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GENEALOGICAL NOTICES

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THE NAPIERS OF KILMAHEW,

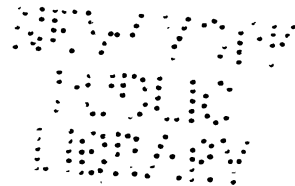
IN

DUMBARTONSHIRE.

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MDCCCLXIX.



GENEALOGICAL NOTICES.

NAPIER OF KILMAHEW.

PARISH OF CARDROSS, DUMBARTONSHIRE.

THE name of Napier is equally ancient and honourable.* Many of those who inherit it are able to trace their descent from a very remote period; and many of them are also able to point to some of their ancestors as eminently distinguished in the annals of their country. In science and learning, legislation, diplomacy, and war, the Napiers can boast of having excelled, at various periods of our national history; and, perhaps, at no period have they shone with greater lustre than during the last fifty years. The annals of our literature, and the records both of the army and navy, bear ample testimony to their merit and accomplishments, both in letters and in arms; while our dockyards and harbours have sent forth evidence over every sea in the world, of their science, skill, and perseverance in improving the greatest mechanical triumph of the age—Steam Navigation. In that branch of mechanical science alone, they have certainly attained a proud pre-eminence, and perhaps it is not going too far to assert that nothing of greater benefit, or of higher importance to this country, has been carried into effect since the illustrious Baron of Merchiston gave his Invention of the Logarithms to the world.

It is with feelings therefore of no ordinary interest that we now trace the origin of the most ancient, and leading family of this distinguished name, resident for centuries in Dumbartonshire, and from which seem to have sprung nearly all those who have contributed lustre to the name of Napier. The Lennox can indeed boast of having possessed, from the earliest times,

* See Mr Mark Napier's Appendix to his History of the Partition of the Lennox, where the learned Author enters fully into an investigation of the origin of this name.

the most remarkable names in Scottish History, from the chivalrous brother of William the Lion down to the eminent novelist, poet, and historian, Dr. Smollet. It produced a Royal Consort, the unhappy Darnley having been a descendant of the first princely lords of the district; Malcolm, the fifth earl of that line, the friend and companion of Bruce, occupied a prominent place among the heroes of Scottish Independence; Murdoch, duke of Albany, and Regent of Scotland, found a bride here, from whom came the noble houses of Avandale, Ochiltree, and Castlestewart; but it has cradled no name, perhaps, which has reflected greater honour on its birth-place, or greater credit on this country, than that which, as already said, has been foremost in mathematical science, eminent in literature, most glorious in war, and most honourable in the promotion of civilization, by the encouragement and improvement of the useful arts.

There is a legendary tradition as to the origin of the name itself, which is not altogether devoid of interest. It is said, in the quaint words of an old Chronicler, of the time of James II., that "one of the ancient Earls of Lennox in Scotland, had issue, three sons; the eldest, that succeeded him to the Earldom of Lennox; the second, whose name was Donald; and the third, named Gilchrist. The then King of Scots having wars, did convocate his lieges to battle, amongst whom that was commanded was the Earl of Lennox, who, keeping his eldest son at home, sent his two sons to serve for him, with the forces that were under his command. This battle went hard with the Scots; for, the enemy pressing furiously upon them, forced them to lose ground until it came to flat running away, which being perceived by Donald, he pulled his father's standard from the bearer thereof, and valiantly encountering the foe, being well followed by the Earl of Lennox's men, he repulsed the enemy, and changed the fortune of the day, whereby a great victory was got. After the battle, as the manner is, every one drawing and setting forth his own acts, the King said unto them, ye have all done valiantly, but there is one amongst you, who hath NAE-PEER; and calling Donald into his presence, commanded him, in regard of his worthy service, and in augmentation of his honour, to change his name from Lennox to Napier, and gave him the lands of Gosford, and lands in Fife, &c."

This is no more than a very innocent old woman's tale, but it is a some-

what curious coincidence that Father Hay, in his manuscript memoirs, should mention a charter, dated in 1150, to Sir Thomas de la Haye de Locharward; upon which he remarks that he (Sir Thomas) had married, "Montfiguett, heretrix of Locharwart, and of this marriage had Sir William, who succeeded him, and *Margaret, married to Donald, son to the erle of Lennox, of whom is come the family of Napier.*" (*M.S. Advocates' Library.*)

Peerage and Baronetage literati, who are troubled with few scruples, and, forgetful or ignorant that nearly all who were honourable in story, or renowned in the olden time, are to be found represented by the *untitled* families of the present day, seem to think that every thing in the shape of ancient tale and ancestral eminence ought to belong as of right to the titledom they worship, have not hesitated to appropriate this legend as the peculiar property of the present noble family of Napier.* But it now appears that this "morceau exquis" for the heralds was recorded in their College (!) in England, on the occasion of a baronetcy being conferred by the poor, venal, and greedy James VI. on a wealthy Turkey Merchant, who was willing to pay well for his title, and for whom it would appear that it was also necessary to fabricate a genealogy by making him the descendant of a cadet of Merchiston, a surreptitious origin which has since been exposed. (*Legal and Historical Tracts, by John Riddell, Esquire, Advocate.*)

Mr Mark Napier in his life of Merchiston, also claims the benefit of this legendary origin, for the Inventor of the Logarithms, and attempts to give a substance to the appropriation, by founding on certain seals of the Merchiston family, bearing the arms of Lennox. The authenticity of the seals so founded on is doubted, but supposing them to be genuine, it is well known, that vassals frequently adopted the armorial bearings of their feudal lord, sometimes with a difference, and sometimes without one. In the Lennox alone, whence have sprung all the Napiers, examples illustrative of this practice are to be found in the families of Douglas of Mains, Lindsay of Bennule, and Blair of Finnick, all of whom bore the arms of Lennox.†

* See also Crabb's Historical Dictionary.

† See Mr Riddell's Tracts on the Partition of the Lennox, where the Claim of the Merchiston Napiers to represent the ancient family of Lennox is most fully discussed.

Douglas also, in his *Peerage*,* and in his usual loose way, unblushingly presses the ancestry of the Kilmahew family into the service, in order to make up a genealogy for the Lords Napier, although he had the work of the accurate Nisbet before him, who speaking of the first Napier of the Lennox, says, "John le Naper is, I suppose, the ancestor of the Napiers "of Wrighthouses near Edinburgh, who were an ancient family; for the "Napiers of Merchiston began but to make the great figure they did in King "James the Second's time; of them is the Lord Napier descended."

The biographer of Merchiston is content to trace the learned Baron's descent (in his case how needless) from an immediate ancestor and burgess of Edinburgh, though it is most probable, that like the family of Wrighthouses, who impale the arms of Kilmahew, the now ennobled family of Merchiston was also an offshoot from the chief family of that name in the Lennox, and if they have any claim to the legendary rubbish above quoted, it must be as cadets of Kilmahew, than which a more honourable origin could not be desired.

This conjecture is borne out by what is said by Sir David Lindesay, who gives the arms of the family of Merchiston, as being quarterly; Lennox with a difference (probably as arms of vassalage) in the first and fourth quarters, the second and third being left blank, in all likelihood for Napier proper, which, however, has been allowed to be eclipsed by Lennox, especially after the alliance with the Lennox co-heiress. (*Orig. Reg. of Arms, Advocates' Library.*)

Mr Riddell, in his learned and acute *Legal and Historical Tracts*, above referred to, states that Mr Thomas Crawford, Professor of Mathematics in the College of Edinburgh, contemporary with Charles I., says, in confirmation of Sir David Lindesay, that the family of Merchiston before their elevation to the peerage, *impaled* the arms of Napier of Kilmahew with Lennox; and Mr Riddell adds, that it is certain, from the seal of Archibald, first Lord Napier, appended to his portrait in Mr Mark Napier's work, that he bore the principal charge or device of Kilmahew—the crescent in the crest, which may have been in remembrance of their original

* See *Peerage*, Vol. II., p. 282.

descent. Nisbet, that careful and laborious genealogist and herald, says, —if his dictum be requisite:—

“What Napier of Merchiston, the most eminent family of the name, carried of old I know not; but since John Napier of Merchiston married Margaret (Elizabeth) Monteith, daughter and co-heir of Murdoch Monteith of Ruskie, and one of the heirs of line to Duntan Earl of Lennox, in the reign of James the Second, they have been in use to carry only the arms of Lennox, viz.: argent, a saltier engrailed, cantoned with four roses, gules.”

But, whatever may have been the origin of the Napiers, be it legendary or otherwise, and whichever family of that name may best claim such traditional descent, it now matters little. It is sufficient for the genealogist that the first appearance of the name in Scotland, is as vassals and allies of the Earls of Lennox, and the first and earliest, of whom any notice is to be found, is

Johannes Naper, who is mentioned in an Inhibition by Robert, Bishop of Glasgow, preserved in the Chartulary of Paisley, and dated in 1294, directed against Malcolm, Earl of Lennox, and his adherents.

“This is obviously,” (says Mr Mark Napier, in the Appendix to his History of the Partition of the Lennox) “the same John Naper, who is mentioned in that degrading document, commonly called the Ragman Roll, wherein the names of the Scottish Barons are recorded who swore fealty to Edward I. in the year 1296.” He is there called *Johan le Naper del counte de Dumbretan*. “So far as I know, (adds Mr Napier,) this is the earliest Napier upon record in Scotland, and it is interesting to find that not only is he a distinguished and historical character, but that a long line of his descendants can be distinctly traced. He was one of the gallant but unfortunate defenders of the Castle of Stirling, when reduced to extremity in the year 1304, by King Edward in person. Before the walls of the last tower in Scotland which opposed his march, that ruthless conqueror seems to have acquired a momentary respect for patriotic valour, which it would have been well for his fame had he extended to Sir William Wallace. He spared the lives of the few obstinate warriors who survived the reduction of Stirling Castle, and issued an express command that the gallant prisoners, among whom was John le Naper, should be

spared the pain and indignity of iron fetters." After experiencing every kind of ignominious treatment he was fined in three years' rent of his estate, in 1305. Rymer has preserved to us the "Instrumentum Publicum de Recognitione superioritatis Domini Regis Angliae per Prelatos et Nobiles terrae Scotiae, et Redditione Castri de Strivelyn;" and John le Naper is one of the twenty-six nobles and prelates whose names are affixed to that document. "There is no doubt, however, (continues Mr Napier,) that he was Napier of *Kilmahew* in the Lennox, and I have been able to trace the descent of that family, (though it is now extinct, and their papers lost) from him, down to modern times, through chartularies and other authentic records. They were originally close allies and vassals of the Earls of Lennox, and became of baronial rank in that district of Scotland, where the family remained until its extinction in the last century."

It is possibly his son, if not indeed the same

Johannes Naper,* who is witness to a Charter of Confirmation by Robert King of Scotland "*Domino Johanne de Luss*," dated in 1316, and to other Charters by Malcolm de Levenax of subsequent dates. (*Lennox Chart.*) He was succeeded by

William Naper, son of Johanne Naper, as appears from the subsequent Charter to Duncan, who had a Charter from King David II., "of the half lands "of Petfour, Perknoc, vic. Perth; *the half lands of Kilmahew*, † *where the Chapel is situate*, vic. Dumbartan, by forfaltrie of Dornagill Montifixo," Whether this Napier of Kilmahew, is the same *William de Naper*, who had a Charter in 1376, from Robert II., of lands in Haddington, and again from Robert III., in 1390, it is impossible to say. It was probably this *William Naper de Scotia* who had a safe conduct from Richard II. of England, dated 14th October, 1398, for himself "cum quatuor servientibus tam equitibus quam peditibus," and in which the names of "*William de Cunyngham miles de Scotia*," and of "*Thomas Kere de Scotia*,"

*The compiler of these notes has made it a rule invariably to adopt the mode of spelling the name, and also the designation, which is used in the document from which the information is derived.

† See Appendix.

cum quatuor servientibus suis tam equitibus quam peditibus," are included.* (*Rotuli Scotia*, Vol. II. p. 144.) At all events,

Duncan Naper, his brother, had a Charter, (dated previously to 1400,) from Walter, son of Alan, lord of Lennox, confirming to him "*domino de Kylemeheew*" pro homagio et servitio quondam *Johannus Naper, patris ipsius Duncani*," certain lands, "de Bullul et Miltoun, que quondam fuerunt *Willielmi Naper fratris dicti Duncani*." (*Lennox Chart.*) He was succeeded by

John Naper, Dominus de Kilmehew, who is witness to a Charter by John de Dolas of Estir Leky, to Murdoch de Leky, of the lands of Estir Leky, in the shire of Stirling, which Charter is dated at Leky, 10th February, 1406-7. (*Robertson's Index.*) The same *Johne Naper, lorde of Kilmehewe*, is one of the assize, mentioned in a decree by John Forstar of Corstorfyne, Chamberlane of Scotland, in an action between the Burghs of Renfrew and Dumbarton, dated, "at Edinburgh, the third day of the moneth of Januare, the Zere of our Lord, a thousand four hundredth twenty and nynt Zere." (*Hamilton's Lanark and Renfrew.*) He was succeeded by

Duncan Naper of Kilmahew, who in 1467, granted to the chapel of Kilmahew several annual rents, from tenements in the burgh of Dunbarton. (*Macfarlane's Extracts from the Great Seal, Reg. MS., 4to, page 280.*) This "*Duncan de Kilmahew*" is one of the inquest in the retour of Elizabeth Menteith of Lennox and Rusky, spouse of John Napier of Merchiston, dated 4th November, 1473. To this document Kilmahew's seal is appended, and it is fortunately entire. The armorial bearings are a bend charged with three crescents (*Merchiston Papers*).† He was succeeded by

James Naper of Kilmahew, who is one of the inquest in the retour of the brieve of division of the Earldom of Lennox, as to the above mentioned Elizabeth Menteith's share thereof, which retour is dated in 1490.

* "*William de Cunyngham*," here mentioned, is probably one of the numerous Cunninghams of the Baillicwick of that name; and, "*Thomas Kere*" may possibly also be one of the Kerrs of Kerrisland,—who were early settled in that part of Ayrshire.

† It would be more correct to quote Mr Mark Napier's *Life of Napier of Merchiston*, as the source from which this information is derived. Mr Napier himself, states that in the Merchiston Charter Chest, the documents referred to are to be found.

A seal with the same bearings is also attached to this document. (*Merchiston Papers.*) He was succeeded by

John Naper of Kilmahew. He and John Buntyne of Ardeoch'are, August 16, 1536, cautioners for Walter Makfarlan, "for his entry at the next Justice-aire of Dunbertane." (*Pitcairn's Crim. Trials.*) He was succeeded by

Robert Naper of Kilmahew, who is mentioned as absent from the assize, held Oct. 8, 1541, for the trial of the "Laird of Bishoptoune and others, "dillaited of Convocation of the lieges, and Invasion of Andrew Hamilton, Provost of the City of Glasgow, for his slaughter." (*Pitcairn.*) He was succeeded by

Patrick Naper of Kilmahew, as appears from the "Ratificatioun of the Dispositioun of the Reversionis of the erldome of Lennox, in favour of Esme Stewart, Duke of Levenax, erll darnlie, Lord dalkethe, tarbol-toun and obegnie, hie and great chalmerlane of this realme, dated in 1581.

The first reversionis mentioned are, "ane reversioun maid be Patrik "Naper of Kilmahew to umq'll matthow erll of lennox for redemptioun "of the toun and landis of Inshinnane contenand thairintill the soume "of ane thowsand four hundreth merkis money Of the dait at howstoun "the fyft day of aprill the Zeir of God Jm Vc. lxxvij Zeiris". And also, "The reversioun maid be the said Patrik nepar and Kathkrene noble his "spous be (to) ye said erll of the landis callit the eister half of the manis "of Inchynnane contenand the soume of nyne hundreth merkis of the "dait at Kirkmahew The sext day of Julii The Zeir of God Jm Vc Exx "Zeiris." (*Scots Acts of Parl.*) He was succeeded by

Peter Naper of Kilmahew, who was slain in 1603, by the MacGregors, at the "conflicte of Glenfruine," sometimes called the "field of the Lennox," where he had accompanied Colquhoun of Luss. See Pitcairn's Crim. Trials, vol. II., p. 433, (*Mailland Club edition*), where a succinct account of the conflict, and the records of the judicial measures, that followed upon it, are to be found.* He died seized of the Ten Pund land of old extent of Kilmahew; and also of All and Hail the twa Bonnyllis-

* See Appendix.

Naper and Miltoun, extending to ane ten merk land,—as appears from a Precept of Clare Constat, dated 26th March, 1603, granted by Ludovick, Duke of Lennox, in favour of his son, and addressed to Aulao Mackola de Ardingapill, Baillie of the Regality of Lennox. Mention is made of three sons of this Peter Naper,

*John,
James, and
Patrick.*

He was succeeded by

“*Johnne Naper*,” designed “*sons and air to umq’u Peter Naper of Kilmahew*,” who was infeft on the above-mentioned precept on 21st April, 1603.* There are nine witnesses to the seisin given of Kilmahew, and among their names appear those of John Naper, N.P., (doubtless a near connection of the family,) James Denyelstoune de Colgrane, and James Naper, brother-german of the said John Naper (meaning evidently John of Kilmahew). Among the nine witnesses to the infeftment of the two Bonnyllis, James Naper’s name again appears. After taking seisin on Kilmahew, the Notary, and some of the party, must have travelled to Bonhill, the seisin there being in presence of a different set of witnesses.

This Johnne Naper of Kilmahew, was on the juries in February and March, 1604, who convicted some of the clan Gregor for their participation in the slaughter of the Colquhouns at the battle of Glenfruin. He was also on the jury in 1622, that convicted two of the Camerons for “intercommuning with the MacGregors, slaughter, fire-raising, theft, &c.” He married the Lady Susanna Cunningham, fourth daughter of William, Sixth Earl of Glencairn, who succeeded, about 1574, to his father Alexander, called by the covenanters the “Good Earl.” (*Douglas’ Peerage*, vol. II., p. 636.) He was succeeded by his son,

Robert Napier of Kilmahew, who on 25th April, 1626, had a charter

* Down till this Baron of Kilmahew, the geneslogy of the family has been made up almost entirely from information derived from public records—such as, Robertson’s Index, Pitcairn’s Criminal Trials, and the Scots Acts of Parliament. In such instances, when the parties are mentioned, their names only appear, very rarely those of their wives; but in scarcely any case, is there any trace of the connection betwixt them, and predeceasing members of the family. It is, therefore, impossible to state what relationship the parties bore to each other, or by what title they held their lands, whether by descent or by grant. As it is, however, these notes shew a long, unbroken, and honourable line of succession. The subsequent account of the family is principally obtained from writs in the Kilmahew Charter Chest.

from his father to himself, and his proposed spouse, Katherine Halden, of the three and a half merk land of Mylnetoun of Naperstoun, and also the half of Midle Naperstoune called Ballules.* Patrick Naper, designed "my brother," James Halden in Sauchanes, and Alexander Barclay, Notar in Striviling, are the witnesses. There are nine witnesses, chiefly occupants of the different farms, or servitors of Kilmahew, to the seisin, dated also 25th April, in favour of "Robert Naper, son, and apparent heir of John Naper of Kilmahew," and "James Halden as actorney, and in the name of Katherine Halden;"—"egregius vir Patricius Napex," being Bailie to give infestment. He was, in 1644, served heir in general to his father, who died in this year, as in 1643, *John Naper* is one of the Commissioners for the Sherifdom of Dumbarton, for raising the loan to the King, and in 1644, he is on the Committee of War for the County.

In 1645, Robert Naper has a Precept of Clare Constat, (interesting from the signatures attached to it,) by William, Earl of Glencairn, Alexander, Earl of Linlithgow, David, Earl of Southesk, John, Earl of Traquare, Archibald Lord Angus, Sir William Cochrane of Coldoun, and Magister Robert Bruce of Gellet, advocate, as commissioners for the noble and mighty Prince, James Duke of Lennox and Richmond, Earl of Darnley, &c., &c. The lands contained in this writ are the same as in the charter of 1603, with the addition of "All and Hail the fyfe pund land of Laid Cameroche, lyand in the paroch of Kilpatrick." Kilmahew was held ward, and the Ten merk land of the Two Bonnylls for a pound of wax, &c. Seisin followed on 24th February, 1645.

But it is probable, that as fiar of the lands, he was in possession of the estate for some time previously, as in 1640, (16th April) "for the glory of God, and the training up of youth† within the parish (Cardross), in learning," he "condescends for him his heirs and possessors of his lands, to give the use of his chappel of Kilmahew bewest the Quir thereof, for and in place of a school," and obliges himself farther to pay four score merks money of Scotland, at Lambas and Candlemas, with five bolls and one firiot of Teind Bear to the schoolmaster, to whom he also

* See Appendix.

† The Act of Parliament "for founding Schooles in everie paroch," was passed 2nd February, 1646. Robert Napier appears to have been some years in advance of the times, so far at least as regards public instruction.

“mortifies an house and an piece of land lyand thereto beside the chapel of
 “Kilmahew, extending to about an acre or thereby, together with an piece
 “of land for pasture, which was of old possesst by the priest of Kilmahew,
 “by order of the said Robert Napier of Kilmahew, his predecessors in
 “time of superstition and popery.” “Attour in case it shall be found that
 the said schoolmaster shall be quallified and able for prayers, and using
 family exercise, in that case the said “Robert Naper of Kilmahew obliges
 “himself and his forsaid to intertain the said schoolmasters present and
 “to come in meat drink and bedding, in household with himself, within
 “the house of Kilmahew, for discharging of his duty and family exercise,
 “and using of prayer within said house and place of Kilmahew, so long
 “as the schoolmaster is able and willing to undergo the same duty of
 “prayer and family exercise within the said family.”* It is stipulated at
 the same time that “ilka schoolar resorting to the said school, dwelling
 “within the parochine, shall pay to the said schoolmaster thereof for their
 “schoolwage Quarterly the sum of six shillings eight pennies scots, and
 “ilka schoolar coming frae any other part without the parochine, shall
 “pay quarterly for their schoolwage to the schoolmaster the sum of 13
 “shillings four pennies scots by and attour the gratitude, and ilk Candle-
 “mas as the use is.” The schoolmaster is also, when qualified, “to be
 “received for taking out the psalms before and after sermon as use is.”
 He is also to be clerk of session, and receive the “benefits and duties” for
 proclaiming the “bonds” of marriage, and at baptisms. Robert Napier
 of Kilmahew subscribed the original liberal deed of gift from which the
 preceding extracts are made, “before these witnesses, John Napier,
 “Younger, of Kilmahew, James Napier, his brother, John Campbell,
 “servitor to the said Robert Napier, and James Thom, Writer in Dum-
 “barton.” He had two sons and one daughter,

John, of whom afterwards;

James, who probably died unmarried, as he is not mentioned in John's deed of ent-
 tail; and

Ann, who was married to John Maxwell of Blackston;

And was succeeded by his eldest son,

John Napier of Kilmahew, who married *Lilias*, second daughter of Sir

* See Appendix.

John Colquhoun of that Ilk, and of Luss, (first baronet,) by Lillias Graham, daughter of John, fourth earl of Montrose, and sister of the great Marquis.* This Sir John Colquhoun was created a baronet in 1625, and was fined by Cromwell in £2000 sterling, (in 1654,) for his adherence to the cause of Charles I. The precise date of Kilmahew's marriage does not appear, but on 28th June, 1649, the lands were resigned in the hands of the superior by "John Buntein, Wryter in Glasgow, as Procurator for Robert Naper of Kilmahew and John Naper his eldest sone and apparant air, "on the one pairt; and John Colquhoun of Lus, and Lillias his second "sister on the other pairt." Robert Naper seems thus to have settled his lands on his son and heir, on the occasion of his marriage, a connection which he must have viewed with much favour, and the Instrument of Resignation contains a reservation of the liferent of "Margaret Naper, "relict of umq'll John Naper of Kilmahew, liferentrix of the lands of "Maines and little Balveyis."

This feudal surrender bears to have been made "in the lodging of "William Lord Cochran, within Glasgow, upon the southsyde of the "streite at the heid of Bells-wynd, quhair he chambered for the tyme."

The resignation was followed by a Precept in favour of John Naper, younger of Kilmahew, and Lillias Colquhoun, spouses, in which the liferents of Robert Naper and Katherine Halden are reserved, and on which Sasine passed on 26th August, 1649. One of the witnesses is James, son of the late James Naper in Ardoch-Campbell. In 1662, Lillias Colquhoun is infeft, on a grant by her husband, in the seven pund land of Waltoun and Wallacetoun, in Balturrich, in the barony of Haldan, and parish of Kilmaronock, and in Miltoun of Naperstoun, and the Miln of Balloch, in the parish of Bonyll. James Naper, brother of Kilmahew, Darleith of that Ilk, and Buntein of Geilstoun, are among the witnesses.

In 1672, John Naper de Kilmahew had a charter from Charles Duke of Lennox, of nearly all his lands, which with the writings above referred to and the Deed of Entail, † executed in 1687, show the very great extent of

* Douglas (Baronage, p. 26) erroneously makes Lillias Colquhoun the *eldest* daughter. The compiler of these notes is in possession of the Instrument of Resignation on her contract of marriage. Douglas also makes Lillias Graham a *niece* instead of a *sister* of the great Marquis.

† See Appendix.

the possessions of the family. These possessions, of course, conferred great political power, and accordingly he was returned along with Sir John Colquhoun of Luss, (second baronet,) his brother-in-law, as Member of the Parliaments of Scotland of 1669 and 1672, for the county of Dumbartane. In 1674, *John Napper* of Kilmahew concurs, probably as a creditor, in a letter of obligation made by Patrick Maxwell of Newark, to dispoise his Baronie of Newark to Sir Patrick Houstoun of that Ilk, for the price of 28,420 merks. (*Penes Cunninghame of Craigends.*)

Napier would appear to have shewn that attachment to Presbytery, which was evinced by his father's donation, certainly for most praiseworthy objects, of that remnant of Popery, as it was doubtless considered, the chapel of Kilmahew. The administrators of the somewhat intolerant enactments of Charles II., could not expect from the son of so orthodox a parent, even an outward compliance with the rules of faith and worship which the law had prescribed; a compliance which Napier seems to have wanted the wisdom, shewn by the majority of his co-land-owners, if he had not the inclination, to accord; for, at Dumbarton, on February 19, 1685, after having been duly indicted for non-conformity, under the Acts of Parliament thereanent, he "for his non-compearance, is holden as "confest and is fined in the sum of £2000 sterling money of England, for "himself and his lady," by the Commissioners of Council and Justiciary. The sum of £2000 in 1685, was equal to five times, perhaps to more nearly ten times, that amount now-a-days. It was natural that a person who had made such sacrifices should be placed in the "high places" at the revolution, and accordingly in April, and October, 1688, he is a ruling elder in the united Presbyteries of Glasgow, Paisley, and Dunbritton, and one of the brethren nominated for committees; and, in October, 1689, he protests and appeals from the sentence of the Synod, for transporting the Rev. Mr Gillies from Cardross to Glasgow. (*Maitland Club Miscellany.*)

In October, 1690, he would seem to have been disposed still to favour the new faith, for he allows a bell, specially bequeathed to the chapel of Kilmahew, to be, ad interim, suspended and used in the parish church;* and he seems to have died some time afterwards, 1689 being the last year in which he is named a Commissioner of Supply for the county.

* See Appendix.

He must have died, at all events, previous to May, 1694, for his grandson is served heir of entail in that month; and he was survived for some years by his widow, as in 1699, John Bunting of Geilstoun, and John Napier, Merchant in Glasgow,* as Factors for uplifting the Rents, &c., of the estate of Kilmahew, raised an Action against the said Lillias Colquhoun, for *twice uplifting* certain sums as wages of the servitors, &c. (*Craigend's Papers.*)

Napier had two daughters, Margaret and Katherine:—

Katherine was married to Robert Campbell of Northwoodside, Dean of Guild of Glasgow, second son of Colin Campbell, first of Blythwood, Lord Provost of Glasgow, a descendant thro' his mother, Mary Lyon, of the noble family of Glammis, now Earls of Strathmore. Of this marriage only one daughter, Lillias, was born, who was married afterwards to James Dunlop of Garnkirk, and is ancestress of several of the families of the name of Dunlop in Glasgow.

The eldest daughter and heiress,

Margaret Napier of Kilmahew, married (firstly) Patrick Maxwell of Newark, second son and heir of Sir Patrick Maxwell, who died in 1678, by Elizabeth, daughter of Robert Semple of Beltrees, and great-great-granddaughter of *Robert*, the *great* Lord Sempill. Of this marriage were born two sons,

George, who succeeded to Kilmahew; and
John, whose grand-daughter succeeded George.

The lady of Kilmahew married (secondly) John, eleventh Earl of Glencairn, also his lordship's second marriage, but had no family. (*Douglas' Peerage*, vol. I. p. 639.) It does not appear in what year she died, but

George Maxwell, alias Napier of Kilmahew, her eldest son, was, on 17th May, 1694, served heir of entail and provision to John Napier of Kilmahew, his grandfather "ex parte matris."

His father had died while Napier was still young, and the management of his affairs by curators does not seem to have been at all advantageous to his patrimonial interests. He was no sooner of age, than to make bad worse, we find him plunged in a sea of litigation in the Court of Session. In 1700, being served heir to his father, he unsuccessfully attempts to resist a sale of some of his ancestral property, the negligence of his

* John Napier, merchant in Glasgow, died in 1703, and left £2666 : 13 : 4d. for the use of the poor Members of the Merchant Bank. (*M'Ure*, p. 255.)

guardians being alleged as the ground for applying to the Court: and much too frequent mention is unfortunately made of him in the disastrous record, known as Fountainhall's Decisions.

In those days as in our own, people who sought redress from the Court of Session, rarely got out of its clutches without having had good cause to repent of their folly; and, accordingly, the extensive inheritance of John Napier, while it afforded the resources of legal strife, seems to have paid the penalties which its foolish owner most deservedly incurred. He would appear to have suffered this retribution, not only in his purse, but in his person; for, in 1711,

Peter Naper, Merchant in Glasgow, being his creditor "in upwards of £34,000 Scots, and having incarcerated him, after he had lien three months, they agree that Kilmahew should dispoise to him certain lands irredeemably, in satisfaction of his debt; but that Peter, out of respect to his chief, shall give a letter of reversion, to repute him to his own land, if within three years he shall redeem from him with his own proper money, without borrowing it from others, and that the favour shall be merely personal to himself, secluding his heirs and assignees. Within the three years Kilmahew procures the money, premonishes and uses an order of Redemption, requiring Peter to denude: who refuses, because not in terms of the reversion, seeing he offered to prove by his oath it was not his own money, but borrowed from the Bank: which made Peter raise a declarator of expiration of the reversion, and that the lands were become irredeemable, against which pursuit it was alledged for Kilmahew, That the bargain was extorted from him by plain concussion and fear, seeing he was let out the one day, and the papers presented to him the next, with this certification, that if he refused to sign he would be re-incarcerate; and the whip of a caption being kept over his head, it was justus metus qui in constantissimum virum cadere potest." The final issue of the contest recalls to mind the amusing caricature which so happily represents a wigged and gowned lawyer standing between two lean simpletons of client-farmers; both look foolish enough at the empty oyster-shell held out in each hand, while the lawyer, fat and smirking, eyes them askance, with the oyster on a fork, pointing to his mouth, which is open as if for the immediate swallow of the delicious spoil of which he has dexterously deprived them.

It appears from the subsequent report of the case, that while the debts, by the expensive process of adjudication, had been increased to £34,800 Scots, Peter agreed to abate £4000 of his claim (being accumulations and penalties) and accept the lands of Naperston for £30,000; but to shew he was taking no advantage, he gave the letter of reversion; though on the somewhat suspicious condition, which may have been also out of respect for his chief, "that the redemption be only with his own proper money without any borrowing or interposing of any other person whatever: Kilmahew at Whitsunday, 1710 gets out of the bank the foresaid £30,800: Peter objects, it was not in the terms of the grant of reversion, but with money borrowed from one who coveted to wrest the bargain from him, but agrees to take the money and damages." Kilmahew refuses this last demand; instruments are taken on both sides; the money returned to the bank; and both parties, shutting their eyes to the probable equitable division of the two shells of the oyster, raise actions of declarator;—Peter, that, on expiry of the reversion, the lands were irredeemably his: Kilmahew, that the lands were lawfully redeemed, and Peter bound to reconvey on receiving his money. The Lords *gave a shell to each*; they "declared the reversion, and right of redeeming expired, yet being *"pactum legis commissoriæ in pignoribus,"* they declared if Kilmahew paid the sum contained in the reversion, the same should be receivable to repon him to his land, whether it were with his own money or not; and that Mr Napier (Peter) was to have right to this year's crop, now on the ground."—*Fountainhall's Decisions.*

In 1703, May 21, George Napier of Kilmahew's claim, to sit as a Baron from Renfrewshire, in the Parliament of that year, was rejected; his grandmother being in possession of the lands, and himself not infeft, but only claiming under a bond of Tailzie. The Union, in 1710, put an end to Scotch Parliaments, and the Lesser Barons became electors to the Legislature of Great Britain, under the new and unpretending title of Freeholders.* To be a freeholder, it was necessary to hold immediately of the crown, either a forty shilling land of old extent, or lands rated at £400 Scots of valued rent. Napier was enrolled as a freeholder in 1735,

* See Appendix.

on the forty shilling land of Walton; in virtue of which same qualification, his grandfather, John Naper, had sat in the Scottish Legislature.

Douglas (*Peerage I.*, 520) states that the Lady Jean Bruce, only daughter of Alexander, sixth Earl of Kincardine, was married to *John Napier, Younger of Kilmahew*, but gives no authority for this, as for various other similar statements.

If this statement be correct, this fortunate John Napier must have been a son of George Maxwell or Napier, but no trace of Kilmahew's marriage previous to October, 1737, is to be found. He may have been married, and had this son, who must have died early without issue; but it is extremely improbable. Where Douglas obtained his information it is impossible to say.

On October 11, 1737, Captain Deuar, commander of the ship *Cæsar* of London, as attorney for Ann Deuar, spouse to George Napier of Kilmahew, receives sasine of part of the lands of Kilmahew, on an heritable bond for £500 sterling, of the same date as the sasine, and as a security to enable her to pay his funeral charges and personal debts, "With this condition and provision always, That the said heritable bond should be without prejudice to, and over and above the provisions and securitys made to the said Ann Deuar conform to a marriage settlement betwixt the said George Napier and her, *of the date thereof.*" Not the slightest allusion is made to any previous marriage, nor is there any trace of any John Napier whatever at this period. Napier's signature is quite baronial, "*G. Nap: Kilmahew.*"

The provisions of the above marriage settlement seem to have been a life interest in the lands, which reduced as they were by the improvidence, folly, and litigation of George Napier, formed still a handsome property, there being a judicial rental in 1757, of the lands of Kilmahew, liferented by Mrs Ann Deuar, relict &c., the amount of which is £868 : 6 : 4 scots, besides victual, capons, peits, services, &c., &c.

It does not appear in what year George Napier died. As he had no children the estates passed, in virtue of John Napier's entail, to

Mrs Jean Smith, alias *Brydie*, alias *Napier*, who had a precept of clare constat from the Duke of Montrose, in 1767, reciting that "the said Jean Napier alias Smith, is daughter and only child procreated of the marriage between Robert Smith, portioner of Inveresk, and the now deceased

“ Elizabeth Maxwell, his wife, who was the only child of the deceased John Maxwell, second son procreated of the marriage between the said deceased Patrick Maxwell of Newark, and the said Margaret Napier, his wife, who was eldest daughter of the said John Napier, so the said Jean Napier is heir of tailie and provision of her grand uncle the said George Napier, alias Maxwell of Kilmahew, who was eldest son procreated of the marriage between the said Patrick Maxwell and Margaret Napier, and who died without issue.”

The Charters to Mrs Smith, or Brydie, now Napier, contain only the ten pund land of Kilmahew, (“ excepting Auchinsail, Drumsodoch, and milk and miln-lands of Kilmahew, and watergang thereof, comprizing Ward-foot, sold by the deceased George Napier to James Smollett of Bonhill;”) and the five pand land of Wallacetown.

Compare the deed of entail of John Napier, with these Charters! Over and above the lands sold to Smollett, the forty shilling land of Waltoun, the ten merk land of Bonyll, Napierstown; the towns of Myltoun of Napertown, Blairwort and Hiltoun, with the Miln of Balloch, the Miln lands, the town of Auchindownzie and Miln and Miln-lands had all departed from the Napiers. Their wide domain, extending from the Clyde at Cardross, (including that village) to beyond the Levan, and the Mill of Balloch, which John Napier had so carefully entailed on those whom he hoped would be as powerful and as illustrious a race as that which had gone before, had dwindled down to a ruinous tower, and the two or three farms around its base, yielding a rental of about £72 sterling! The various conterminous estates which had originally constituted the inheritance of the Napiers, while in the zenith of their feudal grandeur as Barons of Kilmahew, was reduced to a petty lairdship.

*The Court of Session had eaten the oyster.**

Mrs Jean Smith, was married to David Brydie, factor for William, Lord Blantyre, and assumed, on succeeding to Kilmahew, the name of Napier. She had two sons,

William, who succeeded his mother;

Alexander; whose son succeeded William;

And was succeeded by her eldest son,

William Brydie, or Napier of Kilmahew, who had a precept of Clare

* See Appendix.

Constat, for infesting him in his diminished possessions, in 1807. Though he received and took the lands under the fetters of the entail, yet that deed was not effectual, being still unrecorded, to prevent increased dilapidations in the property of the family. The period of his occupancy seems to have been undistinguished by any thing, save further sales of part of Kilmahew. The family of Smollet of Bonhill, increased their acquisitions. Mr Yuille, of the Darleith family, purchased what is now the estate of Cardross Park. Mr Gray, Sheriff-substitute of Dumbartonshire, acquired the property of Auchinfroe. Bloomhill, now Mr Ferrier's handsome residence, came off the lands of Wallaceton, and several long leases were granted of small holdings in the village of Cardross. William Napier died without issue, and was succeeded by his nephew,

William Napier Brydie, or Napier of Kilmahew. His retour, dated 28th January, 1818, recites that William Brydie, afterwards Napier of Kilmahew, was uncle to William Napier Brydie, formerly of Richmond, in Virginia, now William Napier of Kilmahew, in the county of Dumbarton, only son, now in life, of the deceased Alexander Brydie, also of Richmond, in Virginia, who was brother-german of the said deceased William Brydie, afterwards Napier, &c. He had a precept, on which investment followed, both dated in 1818.

William Brydie Napier had been taught, before his arrival in this country, that the inheritance of which he was about to take possession, although not now extensive, yet retained all the prestige of family importance, and must necessarily confer rank in proportion to its antiquity. A short residence here, however, quickly undeceived him. He soon discovered that whatever might have been the case in former days, family distinction in these utilitarian times was nothing, unless associated with money, and that without the advantages attendant even on reputed wealth, a decayed and decaying estate was worse than valueless to the penniless heir called to the succession of his ancestors. Reduced as they now were, the once lordly possessions of Kilmahew presented nothing but a ruined fortalice, the remains of a stronghold which had kept a wide extent of territory in subjection, if not in awe, and as often in alarm, while three or four exhausted and almost desert farms at its base, yielded but miserable crops, little profit to impoverished tenants, and scanty herbage for a few lean cattle. Chagrined and disappointed, Napier did not long hesitate to

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adopt the only course open to him. Discovering that the original entail of John Napier's extensive domain had never been recorded, in terms of the statute, and was therefore as yet ineffectual, even as to the wretched remnant of which he had possession, he resolved to avail himself of the omission, and by so doing rid himself of what he perceived would rather be an incumbrance than otherwise, in his future career in life. Accordingly, he at once effected a sale of the lands of Kilmahew, paid off the few debts which he had incurred during his residence in this country, and bade adieu for ever to the land of his fathers.

It ought not, perhaps, to be left untold, in justice to this high-spirited representative of the defender of Stirling Castle, that at one time he contemplated the possibility of a restoration, to some extent, of his ancient inheritance, by means of a wealthy marriage. Having gained the affections, he demanded the hand of a young lady, beautiful and accomplished, the daughter of a very extensive manufacturer in Dumbartonshire. The young man was agreeable, both in person and manners, and the lady was nothing loth. But, when the father's consent was asked, his answer was emphatically brief as well as decisive, "Sir, before you can be my son-in-law, you must prove to me that you have wherewithal to maintain your wife, according to her rank and station in society." The wretched income then derived from Kilmahew, would hardly have paid the lady's dress-maker. Of course there was nothing more to be said. Disappointed in all his hopes, the last Napier of Kilmahew took his departure for the new world. There he subsequently married, but died, while still a young man, without children.

The proud old gentleman, who thus sternly rejected an alliance with the last inheritor of Kilmahew, was himself not long after a striking example of the instability of fortune. He was suddenly cut off in the apparent enjoyment of robust health, and, as it was thought, of immense wealth. His family quarrelled about the succession to his supposed vast means. The estate was put under trust; the Court of Session was then resorted to; and, as a matter of course, his children at last found themselves *penniless*. What a lesson to the haughty parvenu of every age, and how truly say the Scriptures, that riches make themselves wings and fly away; that pride goeth before destruction, and a haughty spirit before a fall.

The final extinction of an ancient family like that of Kilmahew, occupying for centuries, very extensive possessions, as well as rank and station, necessarily begets a feeling of sympathizing regret. Yet, if the real character of the times during which the family flourished, be considered, there is, in truth, but very little cause either to lament the decline of its feudal power, or to regret the changes which have since occurred. Feudalism, with the military splendour, the almost chivalrous devotion to family ties, and the baronial influence which it fostered, only served, in most cases, to gratify the pride of a limited class; it rarely contributed to the improvement of society, more rarely to the advancement of civilization. Under its selfish influence, the mass of the people, from being military vassals, united to their superior in a bond for mutual protection, became little better than serfs attached to the soil, without a will of their own, and always bound to follow wherever their lords might lead.

From the days of Bruce, till the middle of the seventeenth century, this system prevailed; and although it had become much modified by the increasing intelligence, growing wealth, and extending influence of the people, it may be said to have only yielded at last to the strong political necessity which compelled the legislature to abolish the territorial jurisdiction of the Barons—an apparently harsh measure for them, but a wise and happy consummation for society at large, since it involved the substitution of law and responsibility, for the petty tyranny of hereditary ignorance, prejudice, or pride, and the too often capricious, as well as unjust, exercise of unrestrained power.

The changes which followed the statute of 1746, were still more gratifying to the philanthropist, from the rapidity with which the commercial spirit, checked and trammelled since the days of James VI., superseded and destroyed the ancient habits, feelings, and prejudices, belonging to a feudal and warlike age. To those habits and prejudices, many of the old families clung with a fatal pertinacity, which at length became their ruin. To keep up the empty show of power and rank, they parted piecemeal with their extensive possessions, till scarcely a shred remained, a fate virtually that of the family of Kilmahew.

The mutual persecutions, fines, and confiscations, which followed the several ecclesiastical dominations, from the end of the sixteenth, till the end of the seventeenth century, also contributed, in some degree, to the

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difficulties, impoverishment, and decline of the Barons. No one could adopt or encourage one system of religion, without, when the change came, paying severely for his former profession of faith: even an immediate change of views, to suit those in vogue at the time, could not save the lackless laird, whose only wish was to be left in peace.

Another, and a more ruinous infliction, had many victims. An age of law and lawyers, exercising power, though in a different way, succeeded to the ill-regulated rule of the feudal lords. That age, however, if it introduced a better system of government, was far from favourable to the great families; it not only swamped their power, but too often engulfed their estates in that terrible legal vortex—the Court of Session. A long space of time might be allotted to that period of judicial confiscation and fraud. Its effects were formerly, and still are seriously, felt by the inheritors of the land, and although it has at length yielded to a slightly improved order of things, the Napiers, in common with many of the oldest and best families of Scotland, may point to the many-headed Hydra of litigation as the monster that has swallowed up their fair domains, by involving their race in difficulties, which entailed poverty, insignificance, and extinction.

The genealogist, and the *laudator temporis acti*, may sigh over this melancholy end of a once powerful family, but they will find consolation in the reflection that it was the natural result of salutary changes, tending to the general good of society.

“Of chance or change, O let not man complain,
Else shall he never never cease to wail!
For, from the imperial dome, to where the swain
Rears the lone cottage in the silent dale,
All feel the assault of fortune's fickle gale;
Art, empire, earth itself, to change are doomed;
Earthquakes have raised to heaven the humble vale,
And gulphs the mountain's mighty mass entombed,
And where the Atlantic rolls wide continents have bloomed.”

The friend of progressive improvement, however, requires neither poetry nor prose to satisfy him, that the equivocal glory of the past ought never to be weighed against the positive good of the present and the future. From him the extinction of an old feudal family will receive little consideration; probably no sympathy whatever. On the contrary, he hails the change as one of those events essential to the progress of society;

and, it must be confessed, that if the past be fairly contrasted with the present, the comparison is wholly in favour of the views taken by the utilitarian. Feudalism, even in its palmyest days, when chivalry and honour were its chief and glorious attributes, afforded but few advantages to society at large. It gave everything to a very limited few, and that favoured class was the powerful and the great. It never stimulated industry, nor did it promote the useful arts, except such as were favourable to war. But what was far worse, the power which it conferred on the Barons, instead of a protection, according to original feudal law, became too often a grinding tyranny over the people. Family interests flourished; but those were the only objects of its care. Hence the grandeur, the influence, and the almost unlimited power of Baronial families; more especially, such of them as could boast of extensive possessions, ancient lineage, and noble connections, like those of Kilmahew. Now that this family has at last passed away, and that their wide domains have been divided among a multitude of owners belonging to a new and very different race of men, it may be asked, what does the change present to the calm enquirer after truth. The Keep of the stronghold of the Napiers, which formerly frowned o'er the vale in solitary grandeur, still stands to attest how the warlike Baron fixed his abode, so as to guard against attack or surprise. Around this spot the feudal retainers gathered, either when called to pillage, or to linger away, in listless idleness, their weary time. Here the serf wrung, with thankless toil, from the arid, ill-cropped land, a scanty and uncertain subsistence. Hence the eye wandering over the wide expanse before it of heath-covered hills, and long extended moors, the river, the lake and the sea, could discern nought else to tell that the prospect contained within its bounds anything fit to make it the habitation of man. Nor even at hand was there anything but the Castle itself, and the wretched clachan around it to tell the tale. Roads or bridges there were none, nor even fences to the ill-cultivated fields. All was dark, dreary, barren, and wild. Such was ancient Kilmahew, great and powerful as the owners were, in the feudal times.

How different is the prospect around the Keep now! Nowhere, in the world perhaps, can the eye, at a glance, embrace a scene more gratifying to either the patriot or the philanthropist. From the hills, which divide the ancient property nearly in the centre, there is seen, on the one hand, the

estuary of the Clyde, its well cultivated shores on either side, richly studded with busy towns or villages, populous watering places, handsome country seats, snug rural cottages, and comfortable farm-steadings, intermixed and embellished with gardens, orchards, and every variety of ornamental plantation; while vessels of every denomination, from the mighty steamer to the light yacht, the richly freighted Indiaman to the humble wherry, float along the firth, bearing the produce of Scottish industry and skill, to and from every quarter of the world. The scene which presents itself on the other hand is, perhaps, equally rich, and certainly not less magnificent. It is at once an embodiment of all that belongs to manufacturing industry, directed by intelligence and enterprise; all that is characteristic of the richest rural beauty, taste and luxury, and also all that can be embraced even in the *beau ideal* of the beautiful and the sublime in natural scenery. In this delightful view the eye glances along the whole valley of the Leven, unrivalled for the beautiful productions of its print-works, and the vast wealth acquired by means of its industrial population; it then sweeps o'er the peerless Loch Lomond with its thirty islands, and while grasping the lofty Benlomond in the distance, at last only loses its ken in vainly seeking to distinguish the more remote mountains of the far-west highlands. Such is the scenery, and such are the characteristic features of the district of Kilmahew in the year 1848. Several ancient families still exist in the vicinity, but they exercise no power except what is conferred by their fellow-subjects, no influence except that which is given by the laws: happily the tendency of these is at length to protect, never to oppress; and even the humblest and the poorest can now repose in safety under his own roof-tree.

Like the family of Kilmahew, many others that once flourished in the Lennox are extinct, and now nearly forgotten. Among them is that of the great Lords of the district—the Earls of Lennox, whose vast estates have passed, like those of Kilmahew, into the hands of the new race of utilitarians, who know how to turn them alike to profit and to pleasure; and, instead of making them the fields of strife and bloodshed, have, by means of wealth, knowledge, and industry, converted them almost into a second Arcadia. The Earldom of Lennox is, of course, in abeyance; the Napiers of Merchiston make pretensions to it, but with what justice it is not here pretended to be determined: and the Haldanes of Glenegles, from a

daughter of which family sprang the later Napiers of Kilmahew, also claim the honours of this ancient title. The Lindesays of Bonhill, heritable Baillies of the Lennox, have ceased to exist as a family, though the curious in genealogy may still find them represented in the district where they formerly held judicial sway. With the exception, however, of the Colquhouns of Luss, almost none of the old Baronial families have survived the shipwreck of feudalism. That family, as it was the most ancient among them, and also the most powerful, from the extent of its estates, still retains the distinction which it has always enjoyed, whether political, civil, or otherwise. The late Sir James Colquhoun was prominent as a leader in effecting that great constitutional change, relative to the Parliamentary or electoral franchise, which occurred in 1832. The present baronet, following with meritorious consistency, the example set by his father, has since served for the County in Parliament, and still holds, as Lord Lieutenant, that political influence in the Lennox which is due to the services, the wealth, and the dignity of so ancient and honourable a house.

It is neither consistent nor proper, however, to refer to other families who have claims to distinction, or antiquity, in a mere notice regarding Kilmahew. The small portion which remained of that once extensive property, when it was sold in 1820 by the last of the Napiers, fell into the hands of a zealous and enthusiastic agriculturist. The estate as he purchased it, was just the kind of property adapted to the views and propensities of an experimental improver. He had considerable means of his own, and was thus enabled, as shrewdly remarked by an old neighbouring proprietor, to manure the worn out lands of Kilmahew with Bank-notes! In point of fact, he may be said to have almost literally done so, for he spent a large sum in improving them; and the effect of his labour and skill was indeed wonderful. In less than twenty years, he more than doubled the value of the property, and although, when he entered into possession, it was, perhaps, one of the most wretched in Scotland as to tillage, it became in his hands, and it is now, by perseverance in his system, one of the most beautiful and productive on the Clyde. The rental, in 1820, was about £150 per annum; in 1848, it is upwards of £450.

The family of Kilmahew may be said to be now extinct, so far as regards lineal descent, but the name of Napier still survives in the offshoots from

that once wide-spreading tree. Robert Napier of Shandon, as the only landholder, of the name, within the bounds of the ancient district of the Lennox, takes precedence as the eldest son of one of several families of the same name and lineage, tracing their descent collaterally from that of Kilmahew, and the fame which he and other members of the enterprising family to which he belongs, have already acquired, in that branch of scientific industry, which has carried their name over the world, gives promise that this second race of Napiers shall rival, if not eclipse, all who have gone before them. In following out the objects which they have hitherto so successfully pursued, they cannot fail to benefit themselves, as well as society at large, and it is not to be doubted that the result must be alike beneficial to the present age, and to posterity. Thence also it may justly be inferred that the modern representatives of the patriotic defender of Stirling Castle, will run a still more permanent, because far more beneficial and useful career, than that of the old feudal Barons of Kilmahew.

APPENDIX.

NOTES TO NAPIER OF KILMAHEW.

“Kilmahew Chapel.”

“At Kilmahew, in the parish of Cardross, there was a Chapel, which was founded, “before the reign of David 2nd, and continued till the Reformation.” (*Haddington's Collection, Chalmers' Caledonia, III., 907.*)

The chapel of Kilmahew certainly existed till after the Reformation, for in the Register of Ministers, Exhorters, and Readers, and of their Stipends, published by the Maitland Club, it is entered among the livings of the “Levenax,” thus, “Kilmahew, Adam Hucheson reidar, xvj li. Candilmes 1568.”

“Ballules.”

See (page 7,) charter to Duncan Napier of lands “de Bullul.” There appears also to have been a chapel here, “Bullull” being mentioned among the cures of the Lennox, in the register of Ministers, Exhorters, &c. above referred to, thus: “Bullull, Niniane Galt, reidar, xx li. November 1567.” And on 1 November, 1592, Henrie Kincaid of Auchinreoch, being “ane parochiner of Balul and nocht resorting to the kirk “thair of as it becomes him, he being in the countrey, in swa doing offeris him obedient “to the voice of the kirk;” alledging that he could not resort to the kirk of Dumbarton, “seeing he being adjudgit ane parochiner thair of will evict from him his landis of “Auchinreoch.”

“Robert Napier of Kilmahew.”

The family Bible (as it would appear) of this liberal minded gentleman, is now in the possession of Mr John Napier of the Vulcan Foundry of Glasgow. It is the Amsterdam edition of the “Breeches” Bible, as it is usually termed, dated in 1640. The fly-

leaf bears that "*R. Napeir aught this booke,*" and the name "*James Napeire*" is written on it in several places. "*J. Napeire*" is also inscribed five or six times. Besides the exact names of the Kilmahew family, in and subsequent to 1640, the names of John Dennistoun and James Haldan, a friend and close connection of the family, appear; and the usual preambles of legal writs, as "*Be it kend to all men by ther presents,*" and, "*In the name of God,*" all in the style of writing of the period, are once or twice scrolled on the fly-leaves at the beginning and end of the volume. When it is considered that few landowners, except those of considerable possessions, knew the art of writing in 1640, that few houses then possessed this gorgeous Dutch folio, and that few except families possessing heritable property, were likely to have the phraseology of deeds scribbled on the vacant sheets of almost the only book then, of necessity, in their possession, it is but a reasonable presumption, were it even in the absence of any traditional account of the volume, to suppose that this antique folio is truly a relic of the early reformer lords of Kilmahew.

"Deed of Entail of John Napier."

The Bond of Entail, above mentioned, contains Procuratory for Resignation of the following lands:—viz: The Ten Pound of Kilmahew, comprehending the Towns and Lands following, viz.: The Mains of Kilmahew, with the Tower and Fortalice, Yards, Orchyards and Parks y'rof; The Towns and Lands of Auchinsail, Kirkton and Chappel thereof, Drumsoddock, Mill and Mill Lands, Barris, Spittell and Auchinfro'; The Five Pound Land of Wallacetown, the Forty Shilling Land of Walton, the Ten Merk Land of Bonyle Napier, containing the Towns of Milntown, Napierston, Blairvelt and Hiltoun, with the Mill of Balloch, Miln Lands, Multures and Sequels thereof, with the town of Auchendownzie with the Miln thereof, Miln Lands Multures and Sequels thereof, with the haill Manor Places, houses, biggings, yards, Orchyards, Milns, Miln Lands, Woods, Pastures, Fishings, Mosses, Muirs, Meadows, Coal, Coalheughs, lyme, lymestame, Commonties, Common Pasturages, outsets, insets and haill other parts, pendicles, and pertinents whatsomever of the said haill Lands and others foresaid, all lying as said is.

The destination of the deed is to the said John Napier and heirs male of his body and heirs of the body of said heirs male; failing, to heirs male of the body of Margaret Napier (eldest daughter) spouse to Patrick Maxwell of Newark, and heirs of the body of said heirs male; failing, to Lillias Campbell, daughter to Robert Campbell of Woodside, by Katherine Napier, (second daughter,) and heirs of the body of said Lillias Campbell; failing, to said Margaret Napier and heirs female, and heirs of the body of said heirs

female; failing, to John Napier, Merchant in Glasgow, and heirs male of his body; failing, to David Haldane, brother-german to John Haldane of Glenegles, and heirs male of his body; failing, to John Haldane of Lanrick, and heirs male of his body; failing, to Archibald Buntine, brother-german to John Buntine of Geilstone, and heirs male of his body; failing, "to such persons as I shall nominate and appoint, by a Writ under my hand at any time in my life, ac etiam in articulo mortis. Whilkis all failing, to and in favour of my heirs and assignees whatsoever, Anne Napier, my Sister, Relict of the said umq'll John Maxwell of Blackston, and the Descendants of her body, being in all events and for ever excluded from the benefit of succession to the said lands and estate."

The name of John Maxwell of Blackstone, here mentioned, has been handed down to posterity in no very enviable light. In November, 1686, when the covenanters in Ayrshire had recourse to arms, Mure of Caldwell, Kerr of Kerristand, Gabriel Maxwell, Minister of Dundonald, and Blackstone, met at Shitterflat, in the parish of Beith; and there resolved to join the banner of the covenant. They raised a small body of horse, the command of which was given to Caldwell, and then marched as far as Glassford. Being informed, however, that the King's troops were betwixt them and the forces of the covenanters, who had been defeated at Pentland, they retired and afterwards dispersed. Maxwell, having secured the promise of his own pardon, gave information against his companions, who were indicted for treason, tried in their absence, according to the custom of the times, and convicted, their estates forfeited, and themselves obliged to seek safety in flight.

Blackstone's treachery naturally made him extremely odious to the party of the covenanters. John Napier had himself suffered for his attachment to their doctrines, but while it is very difficult, and scarcely justifiable, to hazard any opinion as to his motives for disinheriting, for ever, the children of his sister Ann, it is neither an unreasonable nor farfetched conjecture, to suppose, that a high-minded, conscientious, and consistent reformer like Napier, should be unwilling that any of his means should pass to the descendants of one whom he must have regarded as a renegade and a traitor.

*"Protestation of John Napier anent the Bell of Kilmahew Chapel,
lent to Cardross Kirk."*

At and within the new parish church of Cardross, the twenty-third day of
October jxvijit ffourscore ten yeiers (1690).

The whilk day In presence of me notar publick common clerk of the Burgh of Dun-

britain and witnesses undersubscribing Compeared personallie Johne Napeir of Killmahew
 In whose favours the warrand and commission underwritten is made and conceived and
 there In presence also of certain heretors and gentlemen within the said parish con-
 vened within the said kirk with Master James Gordoun present minister of the said
 parish presented and produced to them the following gift and donation to be publickly
 read by me notar publick to them and the witnesses there present whereof the tenor
 follows Be it known to all men by these presents that I Jean Moor tobacconist in Wap-
 ping in the County of Middlesex and kingdome of England for the love favour and
 affection which I have and bear to the place of my nativitie in the kingdom of Scotland
 Viz. the parish of Cardross within the Shirreffdom of Dunbritan have given and hereby
 give and grant full power warrand and commission to Johne Napeir of Killmahew in the
 said parish to cause erect build and finish at my own proper coast and expense a stone
 bridge over the water or burne of Auchinfro near the place commonly called Burnfoot
 for the common good and benefite of the inhabitants of the said parish and all others
 travelling or passing that way as also That I have gifted dedicated mortified and be-
 queathed as by these presents I gift dedicate mortify and bequeath a bell which I caused
 laitlie buy in this kingdome and two mortcloaths made heir and both sent by me to the
 said Johne Napeir of Killmahew the bell to be for the use of the chappell of Killmahew
 in the parish aforesaid only and to be sett up upon the said chappell or some other con-
 venient place neir the same for convocating the people to divine worship and burials,
 and the mortcloaths to be kepted and lett out to burials for the benefite good and ad-
 vantage of such poor in that parish as to the said Johne Napeir and any other gentlemen
 concurring with and assisting him to maintain a schooll at the said chappell shall seem
 fitt Giving and hereby granting to the said Johne Napeir his aires and successors and to
 the said gentlemen concurring with him or them for keeping of the said scholl full power
 and commission to use and dispose of the same and to cause the benefit thereof be from
 time to time accompted for according to the true meaning and intent of these presents
 secluding and hereby debarring all other persons whatever from haveing any power to
 dispose thereupon or pretence right or interest, In or to the samyne in all tyme hereafter
 Consenting to these presents be insert and registrat in the books of Counsell and Sessioun
 or others competent within the said kingdome of Sootland therein to remain ad futuram
 rei memoriam and constitute my prors &c. In witness whereof I have subscribit and
 scaled these presents (written be Hendrie Reid notarie publick admitted in Scotland now
 residing in Westminster) at Wapping aforesaid the second day of Junij jajvj ffour scoir
 eight yeiers Bcfore these witnesses James Weaver and William Watson my Servants and

the said Hendric Reid and John Banks Mariner in prestoun panns in Scotland sic subscribitur I MOORE James Weaver witness Wm Watson witness John Banks witness Hen. Reid. witness after the reading of which righte in presence of the saids gentlemen heretors and witnesses undersubscribing by me notar publick also undersubscribing the said John Napeir protested that albeit at the said desyre of the said parish and at the earnest desire of the gentlemen and heretors as members of the said session of the presbyterian persuasion concurring with him in the said donation he had caused renew the old bell house of the said church and sett up the said bell therein without any expenses to the parish evin disagreeing with the will of the said donation appointing the samen bell only for the use of the chappell and that in regard of the gospels being preached in its puritie within the said church at present that yet notwithstanding therfor the setting up of the said bell in the aforesaid place might no wayes be prejudiciall to the interest of the chappell of Killmahew in the said bell conform to the tenor of the said donatioun but may be only reputed and holdin as ane lending of the samyne judged convenient in this juncture wherein it has pleased god to establish presbyterian government by law the setting up whereof being only now judged necessary and convenient for convocating of the people to divine worship and burials at the said Kirk But that at any time hereafter it might be leasom to him with advice of any of the gentlemen aforesaid in the said donatioun upon his own charges to remove and take down the said bell from the said church and transport the sayme to the said chappell or any other convenient place within the said parish he pleases for the uses and conforme to the will of the said donatioun Whereupon all and sundry the premises the said John Napeir asked and requyred instruments in the hands of me notar publick undersubscribing, thir things were spoken and done day and place foresaid about twelve hours the said day before and in presence of Jon Bontein of Geilstoun James McAulay in Holl of Ardoch, Robert Gilchrist precenter and reader at the said Kirk, and John Menzies in Auchinfro witnesses specially callit and requyrit to the premises.

ut præmittitur attestatur Joannes McAlpine notarius
publicus in premissis requisitus in omnibus esse bona manu
propria.

Apud Dunbritane die quarto mensis Novembris anno domini millesimo
sexcentesimo nonagesimo.

The protestation within written is registrat in the first book of the particular register of Seasines reversions and wyl rights &c. appointed to be registrat within the Burgh of

Dunbritane conform to the act of parliament made thereanent 1661 and in
the 143 leafe thereof by me Johne McAlpine Clerk of the said Burgh.

(sgd) Jo: McAlpine.

“ Conflict of Glenfruin.”

Glenfruin, or the *Glen of Sorrow*, derives its name from the bloody conflict thus referred to, of which the subjoined account may not be altogether destitute of interest to the readers of these notes.

About the year 1594, a body of the M'Gregors, a lawless and turbulent clan, who resided in Glenorchy, came down upon the lower parts of Dumbartonshire, and committed various outrages and depredations, particularly upon the territories of the Colquhouns. These plundering excursions they so often repeated, that in 1602, Humphry Colquhoun raised his vassals to oppose them, and was joined by many gentlemen in the neighbourhood, whose properties had suffered, and among others by the Napfers. The parties met in Glenfruin, where a dreadful combat ensued, the battle continuing with great obstinacy till night parted the combatants. Many fell on both sides; but the loss of the Colquhouns was very great. The laird of Colquhoun is said to have escaped, and to have retired to a strong castle on the banks of the lake, but being closely pursued, a party of the enemy broke into the castle, found him in a vault, and there put him to death with many circumstances of cruelty. This tragedy happened in the month of February, 1602.

What added to the horror of the conflict, was the massacre of a great number of young boys, who had come from the school or college of Dumbarton to see the battle, which they beheld from a hill above Glenfruin, but who were in the evening shut up in a barn for safety. The M'Gregors discovering them, barbarously put them to death, to the number of eighty. One of the survivors of the Colquhouns, who became chief of the family, supplicated the assistance and protection of James the Sixth against this lawless clan; and in order to excite the compassion of his Majesty, he carried with him a number of women, each of whom displayed a bloody garment of some relation murdered by the M'Gregors. On account of these cruelties the clan M'Gregor was proscribed as “lawless limmers, or villains:” even the name was to be for ever abolished; and clergymen were prohibited from giving it at baptism, under the penalty of banishment and deprivation.

Such is the substance of the popular account given of the “*felde of the Lennox*,” from which the proscription and systematic persecution of the M'Gregors which so long

disgraced Scottish annals, had their origin. But new light has been thrown on this hitherto much misunderstood transaction, by the able editor of the Criminal Trials above referred to. It would appear that the clan Gregor, from various causes, had been for some years previous to 1603, placed under the control of Archibald (seventh) Earl of Argyll, who, as King's Lieutenant in the 'Bounds of the Clan Gregor,' was invested with extensive powers, and by his acceptance of the office, made answerable for every excess committed by the clan. It was, therefore, his duty to have done all in his power to keep the M'Gregors in obedience to the laws; but this duty he was at no pains to fulfil. On the contrary, it appears that, from the first, the principal use he made of his influence was artfully to stir up the clan to various acts of hostility against his own enemies, of whom Colquhoun of Luss was one. It is to this crafty, cowardly, and perfidious system of Argyll, therefore, that must solely be traced the feud between the Colquhouns and M'Gregors, which proved, in the end, so hurtful to both; a result, no doubt, all along contemplated by that treacherous nobleman. It is unnecessary to enlarge upon this, as the Dying Declaration of the Laird of M'Gregor places in a clear light the cruel and deceitful policy pursued by Argyll, as does also the treacherous capture of M'Gregor of Glenstra, on promise of protection, and his subsequent execution.

Moreover, at the period of this conflict, both of the parties were, in a manner, armed with the royal authority; the Laird of Luss having raised his forces under a commission, from the King himself; while M'Gregor marched to invade the Lennox, under the authority of the King's lieutenant! Every popular account of the transaction charges the M'Gregors with the two atrocities, already referred to, viz.: the murder of Sir Humphrey Colquhoun, and the slaughter of a number of defenceless boys. Some doubts have been thrown on the accuracy of these accounts, but with what justice it is not here pretended to determine. According to an opposite statement, it would appear that Sir Humphrey was murdered in his Castle of Bannachrea, eleven years before the conflict, by some of the MacFarlans, under circumstances of extreme atrocity, and he was succeeded by his brother, Sir Alexander, who was alive in 1610. The then Laird of Luss must, therefore, have effected his escape, from the field of battle, after seeing his vassals cut to pieces by their victorious antagonists; and, as to the slaughter of the school boys, that circumstance forms no part of the accusations against those of the M'Gregors who were subsequently tried for their share in this battle, although every criminal act which could possibly be adduced against them, is carefully inserted in the indictments. Whether this modified version of the affair be correct or not, there can be no doubt that Peter Napier of Kilmahew, was slain in the conflict, fighting at the head of his vassals, in the ranks of the Colquhouns.

“Scottish Barons.”

The degrees of hereditary dignity in England, are six,—Baronet, Baron, Viscount, Earl, Marquis, Duke;—in Scotland, they are seven—Baron, Baronet, Lord, Viscount, Earl, Marquis, Duke. Prior to the reign of James VI., the nobility of Scotland consisted of three grades,—Earls, Lords, and Barons. The latter, styled sometimes free barons, small barons, and lesser barons, formed the most numerous, and not least powerful section of the *Proceres Regni*. They had hereditary seat and voice in Parliament *inter magnates*; were styled “*Lovit Cousin*,” by the King; were called “noblemen” in Acts of Parliament; had ascribed to them the courtesy style “right honourable;” had the right of “pit and gallows” within their respective baronies; and enjoyed, by statute, Parliamentary robes and ornaments of estate, similar to those of the ranks above them. They also carried *de jure* supporters to their arms.

Before the Union, Parliament was composed of three estates, viz. :—the Clergy, the Nobility, and the Burgesses. These all sat in one house, according to their respective ranks, whether ecclesiastical, territorial, or municipal. The term comprehending the second estate, “the nobility,” and the modern word “peerage,” are not to be confounded with each other. The latter now implies only those hereditary classes that rank above the baronetcy, which was a rank invented by James VI., and originally conferred for a certain price.

The Statutes of Robert I. bear to be made in his Parliament, with “Earls, Barons, and others, his noblemen of his realm;” and so late as 1692, the 134th Act of James VI. begins, “the Nobility, Earls, Lords, and Barons, &c.” In the 87th Act, 6th Parliament of James V., it is ordained that “everie nobleman, sic as earle, lorde, knight, and barone,” &c. Sir George Mackenzie, Lord Advocate of Scotland under Charles II. and James II., in his celebrated work on Precedency, observes—“Under the word *baron*, all our nobility are comprehended,” and, he states,—“I find by the old records, as particularly in October, 1562, that noblemen and burgesses are called, but no barons—the barons and noblemen being then represented promiscuously.” By the 101st Act, 7 Parliament of James I., the barons of each shire *were allowed* to choose two of their number to represent them, “which,” continues Sir George (who died 1691), “is the custom at this day.” “Yet,” says he, “it is observable, that though by that act the barons may, for their conveniency, choose two, yet they are, by no express law discharged to come in greater numbers.”

This was James I. of *Scotland*, not James I. of England; accordingly, in the reign of Queen Mary, when the estates assembled for ratification of the Confession of Faith, in 1560, the barons claimed their right to have seat and voice in Parliament, intimating their desire to exercise the same, which was unanimously allowed.

The titles of hereditary dignity in Scotland were originally territorial. Thus lands were erected into baronies, giving the title of baron; into lordships, giving the title of lord; and into earldoms, which gave the title of earl. *Barony* was truly and strictly, however, the only *feudal* dignity conferred on territorial proprietors; lordship, earldom, &c., being only nobler titles for a barony, as connected with personal dignities. (*Stair, II.*, 3, 60. *Erskine, II.* 3, 46, and 6, 18.) As these were the constituent portions of the second estate of the realm, it does not appear how the barons allowed their rights to fall into disuetude. No act of the legislature was ever passed by which they were disfranchised; for the consent given by James I., that the barons of each shire should be represented by two of their number, merely relieved them from the great trouble, and very grievous expense, occasioned by their attendance in Parliament. It was, in fact, on a representation of the hardship of this expensive honour, that the King allowed the barons to appear by representatives; or rather agreed, as Pinkerton says, that a baron should "not be constrained to attend, except his estate amounted to a certain sum."

These noble deputies were even paid for their attendance in the Legislature; and perhaps one of the most curious and interesting documents among the Kilmahew Papers, (especially now-a-days, when payment of members is so much scouted, sneered at, and despised, as one of the six points of the Charter,) is the "Horning and Poynding, Sir John Colquhoun and John Napier, Members of Parliament, chosen for the shire of Dumbartane, against the free-holders of the said shire, for the £5 scots, daylie allowance, modified by Parliament, which is signet at Edinb. 22 feb. 1662," accompanied by the "Certificate for the saids Commaisoners Their Sitting in Parliament 1661, Extracted furth of the Rolls of Parliament by Hamilton."

Rights of blood do not prescribe, and it is, therefore, somewhat remarkable, that the barons of Scotland, numbering even at this day, (1848,) perhaps 400, should have allowed their rights, privileges, and distinctions, to remain so long unrecognised, and even unknown, while the comparatively modern baronetcy has never ceased an agitation, as yet fruitless, for a recognition of its claims to certain shadowy baronies in Nova Scotia, and valueless rights to trifling personal decoration.

The Acts of Union and of the Scottish Legislature, regulating the elections of the

Representative Peers and Commissioners for Scotland, made no express provisions beyond those of 5 Feb, 1707; when it was enacted that of the forty-five members to be sent to the House of Commons, thirty should "be chosen by the shires or stewarties, and fifteen by the Royal Burrows;"—and "that the sixteen Peers and forty-five Commissioners for Shires and Burghs, who shall be chosen by the Peers, Barons, and Burghs, respectively, in this present Session of Parliament, and out of the members thereof, in the same manner as Committees of Parliament are usually now chosen, shall be the members of the respective Houses of the said first Parliament of Great Britain."

Against the articles of Union, and pending their discussion, the Earl of Buchan protested for the privileges of the Peers, the Duke of Argyll for those of the Peerage, the Baronage, and the Burgesses, and George Lockhart of Carnwath, that neither votes, conclusions, nor articles, should "prejudge the Barons of this kingdom from their full representation in Parliament, as now by law established, nor any of their privileges, and particularly their judicative and legislative capacities;" &c.

These "*judicative*" capacities were swept away by the act, abolishing heritable jurisdictions, passed immediately after the vindictive and bloody suppression of the rising in 1745; a measure, which, however politic in the then state of Scotland, wise in a national point of view, and fortunate in its results, was at least somewhat unjust, so far as regarded the personal rights of the Barons. The power of "pit and gallows" is happily gone, but the crown vassals, infest *cum curiis*, may still hold a court for pleas not exceeding 40s.; fine to the amount of 20s.; and imprison in the stocks five hours in the daytime within their own feudal jurisdictions.

Their "*legislative*" capacities, since the Union, were, till the Reform Act, exercised by the "freeholders" in the counties, electing commissioners to Parliament as before; and the debates in the House of Commons of 1832, as well as of previous years, prove how extensive was yet their political influence.

These electoral privileges, however venerable or respectable, were then committed to every proprietor, whatever might be his tenure, of property yielding him £10 sterling yearly. The justice of that change, as affecting the personal interests of the freeholders, has often been controverted. Freeholds, from having been a sacred trust for the people at large, had become marketable property, of great value, and in constant demand. This had been long sanctioned by law. Yet, without reservation or compensation, that property was at once swept away, and, in some counties, what had been eagerly sought at the price of £2000, in 1830, was, in 1832, worth *nothing!* The policy of the new mode of representation is best judged of by its results, on which, be it remarked, scarcely two

men can be found to agree; and it is, perhaps, not going too far to remark, that although the embittered, and all but extinguished free-holder may now sneer to see the immunities of a "lovit cousin" of Majesty vested in the presiding lord of a village whisky shop; the parish "Stults," profound only in fustians, ruminating on the newly-acquired privilege, held formerly by those only who had "robes of estate;" or the master weaver holding out to the laudable ambition of shoeless apprentices their future possession of the franchise, conferred by the occupancy of a floorless loom-shop, and the chance of thereby wielding the rights of the former *Proceres Regni*; still it can by no one (however fervent his hopes of the new constitution) be denied, that the classes, who acquired the legislative capacities of the ancient Barons, were the first to raise their voice against that political party who had bestowed on them their new electoral powers, and that, in 1848, many not only will not exercise the rights so conferred, but even fervently desire to be unpossessed of what is to them a troublesome privilege. Whatever may be thought, however, of this great political change in the constitution of the country, it is earnestly to be hoped that the franchise will never again become *property*, as it was in the time of the Barons, and their representatives, the Freeholders, nor be made the subject of barter or sale, in any shape whatever.

In the words of a learned commentator on the Laws of England:—"It was the stern task of our forefathers to struggle against the tyrannical pretensions of regal power: to us, the course of events appears to have assigned the opposite care, of holding in check the aggressions of popular licence, and maintaining inviolate the just claims of the prerogative. But, in a general view, we have only to pursue the same path that has been trodden before us,—to carry on the great work of securing to each individual of the community as large a portion of his natural freedom as is consistent with the organization of society, and to increase to the highest degree, that the order of divine Providence permits, the benefits of his civil condition. A clearer perception of the true nature of this enterprise, of the vast results to which it tends, and of the obligations by which we are bound to its advancement, has been bestowed on the present generation, than on any of its predecessors. May it not fail also to recollect, amidst the zeal inspired by such considerations, that the desire for social improvement degenerates, if not duly regulated, into a mere thirst for change; that the fluctuation of the law is itself a considerable evil; and that however important may be the redress of its defects, we have a still dearer interest in the conservation of its existing excellencies."

“*Court of Session.*”

As early as 1580, and not more than fifty years after its institution, loud complaints were made against the iniquities of the Court of Session. Two verses from a poem, by Sir Richard Maitland, afterwards Lord Lethington, addressed to James VI., and descriptive of the *judicia plans tyrannica* of the Lords of Session, as it was even then designated by the immortal Buchanan, are as apposite to the present day, as to those of the later Napiers of Kilmahew, or Sir Richard himself:—

“The Barons say, that thay hae far mair spendit
Upon the law, or thair mater was endit,
Nor it wes worth, thairfore right sair they rue,
To found ane plie that ever thay pretendit,
Bot left it to thair airis to pursue.

The puir folk say, that thay for fault of spending,
Maun lief the law, it is sae lang in ending;
Lang process thaim to povertie hes brocht,
For of thair skayeth be law can get nae mending,
That thay are fain to grie for things of nocht.”

A modern bard has reduced the chorus of the poem to less unaccommodating language, in these terms:—

“Their process long, perplex’d and wrong, no man can now endure,
Their process fraught, with trick and craft, none justice can procure;
With objects mean, and hands unclean, into that state they bring
The cause, that from their victim, they his shilling last may wring.”

It is universally admitted that the golden age of Scottish Jurisprudence was that short period, when the great Oliver held the northern kingdom by a Lieutenant, and when English Judges went the circuits, and dispensed what was truly “*justice.*” A Court of Session Lord has remarked, as accounting for the purity of the decisions of the English Justices, “Deil mean them, they had neither kith nor kin in the country.” It is lamentable to think that there was not only truth in the remark, but that the sneer of the Senator has been all along too much justified by the mode of administering the law in Scotland. In fact, the whole Court of Session always was, and is, and for a long time, it is to be feared, will be little better than a “snug family party.”

It appears, from the Scottish Declaration of Rights, that the most prominent and

insupportable grievances, of which redress was *claimed, demanded, and insisted on*, were those flowing from the corrupt and unjust judgments of the Court of Session, so that the short dominion of the Protector had only given to the people a sight, as it were, of the land of Promise—a taste of pure justice, only to farther embitter the restoration of the ancient system.

The immensely increased commerce and wealth of Scotland, have hitherto only added to the sources of judicial plunder, and extended the baneful operation of its antiquated judicial system. It is to be hoped that the rapidly increasing intelligence of the country will some day open the eyes of the people to this great and increasing evil, and then public indignation may sweep it away, or at least apply a new broom to the Augean stable of Edinburgh Law.
