible and inexpedient innovation on the ancient and true theory of University work—it may be worthy of consideration whether some benefits of English college life may not be attained without its drawbacks. A number of Students living together under one superintendence, associated, not merely in their studies, but in their social hours and amusements, contribute largely and usefully to educate one another. If the head of the establishment be suited to his place, the tone of the society will be high, both morally and intellectually, and the life will be cheerful and happy. This last is of the highest importance; for the natural condition of the youthful mind is joyous and impulsive, and whatever tends to unnecessary depression or sombre thought will impair its elasticity and vigour.

Students placed in such circumstances as I have supposed will, generally speaking, be preserved, not only from demoralising associations, but from debasing and vulgarising influences. The solitary student, if he be true to himself and firm of purpose, and particularly if his comparative poverty place him beyond the reach of strong temptation, may secure more hours for study, and accomplish a greater amount of intellectual work. But even in his case it may be doubted whether the gain is not purchased at too high a cost, and whether the training of the moral and social man is not too much subordinated to intellectual culture and attainments. The great majority of Students, however, are not of the temper and disposition supposed, but, on the contrary, both desire and need variety and relaxation. To such men in early youth, when the character is in process of formation, the pleasures and the vices of a large city are perils and snares; not to the wealthy among them only, or to those who have money enough to purchase pleasures that combine with their allurements something of a refining influence, but still more to those who in the pursuit of pleasure are constrained by their scanty means to rest content with what is coarser and more ignoble.

It may be objected that the social or gregarious Students' life will be found too expensive for many who come to the University. I do not believe the objection to be well founded in fact. A common table and sleeping accommodation for twenty or thirty students does not imply that they are to indulge in luxuries which, if they lived separately, they could not command; while all experience of analogous cases leads one to conclude that, *cæteris paribus*, such accommodation can be provided more economically and of better quality for a large number than for one, two, or three. But even were it otherwise—were it true that this common

or social life is not attainable by all—surely that is no reason why, if it be a good in itself, it should be denied to all.

Entertaining these views, and being firmly persuaded of their general soundness, I have observed with pleasure the success of such an institution in St Andrews, and with pain and disappointment the apparent abandonment of all attempts to follow the good example here. But I still hope that, ere long, reflection and experience will induce a revival of the project, which, even as a commercial enterprise, might, I am convinced, be conducted to satisfactory results.

The German Universities, much more than the English, have been suggested as models for our imitation by some University reformers distinguished both by their ability and their enthusiasm. Nor is this surprising. The external aspect of those centres of learning in Germany is most imposing, whether as regards the number of their Professors and other teachers, the amount and variety of the subjects of their prelections, or the reputation for scholarship which the Professors enjoy among the civilised nations of Europe.

When, however, we are told that the University of Berlin, in the year 1860—then only half a century old—furnished for the education of about 2000 students, 97 Professors, 66 prelectors or *privatim docentes*, holding a *licentia docendi* from the University, and 7 lecturers;[1] when we are further told that in the same University, in 1865-66, there were delivered in the Faculty of Law alone, 61 separate sets of lectures, 22 by the ordinary Professors, 13 by the extraordinary, and 26 by the *privatim docentes*,[2] the first emotion of surprise and humble admiration rapidly gives way to a serious and reasonable misgiving that if these words and figures really mean all that they seem to say, such a programme is absolutely unattainable in this country, and therefore that the study of the German system is for practical purposes useless to Scottish University reformers.

But such a conclusion would be a mistake; for though there are many features in the German system which are quite alien and unsuitable here, there are not wanting important lessons to be learned, and useful suggestions to be obtained, from an examination of German University life.

The German Professorships are so endowed, independently of fees from Students, that they afford a comfortable provision and an honourable career for a man's whole life; and every Professor retains his full salary whether he is able for the work of teaching

[1] Dr Döllinger's Lecture on his Installation as Rector of the University of Munich, 1866. Appleton's translation. Oxford, 1867, p. 18.

[2] Mr. Grant Duff's Inaugural Address as Rector of Aberdeen University, 1868, p. 23.

or no. Such Chairs naturally attract to them men of great learning and reputation; and a centre of literary society once formed becomes, year by year, more attractive, so that in the end all the great learning of Germany has become concentrated in the Universities.

No Professor is limited to the teaching of one definite branch of science or literature, but has entire liberty to lecture on any subject within the general limits of the Faculty to which he belongs. The consequence of course is that there are frequently two or more Professors lecturing on the same subject at the same time, and competing for the attendance of Students; thus a great rivalry and emulation arises among the Professors of the same Faculty.

The Students come to the University about eighteen or nineteen years old, and are gathered from all classes of society, from the rich and noble down to those of the lower middle class, whose whole expenses are estimated from £30 to £50 a-year. They are supposed to have completed their classical education at school, and are subjected to an entrance examination for the purpose of ascertaining if they be thus qualified. When they pass this examination satisfactorily, they are left entirely to their own guidance, both as regards study and discipline. They find a list of lectures embracing the whole circle of the sciences, and dividing and subdividing all sciences and branches of learning with subtle ingenuity. They may attend what lectures they please, and as many or as few as they please, or none at all if they please. There are no class examinations, nor anything to take their place; and practically there is little or no private tuition. The residence is for three or four years, and for about thirty-two weeks in the year, with two vacations in spring and autumn of seven or eight weeks each. During the whole of this period of residence, the Students are subjected to almost no discipline, their life out of doors being as free from control as their choice of Professors and of subjects of study. While there is thus on the part of the Students a freedom from all control by the University authorities, there is also an absence of all those encouragements to learning which exist in other Universities, in the shape of scholarships, fellowships, and prizes. The Germans, it is said, set no value on industry or study that is not spontaneous; and the student who is not impelled to exertion either by a love of learning for its own sake, or by a wholesome fear of the final examinations which stand between him and his entrance to a profession, is thought unworthy of the care and attention of the University.

The result of this system is described by its admirers to be not only a Professoriate of unrivalled learning and intellectual activity, but a body of Students who, when they leave the

University, are distinguished by attainments more extensive, varied, and useful than are to be acquired in any other school.

It is a bright picture. But as we gaze, some dark shadows flit across it.

The German Universities, we are told by Germans themselves, have been hitherto engines in the hands of despotic Governments for the promotion of their selfish ends. Every academic interest, it is said, "like everything else, is merged in the STATE, that idol of false worship tending to the dominion of egotism in its worst form."[1]

The concentration of learned men at the University seats, and their isolation from public and political life, which gives them leisure to produce learning so profound and universal, is a result obtained at the expense of the country, which is thus deprived of the active services of the best minds of the day,[2] while the Professors, as might be predicted, are, when called to take part in public or political life, found practically useless. To the Frankfort Parliament of 1848 no less than 118 Professors were returned, and every one knows the result.[3]

It must seem at first sight a great advantage that, at the age of eighteen or nineteen, when he enters the University, the Student's classical education is completed. But listen to the sequel as described by Professor Huber, "The preference might be well given on our side, if we were to take it for granted that upon this foundation we erected a proportionate structure of learning, or at least preserved the foundation itself. That this, however, is but little the case, that young men seldom keep up, while studying in other professions, the general cultivation bestowed or forced upon them in rich and over-rich abundance at school, none will deny but those who (knowingly or unknowingly) help to weave that great web of lies which envelops our much-praised civilisation."[4]

When we read a general syllabus of the lectures delivered in one year in a German University, we are dazzled and almost blinded by the splendid variety and apparently unlimited extent.[5] But here again Professor Huber dispels the illusion. "If we judge of this part of our public education by our pompous pretensions, by the signboards of our gymnasia, by the praises of modern Liberalism, the jargon of speculation, and the insipid oratory of our public functionaries, we shall appear to stand infinitely higher in every point of universal preparatory educa-

[1] Huber, *ut supra*, vol. ii. p. 322.

[2] Evidence of Dr. W. C. Perry before Select Committee on Oxford and Cambridge Education Bill, 1867. Report, p. 264, Q. 4428.

[3] Döllinger, *ut supra*, p. 45.

[4] Huber, *ut supra*, vol. ii. p. 361-2.

[5] See an example given in Perry's Evidence, *ut supra*, p. 259-60.

tion than any other nation whatever." "However, I must declare my conviction and give my testimony that all true and living results decrease in proportion as the means and the pretensions increase in number, artifice, and complication." History, modern languages and their literature, and even geography and natural history, are studied less generally, less zealously, and less successfully than in the corresponding academic spheres in England."[1]

I need hardly remind you that I have been speaking of the German Universities as we have hitherto known them. What effect the recent revolution in Germany may have on the interests of learning and education in that country, this is not a proper occasion to speculate. But the admirers of the German Universities seem to look with some apprehension on the consequences of their contact with free institutions and political liberty.

The most striking points of resemblance, as it appears to me, between the German system and our own, occur in the classes of the population from which the Students are drawn, the absence of religious or other exclusive tests, the cheapness of the Students' life, and the freedom of thought and speculation enjoyed by the Professors.

With a special view to these points of resemblance, it has been suggested that another feature in the German system might be adopted in Scotland, subject to some limitations. I mean that free-trade in teaching within the University itself, which gives the Student a choice of teachers on any subject which he is about to study.

In our Faculty of Medicine this principle has already been, to a great extent, recognised and acted on. In the Faculty of Theology it is, for obvious reasons, more difficult to give it full effect, though even within this Faculty extramural teaching has in our University been liberally recognised as a considerable portion of the qualifications for a degree. In the Faculty of Law, the number of Students is scarcely large enough to afford encouragement to competition among teachers. It is, therefore, in the Faculty of Arts that the adoption of this principle is seriously recommended as a novelty.

The project, as originally propounded and ably maintained in argument by two gentlemen connected with the University of Aberdeen,[2] is that Graduates should be allowed to teach any subject or branch of science or learning taught by a Professor in the University, and that this teaching should be as available as

[1] Huber, *ut supra*, vol. ii. p. 366-7.

[2] See "The Scottish Universities and What to Reform in Them." By Alex. Kilgour, M.D. Edin. 1857. —"How to Improve the Teaching in the Scottish Universities." By Prof. Struthers, M.D. Edin. 1859.

that of the Professor to qualify for a Degree in Arts; the conditions being that to enable any Graduate to undertake such teaching, he should receive from the University Court *licentia docendi*, that in granting such licence the University Court should be limited in their choice to Graduates who have distinguished themselves by taking their degree with honours or the like, that the Graduate receiving the licence should exact fees of equal amount with those paid to the Professors, that he should not be connected, as a teacher, with any other educational institution, and that he should not engage in private tuition.

The chief advantages of this new arrangement are represented to be that when by any accident a Chair is filled by a Professor who, though learned and able, has not a special talent for teaching, it may be in the power of Students to resort to a better teacher, and that liability to competition may act as a stimulus to activity and zeal on the part of all the Professors.

The object, it is said, is not to force competition, but only to permit it when required. And therefore the competing Graduate is to be placed in a position of disadvantage, without endowment, dependent on the fees of the Students for his emolument, without the prestige of the Professor's name and office, without a seat in the Senate, perhaps also without the advantage of delivering his lectures within the walls of the University. No Graduate, it is contended, will compete on such terms with the Professor, unless there be urgent need for his services: and if there be, why should the Students be deprived of these services only to maintain a monopoly? The monopoly protects the Professor only when he is unable to protect himself. If he be efficient he requires no such protection. Even if a Graduate should be found adventurous enough to embark in a competition with an efficient Professor, the loss to the Professor of a few of his Students would be amply compensated by the wholesome effect of rivalry in stimulating his own energies and rendering his work more satisfactory to himself as well as to others. Thus dull Professors only will suffer from the change; while dull Professors will be dull no longer, but break forth into new vigour and life; a race of teaching Graduates will be brought into existence, and to some extent encouraged, who will contribute to raise the reputation of the University, and in the end be eligible candidates for Professors' Chairs; while any Professor who has not the faculty of communicating his learning may be left to the enjoyment of that leisure which some so much desire for the cultivation of high scholarship or the uninterrupted pursuit of scientific investigation.

Such, I think, is a fair statement of the grounds and reasons of a project which, even if liable to grave objections, is entitled to respectful consideration. Regarded as an abstract question, the arguments in its favour are difficult to answer. But we are

bound to examine its merits in the light of practical expediency as affecting our own University.

Its supporters entirely avoid the danger which is incident to a general recognition of extramural teaching as a qualification for a Degree. Such indiscriminate recognition is only the first step towards the realisation of that false theory which leads a University to demit its high prerogative of training those who are to receive its Degrees. A University which does not teach is, in my view, not a University at all. It is the embodiment of a modern idea—an examining board created for the purpose of graduating all who can come up to a certain standard in examination. This may be a useful institution. It may, in the opinion of some, be preferable to a University. That is not my opinion. But at all events it is not a University, however it may usurp the name.

But while the supporters of this project guard against so dangerous a tendency, I cannot help thinking there is a fallacy pervading their arguments from assuming too lightly that the Professor's office and teaching constitute a monopoly. A Professor in a University is no more a monopolist than a teacher of a special subject in any other educational institution. Those who don't like his teaching can go elsewhere for instruction—that is, they can go to some other institution where the teaching of the particular subject is in better hands. The only monopoly is in the University itself, or rather in the whole of the national Universities; and that monopoly consists in the power of graduation, coupled with endowments which secure, or are intended to secure, the best men that can be found to fill the Professors' Chairs.

Speaking in this place, I cannot permit the lawfulness and expediency of that monopoly to be brought in question. On the contrary, we are all bound to do what in us lies to support and justify and strengthen it. The case supposed of an incompetent Professor constitutes no objection to the monopoly enjoyed by the University, or to the system which it represents, but only indicates mal-administration somewhere, probably in the exercise of Patronage.

It may, however, happen that, with the best Patrons, and the purest exercise of their functions, an eminent man may be placed in a Professor's Chair who is devoid of the peculiar gift of teaching; and how shall we resist the argument that, for such an evil there ought to exist within the University a possible remedy, by allowing competition on reasonable conditions?

This is a question of importance and difficulty on which I am by no means prepared to pronounce an opinion. I have offered for your consideration some views in connection with it, which I think it would be unwise to overlook. I would further suggest that the salaries of our Professors are not such that it is safe to

try experiments. For if we create competition which has the effect of starving both competitors, we shall probably do little practical good immediately, and may do great mischief in the end, by deterring men of the stamp we should desire from offering themselves as candidates for our Chairs.

I cannot conclude without a reference, however passing, to a topic which I have not yet mentioned, but which is of the highest importance and interest—I mean the increasing necessity and demand for the institution of additional Professorships.

The development and cultivation of new sciences, the creation of new employments requiring the exercise of cultivated and matured intellect, as much as those which formerly monopolised the name of the learned professions—these are facts in the progress of the world's history which demand something more than improvement of our existing means of instruction. That this extension of our teaching must be provided without delay, if our Universities are not to abandon their noblest function, of providing adequate instruction for all whose prospects in life, or whose personal desires, lead them to seek the benefits and blessings of the higher culture, is a conviction which, the more I consider the subject, I find it the more difficult to resist.

But these considerations need cause no uneasiness or alarm to any friend or admirer of our ancient Universities; for such extension is not incompatible with the maintenance of these institutions in their integrity, and the introduction of new sciences or branches of learning will not necessarily interfere with the existing curriculum of study in any of the faculties. No one, I think, who is practically acquainted with the working of our academic system, particularly as regards its capacity of expansion, can share in such apprehensions.

So far am I from dreading any evil consequences from what I venture to call, for the sake of distinction, University Extension, that I believe one of the most important boons which have been conferred on the University of Edinburgh of late years has been the endowment of the Chair of Engineering by an enlightened and judicious benefactor, to whom we are otherwise under deep obligations.

In the development of the material resources of the country the work of our engineers is second to none in importance and in immediate and startling effects. Natural wealth is rendered available, and the latent energies of a population are awakened into useful and productive action, only in proportion as the country is rendered accessible by roads, bridges, canals, and railways. Foreign commerce, as we now understand and practise it—intercourse with every race of mankind in every corner of the habitable world—might have remained a hopeful dream rather than a present reality, had it not been for the application of

steam to navigation, the advance in the art of shipbuilding, and the construction of improved harbours, docks, breakwaters, and lighthouses. But for the employment of practical engineering in aid of agriculture, large tracts of land which yield abundant crops, and are fitted for human habitation, would have remained in their original condition of unreclaimed bogs, salt marshes, or sterile moors. The great works of the engineers, stupendous and overpowering as they seem to the outward sense, are yet more interesting and impressive as monuments and landmarks of the advancing tide of civilisation.

The men by whom such works are planned and executed must not only possess unusual vigour of mind and body, but must have been subjected to a special and laborious training; for these ends could not be attained without a thorough knowledge of the principles of mathematical and physical science, and an aptitude and readiness in their application to every new want and emergency. It is true that some of the greatest of our engineers have been men of humble origin and imperfect education. But while this lends the charm of romance to the story of their lives—their struggles, disappointments, and triumphs—it cannot be disputed that greater advantages of education might have saved them much useless toil and consuming care, and that their successors will be best prepared for their work by such an education as will not only furnish them with the highest professional knowledge, but cultivate and develop the intellectual and moral powers to the fullest attainable perfection.

If this be anything like the truth, it cannot be below the dignity, or inconsistent with the functions of a University, to provide such education; nor can any one be heard to dispute the claim of engineering to a place among the learned professions. Should Scottish Universities be among the first fully to recognise this claim, so much the better, and the more natural; for Scotland is the native land of Rennie and Telford, and their countrymen can never forget that most of the great engineering works in the United Kingdom during the past generation bear the impress of their genius, and that within Scotland itself, notable triumphs of skill and perseverance over the powers of nature were achieved by two Scotchmen, father and son, less known beyond the limits of their own country, but whose name stands for ever associated with the Bell Rock and Skerryvore.

I trust that the institution of the Chair of Engineering may be followed by other additions to the professoriate which are greatly needed. It requires no argument to show that the great department of Natural History (even when Botany is otherwise provided for) is far too wide a field for the labour of one Professor. If the domain of Natural History embraces the globe and all that it contains, earth, air, and water, and every description of animal

and vegetable life, it would seem naturally to resolve itself into these corresponding divisions—(1) Geology and Mineralogy; (2) Meteorology; (3) Hydrography; (4) Zoology; (5) Botany. It would be perhaps too ambitious to propose that each of these divisions should form the subject of a separate Professor's work. But when we have it already practically admitted that Botany alone furnishes ample work for one Chair, and when we consider the vast recent progress of knowledge in Natural History, it is surely not too much to require that the two great branches of Zoology and Geology should be represented by separate Professorships. Leaving Zoology to be taught by the present Professor of Natural History, with such addition to his salary as will compensate him for any consequent loss of Students, I hope we may ere long witness the endowment of a Chair of Geology and Mineralogy, embracing the widely interesting subject of Metallurgy and Mining.

I might easily run up a catalogue of other subjects in which the teaching-power of our University is still defective. The great department of History and the Philosophy of History, Modern Languages and their Literature, Political Philosophy and Economics, including the pure science of Jurisprudence, have all strong claims on our attention, when we are thus reckoning our possessions and our wants.

But I trust the interests of physical science, and the admiration which its wonderful progress commands, will not blind us to the still greater importance, in an educational point of view, of other and old-fashioned studies. The cultivation of physical science alone has never yet in the world's experience produced a great statesman, orator, philosopher, or poet; and I am much mistaken if the best men in the department of physical science itself, the most successful in investigation and discovery, the men of highest inventive genius, have not enjoyed the full benefit of that culture and training of the mind which, according to the Scottish theory, ought to precede the acquisition of all professional or other special knowledge.

I am not about to enter upon the great controversy between "culture" and "useful knowledge," on which so much has been recently spoken and written. I have more than once had occasion in public to state my opinions on that question, and I abstain from repeating them now, the more especially as you have by this time heard quite enough, perhaps more than enough, of my opinions; and the tone of my Address has been throughout so dogmatic that I almost expect the Professor of Greek to rebuke me in hexameter verse:—

"Δόξα μὲν ἀνθρώποισι κακὸν μέγα, πεῖρα δ' ἄριστον."[1]

[1] Theogn. 571.

Let me conclude with the expression of my earnest hope, that whatever diversity of opinion on this question may exist even within our own walls, the University may be enabled to meet and satisfy all the educational wants and desires of modern times, without deserting any part of her great duty to teach men to know themselves, to fathom the depths of their own spiritual life, and, by the study of the laws of thought, of the science of language, and of the rules of human conduct, to grow in wisdom and virtue as they increase in strength and in knowledge.

APPENDIX J.

GLENCORSE OR GLENCROSS, December, 1877 (see p. 318).

The proper spelling of the name of this parish has become a matter of some importance of late, in consequence of the establishment of a new railway station, and of a proposed change in the name of the Greenlaw Barracks, now formed into the 62nd Brigade Depot.

The proposal was, that both the barracks and the railway station should be called by the name of the parish and of the barony.

The parish originally consisted entirely of two baronies—viz., Glencorse and Woodhouselee. The former comprehended generally all the lands lying on the south-west side, and the latter all those lying on the north-east side, of Glencorse water. Thus Glencorse barony included not only the lands now distinctively known by that name, but also Loganbank, Whinnyhaugh, Lawrenceclaw, Greenlaw, Dalmore, Beeslack, Cuiken, Lawhead, Mauricewood, Belwood, Marchwell, and House of Muir. Woodhouselee barony included, besides Fulford, now called Woodhouselee, the lands called Old Woodhouselee, Castlelaw, The Bush, and the various parcels of lands in the parish belonging to that estate, and those portions of the barony of Dryden which lie within the parish.

Naturally there was a certain rivalry between the owners of the two baronies; and when the Laird of Woodhouselee secured the patronage of the Church in the seventeenth century, he was desirous to change the name of the parish and call it after his own estate. But the only contest was between "Woodhouselee" and "Glencorse," there being no lands in the parish which were ever known by the name of "Glencross."

There is no doubt that the generally received name of both

the barony and the parish was *Glencorse;* but circumstances to be immediately noticed had created an impression that the original and proper spelling was *Glencross.*

The late minister of the parish always adopted the spelling "Glencross"; and in his Statistical Account, published in 1845 ("Statistical Account of Scotland," vol. i. p. 310), he gives his reason for the preference: "Glencross, or Glencorse as it is now very generally written, according to Chalmers in his 'Caledonia,' derives its name from 'a remarkable cross which had once been erected in the vale of Glencross by pious hands, and which also gave the name to Crosshouses.'"

It is not surprising that this statement should be repeated or accepted by writers of merely popular or ephemeral works, who had occasion to mention the parish; and it must also be admitted that some support was given to the reverend gentleman's statement by occasional misspellings of the name for a considerable period anterior to the publication of his account. But it will be observed that he admits that Glen*corse* is the general modern spelling, and he prefers the other only because he believes it to be the true and original name.

The object of the present paper is to show that "Glencorse" has been the name both of the parish and of the barony and estate from the thirteenth century down to the present day. That spelling has been uniformly adopted in Acts of Parliament, royal charters, title deeds, public registers, the records of the Church, and authentic documents and books, with the variation only that the second syllable of the word is written indifferently *cors*, *corss*, *corsse*, *corce*, and *corse*, but (with a few trifling exceptions) NOT *cross.*

The statement in Chalmers's "Caledonia" is a repetition of an idle story, unsupported by any historical evidence, to the effect that after the battle of Roslin a cross was erected in the valley of Glencorse to mark the place where the English prisoners, who had been put to death, were buried; and on this story has been based the inference that the cross gave name to the parish.

But the battle of Roslin was fought in 1302, while the barony had the name of Glencorse at an earlier period, as shall presently be shown.

The germ of the story is probably to be found in Father Hay's "Genealogie of the Sainteclaires of Rosslyn"; but so far from supporting Chalmers's theory, Father Hay's statement shows that none of the encounters between the Scots and English forces, which are commonly called the battle of Roslin, took place within the parish or anywhere in the immediate neighbourhood of the valley of Glencorse, while the only cross mentioned was erected on the fields of battle.

"Att a place in the moore" (that is Roslin Muir) "named

Bilsdone burne . . . they became victors, slew Rodolph their Generall: the death of whom, after it came to the ears of a lady in England, who intirely loved him, she made be sett up in remembrance of his death into that part, a crosse of stone, which at that time was all gilded over. . . . The ground whereon the battle was fought the first of them at Bilsdon Burne, besides Draidone, the which to this day is called the Shinne Bones, some bones and swords being therein found to this day; the other two betwixt Draidon and Hathornden, which place is called the Graves."—See Father Hay's "Genealogie," pp. 10-12.

In the year 1259, forty-three years before the battle of Roslin, Hugh, the son of Sir Patrick Abernethy, gave, with his sister in marriage, to Hugh de Douglas, twenty merk-lands in his town of Glen*corse* in Edinburgh.

The contract of marriage containing this conveyance is in the possession of the Douglas family.—See Douglas Peerage, vol. ii. p. 467.

By a charter, dated January 1464, King James III. granted to Lord Abernethy the lands of Rothiemay and others, including the lands of Glen*corse*, lying within the sheriffdom of Edinburgh. —Registrum Magni Sigilli, lib. vi. No. 79.

In 1483, January 10th, King James made another charter in favour of Lord Abernethy, including among other lands the barony of Glen*cors*, lying in the sheriffdom of Edinburgh.—Reg. Mag. Sig., x. 52.

On 9th March, 1492, King James IV. granted to Lord Abernethy several baronies, and, *inter alia*, the lands and barony of Glen*cors*, with the mill of the same called Greenlaw.—Reg. Mag. Sig., xii. 342.

Glencorse is supposed to have been a parish before the Reformation, though the evidence of this is not very clear. Immediately after the Reformation it had no minister, but only a reader.

In the "Register of ministers and their stipends, sen the yeir of God 1567," there is an entry of "Lancelot Gibsoun, reidare at Glen*corse*," while on the margin of the Register appears the word "Glen*corce*."

On the 15th November, 1610, John, Lord Abernethie of Saltoun, conveyed to a kinsman his mill of Glen*cors*, called Dalmoir Mylne, with the mill-lands lying in the *Parish* of Glen*cors*, and sheriffdom of Edinburgh.—Reg. Mag. Sig., xlvi. 394.

By charter, dated 13th April, 1625, King Charles I. granted to William Forbes of Craigievar the lands and baronies of Salton and Glen*corce*.—Reg. Mag. Sig., li. 3.

In the minute-book of the kirk-session of Glencorse, there is, under date April 21st, 1643, an entry that Mr. Robert Alisone was chosen minister of Glen*corse;* and under date October 16th, 1643, another entry that Mr. Robert Alisone received ordination

in the Kirk of Glen*corse*. These are the two earliest minutes in the book.

By Act of the Scottish Parliament, 1647, c. 273, Glencorse was erected into a regular parish. In this Act the spelling of the name is twice Glen*corce* and three times Glen*corse*.—See Acts of the Parliament of Scotland, vol. vi., part i., p. 733.

In the contemporary records of the Church, having reference to the erection of the parish, there is in the year 1646 this entry: "Recom. Glencorce, Tweedmoore (&c.), to Commis. for planting kirks"; and in 1647 this entry: "Recom. of the petition concerning Glencorse to the Lord Thesaurer and the Lords of Exchequer."—See Acts of Assembly, *sub ann.* Index of unprinted Acts. It does not detract from the value of this authority that on some subsequent occasions there may be found in the Acts of Assembly a merely casual use of the name, where the spelling is erroneously Glencross—*e.g.*, in the Acts of 1761 (Printed Acts, page 16), where, in the Commission for Managing the Royal Bounty, Mr. John Walker, the minister of the parish, is designed "at Glencross."

In the same year, 1647, King Charles I. granted a charter (in the possession of the present proprietor of the estate) in favour of Alexander Bothwell of Glen*corce*, conveying, *inter alia*, "terras et baronium de Glen*corce*."

In 1654 (14th July), Oliver, Lord Protector, granted to John Clerk, merchant, burgess of Edinburgh, among other lands, the lands of Cuiking, with rights of common pasture on the Common Muir of Glen*corse*.—Reg. Mag. Sig., lix. 151.

In 1661 King Charles II. confirmed to the town of Edinburgh the privilege of a market at "the House of the Moore within the paroch of Glen*corce*."—See Acts of Parl., vol vii., p. 81.

Under date 1669, c. 74, the Scottish Parliament ratified a Royal grant in favour of Sir William Purves of Woodhouselee, of, *inter alia*, the patronage of the kirk of Glen*corce*.—Acts of Parl., vol. vii., p. 608.

On the 4th July, 1676, King Charles II. granted to James Deans, writer in Edinburgh, the lands and barony of Woodhouselee, with the patronage of the parish church of Glen*corse*.—Reg. Mag. Sig., lxv. 114.

Among the orders of the Committee of Estates, there is an order dated May 7th, 1689, in favour of Mr. George Purves, minister at Glen*corss*.—See Acts of Parl., vol ix., app. 10 A. There is also mention made of this same Mr. George Purves in the well-known "Historical Relation" of the General Assembly, 1690 (page 13), where he is designed "minister at Glencorse."

Early in the seventeenth century a family of Bothwells, descended from the famous Bishop of Orkney, acquired the lands and barony of Glencorse. The present proprietor of Glencorse is

in possession of a complete series of the title deeds of this family from 1610 to 1809, when the estate passed into other hands; and after careful examination of the title deeds, it has been found that in not one single instance is the name spelt Glen*cross*, though there are other variations of spelling, such as have been already mentioned, but always with the *o* before the *r*.

This family of Bothwells was ennobled in the peerage of Scotland with the title of Lord Holyroodhouse; and consequently both Crawford and Douglas, in their books on the Scottish Peerage, have occasion to speak of these Bothwells and their possessions. They both invariably spell the name—the former Glen*corss*, the latter Glen*corse*. It need hardly be said that there are no higher authorities on Scottish history and antiquities than these two writers on the peerage.—See Crawford's Peerage (1716), pp. 185, 186; Douglas, vol i., pp. 728-731.

The Bothwells of Glencorse had also litigations with their neighbours. And in the Records of the Court of Session there is mention of a suit in 1687 between Bothwell of Glen*corse* and Deans of Fulford; of another in 1702 between Bothwell of Glen*corse* and Clerk of Penicuick; and of another in 1710 between Bothwell of Glen*corse* and Trotter of Mortonhall.

From the time that the Bothwells parted with Glencorse, in 1809, till it came into the present proprietor's possession, there have been several transmissions of the estate, chiefly by purchase, and in all the conveyances Glen*corse* appears without exception.

In 1796 the Common Muir of Glencorse was divided among the adjacent proprietors by a process before the Court of Session. In these proceedings the spelling is invariably Glen*corse*, and a considerable share of the Common was allotted to Bothwell of Glen*corse*.

In the year 1812 the Commissioners of Supply of the county of Midlothian committed to one of their number, Mr. William Macfarlane, W.S., the task of revising the Valuation Books of the county. Mr. Macfarlane, who possessed great local knowledge, completed his task in 1814; and the result of his labours appeared in the form of a completely digested valuation of every parish, printed for the use of the county. This has ever since formed the authoritative rule for imposing those assessments which are payable according to the "valued rent." The volume contains a Roll made up in the year 1726, as well as Mr. Macfarlane's rectified Roll of 1814. In both of these the parish is called "Woodhouselee or Glencorse," and the estate is, in all its different divisions, called "Glencorse." It may be explained in passing that the alternative name "Woodhouselee" came to be used for some time in consequence of the attempt already mentioned of Deans of Woodhouselee, the patron of the parish, to change its name, which, however, in the end proved unsuccessful.

As regards the valuation of the county according to the real rent, which is now regulated by the Valuation Act of 1854, the names of the parish and of the estate are, in the annually revised lists, both written Glen*corse*. For some short time after the passing of the Act of 1854, the misspelling Glen*cross* was introduced in the heading of the parish; but in the names of the various parcels of lands, and in the designation of the owner of the estate, the correct spelling was always maintained, and the error in the heading or title of the parish was soon corrected, being in the printed and published Roll of 1867-8, and in the subsequent MS. Rolls for each year, correctly spelt Glen*corse*.

It may also be observed that Glencorse is a perfectly well known, though not very common, Scottish sirname; and, like many Scottish sirnames, was in all probability derived from the name of a place. The sirname is invariably written Glen*corse*.

The above historical evidence seems to show conclusively that the original and only proper spelling of the name of the parish is Glencorse; and if this be taken in connection with the admission of the late minister, that "it is now very generally written" in this way, it is surely not too much to expect that the name should, for the future, be uniformly so written and pronounced.

Uncertainty in this matter is very much to be deprecated, as it has been, even in times past, productive of confusion and inconvenience, and is likely to prove a more serious evil hereafter, in consequence of the parish and district becoming much more populous and important.

APPENDIX K.

Speech at Centenary Dinner of Juridical Society, February 27, 1873, proposing the toast of "The Juridical Society."

My Lords and Gentlemen,—If I were addressing a mixed assembly, I do not know that I could safely take for granted that it is a merit in the Juridical Society to have endured for one hundred years. As regards political institutions, some men think that antiquity is a merit, but there are many others who think that antiquity only proves that those institutions have lasted too long and ought to be abolished. I do not know, however, that politicians of this last school would extend their doctrine to institutions of a literary, scientific, or educational character, and

perhaps I may fairly presume that no Society like ours could have lasted for so long a period unless it had done in the course of its existence some good service. It is not unnatural for us, on the present occasion—indeed it appears to me to be most becoming—that we should, as far as we possibly can, carry back our thoughts to the time when the Society was instituted, and to the men who had the merit of giving it birth. Those men were very few in number, and they lived a long time ago; and that is pretty nearly all the impression that we receive from the story at first sight. But how long a time ago it is, and under what different conditions and circumstances they lived, it requires some little stretch of thought altogether to realise.

The year 1773 was not, so far as I am aware, a year distinguished above others by any great historical or political event, and therefore there are none of those wide or grand associations connected with it which often impress the imagination so strongly, that the moment the year is mentioned there comes back to you at once a vivid picture of something that then happened which enables you to judge of the character of the actors in the drama, and to appreciate how they lived, and thought, and acted. But although that year in particular is not so distinguished, we may recall some circumstances which will enable us to judge of the position in which our predecessors were then placed. Let me recall to your recollection, then, that at that period, what is now the great Republic of North America was still a British colony; that Lord North was then Prime Minister; and that Charles James Fox was a junior Lord of the Treasury; that Robert Dundas of Arniston was President of the Court of Session; and that the Bench was made famous by the names of Hailes, Kames, and Monboddo; that Harry Dundas had not yet entered on political life, and was labouring hard as a working lawyer in his chambers at the mouth of the Fleshmarket Close; that Harry Erskine was a very promising, but a very young, member of the Bar; that Principal Robertson ruled supreme in the councils of the University; that the great depository of our national muniments—the Register House of Edinburgh—existed only on paper; and that the North Bridge was just completed, and was thought to be a marvel of engineering skill and architectural taste. Such were the circumstances of the time, and such were the influences that surrounded the birth of our Society. It was a very small and modest Society at its beginning, and it was also rather of a vagabond character, for it had at that time no settled place of abode. I find that a number of its first meetings were held in a very classical locality—John's Coffee-house. What associations that name calls up! The old walls of that house, so long as they resisted the inroads of destructive or reforming times, were haunted by the shades of all the great worthies of Scottish

Jurisprudence; and even now the very mention of the name suggests a recollection of some of the finest creations of the great master of fiction—Peter Peebles, with his inimitable buffoonery; the wit of Peter Pleydell; and the wonderful capacity of his clerk, Mr. Driver. It would not be thought, perhaps, altogether decorous in the present day if we were to hold our debates in a tavern; but at the time of which I am speaking the members of the Juridical Society had the countenance of all the best men in the profession in selecting John's Coffee-house as the place of their assembly, for I believe there was no man, however distinguished or however respectable, who did not find himself led to that classic retreat at some hour of the day, either by business engagements or by natural thirst. To illustrate the small beginnings from which this now distinguished Society arose, let me mention to you that it is recorded in the minutes in the year 1775 that a motion was made, seconded, and duly carried, to instruct the treasurer to purchase one copy of Erskine's smaller work for the use of members of the Society attending the debates. But it was an important event, for it formed the germ of that excellent and valuable library which now adorns our premises in Charlotte Square, and it is from such small beginnings that such institutions arise. I do not dwell on the early history of the Society further than to tell you, what perhaps you all very well know, that the Society had hardly attained any great amount of vital energy before the members set themselves to that work which has been their great and distinguishing enterprise during their whole existence—I mean the compilation of "The Styles." The first volume of that great work was published by the Society in 1787. It has gone through a great many editions, and it may be pronounced to be really a part of the written law of Scotland. It is very astonishing, when you look back on the circumstances, that a Society, composed of so small a number of members, should have performed so energetically and successfully a task of no ordinary importance, and should have carried on that task down to our own times. The young men who were the active members of the Society at that time were no doubt connected with other Societies, such as the Society of Writers to the Signet, and from them they received the materials for the work; but the labour of selection, of collection, and publication was not small. By what they did, not we only, but the whole profession of the law, from the judges downwards, have received a most valuable legacy. It is sad to confess, but still it is so, that after the Society had set itself to this great work, the debates on law questions and the essays on law subjects began rather to languish, and it was found somewhat difficult to procure a sufficient number of members to make up a good debate at one of the ordinary meetings. But the active members of the Society at that period were not to be daunted; and they resorted to one

of the ordinary processes for renovating an enfeebled constitution —they imported new blood. They effected an amalgamation—a very favourite thing in the present day—with another Society of somewhat similar purpose, called the Logical Society. The difference between the two was this, that the Logical Society devoted itself to the consideration and debate of speculative as well as legal questions, while the Juridical Society had, previous to the amalgamation, confined itself to legal subjects. From the date of that amalgamation in 1797 the Juridical Society has continuously prospered. Now, it seems to me that that passage in our history symbolises a great truth, which is, that the mind of man cannot live on law alone. The infusion of the speculative element from the Logical Society gave the Juridical Society new life; and is it not true in all cases, that if a man devotes himself exclusively to to one subject, his mind becomes gradually narrow and contracted, until he comes to find the greatest difficulty in applying his mind energetically and effectively even to the subject of his exclusive study? The addition of some other pursuit to that which is a man's professional occupation is absolutely necessary to a healthy tone of mind. I don't know that it matters what it may be. It may be literature, it may be philosophy, it may be agriculture, or arboriculture, or horticulture—it matters little what it is—but there must be something to occupy the thoughts besides that which is a man's necessary and normal occupation. And from this is to be adduced an important corollary, that if a lawyer's mind is not to be constantly employed with legal subjects, there must be intervals of repose from professional work, and hence the advantage of that blissful period we know under the name of "The Long Vacation." I do not say that the Long Vacation is to be a repose in this sense, that it is to be a period of mental and bodily inactivity; for repose, mental and bodily, means variety of occupation. Well, the debates, as I have said, went on improving after the junction of the Logical Society to which I have just referred; and although it may be almost out of place for me in this company to dwell on the uses and advantages of debating societies, I cannot help saying a single word on that subject, especially as applicable to the Juridical Society itself. I apprehend that the true use of a debating society, and particularly of a society instituted for the purpose of legal discussion, is that its members shall acquire the habit of precise and accurate expression on legal subjects in particular. Lord Neaves the other day, in addressing the students of the University of St. Andrews, struck out a new idea as to the uses of language. He said that there were three common uses of language—one to express a man's thoughts, another to conceal his thoughts, and the other to conceal that he had no thoughts. Now, I think that the use of a debating society is to suppress and put down the two latter illegitimate

uses of language, and to encourage the first and only legitimate use of language. It has been well said, too, that precise and accurate expression, clear speaking, is only to be obtained on a foundation of clear thinking, and that is perfectly true in one sense; but I venture to think that clear thinking may be very much aided and encouraged by clear speaking, and that the two excellent habits act and re-act one on the other. While a man is studying to speak in a clear and perspicuous manner, he is unconsciously teaching himself to think clearly also. In short, it appears to me that whoever may attain, by the exercise of such debates as I have heard in the Juridical Society, to a concise and clear habit of speech, will thereby very much improve his habits of thinking. The truth of this may be strikingly illustrated by studying critically the performances of any very successful mimic. If he select as his model or victim a really good speaker, one who can clothe thoughts in clear, terse, and appropriate language, you will find that he is not merely adopting the voice and manner of the person he represents, and his style of composition, but has for the time become to all appearance possessed of his wit and wisdom. The mimic may not resemble his pattern in any of his intellectual or moral powers or qualities, and yet (such is the force of association between speaking and thinking) he will, under a sort of momentary inspiration, become logical or imaginative, philosophical, abstruse, or discursive, or whatever else is necessary to present a perfect picture, in sentiment as well as manner, of the man he is imitating. If, then, in practising the art of public speaking, young men set before them good models—not such as are distinguished only by fluency and elegance—but those who use rhetoric as the means of conveying their matured thoughts clearly and intelligibly to others, it is not too much to expect that, studying (without slavishly imitating) such models, the student may not only gain the habit of clear and impressive speaking, but also find his mental powers invigorated and trained to the practice of rapid and accurate reasoning. If there be any truth in what I am now suggesting, we have, if not a new, at least a most important ground for encouraging such debating societies as that to which we belong. For myself I can say, without hesitation, that whether I was taught, by my practice of debating at the Juridical, to make free with the style and thoughts of other men or no, I was in many ways greatly indebted to that training in the early stages of my professional career. It will probably be not uninteresting to you to know, as I daresay many of you already do, that as we are now celebrating the Centenary of this Society, another very distinguished party of men just fifty years ago proclaimed its jubilee, and a very remarkable party assembled on that occasion. There were, among other persons, the Solicitor-General of the day in the chair (Mr. Wedderburn), who presided

in the absence of Sir Robert Dundas, and around him were Walter Scott, Jeffrey, Colin Mackenzie, Moncreiff, Cockburn, and other celebrated men. What a party that would be to meet! There is preserved an excellent but not a very full account of the meeting, from which I derive the information I give to you. But perhaps one of the most interesting circumstances connected with it was the announcement that at that time there were still surviving four of the original founders of the Juridical Society—Harry Guthrie, a name well known in connection with the profession of the law; Sir John Leslie, a name not to be confounded with the distinguished professor of the University of Edinburgh of the same name. He was a baronet from Morayshire, but had been a Writer to the Signet before he succeeded to the family honours. Then there were Colonel Farquharson, who had left the legal profession for the military, and Mr. Alexander Kidd, who were also present at the jubilee dinner. The names I have mentioned, and indeed all the names that appear in the report, are, I am sorry to say, the names of men who have passed away; but I understand that there are two gentlemen who were present on that occasion, distinguished members of the Juridical Society who are here to-night—Mr. Pillans Scarth and Mr. Thomas Sprot—a gratifying circumstance, for it seems to carry down by uninterrupted succession the line of the great men who founded and sustained the Society. I observe that the jubilee meeting fifty years ago was surrounded by a great many very gratifying circumstances; but I was startled to observe that they used up no less than three chairmen. One of them, Mr. Solicitor-General, began to think of the work he had to perform next day, and beat an early retreat. The chair was then filled by one of the croupiers, and when he in his turn went to bed, or was put to bed, his place was occupied by a Mr. John Wilson, junior, and it is narrated that under his auspices "the evening was spent with the greatest possible hilarity, and the company parted at a very late hour." What was the fate of the last chairman I do not know. Whether it is in the book of fate that the progress of hilarity shall displace me from the position I occupy, to be succeeded by a stronger-headed successor, I cannot at present anticipate, but I hope I have so far discharged my duty as to afford a sufficient reason for your receiving with cordiality the toast of the evening. I only wish to add one word. In the case of that delightful evening which our predecessors spent in 1823—by the way it was in Oman's Hotel—there was a little episode to be reflected on next morning. There was an attack on the purses of the distinguished gentlemen who attended the dinner—the object being to get up a sufficient fund to purchase the premises which the Society now occupy; and I mention this circumstance only for the purpose of removing any apprehension that may be now entertained on that subject by telling you that the prosperity

of the Society is not attested merely by the number of its members, and their energy and zeal, but that its finances are in an altogether unexceptional state. I have now great pleasure in proposing the toast of the evening—"The Juridical Society."

APPENDIX L.

SPEECH AT THE JUBILEE BANQUET given by the Faculty of Advocates, June 11, 1887. This was in reply to the toast of "The College of Justice" proposed by Lord Stair.

You have assigned to me, sir, the great honour and privilege of responding to this toast; and the pleasure with which, in any event, I should have undertaken the task is very greatly enhanced by the circumstance that the proposer of the toast is the descendant and representative of Scotland's greatest lawyer. My noble friend, I hope, will forgive me if, yielding to my professional leanings, I venture to say that the first Viscount of Stair is the noblest and the worthiest of all his ancestors, not because he was President of the Court of Session or of the College of Justice, but because, living in an age prolific of illustrious lawyers, in this country, and in England, and on the continent of Europe, he succeeded by his own original genius, and by his wonderful attainments and culture, in becoming, in the truest sense of the word, a philosophic jurist, and thus took his place among the foremost of them all. We have received from him a legacy in his *magnum opus* which we fully appreciate—an imperishable monument of his wisdom, his genius, and his learning.

The College of Justice is a comprehensive and composite body. I do not know whether that will account for the circumstance that they do not seem to be affected with much modesty, because I observed that instead of imitating the usual bashfulness of an individual when his health is proposed, and remaining seated until the plaudits have come to an end, they one and all rose from their seats and applauded themselves to the echo. But be that as it may, the College of Justice is, as I have said, a composite body, and may be roughly classed as consisting of judges, advocates, and agents.

As regards the judges, I shall only say, in all simplicity and sincerity, that I believe the earnest and constant desire of us all is to administer justice, not only with impartiality, but with

diligence and zeal, bringing to bear upon the great questions brought before us all the abilities we possess. If by such means we secure the confidence of the profession and the public, that is our all-sufficient reward.

The Faculty of Advocates, or rather the bar of Scotland, has been always distinguished by two great characteristics—the love of independence and learning. In times past they have not been slow to assert and vindicate their independence when it was assailed, either by the Court or by the King; and if no recent opportunities have occurred to call forth a display of this magnanimous virtue, we must ascribe that to the milder manners of modern times, and, I hope I may add, to the mutual confidence and respect and goodwill which have so long subsisted between the bench and the bar. Of the learning of the Faculty of Advocates it is difficult to speak within a short compass. It is displayed not only in forensic debate, and in those *responsa prudentium* which men of the present day call "opinions of counsel and of judges," but in every walk of intellectual enterprise and pursuit. We have sent our representatives into the field of literature, and they have returned to us laden with honours as historians, and poets, and philosophers, and archæologists. Others of them, again, have achieved good positions in public and political life. Some have betaken themselves to classic scholarship, and some have become eminent students of mathematical and physical science, and a few have trodden the thorny path of theology and have lived to become valued and useful ministers of religion.

Of the general body of agents it is impossible to speak except in terms of the highest respect. We must not forget—we never can forget—that they and their clients are the fulcrum upon which the whole system and machinery of judicial procedure rests and moves; and I trust that they, on the other hand, will always bear in mind that, however great the position of an eminent advocate may be, which in his relation to his client has been described as a trust the most exuberant and the most sacred, and involving the highest responsibility, the position of the agent is not less one of great confidence and great responsibility, strongly analogous, I venture to say, to that of a family physician—the one being concerned with the welfare of his client's body, and the other with the welfare of his estate, his reputation, and his affairs. I have only, in conclusion, to say that, in the name of the whole body of the College of Justice, I return warmest thanks for the way in which this toast has been proposed and received. Of the observations that Lord Stair has made regarding my own position personally, I feel it impossible to express my thanks in adequate terms. I fear he has allowed his feeling of friendship to overmaster his sounder judgment. One word more and I have done:

it is only to express the delight with which I have heard these old walls and rafters resound to the plaudits of an enthusiastic and an affectionate loyalty.

APPENDIX M.

Speech at the opening of the Scottish National Portrait Gallery, 15th July, 1889.

My lords, ladies, and gentlemen, I have been requested by my colleagues of the Board of Manufactures to offer you some explanation of what, for want of a better name, I may call the genesis of the National Portrait Gallery which is to be opened this day by our noble Chairman. The patriotic sentiment which underlies and prompts the desire of men in this country to possess authentic pictorial representations of the great and notable men and women of Scotland has not its origin in late days, nor is it in any way of factitious creation. It is, indeed, part of the national character. So early as the year 1778 two very remarkable men entered into a correspondence upon this subject, which has fortunately been preserved—I mean that distinguished antiquarian and historian, Lord Hailes, and that not less prominent and distinguished Scotsman, David, Earl of Buchan. They were at that time engaged in laying the foundations of the Society of Scottish Antiquaries, by whose zeal, learning, and industry has been erected that splendid Museum of National Antiquities, the property of which was transferred more than thirty years ago by the Society to the Board of Manufactures in trust for the nation, and is soon to be housed under the same roof with the National Portrait Gallery. This happy conjunction fully realises and justifies the original conception of Lord Hailes and the Earl of Buchan that National Antiquities and National Portraiture have a natural if not a necessary connection. Their ambition at that time did not extend beyond a collection of engraved portraits; and the outcome of it all was the two publications by Mr. Pinkerton, which are very well known—the *Iconographica Scotica*, and the *Scottish Gallery*—which contain a number of engraved portraits, the engravings certainly not being of a very high class, but valuable because they are chiefly drawn from what are well known and authentic pictures, although, I must say at the same time, mingled with some which are of very doubtful or spurious origin. The next

event to which I would venture to allude is the correspondence between two other very distinguished Scotsmen—Thomas Carlyle and David Laing—which took place in 1854, upon the same subject, both of them entering into it with great enthusiasm. There is a letter by Mr. Carlyle which is so much to the point, and at the same time so characteristic of the writer, that I make no apology for reading to you two or three extracts from it. It is addressed to Mr. Laing. He says—"In all my poor Historical investigations it has been, and always is, one of the most primary wants to procure a bodily likeness of the personage inquired after; a good *Portrait*, if such exists; failing that, even an indifferent if sincere one. In short, *any* representation, made by a faithful human creature, of that Face and Figure, which *he* saw with his eyes, and which I can never see with mine, is now valuable to me, and much better than none at all. . . . Often I have found a Portrait superior in real instruction to half a dozen written 'Biographies,' as Biographies are written—or rather, let me say, I have found that the Portrait was as a small lighted *candle* by which the Biographies could for the first time be *read*, and some human interpretation be made of them; the *Biographied* Personage no longer an empty impossible Phantasm, or distracting Aggregate of inconsistent rumours—(in which state, alas! his usual one, he is *worth* nothing to anybody, except it be as a dried thistle for Pedants to thrash, and for men to fly out of the way of)—but yielding at last some features which one could admit to be human." He goes on further to say—"It has always struck me that Historical Portrait Galleries far transcend in worth all other kinds of National Collections of Pictures whatever; that, in fact, they ought to exist (for many reasons, of all degrees of weight) in every country as among the most popular and cherished National Possessions—and it is not a joyful reflection, but an extremely mournful one, that in no country is there at present such a thing to be found." It must be remembered that this was in the year 1854. Finally, he says—"I hope you in Scotland, in the 'new National Museum' we hear talk of, will have a good eye to this, and remedy it in your own case. Scotland at present is not worse than other countries in the point in question, but neither is it at all better; and as Scotland, unlike some other countries, *has* a History of a very readable nature, and has never published even an *engraved* series of National Portraits, perhaps the evil is more sensible and patent there than elsewhere. It is an evil which should be everywhere remedied; and if Scotland be the first to set an example in that respect, Scotland will do honourably by herself, and achieve a benefit to all the world." Mr. Laing took what may without offence be called a somewhat more sober-minded view of the subject, and in presenting this letter to the Society of Antiquaries, of which he was a dis-

tinguished member, he dilated rather on the difficulties of the undertaking and the great expense; for he says—"It is with no intention of proposing that the Society should undertake this that I have brought it under their notice. To be successfully launched would require the influence and the means of the Honourable Board of Trustees, possessing apartments most suitable for the purpose." At that time, I am sorry to say, the Board of Trustees were not in a position to undertake so very serious and costly an enterprise. They were possessed, no doubt, of galleries admirably fitted for the exhibition of national portraits, but unfortunately they were all appropriated to other equally important objects; and although there was a vague suspicion in the public mind that the Board of Manufactures was a rich body, they were unfortunately only rich in this sense, that they administered a certain amount of public moneys which were all appropriated to specific purposes, and therefore they had no means of undertaking anything like the creation of a National Portrait Gallery. However, the subject became one of great interest from various events which occurred not long after the time that I am now speaking of. In the first place, the Portrait Gallery of London was opened in the year 1859, and in that same year there was a very attractive exhibition in Aberdeen of portraiture, chiefly confined to the neighbourhood of that city. In Glasgow, again, in 1868, there was a similar exhibition of portraits; and the loan exhibitions of South Kensington, which I daresay many of you have some recollection of, were opened in the years 1866, 1867, and 1868. It thus became pretty obvious that Scottish national portraiture was in the air, and that something must be done. But how long we might have waited for that something to come about, it is very difficult to tell, if it had not been that the Board of Manufactures received unexpected, but most valued aid from a private quarter. (Applause.)

In 1882, on the 7th December, they had a communication made to them from my friend Sir William Fettes Douglas, the President of the Scottish Academy, that a gentleman, whose name was in the meantime not disclosed, was willing to give £10,000 to help to make an endowment for a collection of national portraits, if an equal amount could be had from public sources. I am happy to say that the Treasury gave an equal sum in the following year, and so the Board were at last put in possession of means to commence the purchase and collection of national portraits. The gentleman who had made this gift suggested, very properly, to the Board of Manufactures, for the purpose of stimulating interest in the subject, that they should open a loan exhibition in one of their galleries, and this was done in 1883, and afterwards in 1884, the exhibition of 1883 being divided almost equally between national portraits and pictures by the old masters,

and a very attractive exhibition it undoubtedly was. In 1884 the exhibition consisted entirely of national portraits, and I venture to read to you, in connection with it, a sentence from the preface to the catalogue of the exhibition of 1884, which will give you some information of how that exhibition was got up. It says:—"The present loan exhibition of portraits of eminent Scottish men and women, and of persons intimately connected with Scotland, has been brought together by the Board of Trustees for Manufactures in Scotland, in anticipation of the opening of the permanent Scottish National Portrait Gallery, with the view of interesting the public in the subject of portraiture generally, and of ascertaining the present resting-places of important works of this class in the country. It is believed that, taken in connection with the portrait department of last autumn's exhibition, the present collection will afford a not inadequate view of Scottish portraiture, and that it will give valuable opportunities for study and comparison." I think I am not speaking in a spirit of too great self-complacency when I say on behalf of the Board that these exhibitions were highly successful, and did create a vast amount of interest in the subject with which we are now dealing.

But the only gallery in which it was possible for the Board of Manufactures to house the portraits which they had begun to collect was, unfortunately, occupied by another important institution—the Society of Scottish Antiquaries. The Royal Institution on the Mound, as you are well aware, had at that time, and has still, its principal room entirely occupied by their Museum. Of course, it was proposed that the Museum should be removed to another public building, and it was all the more desirable that this should be done because the space allotted to it in the Royal Institution was quite inadequate for the exhibition of their treasures. But great difficulties occurred, and, as was natural, the Society of Scottish Antiquaries were somewhat hard to please. I do not blame them, considering the extreme value of the treasures under their charge. It was not at all an easy matter to find in any other public building accommodation that would satisfy them. Now, it was at this critical moment that our valued friend, although he still continued anonymous, stepped in to the rescue again, and offered the sum of £20,000—(loud applause)—to erect a building which should be capable of providing accommodation for the Society of Antiquaries as well as for a National Portrait Gallery. (Applause.) Thus armed with an endowment, and with the prospect of a building, everything appeared to the Board in rose colour. But I dare say all who hear me are aware that estimates for building are very shifty things—(laughter)—and that when you begin to build you require to count the cost upon a rather extravagant scale. Well, the end of it all is that our anonymous donor has provided, first and last,

including the £10,000 which he gave for the endowment originally, a sum of £50,000, which he has placed in the hands of the Board of Manufactures. (Applause.) Gentlemen, it is difficult to speak without some extravagance of language upon the munificence of this generous gift, but I am sure you will all agree with me that the thanks, not only of the Board of Manufactures, but of the whole people of Scotland, are due to that gentleman for the extremely well-timed, as well as munificent, gift which he has made. (Loud applause.) You have this day to a certain extent seen the result of this munificence. You are assembled in a building which, I think, when you have seen more of it than you have yet, you will pronounce to be extremely well adapted for the purpose for which it has been erected. When completed, I think I may venture to say that there will not be a finer building in the city of Edinburgh, or perhaps in Scotland. (Applause.) The architect, in designing this building, as an architect always should do in designing any kind of building, took into account, first, what was the nature and the extent of the accommodation required, and then he considered what was the best style of architecture to secure that amount of accommodation. The accommodation required was of a nature which you can easily now understand, and the style of architecture which he adopted was, in his own words, "the secular Gothic of the latter half of the thirteenth century, a style that lends itself readily to the purpose of the building, and secures the greatest amount of light to those rooms that must be lighted from the side only."

There is one detail in connection with the design of this building as to which I should like to say a word, and that is the niches which are left all round for statues. There is no doubt, I think, that the union of sculpture and architecture is most desirable. It is much too little studied, I think, in this country; and, in regard to this particular building, it surely would be most appropriate that these niches should be filled with statues of eminent Scotsmen of times past. (Applause.) The difficulty in a case of this kind is to make a start. Who is to be the first donor of a statue? Because I need hardly tell you that we look to you and the people of Scotland generally to provide these; but I will venture to say from my own personal knowledge, that if we had once made a beginning—once got the first statue erected, I know it will be followed by others. (Applause.) With regard to the contents of the Gallery which you are presently to be introduced to, I may give you this information generally—and it is not necessary to go into any detail—that the pictures and busts for the most part are the property of the Board; but there are also a considerable number of pictures which we have upon loan from noblemen and gentlemen, who have been extremely generous and obliging, not only now, but in former times when

we had our exhibitions in 1883 and 1884; and we have felt very strongly that a great deal of the success both of these exhibitions and of the opening of the present exhibition will be due to the generosity of these private individuals. I think it is perhaps no small reason for congratulation that from the first subscription of the £10,000 by our munificent donor only seven years have elapsed, and here we are with a Portrait Gallery well hung. It affords a pretty strong contrast to the adventures of the London Portrait Gallery, which has been described by some of its warmest friends as "leading a vagabond life for thirty years." (Laughter.) But I very much rejoice to know, as I am sure you will also, that that collection at last is to have an adequate and permanent resting-place, and, oddly enough, by the very same means by which we have secured ours—the intervention of an anonymous donor. (Applause.) We have had, however, our period of nomadic life, and I am very happy to take this occasion of returning thanks to the Senatus Academicus of the University of Edinburgh for the handsome way in which they took us in—I mean in the most honourable and most hospitable sense of the word. (Laughter.) The pictures were housed there for some considerable time in rooms which, fortunately, were not immediately required for the purposes of the University, and so they have been kept out of harm's way, and are now, I think, to be presented to you this afternoon in the highest possible condition. I cannot help going back once more to the gift of our anonymous friend. I think the great distinguishing feature of that gift is that it is entirely national in its purposes, in its aims, and in its results; and in that respect I cannot recall—I may be wrong—any gift of at all the same amount that has ever been made for purely and thoroughly national purposes. That, I think, is the distinctive character of this gift which gives it so much importance and so much value. It was not to be wondered at that this gift and the use made of it should attract a great deal of public attention, and that there should be many speculations as to who was the anonymous donor, and a great deal of curiosity—and investigation, I might almost say—(laughter), for the purpose of finding out the well-kept secret. But I am happy to tell you that speculation is now to come to an end—(loud applause)—that curiosity is to be satisfied, and the donor is to stand face to face before you. (Renewed applause.) He is a distinguished citizen of Edinburgh, given to all manner of good works, an intelligent lover of art, a zealous archæologist, and a Commissioner of the Board of Manufactures. (Applause.) If that seems like a conundrum, I can only say I think it is one of easy solution, and you must, I think, all have arrived by this time at the conclusion that the donor is Mr. John Ritchie Findlay. (Loud and continued applause.)

APPENDIX N.

The Funeral of John Inglis.

[Abridged from "The Scotsman" of August 26, 1891. Cf. the account of his father's funeral in the "Courant," January, 1834, *vide supra*, p. 24.]

With every mark of public respect which could be paid to his memory, the mortal remains of the Lord Justice-General of Scotland were interred in the New Calton Burying Ground, Edinburgh. The long and useful life of the Lord Justice-General, his position as head of the Court of Session and of the Edinburgh University, and the high esteem in which he was held by all sections of the community made it a befitting thing that his obsequies should be of a public character. It was accordingly arranged that a funeral service should be held in St. Giles' Cathedral at two o'clock; and at this solemn function almost every public body of any note in the city was represented. The Corporation of Edinburgh attended in an official capacity; Glasgow sent its Lord Provost and Town Clerk; and bench and the bar, and the legal and mercantile societies mustered in force to do honour to the memory of the deceased Lord President. Many gentlemen travelled long distances from summer quarters, and at great personal inconvenience, to be present; and, but for the season of the year, many more would, no doubt, have attended the funeral, which, however, was one of the largest and most imposing which has been seen for many years in the city. The proceedings in the Cathedral were of an impressive character; and though the day was wet and disagreeable, the funeral procession, numbering over seventy carriages, passed to the burying-ground along streets which were crowded with respectful and orderly spectators. Flags, flying half-mast high, at many points, and other signs of mourning, indicated at the funeral hour that the capital was doing honour to the memory of a very distinguished citizen and Scotsman.

The relatives of the deceased assembled at the house, and accompanied the hearse to St. Giles' Cathedral. Those present included Mr. Alexander W. Inglis and Mr. H. H. Inglis, W.S., sons; Colonel Hector Mackenzie, nephew; Dr. Wilson, Florence, brother-in-law; Mr. Frank Ogilvie, nephew; Mr. Leslie M. Balfour, W.S., husband of niece; Mr. Frederick Pitman, W.S.; Mr. Finlay B. Anderson, C.A. These gentlemen acted as pall-bearers. The remains of the deceased were enclosed in a metallic shell and a coffin of antique oak, with bronze mountings. The

coffin plate bore the inscription:—"The Right Honourable John Inglis of Glencorse, Lord Justice-General. Born 21st August, 1810; died 20th August, 1891." Wreaths were sent among others by the Kirk-Session of St. Giles, Sir William Muir, the men-servants on Loganbank estate, and the employees on Glencorse estate. About ten minutes to two the funeral car, which was drawn by four horses, and the carriages containing the relatives, left 30 Abercromby Place. As a mark of respect to the deceased, the blinds of the houses in Abercromby Place were drawn, and the flags on hotels in Princes Street and on other public buildings were half-mast high. The route taken was by way of Hanover Street, the Mound, and St. Giles Street. At various points there were small gatherings of the general public, who respectfully saluted the cortege as it passed along. In the High Street a large crowd had gathered, but the police did not experience any difficulty in keeping a clear space in front of the Cathedral, at the west doorway of which the procession halted.

While the remains were being conveyed from the house to the Cathedral, the public bodies which were to take part in the obsequies were assembling in the Parliament Hall and the City Chambers; and the general public were gathering in their thousands all along the route of the procession. Before two o'clock the High Street, North Bridge, and Waterloo Place were lined on either side to the entire depth of the pavement; but by far the largest crowd remained in the vicinity of the Cathedral, where the arrival and departure of the coffin and the mourners were watched with a respectful interest. Parliament Hall was thronged with representatives of the bench, of the bar, and of other branches of the legal profession, the members of which assembled there to robe and form in processional order before entering the Cathedral. Other public bodies, too—including the University, the Society of Accountants, the Royal Infirmary, the Royal Dispensary, the Royal Scottish Academy, the Society of Antiquaries, the Society of Actuaries, the Merchant Company, the Prison Commissioners—met in the Hall, the proximity of which to the Cathedral rendered it convenient as a general meeting place. Amid a silence which was only broken by the voices of the marshals as they gave directions in an undertone, the large gathering was drawn up on the floor of the Hall preparatory to marching into the church—the advocates in wig and gown, Sir William Muir and the University professors preceded by the mace-bearer, and other bodies similarly distinguished by their emblems of office or authority. The progress of the long line of processionists from the Parliament House to the west door of the Cathedral was watched with interest by the public gathered in the Square, the High Street, and St. Giles Street, from which posts of observation could also be seen the members of the Edin-

burgh Corporation in their scarlet robes issuing from the Royal Exchange, preceded by the halberdiers, mace and sword bearers, accompanied by Lord Provost Muir, Glasgow, and Sir J. D. Marwick, town clerk, Glasgow; and followed by the Justices of the Peace and the members of the Dean of Guild Court of Edinburgh. By two o'clock the whole of the public bodies had entered the Cathedral.

Nothing, perhaps, was more calculated to strike the beholder with the public character of the ceremony than the service in St. Giles. The High Church of Edinburgh is, in the minds of most Scotsmen, associated in a peculiar degree with the life and the history of the nation, and the funeral service of yesterday gathered additional solemnity from the venerable associations of the ancient building. The service began at two o'clock, before a congregation which crowded every part of the church. In addition to the representatives of many public bodies in the city there was a large gathering of the general public. These last filled the nave of the church, and had crowded it for half an hour before the service commenced. The chancel and the transepts were reserved for the invited company and for the representatives of public bodies. These bodies as they arrived entered by the western door, and marched in processional order up the nave, and were shown to their allotted places by members of the kirk-session and others who acted as marshals. The Merchant Company of Edinburgh, the Merchants' Association, the Society of Antiquaries in Scotland, and the High Constables of Edinburgh were the first to arrive, and they were directed to places in the Preston aisle. The Midlothian County Council followed them, headed by Mr. Dundas of Arniston, their convener, and by Sir Charles Dalrymple. Next came the Edinburgh Corporation. The city officers of Edinburgh and Glasgow walked in front; behind them came the city sword and mace bearers, with their symbols of office draped in black crape. The Lord Provost of Edinburgh, accompanied by the Lord Provost of Glasgow, headed his colleagues, and both were in their scarlet and ermine robes, and wore their gold chains of office. Behind them walked the Bailies of Edinburgh, similarly attired, the town clerks of Edinburgh and Glasgow, the members of the Edinburgh Town Council, and the Justices of the Peace for the city. They were shown to the Corporation pews on the north side of the chancel. The organ pealed out the opening notes of Chopin's Funeral March. To its moving strains the imposing procession of the College of Justice entered the church, and were received by the congregation upstanding. Following the mace-bearers, the Lord Justice-Clerk, with Lord Adam, headed the procession of his colleagues, all of them in the striking robes of the Scottish bench. The members of the bar followed the representatives of the bench—first the Lord Advocate walking alone;

next Mr. J. B. Balfour, the Dean of Faculty, bearing his staff of office draped in black; after him Sir Charles Pearson, the Solicitor-General; and then the rest of the Faculty, walking two and two, in wig and gown, in long and striking procession, the tolling of the bell outside adding its note the while to the solemn strains of the organ. The judges were shown to their official seats in the chancel facing the Corporation pew, and the members of the Faculty of Advocates occupied the great part of the rest of the choir. When they had taken their seats, the Society of Writers to the Signet, followed by the Society of Solicitors before the Supreme Courts, proceeded up the nave, and were accommodated in the Preston aisle. Next among several bodies claiming less attention came representatives of the Infirmary managers, and lastly the procession of public bodies was closed by the University representatives, who came preceded by the bedellus, with the draped mace, and headed by Principal Sir William Muir, in his Vice-Chancellor's robes.

When all had assembled there were few vacant seats in the venerable pile. The excitement which had been occasioned in the nave by the arrival of the various public bodies speedily subsided, and quietude reigned over all. Not a sound was heard from one end of the building to the other save the tolling of the bell in the tower overhead. Presently all rose to their feet to receive the funeral procession, which had arrived at the western doorway. It was met there by a procession of clergy. At their head walked the Rev. Mr. Ritchie, Dunblane; the Rev. Mr. Carrick, Newbattle; the Rev. Mr. Thomson, Penicuik; the Rev. Mr. Somers, Moffat; and the Rev. Mr. M'Gibbon, Blackford, honorary assistant ministers in St. Giles; the Rev. Mr. M'Vicar and the Rev. Mr. Ritchie, assistant ministers of St. Giles; and the Rev. Mr. Taylor, Reader. Then followed the Rev. Dr. Cameron Lees, with the Rev. Professor Story, Glasgow, and last in the procession walked the Rev. Dr. MacGregor, Moderator of the General Assembly. These preceded the coffin, which, covered with beautiful wreaths, was carried shoulder high along the nave to the east end of the chancel. As it moved slowly onwards, the Cathedral choir, almost in subdued whispers, sang the funeral hymn beginning "When our heads are bowed with woe." The scene at that moment in the Cathedral was most impressive, and when the procession reached the chancel there were few hearts which were not touched, when the voices, growing fainter, sang the mournful strain—

> When the solemn death-bell tolls
> For our own departing souls,
> When our final doom is near,
> Jesus, son of Mary, hear.

By the time the hymn had ended the coffin had been borne to the dais in front of the communion table, round which the clergymen

grouped themselves, while the chief mourners were accommodated with seats under the reredos below the great window. With the congregation still standing, the Rev. Mr. Taylor, one of the officiating clergymen, read a few appropriate sentences from Scripture, beginning—"I am the resurrection and the life," and this was followed by the choir reciting to a chant by Beethoven in a minor key the 90th Psalm, "Lord, Thou hast been our dwelling-place in all generations." A Scripture lesson was next read from 1 Cor., xv. 20—in which St. Paul deals with the mystery of the resurrection—and then the choir sang the beautiful hymn beginning—

Now the labourer's task is o'er,
Now the battle day is past,
Now upon the farther shore
Lands the voyager at last.
Father, in Thy gracious keeping,
Leave we now Thy servant sleeping.

Suitable prayers were afterwards offered by the Rev. Dr. Cameron Lees, whose full, penetrating voice was well heard in every part of the building. In one of the prayers the following passage occurred—

We thank Thee especially for him whose loss we this day mourn. We thank Thee for the long earthly life Thou didst give him, and that he has gone from us in the fulness of years and of honour. We thank Thee for those qualities of heart and mind that endeared him to those who knew him, for the unfailing courtesy, for the clear insight, the calm judgment, the strong intellect, the uprightness of character, the high sense of duty by which he was ever distinguished among us. We thank Thee for the manner in which he fulfilled the duties of the high station to which Thou didst call him, doing the work Thou didst give him to do with all his might even unto the end. We thank Thee for the pleasant memories that are for us associated with him, and that will remain with us, while we live, a prized possession. We thank Thee for the firmness of his belief, for the consistency of his Christian life, for his sense of responsibility to Thee the Judge of all men, and for his service humbly and cheerfully rendered in Thy Church on earth. And we thank you for his peaceful departure, and that, having served his generation by Thy blessed will, he fell on sleep. For these things we thank Thee this day.

The choir sang the "Amen," and immediately thereafter burst into the triumphant "Hallelujahs" of the opening bars of Dr. Stainer's well-known anthem, founded on St. John's question to the angel—"What are these that are arrayed in white robes, and whence came they?" The anthem was sung in a very expressive manner—the sopranos rendering the closing line, "And God shall wipe away all tears from their eyes," in sweet and subdued tones. The service was brought to a conclusion by the Rev. Dr. MacGregor pronouncing the benediction.

To the strains of the "Dead March in Saul," given out by the organ, the coffin was carried down the chancel and nave, and out at the west door again to the funeral car; while in the same orderly manner in which they had entered, the various public

bodies quietly left their seats, and passing out by the Preston aisle entered their carriages in the order in which they appeared in the procession.

Unfortunately for the large concourse of people assembled in the streets, the weather, which during the early part of the day had been very bright and promising, broke down, and from the time the coffin was carried into the Cathedral until it was again removed rain fell continuously. Notwithstanding these unpleasant conditions, however, the crowds in the streets increased rather than diminished during the half-hour or more occupied by the service. Though subjected in this way to a good deal of discomfort, the most perfect order prevailed, and the police, of whom there was a large number on duty, had not the least difficulty in keeping the thoroughfare clear. Representatives of all ranks and classes in society, and composed in a very large part of ladies, many of whom were attired in mourning, out of respect to the deceased, the gathering was in every respect as orderly as the solemnity of the occasion required. At twenty minutes to three o'clock the first of the mourners were observed issuing from the Cathedral, but, owing to the time occupied in marshalling the carriages, it was five minutes past three before the last of the procession drove off. The coffin was removed by the west door, and placed on the open hearse, evoking, as it was borne slowly along the street, many tributes of respect from high and low. Amid solemn silence, broken only by the muffled tolling of the Cathedral bell, the procession moved slowly down the High Street and the North Bridge, along Waterloo Place and Regent Road, along which were assembled thousands of the general public. The order of the procession was as follows :—

Merchants' Association.
Royal Dispensary.
Society of Antiquaries.
Royal Scottish Academy.
Dean of Guild Court.
Merchant Company.
Lord Provost and Town Clerk of Glasgow.
Justices of the Peace.
Prison Commissioners.
Society of Accountants.
Edinburgh University.
Law Agents' Society.
S.S.C. Society.
Society of Writers to the Signet.
Faculty of Advocates.
The Solicitor-General.
Judges of the Court of Session.
Lord Advocate.
Corporation of Edinburgh.
THE HEARSE.
Chief Mourners.
Private Carriages.

The Edinburgh Corporation was represented by the Lord Provost, Bailies Turnbull, Russell, and Dunlop, Dean of Guild Miller, Convener Ramage, Councillors Gillies, Sloan, Pollard, Hunter, Hay, Petty, Mitchell, Thomson, Chalmers, Mackenzie, Murray, J. A. Robertson, Auldjo Jamieson, James Robertson, Gulland, Crichton, Younger, Macpherson, Flannigan, Telfer, Walker, Robert Anderson, M'Crae, and M'Laren; Mr. Skinner, Town Clerk; Mr. Adam, City Chamberlain; with Mr. Russell, chief city officer, in attendance.

Representing the Judges of the Court of Session were the Lord Justice-Clerk, Lords Adam, M'Laren, Kinnear, Trayner, Kincairney, Stormonth-Darling, and Low.

The Faculty of Advocates was represented by the Dean of Faculty, the Vice-Dean, the Treasurer; Sheriffs Graham Murray, Comrie Thomson, Blair, Spens, Hope, M'Kechnie, Jameson, Orphoot, Vary Campbell, Baxter, Lyell, Scott-Moncrieff, and Messrs. R. H. Baillie, R. F. L. Blackburn, C. P. Boswell, Boyd, Chisholm, Constable, J. J. Cook, Cosens, Craigie, Crole, Dean-Leslie, Deas, Dewar, C. S. Dickson, David Dundas, H. J. E. Fraser, R. K. Galloway, Glegg, C. J. Guthrie, Guy, A. E. Henderson, Howden, C. N. Johnston, N. J. D. Kennedy, King, Kinloch, Kippen, Kirk, Lee, Liddall, Campbell, Lorimer, M'Clure, Macintyre, C. K. Mackenzie, Lyon Mackenzie, M'Lennan, Napier, Penney, Ralston, Rhind, Duncan Robertson, Salvesen, Scott, Shennan, R. E. M. Smith, P. Smith, Macaulay Smith, W. C. Smith, Stark, Steele, J. H. Stevenson, Graham Stewart, Sym, James Wallace, and James Crabb Watt.

Among those representing the Society of Writers to Her Majesty's Signet were:—Messrs. C. B. Logan, deputy-keeper; John Cook, collector of Widows' Fund; R. L. Stuart, Alexander Peddie Waddell, John Rutherfurd, George Dalziel, Ralph Dundas, John Stuart, Peter Gardiner, William MacGillivray, James Craik, J. P. Wood, Hugh Auld, W. J. Dundas, Henry Cook, David Shaw, A. P. Purves, J. M. Dickson, T. W. Wallace, F. J. Martin, Charles Cook, J. R. M'Lagan Wedderburn, John Macpherson, W. C. Bishop, J. A. Dalmahoy, William Traquair, jun., W. G. L. Winchester, J. P. Bannerman, F. J. Dewar, James H. Jameson, J. C. Auld, Thomas Horne, James Drummond, N. J. Finlay, James Falconer, James Steuart, J. H. Sang, W. B. Wilson, A. W. Gifford, J. T. Gibson, E. P. Thomson, G. D. Ballingall, J. E. Guild, E. D. Young, W. A. Hartley, Andrew Wishart, V. A. Noel Paton, W. R. Mackersy, A. L. Kennaway, William Thomson, W. C. Hunter, J. A. S. Millar, R. T. Anderson, W. D. Lowe, A. V. Begg, Lewis J. Cadell, F. G. Haldane, A. S. Blair, J. J. Waugh, R. H. Johnston, C. E. Horsbrugh, William Purves, K. R. Maitland, Wyld, Todd, Baxter, George Bruce, and Beatson.

Of the S.S.C. Society, the following office-bearers and Council

of the Society were present, namely:—Messrs. James D. Mack, president; John Smart, vice-president; John Galletly, R. Addison Smith, John Campbell, James M'Intosh, J. B. M'Intosh, John Mathison, James Rennie, D. D. Buchan, H. W. Cornillon and J. B. Sutherland, ex-presidents. Nearly eighty members of the Society, including W. Duncan and D. J. Macbrair, senior members of the S.S.C. Society, were also present.

It was about ten minutes past three o'clock when the carriages at the head of the procession reached the New Carlton Ground in the Regent Road, where the interment was to take place. The cemetery was made at the end of last century, when the new approach to the city at Waterloo Place cut through the Old Calton, and it was for many years managed by the Calton Corporation. Latterly it has come again into the hands of the Corporation, who have put it into creditable order. It is situated on the south-eastern slope of the hill, and overlooks the smoky valley, beyond which, however, rises the more pleasant prospect of Arthur Seat and Salisbury Crags. In the burying-ground are many strongly walled and railed vaults, such as may be seen in Greyfriars and other old Scottish churchyards, with here and there an elm or an ash rising above this resting-place of the dead. In the borders among the grass many brightly coloured autumn flowers were yesterday in bloom. The grave of the Lord Justice-General is situated about the centre of the eastern wall. It has stout freestone walls, pierced in front with a triple arcading, while on the back are three Gothic tablets, that on the left bearing this inscription—"Sacred to the memory of Isabella Mary Wood, the beloved wife of John Inglis, Dean of the Faculty of Advocates, died 20th November, 1855, aged 38; also of their son, John David Inglis, died 9th November, 1861, aged 18." The grave of the Lord Justice-General was made just below the centre tablet. As the company arrived they lined the approach to the burying-ground and the narrow pathway leading down the slope to the grave. The rain was still falling as the coffin, preceded by the Corporation of Edinburgh and the clergy already mentioned, was borne to its last resting-place. As it passed along the gentlemen on each side of the pathway uncovered. The large company arranged themselves near the grave, the scarlet cloaks and draped halberds of the Corporation being seen on the right, while the mourners passed within the walls. A number of women with bare heads and shawls and half a dozen workmen had clambered upon the top of an adjoining tomb to witness the ceremonial, and the windows of some houses on the lower level which commanded a view of the graveyard were filled with spectators. The coffin having been lowered into the grave by the pall-bearers already mentioned, the Rev. Dr. Cameron Lees continued the burial service, "Dust to dust, ashes to ashes," and the obsequies were

concluded by the recital of the Lord's Prayer by the clergy, and the benediction. The grave was then filled in, the wreaths laid upon the top of the turf, and after a parting look at the last resting-place of one of the great Scotsmen of the century, the company gradually dispersed.

APPENDIX O.

Lords of Session from 1800-1891.

[This List does not include judges who are mentioned in other lists in the body of the book. Particulars regarding the first twenty names will be found in Haig and Brunton. Where two dates are given for appointment as judge, the first indicates date of commission, the second the date of admission. Lords Young, Rutherfurd Clark, Adam, M'Laren, Kinnear, Trayner, Wellwood, Kyllachy, Kincairney, Stormonth-Darling, and Low are on the bench. The Presidents of the Divisions have been mentioned on another page.]

1799	William Macleod Bannatyne, -	Lord Bannatyne.
	Claude Irvine Boswell, - -	Lord Balmuto.
	George Fergusson, - -	Lord Hermand.
1802	Alexander Fraser Tytler, -	Lord Woodhouselee.
1805	William Robertson, - -	Lord Robertson.
1806	Charles Hay,- - - -	Lord Newton.
1809	Archibald Campbell, - -	Lord Succoth.
1811	David Boyle,- - - -	Lord Boyle.
	Robert Craigie, - - -	Lord Craigie.
	David Williamson, - -	Lord Balgray.
	Adam Gillies, - - -	Lord Gillies.
1813	David Monypenny, - -	Lord Pitmilly.
	David Cathcart, - - -	Lord Alloway.
	David Douglas, - - -	Lord Reston.
1816	James Wolfe Murray, - -	Lord Cringletie.
1819	Alexander Maconochie, - -	Lord Meadowbank.
1822	William Erskine, - - -	Lord Kinneder.
	Joshua Henry Mackenzie, -	Lord Mackenzie.
1823	John Clerk, - - - -	Lord Eldin.
1825	John Hay Forbes, - - -	Lord Medwyn.
1826	George Cranstoun,- - -	Lord Corehouse.
	Alexander Irving, - - -	Lord Newton.
1829	John Fullerton, - - -	Lord Fullerton.
	Sir James W. Moncreiff, Bart.,	Lord Moncreiff.

1834 Francis Jeffrey, - - - Lord Jeffrey.

Jeffrey, Francis, Lord Jeffrey, 6th June, 1834; born, 23rd October, 1773; died, 26th January, 1850. Educated at the High School of Edinburgh, in 1787 he went to the Glasgow University, and in 1791 he removed to Oxford and completed his academical education at Queen's College; admitted an advocate, 13th December, 1794; editor of *Edinburgh Review*, 1803; chosen Rector of Glasgow University in 1821, Dean of Faculty in 1829, Lord Advocate in 1830, judge in 1834.

1834 Henry Cockburn, - - - Lord Cockburn.

Cockburn, Henry, Lord Cockburn, November 15, 1834; born, 1779; died, 26th April, 1854. Passed advocate, 13th Decem- 1800; Solicitor-General, 1830; Lord Rector of Glasgow University in 1831, judge, 15th November, 1834.

1837 John Cuninghame, - - Lord Cuninghame.

Cuninghame, John, Lord Cuninghame, 16th February, 1837; born, 1782; died, 26th October, 1854. Passed advocate, 7th March, 1807; appointed Sheriff of Moray in 1831, Solicitor-General, 12th May, 1835; judge, 16th February, 1837.

1839 Sir John Archibald Murray, - Lord Murray.

Murray, Sir John Archibald, Lord Murray, 1839; born, 1778; died, 7th March, 1859. Admitted an advocate, 21st December, 1799; appointed Lord Advocate in 1834 (resigned in November), re-appointed 20th April, 1835, and again on 13th July, 1837; M.P. for Leith Burghs, 1832-38; knighted and raised to the bench in 1839.

1840 James Ivory,- - - - Lord Ivory.

Ivory, James, Lord Ivory, 23rd May, 1840; born, 1792; died, 17th October, 1866. Educated at St. Andrews and Edinburgh University, called to the bar, 9th July, 1816; appointed an Advocate-Depute in 1830, Sheriff of Caithness in 1832, transferred to the Sheriffdom of Bute in 1833, Solicitor-General in 1839, judge in 1840, resigned in 1862.

1842 Alexander Wood, - - - Lord Wood.

Wood, Alexander, Lord Wood, 23rd Nov. 1842; died, 18th July, 1864. Passed advocate, 15th June, 1811; appointed Dean of Faculty, 12th Nov., 1841; raised to the bench in 1842; retired, January, 1862.

1843 Patrick Robertson, - - Lord Robertson.

Robertson, Patrick, Lord Robertson, 22nd November, 1843; born, 1795; died, 10th January, 1855. Passed advocate, 27th May, 1815; appointed Dean of Faculty, 29th November, 1842; raised to the bench, 22nd November, 1843.

1850 Thomas Maitland, - - - Lord Dundrennan, Feb. 6.

Maitland, Thomas, Lord Dundrennan, February 6, 1850; born, 9th October, 1792; died, 10th June 1851. Passed advocate in 1813, appointed Solicitor-General, 9th May, 1840, and again 6th July, 1846; M.P. for Kirkcudbrightshire, 1845-50; appointed judge, 6th February, 1850.

1851 Andrew Rutherfurd, - - Lord Rutherfurd, April 7.

Rutherfurd, Andrew, Lord Rutherfurd, April 7, 1851; born, 1791; died, 13th December, 1854. Passed advocate, 27th June, 1812; Solicitor-General, 1837-39; Lord Advocate, 1839-41, and 1846-51; M.P. for Leith Burghs, 1839-51; judge in 1851.

1851 Duncan M'Neill, - - - Lord Colonsay, May 15; aft. Lord Colonsay.

M'Neill, Duncan, Lord Colonsay, May 15, 1851; born, 20th August, 1793; died, 31st January, 1874. Educated at St. Andrews and Edinburgh Universities, passed as advocate, 1st June, 1816; Advocate-Depute in 1820, Sheriff of Perthshire in 1824, Solicitor-General, November, 1834, to April, 1835, and again from September, 1841, to October, 1842; Lord Advocate, 1842 to July, 1846; Dean of Faculty, 1843; Lord of Session in May, 1851; Lord Justice-General, &c., in May, 1852; Privy Councillor in 1853; raised to the peerage under the title of Baron Colonsay, 26th February, 1867; and sat as an appeal judge in the House of Lords.

1851 John Cowan, - - - - Lord Cowan, June 23.

Cowan, John, Lord Cowan, June 23, 1851; born, 1798; died, 1st August, 1878. Educated at Ayr Academy and University of Edinburgh, passed advocate 14th December, 1822; Sheriff of Kincardineshire in 1848, Solicitor-General in 1851, appointed judge, June 23, 1851.

1852 Adam Anderson, - - - Lord Anderson, May 18.

Anderson, Adam, Lord Anderson, May 18, 1852; born, 1797; died, 28th September, 1853. Called in 1818, appointed Sheriff of Perthshire in 1835, Solicitor-General in 1842-46, Dean of Faculty in 1851, Lord Advocate in 1852, judge in May 18, 1852.

1852 John Marshall, - - - Lord Curriehill, *vice* Forbes, Nov. 3.

Marshall, John, Lord Curriehill, November 3, 1852; born, 7th January, 1794; died, 27th October, 1868. Educated at Sorbie Parish School, Grammar School of Wigtown, and Edinburgh University; admitted an advocate in 1818, appointed Dean of Faculty in March, 1852, and promoted to the bench in November of the same year.

1853 George Deas,- - - - Lord Deas, *vice* Cuninghame, May 25.

Deas, George, Lord Deas, May, 25, 1853; born, 7th January, 1804; died, 7th February, 1887. Educated at Perth and Milnathort, and Edinburgh; admitted an advocate, 10th June, 1828; appointed an Advocate-Depute in 1840, again in July, 1846; Sheriff of Ross and Cromarty in 1850, Solicitor-General in 1851, promoted to the bench in 1853, resigned in 1885.

1853 Robert Handyside, - - Lord Handyside, *vice* Anderson, Nov. 15.

Handyside, Robert, Lord Handyside, November, 15, 1853; born, 1798; died, 17th April, 1858. Educated at the University of Edinburgh, admitted an advocate in 1822, appointed a commissioner of inquiry into the state of the municipal corporations in 1833, Advocate-Depute in 1835, Sheriff-Depute of County of Stirling in 1840, Solicitor-General in 1853, and promoted to the bench in November, 1853.

1853 Hercules James Robertson, - Lord Benholme, *vice* Fullerton, Dec. 7.

Robertson, Hercules James, Lord Benholme, December 7, 1853; born, 13th October, 1795; died, 15th September, 1874. Educated at Edinburgh University, and called to the bar in 31st May, 1817; appointed Sheriff of Renfrewshire in 1842, judge, 7th December, 1853.

1854 Charles Neaves, - - - Lord Neaves, *vice* Cockburn, May 13.

Neaves, Charles, Lord Neaves, May 13, 1854; born, 14th October, 1800; died, 23rd December, 1876. Educated at Edinburgh High School and the University, admitted an advocate in 1822, appointed Advocate-Depute in 1841, Sheriff of Orkney in 1845, Solicitor-General in 1852, raised to the bench in 1854, Justiciary judge, 1858.

1855 James Craufurd, - - - Lord Ardmillan, *vice* Rutherfurd, January 10.

Craufurd, James, Lord Ardmillan, January 10, 1855; born, 1805; died, 7th September, 1876. Educated at Ayr Academy, Universities of Glasgow and Edinburgh; passed as advocate, 1829; Advocate-Depute in 1840, Sheriff of Perth in 1849, Solicitor-General in 1853, judge in 1855.

1855 Thomas Mackenzie, - - Lord Mackenzie, *vice* Robertson, January 29.

Mackenzie, Thomas, Lord Mackenzie, January 29, 1855; born, 16th April, 1807; died, 26th September, 1869. Admitted an advocate in 1832, appointed Solicitor-General, 10th January, 1855; promoted to the bench on 25th January, 1855; retired, 11th November, 1864.

1858 William Penney, - - - Lord Kinloch, *vice* Handyside, May 7.

Penney, William, Lord Kinloch, May 7, 1858; born, 8th August, 1801; died, 30th October, 1872. Educated at Glasgow University, admitted an advocate in 1824, raised to the bench in 1858.

1859 Charles Baillie, - - - Lord Jerviswoode, *vice* Murray, April 15.

Baillie, Charles, Lord Jerviswoode, April 15, 1859; born, 1805; died, 23rd July, 1879. Admitted in 1830, Advocate-Depute from 1844-46, and again from February to December, 1852; appointed Sheriff of Stirlingshire in 1853, Solicitor-General and Lord Advocate in 1858, judge in 1859, Lord of Justiciary, 1862; retired in 1874.

1862 Robert Macfarlane, - - Lord Ormidale, *vice* Wood, January 13.

Macfarlane, Robert, Lord Ormidale, January 13, 1862; born, 30th July, 1802; died, 3rd November, 1880. Educated by private tuition, and at Glasgow and Edinburgh Universities; practised ten years as a W.S., admitted an advocate in March, 1838; was an Advocate-Depute, appointed Sheriff of Renfrewshire in December, 1853; and judge in February, 1862; transferred to Second Division in 1874, retired in 1880.

1862 Edward Francis Maitland, - Lord Barcaple, *vice* Ivory, November 10.

Maitland, Edward Francis, Lord Barcaple, November 10, 1862; born, 16th April, 1808; died, 23rd February, 1870; LL.D., Edinburgh. Educated at the High School and University of Edinburgh, admitted an advocate in 1831, appointed an Advocate-Depute in 1847, appointed Sheriff of Argyllshire in 1852, Solicitor-General in 1855, judge in 1862.

1865 David Mure, - - - - Lord Mure, *vice* Mackenzie, January 11.

Mure, David, Lord Mure, January 11, 1865; born, 1810; died, 11th April, 1891. Passed advocate, 1831; Sheriff of Perthshire, 1853; Solicitor-General, 1858; Lord Advocate, 1859; judge, 1865; resigned, October, 1889.

1867 George Patton, - - - Lord Glenalmond.

Patton, George, Lord Glenalmond, 1867; born, 1803; died, 20th September, 1869. Educated at Cambridge; passed as advocate, 1828; Lord Advocate, 1866; appointed Lord Justice-Clerk, 1867.

1868 George Dundas, - - - Lord Manor, *vice* Marshall, October 14.

Dundas, George, Lord Manor, October 14, 1868; born, November 19, 1802; died, 7th October, 1869. Educated at High School of Edinburgh, Glasgow University, and at Balliol College, Oxford; admitted an advocate in 1826, Sheriff of Selkirkshire in 1845, Vice-Dean from 1855-68, judge in October 14, 1868; LL.D., Edinburgh.

1870 Adam Gifford, - - - Lord Gifford, *vice* Dundas, January 26.

Gifford, Adam, Lord Gifford, January, 26, 1870: born, 1820; died, 20th January, 1887. Called to the bar, 1849; Advocate-Depute, 1861-65; Sheriff of Orkney, 1865-70; judge, 1870; resigned in 1881.

1870 Donald Mackenzie, - - Lord Mackenzie, *vice* Maitland, March 16.

Mackenzie, Donald, Lord Mackenzie, March 16, 1870; born, 1818; died, 19th May, 1875. Admitted an advocate in 1842, appointed Advocate-Depute in 1854, Sheriff of Fife in 1861, judge in 1870.

1872 Alexander Burns Shand, - Lord Shand, *vice* Penney, December 9.

Shand, Alex. Burns, Lord Shand, December 9, 1872; born, 1828. Called to the bar, 1853; Advocate-Depute, 1860-62; Sheriff of Kincardine, 1862-9; of Haddington and Berwick, 1869-72; judge, 1872; resigned, July, 1890.

1874 George Young, - - - Lord Young, *vice* Cowan, February 19.

1874 John Millar, - - - - Lord Craighill, *vice* Baillie, July 15.

Millar, John, Lord Craighill, July 15, 1874; born, 1817; died, 22nd September, 1888. Passed advocate, 1842; Advocate-Depute, 1858-9 and 1866-7; Solicitor-General, 1867-8 and 1874; Q.C., 1868; judge, 1874; Justiciary, 1876.

1874 John Marshall, - - - Lord Curriehill, *vice* Robertson, October 29.

Marshall, John, Lord Curriehill, October 29, 1874; born, 1827; died, 5th November, 1881. Educated at Edinburgh Academy, Universities of Glasgow and Edinburgh; admitted an advocate in 1851, appointed a judge in 1874.

1875 Andrew Rutherfurd-Clark, - Lord Rutherfurd-Clark, *vice* Mackenzie.

1876 James Adam, - - - Lord Adam, *vice* Craufurd.

1880 Robert Lee, - - - - Lord Lee, *vice* Neaves, May 5.

Lee, Robert, Lord Lee, May 5, 1880; born, 1830; died, 11th October, 1880. Passed advocate, 1853; Advocate-Depute, 1867-74; Procurator of Church of Scotland, 1869; Sheriff of Stirling and Dumbarton, 1865, Perthshire, 1877; judge, 1880.

1881 Patrick Fraser, - - - Lord Fraser, *vice* Macfarlane, February 8.

Fraser, Patrick, Lord Fraser, February 8, 1881; died, 27th March, 1889. Passed advocate, 2nd December, 1843; Sheriff of Renfrew, 1864-81; LL.D., 1871; Dean of Faculty, 1878-81; Q.C., 1880; judge, 15th February, 1881.

1881	John M'Laren, - - -	Lord M'Laren, *vice* Gifford, August 15.
1882	Alexander Smith Kinnear, -	Lord Kinnear, *vice* Marshall, January 2.
1885	John Trayner, - - -	Lord Trayner, *vice* Deas, February 26.
1888	Henry James Moncreiff, - -	Lord Wellwood, *vice* Millar, November 1.
1889	William Mackintosh, - -	Lord Kyllachy, *vice* Fraser.
	William Ellis Gloag, - -	Lord Kincairney, *vice* Mure.
1890	Moir T. Stormonth-Darling, -	Lord Stormonth-Darling, *vice* Shand.
	Alexander Low, - - -	Lord Low, *vice* Lee.

INDEX.

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