AN

ANALYTICAL STATEMENT

OF

THE CASE

OF

ALEXANDER,

EARL OF STIRLING AND DOVAN,

&c. &c. &c.

CONTAINING AN EXPLANATION OF

HIS OFFICIAL DIGNITIES,

AND

PECULIAR TERRITORIAL RIGHTS AND PRIVILEGES IN THE BRITISH COLONIES OF

NOVA SCOTIA AND CANADA,

&c. &c.

AND ALSO SHEWING

THE DESCENT OF THE STIRLING PEERAGE HONOURS,

SUPPORTED BY LEGAL EVIDENCE, AND THE LAW AND USAGE OF SCOTLAND, APPERTAINING THERETO:

WITH A VARIETY OF

INCIDENTAL NOTES AND OBSERVATIONS.

BY SIR THOMAS C. BANKS, BART. N. . .

"FIAT JUSTITIA, RUAT CŒLUM."

LONDON:

JAMES COCHRANE AND CO.

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1832.

lexander.

PEDIGREE—*shewing the Descent of the* EARLDOMS OF STIRLING AND DOVAN, *from the Creation of the Titles to the present Time.*

ANDREW ALEXANDER,
of Menstrie,
ninth in descent from Alexander McDonald,
second son of Angus, King of the Isles.

1. Alexander Alexander, of Menstrie, ob. 1594.

2. John Alexander. *(See Table, No. II.)*

1. Sir William Alexander, of Menstrie, Knight, Master of Requests to King James VI.; born 1587; knighted 1614.

CREATED
- 12th July, 1625, *Hereditary Lieutenant, &c., of Nova Scotia; also Premier Baronet, with precedency from 21st May, 1625.*
- 4th Sept. 1630, *Lord Alexander, of Tullibodie, and Viscount of Stirling.*
- 14th June, 1633, *Viscount of Canada, and Earl of Stirling.*
- 30th July, 1637, *Earl of Dovan.*
- 7th Dec. 1639, Charter of Novo-Damus.

Privy Councillor and Secretary of State, 1626; Keeper of the Signet, November, 1627; a Lord of Session, 28th July, 1631.—Died at London in February, 1640, and buried at Stirling, 12th April following.

= Janet, daughter and heir of Sir William Erskine, Knight, Bishop of Glasgow, and cousin-germain of John, 6th Earl of Mar, Regent of Scotland.

2. Andrew Alexander. =

Margaret Alexander, married Mr. James Gordon, Keeper of the Signet.

1. William, Viscount Canada, died at London [illegible] in March, 1638, and was buried at Stirling.

= Margaret, Daughter of William, Marquis of Douglas, died 1st Jan. 1650.

2. Sir Anthony, Master of the King's Works in Scotland, married daughter of Sir Henry Wardlaw, of Pitreavie, Bart.—Died at London, August, 1637, and was buried at Stirling.—Left no issue.

3. Henry, 3rd Earl of Stirling, succeeded his nephew, William, 2nd Earl, ob. ante 16th August, 1644.

= Mary, daughter and co-heir of Sir Peter Vanderet of Tylehurst, co. of Berks, Bart.

4. John, Settled in the North of Ireland, ob. 1666.

= Agnes, . . daughter and heir of Robert Graham, of Garmore, Esq. representative, in the second lineal, of the Earls of Menteith, and lineally descended from King Robert Bruce.

5. Charles, married Ann Drury.

6. Ludovick, died in infancy.

7. James, married Gisel Hay.

1. Jane, = (1st. Hugh, Viscount Montgomery of the Ards, (2nd. Major-General Munroe.

2. Mary, = Sir William Murray, Baronet.

3. Elizabeth, died unmarried.

William, 2nd Earl of Stirling, died at [illegible] in March, 1690, aged [illegible] years.

1. Catharine. = Walter, Lord Torpichen.

2. Jane.

3. Margaret, = Sir Robert Sinclair, of Longformacus.

Henry, 4th Earl of Stirling, ob. 1690.

= Judith, daughter of Robert [illegible] of Binfield, county of Berks.

Jane, ob. ante 1709.

John, died April, 1742.

= Mary, daughter of Hans Hamilton, Esq., died June 1st, 1744, aged 63 years.

Janet, only daughter.

Charles, died without issue.

Margaret, ob. s. p.

1. Henry, 5th Earl of Stirling, married Elizabeth, widow of John Hobby, Esq.; died without issue, at Ewell Court, county of Surrey, 9th December, 1739, and was buried at Binfield.

2. William.

3. Robert.

4. Peter.

Omnes ob. s. p. ante 1730.

1. Mary, = . . . Pitt Ups, Esq. of Binfield, Berks. Issue extinct.

2. Judith, = Sir Wm. Trumbull, Kt. ob. 1716. *(See Table, No. III.)*

3. Jane, ob. s. p.

John, 6th Earl of Stirling, succeeded his cousin, Henry, 5th Earl, 9th December, 1739; born at Nairn, 20th September, 1696, died at Dublin, 1st November, 1743.

= Hannah, daughter of the Rev. John Higgs, of Charlesworth, county of Worcester, great granddaughter of Dr. Griffith Higgs, Dean of Lichfield, Temp. Car. I. ob. 1765.

1. Mary, died unmarried.

2. Elizabeth, = John Mac Skinner, Esq.

1. John, 7th Earl of Stirling, born at Dublin, 26th January, 1735-6; died unmarried, 2nd December, 1765.

2. Benjamin, 8th Earl of Stirling, born at Dublin, 11th March, 1737; died unmarried, 15th April, 1768.

1. Mary, Countess of Stirling, born at Dublin, 1st October, 1739; died unmarried, 4th December, April 24th, 1794.

2. Hannah, Countess of Stirling, succeeded her sister, 1794; born at Dublin, 8th January, 1740-1; died at her house, in the College Green, Worcester, 12th September, 1814.

= William Humphrys, of the Leathes, county of Warwick, Esq., died at Verdun, in France, 1st May, 1807.

ALEXANDER,
9th and present
EARL OF STIRLING AND DOVAN.

DEDICATION.

TO

The King's Most Excellent Majesty.

SIRE,

IN dedicating this Pamphlet to YOUR MAJESTY, I am not so vain as to imagine there is any particular merit in its performance, to recommend it to your Royal notice; but I feel a confidence, that, should it ever be read by YOUR MAJESTY, you will find in it a detail of the most interesting nature, as well affecting the Individual to whom it relates, as affecting also the honour of the Crown, in the administration of the laws of the Kingdom with impartial justice.

When the Noble Individual in question applied to be admitted to your presence, to pay his homage of respect and congratulation upon your happy accession to the Throne, he could not apply in any other character, than in the one he had acquired by right of inheritance, by the exercise of his Peerage rights, and by the qualification of having already taken the Oath of Allegiance to Your MAJESTY, as one of the Nobility of your Realm. He had obtained a public acknowledgment of *status*, and was admitted to be an *Earl de facto*, while the right of being an *Earl de jure*, was not and could not be disputed by any claim, preferred from any other person.

In this respect, Your MAJESTY had not to inquire into further particulars, than to be assured that the EARL OF STIRLING actually held the *status* he represented; your reception of him by

that title, could not have confirmed it to him against another person, who might be capable of proving a better right at any future day; nor has your denial to receive him, the power of taking away his title, supported as it is by law.

On what ground Your Majesty was advised to act, and why you did not exercise your own judgment on the occasion, I shall not assume to ask; but I must observe, that, according to all precedent, either a Sovereign or a Nobleman *de facto* has always been considered in a state, the one to command obedience, and the other to enjoy his privileges.

Richard, Duke of York, the father of King Edward IV., was entitled *de jure* to be King of England; but Henry VI. was reigning King *de facto*, and in him was vested the legal exercise of the Royal prerogative, and thereby the

attainders of the supporters of the House of York were temporarily valid and effectual; as were the laws made by the Parliaments of Henry VI.

Henry VII. was never King *de jure*, but he was King *de facto*. I will not put the question as to William III.; but I will maintain, that the people, from whom all power flows, gave to both of those Monarchs the only title by which they could hold the Royal dignity, for neither had in him the *jus successionis sanguine hereditario*.

Is not Louis Philip, King of the French, a *King de facto*, rather than *de jure?* unless, from the approbation of the nation, or a partial part of it, declared in his behalf, he may be considered to derive the latter title; but even then, acquiescence is no more than sufferance, for it cannot convey the right of successional blood. Yet he has been acknowledged by Your Majesty,

and YOUR MAJESTY'S Ministers. Now, the EARL OF STIRLING is unquestionably EARL *de facto*, and in conformity to the law by which title is established in Scotland, he has been found EARL *de jure*—as the Services of Heirship retoured into the Court of Chancery, and recorded in the public Office of Registry at Edinburgh, will afford ample evidence.

MOST GRACIOUS SIRE, I humbly presume to remark, that though the Royal prerogative is invested with immense power, yet the law has provided that it ought never to be exerted to the suspension of justice. Bracton, an eminent Judge, in his Treatise upon the Law, (L. 2. c. 16.) writes, viz. "*The "King hath a superior, namely God, "and the law by which he is made King;*" and that law consequently enjoins the proper and equal administration of it to all alike.

Your Majesty, on your late auspicious coronation, took the usual oath of your predecessors, to preserve, keep, and administer the laws of the Kingdom inviolate.

Of those laws, the Magna Charta of King John has ever been estimated the principal. In it is an article which says, that "*none shall be deprived of his "freehold, otherwise than by law;*" but has this been observed with regard to the case of the Earl of Stirling? His title is a part of his freehold. Still, it appears, a Judge of the first station has thought proper, without an investigation of a question of right being before him, to pronounce a *sic volo, sic jubeo*, of his own; and thus, as it were, took upon him to make a decision, when he had a mere ministerial practice of his Court alone to follow.

I cannot but regret that certain ceremonious forms are interposed to pre-

vent a personal access to the presence of the King by the subject; so that the latter cannot approach the former, excepting through a Minister, who, from wilfulness, prejudice, and a variety of self-reasons, may think fit to answer for his Master, without having notified the application, or received any commands thereon.

I could illustrate this mode of acting by a recent instance, were it necessary, on the part of your Secretary of State for the Colonial Department; but on the present occasion, I shall, out of respect to Your Majesty, refrain from explaining more with reference to the conduct of this Right Honourable Officer of State.

The contents of the following pages must speak for themselves; and when perused, I shall hope they will satisfy Your Majesty and the Public, that the Noble Individual whom they concern,

has been treated harshly, illiberally, and most unjustly.

With the highest consideration of Your Majesty's desire to promote the welfare of your Kingdom, and to deserve the veneration of those who live under you, I, as one of that number, have the honour to subscribe myself,

May it please Your Majesty,

Your Majesty's most obedient,
Humble Servant,

T. C. BANKS.

London,
February, 1832.

ADVERTISEMENT.

HAVING, in the title-page, announced my name in the character of a Baronet of Nova Scotia, it may not be improper for me to state on what grounds I have assumed that honour.

By the Charter which His Majesty King Charles I., in 1625, made to SIR WILLIAM ALEXANDER (afterwards EARL OF STIRLING) of the Dominium of Nova Scotia, there was power given to him to make resignations of lands, for the qualification of honours to be conferred by him, and power for him to create titles, and dignities, and honours, connected with Nova Scotia; and accordingly the Order of Baronets of Nova Scotia was instituted, and limited never to

exceed the number of one hundred and fifty; and in the said Charter was contained a special clause on the part of the Crown, that it would, whenever required, confirm all such resignations and creations made by the EARL OF STIRLING, according to the terms agreed upon between him and the respective disponees.

The EARL OF STIRLING having, on the 2nd of July last, been cognosced nearest and lawful heir in special to the said Sir William Alexander, his Great-great-great-Grandfather, in the manner the law prescribes, and having had His Majesty's precept for seisin and infeftment directed in his favour upon such cognition, which was executed on the 8th of the same month, (as fully detailed in the subsequent pages,) is now in the legal possession, and entitled to the exercise, of all those powers and privileges which were conceded to his ancestor by the Charter aforesaid.

I shall merely add, that having accepted the Patent of Baronet of Nova Scotia from the EARL OF STIRLING, sealed with the Great Seal of Nova Scotia, and in conformity to the form used and followed by his said ancestor, in the Patents given by him to the several Baronets who had their

creations from him,* I consider the same to be perfectly as legal and as efficacious, as if it had been conferred upon me by the Crown itself; and I have no doubt the Crown, in its liberal view of justice, will concur in the propriety of confirming the same, or of regarding it as quite valid without such confirmation.

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* A proper deed, in the Scotch form, has been accordingly executed to me, under the Great Seal of Nova Scotia.

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APPENDIX.

PRELIMINARY ADDRESS.

In submitting the contents of the following pages to public notice, it may be asked, what the public has to do with the affairs of private individuals? It is true, it has little (if any thing) to do with such concerns, though sometimes there are occasions when an appeal to the public is a matter of absolute necessity.

This is the situation of the Noble Person, whose case is now under detail; and concerning whom, it must be remarked, that, ever since he took the place and seat of his family among his co-Peers, at Holyrood House, on the 2nd of June, 1825, the endeavours of malevolence have been most active to misrepresent his right of succession, to detract

from his indubitable evidence in support thereof, and to asperse his character personally, with the most illiberal, invidious, and contumelious reflections.

Convinced of the propriety of the grounds on which the Earl of Stirling resumed the rank of his ancestors—confident in the ample, genuine, and legal proofs, of which he is possessed, to shew and maintain his descent—and confirmed in my own opinion, by the similar sentiment of several Barristers of high professional practice and knowledge, who have been consulted and advised with, I have been induced to the compilation of this pamphlet; of which I shall only observe, that it comprises a true, and unvarnished statement, which I trust will prove explanatory and satisfactory to the unprejudiced and discriminating part of the public, and will expose and confound the wicked and calumnious.

In addition to the reasons before-mentioned for this publication, there is one arising from a late proceeding in the Court of Common Pleas, whereof the newspapers, at the time, gave a very imperfect account, and thereby caused a very erroneous opinion to be formed of what passed on

that particular occasion, and of what was really expressed by the learned Judges before whom the point in question was agitated.

The case was founded on an action brought by *an English Admiral*, Sir Henry Digby, to recover a sum of money lent, by him, to the Earl of Stirling, for which his Lordship's promissory note had been given to him, as an obligatory security; and a bill of exchange, drawn by a friend of the Admiral, upon, and accepted by, the Earl of Stirling.

This was the nature of the transaction between Sir Henry and the Earl. But it so afterwards occurred, that the Earl of Stirling considered it necessary to discontinue the services of the individual referred to, which circumstance having been communicated to the Admiral, he was much annoyed, as subsequent events have abundantly proved, and wrote a letter to the Earl, to ascertain the cause, and to require payment of the money owing to him. He was replied to, in a manner which was at once candid, explanatory, and to an unimpassioned person, ought to have been satisfactory; but it would seem that the motive of the Earl, inducing

this letter, was but ill appreciated—as the answer testified. It may suffice to say, that the result was a violent determination, on the part of the Admiral, to pursue the Earl, with all *the little pettifogging* malice, which the nature of the Common Law will allow, to torment, harass, and vex the feelings of an honourable mind.—He gave instructions to his Attorney, to arrest the Earl as a commoner, by his family name—though he knew that the Earl, being entitled to his privilege of Peerage, was not liable to personal caption—though he had recognized him as EARL OF STIRLING, while on terms of friendly intercourse—though the securities he held, were under the signature of STIRLING only—and though he knew that an action in a similar way, had been before overruled by a decision of Lord Chief Justice Tenterden.

The character of an English sailor has usually been considered (and I hope this solitary instance of deviation, will not depreciate it) as open, liberal, hateful of law and litigation, and fraught with no mercenary conduct, or inclination either to oppress or molest his fellow-man: I wish I could in the present instance illustrate that high reputation, by

the example of this renowned Knight of the red ribband; my judgment leads me to a very contrary opinion; and I do not think the lowest Jack in the navy would approve the behaviour of his Admiral, in the vindictive manner here noticed.

In the subsequent pages, there will be found a more detailed account of the result of the Admiral's attempt to hold the Earl to bail; and all, therefore, that will now be observed, will be to remark upon the instructions, which, it must be presumed, he gave to his Attorney, for his Counsel to make misrepresentations; for it cannot be believed that Mr. Serjeant Wilde would, without instructions, have thought of, or brought forward, the topics he so pertinaciously insisted upon in Court.

Among the points most vehemently commented upon, one was, that *the Earl of Lauderdale, and the Duke of Buccleuch, had complained to the House of Peers, of the* EARL OF STIRLING *having voted in the election of Representative Peers;—a statement as untrue, as it was unnecessarily made,* for the wilful purpose of misleading the Court; for neither the Earl nor the Duke ever made such a complaint to the House of Peers. At the general election in September, 1830, they were present in

the election chamber, and heard the Earl of Rosebery state, "*that he should not oppose the* "EARL OF STIRLING'S *vote, as he had voted, and* "*his vote had been received, at a former election;* "*and that the Resolutions he had moved in* 1822, "*did not apply against him.*" On this occasion, the said Noblemen must have been convinced that the EARL OF STIRLING'S vote was legally tendered, and legally accepted; for *they expressed no objection to it,* although much discussion took place with regard to the vote of the Lord Duffus, which was rejected and disallowed. However, at the late general election in June last (1831), these noble personages *did, after the election was over,* present to the officiating Clerks of Session, a written paper, complaining of the Clerks having, on a former election, received the EARL OF STIRLING'S vote, he not having gone before the House of Lords, in conformity to their Resolutions. But with what propriety these worthy Noblemen could complain against the Clerks, for having done that which they themselves had, in the Clerks' presence, only a few months before, suffered to pass without opposition, by their silent acquiescence in the Earl of Rosebery's explanation, must be left to

their ideas of consistency,* and the ingenuity of Serjeant Wilde to reconcile. I should nevertheless observe, that at the last election there was a great competition of candidates; and a vote might be estimated, in a political point of view, as of much importance. Suffice it to say, the Earl's vote was admitted, and counted, and his name returned among the Peers personally present.† Still, the averment of the learned Serjeant was a great perversion of fact.—Another point urged by the Serjeant was, that the Earl claimed his title under a Patent which limited it to the female line; and that, if it did so limit it, the Dowager Marchioness of Downshire was the right heir—but he argued that no such Patent existed. Here the Chief Justice remarked, with great propriety, that "*the Court had no right to try a right of title to the "Peerage of Scotland.*" In this respect, it must

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* It must be in the mind of every one to know, that there is no Act of Parliament to regulate consistency. Of the ability of the Earl of Lauderdale to explain what it means, his political life may afford a specimen; as also the value he once *set upon his Nobility*, may be gathered from the Memoirs of his conduct in the early part of the French Revolution. It may be queried, how far his Lordship may feel obliged to Mr. Serjeant Wilde, for having brought him forward as a scare-crow on this occasion.

† Vide Appendix, p. 110.

be seen that it was not truth, but the perversion of truth, by which the Serjeant had been instructed to adopt his observations to the Court, to impose upon its judgment. This perversion of fact was the more wilful, because the *friend* of Sir Henry Digby has asserted, that he had been informed by the Solicitor of the Marchioness, that there were, among the Downshire MSS., a great many letters addressed to her mother, as COUNTESS OF STIRLING—a circumstance, which must shew that the Charter respecting the title, was known to the family, and that it was also known not to let in the course of female succession, under which she could pretend any right. Either the Solicitor to the Marchioness must have told the intimate friend of Sir Henry a falsity, for some purpose of deception, or his friend must have told a similar falsity, for some particular reason.* Indeed, it would seem that the existence of the Charter was matter of notoriety in the Downshire

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* It is worthy of remark, that this person has stated that he knows where the Charter of Novo-Damus is to be obtained, if he thought fit to declare the custody it is in:—supposing this to be true, it is somewhat strange he should not satisfy his friend the Admiral, and his Janus-like Solicitors, of the error they are under, in asserting that the Charter never existed.

family, and only denied, when it was found there was no inheritable right derivable under it; and then, according to the fable of the dog in the manger, as the family could not gain any thing itself, it did not like another to enjoy the benefit.

Another point urged by the Serjeant, was, that the King had refused to receive the Earl at Court. But supposing the King had received him at Court, what would it have amounted to? His Majesty, by his reception, could no more have confirmed his Peerage right, if he had no legal title to it, than by his rejection, he could deprive him of his rank, contrary to law. I will only say, that His Majesty would have exercised a degree of courtesy, not unworthy royal dignity, had he received the Earl; for, as the Earl had previously taken the oath of allegiance to His Majesty as a Peer, and had been allowed to exercise the privileges of his order, he had acquired a *public status* which was only questionable by a competitor. I shall not assume to inquire, on what ground the Earl of Newburgh shall have been received at Court, in his Peerage character, without having gone before the House of Lords for allowance of dignity—nor why a nautical Baronet shall have partaken of a similar honour, when the verdict of

a Jury shall have decided against his honorial descent. These little discrepancies of royal grace may probably be easily reconciled, where influence and connexion have weight, and a sympathetic regard for service induces favour; but yet these acknowledgments of the Court cannot operate confirmation of right, where it is not founded on a legal basis.

Again, the forensic orator endeavoured to lay stress upon the circumstance, that the Earl's name having been introduced in a bill in Chancery, and he being described therein as a Peer of Scotland, the present Lord Chancellor refused to recognise him in that character;—yet the learned gentleman admitted that the same Peerage character had been allowed to him by the late Lord Chancellor Lyndhurst, who had certified him under the Great Seal, as a Peer of Scotland, who, as such, had taken the usual oaths before him, to become qualified to vote by signed lists at the then ensuing general election for the Representative Peers of that kingdom; and he also admitted, that the Chief Justice, the Lord Tenterden, had, upon a very recent application, likewise allowed him to be entitled to the privilege of Peerage; but, notwithstanding these admissions, he contended that

the refusal of the King, and of the Lord Chancellor, to recognise the Earl in that capacity, were much stronger facts against the legality of his title, than the sanction given by the two noble and learned Judges, were in favour of it. On a logical comparison of the weight of legal opinion, most certainly the preponderance is on the side of the Judges; there are two Lords of high legal knowledge against one—unless the names of my *Lord Brougham and Vaux* are to be deemed equivalent to those of my Lords Lyndhurst and Tenterden, and the name of the King unceremoniously superadded, as a make-weight to turn the scale.

For the exertions of Serjeant Wilde to serve his client, every credit is to be attributed to him, by those who paid him for his ingenuity, or for his close adherence to his instructions; yet it must be convincing to every one, that the whole of the Serjeant's reasoning was irrelevant to the point before the Court—for the Bench had not to try a question of Peerage right—it had only to decide how far the privilege of Peerage attached to a person who had obtained the actual *status of a Peer*, unchallenged by any counter-claimant, and who had been put upon the records of Parliament, as a Peer of Scotland, and whose right thereto had never been overruled.

With these observations, I shall conclude my comments on the case before the Court of Common Pleas; but, inasmuch as Mr. Serjeant Wilde, on that occasion, so particularly laid stress on the conduct of the Lord Chancellor, it may be proper briefly to remark thereon. The application to the Chancellor was for a letter missive to the Earl of Stirling—the usual and only form of practice, on bills filed against a Peer; this, the Lord Chancellor refused to allow—taking upon himself to say the Earl was no Peer; and thus also presuming to pronounce a judgment, where no cause was before him requiring it. On the argument by Serjeant Wilde of the effect of the Chancellor's declaration, Mr. Justice Alderson asked, (apparently much surprised,) under what statute the Lord Chancellor had exercised that refusal? to which the Serjeant replied, he was not aware of any statute. Now, every impartial and unprejudiced person must consider that it was the duty of the Chancellor to have granted the letter missive applied for; it did not commit him to any approbation of the Earl's title, any more than the certificate under the Great Seal on the occasion before-mentioned, committed his predecessor, Lord Lyndhurst: but his refusal has shewn that the

two Chancellors entertained very different notions of official consistency—while the learned Serjeant chose to determine the better knowledge, by applying it to the one in power, rather than to the one out; and in doing so, he warily suppressed the important fact, that the Earl of Stirling having instituted a suit to recover property before the Court of Session in Scotland, to which the Crown was made a party, exception was taken to his title, and the Counsel for the Crown heard thereon; but the Judges, thirteen in number, were of opinion he was entitled to come before them in his Peerage character, and accordingly sustained instance (*i. e.* suit) in his Lordship's favour, 9th February, 1831. An old adage says, that "in a "multitude of counsellors there is safety;" but it appears here, that there is not so much safety or wisdom in the decisions of thirteen Judges in Scotland, and of two in England, *viz.* the Chief Justice, and the ex-Chancellor, as in one, the blazing star in the legal and political firmament of the day!

I do not wish to denounce the hasty proceeding of my Lord Brougham, as unbecoming the temperate justice of a Judge; but I cannot help observing, that his conduct in this instance appears to be a sad deviation from his sentiments, as

delivered in his speech on the state of the law, in the House of Commons, 7th February, 1828—in which he complained that a process for trial of right should be left to the arbitrary caprice of an Attorney-General, when, as a mere ministerial act of office, the fiat ought to be given as a matter of course. Yet his Lordship, on the occasion before himself, thought fit not only to refuse the usual process applied for, but to express gratuitously his opinion respecting the title of the party, of the particulars of whose case he was totally ignorant. The result was, that the Earl of Stirling, not being able to appear before the Court in his proper character, to have the merits of the bill filed against him entered into, was obliged to pay, and did pay, £500, to settle the subject in dispute.

I am informed, by persons who know him, that my Lord Brougham is a most worthy man—incapable of doing wrong to any one—willing always to compensate an injury, or retrace an error, when inopportunely or prematurely committed—and in every way truly deserving the high and distinguished popularity he has attained; as such, I make no further remarks on this exalted personage; nor shall I say more on the case which has occasioned the preceding narrative—though it is

plainly evident, that Sir Henry Digby has been less desirous to get paid his demand, than willing to fight the battle of others, as their cat's-paw.

I now come to the title of the Earl of Stirling.—This devolved upon him through a regular course of descent. Wallace, an eminent writer upon the Scotch Peerage, says,* "Honours "are not enjoyed by any person to whom they "devolve, under the will, or right of inheritance of "his ancestor; but are derived to every possessor "of them solely from the favour of the King, as "if each successive individual possible to come "into being, and inherit them, had been distinctly "foreseen, particularly named, and originally "called in the Royal Charter which granted them: "in consequence, a Peer requires not a service, a "conveyance, or the using of any form, to acquire "a dignity that is cast on him by descent; but, "on the death of his ancestor, is fully invested "with it merely by existence, *and may assume it* "*at pleasure.*"

Acting upon this principle, the Lord Aston, whose name does not stand even upon the Roll of Scotch Peers, has taken the title, and, though he

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* R. 434.

has never exercised any Peerage right, and cannot do so, until his name shall have been admitted upon the Roll, he has still been allowed to keep his title, and to be denominated as Lord Aston, in the Commission of the Peace, as an acting Magistrate for the County of Worcester. Does the learned Lord upon the Woolsack approve of this anomaly? Would he refuse a letter missive to him, while he recognized him as a Peer, in the civil functions committed to him under the Great Seal to perform?

Does not the Noble Lord suppose that in the dispensation of justice, consistency and impartiality should prevail, and not be warped by prejudice of person, or of opinion?

The Earl of Newburgh has assumed the title, but has never gone before the House of Lords for allowance of dignity. He has been received at Court as Earl of Newburgh; and yet it may be considered, exclusively of other circumstances, that an Act of Parliament, as in the case of Stafford, would be requisite to cure the attainder of his ancestor, and render the honour legally descendable to him.

Alexander, Eleventh Earl of Cassilis, became entitled to the dignity upon the death of his

distant cousin, David, the Tenth Earl, in 1802; but he assumed the title without going before the House of Lords to prove his right.

Thomas, Eighth Earl of Dundonald, on the death of his very distant cousin, William, the Seventh Earl, 1750, took the title, which has descended in his line ever since; but he never applied to the House of Lords for its approbation.

Anthony, Eighth Lord Falconer, on the death of his collateral cousin, George, Tenth Earl Marischal, in 1778, became Fifth Earl of Kintore, took the title, but never applied to the Lords for confirmation.

John, Fourth Earl of Breadalbane, succeeded, in 1782, his most distant kinsman, John, the Third Earl, as heir male, not of the body of the First Earl, but as heir male of Colin Campbell, next brother to John, father of the First Earl.

Lewis Alexander, Fifth Earl of Seafield, on the death of James, Fourth Earl, in 1811, took the title, without going before the House of Lords.

John William, Seventh Earl of Stair, succeeded his cousin John, the Sixth Earl, in 1821, but did not apply to the House of Lords for allowance of dignity.

John, Sixth Viscount Arbuthnot, succeeded his

cousin, John, the Fifth Viscount, in 1756, without application to the House of Lords.

Eric, Seventh Lord Reay, on the death of his distant cousin, Hugh, the Sixth Lord, in 1797, assumed the title, and did not apply for confirmation.

James, Earl of Verulam, on the death of his mother's cousin, Anna Maria, Baroness Forrester, in 1808, took that title, but has not gone to the House of Lords for confirmation of it, although it embraces an interesting descent.*

Other titles might be enumerated,—but it is submitted, that these already recited are sufficient to shew, that in the right of succession to their honours, the noble persons before named did not deem it a point imperative upon them, to go to the House of Lords for the confirmation of their dignities; they were not questioned, nor challenged by any other parties; and therefore they became entitled to them merely by descent. The House

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* This account of successions of Scotch Peers, without going before the House of Lords, is taken from "Debrett's Peerage," edited, I believe, by Mr. Townsend, a Member of the College of Arms; and from the Peerage by Mr. Lodge, the literary Norroy King of Arms, who has omitted the name of the Earl of Stirling, but left his Arms remaining;—the motive is not necessary to be inquired into.

of Lords could not, in a legal point of view, make an enactment to alter the course of trial of descent: the laws and customs of Scotland were confirmed by the Articles of Union; and in this light, the learned Chief Justice of the Court of Common Pleas, on the occasion before-mentioned, was pleased to observe, that the Resolutions of the House of Lords, in 1822, respecting the Peers of Scotland, appeared to him to be a violation of the said Articles of Union.

Upon the Union taking place, the Peers of Scotland ceased to be a Parliamentary and legislative body; but their character and privileges of Peerage were preserved to them co-equal with the Peers of England, thenceforth denominated Great Britain; they were to enjoy all the same rights, excepting the right of sitting and voting in the House of Lords, otherwise than by representatives, chosen by, and from among themselves. Thus the electors and the elected were equally Peers of the united realm. Another proof of Peerage must thence be taken, from the act of voting upon those occasions, when, by virtue of His Majesty's proclamation, they shall be called to assemble in their Parliament Chambers at Holyrood House, for the purpose aforesaid:—the return made by

the Lord Clerk Register, or his deputies, in obedience to His Majesty's command, of the Minutes of Election, with the names of the Peers voting, and of the Peers elected, becomes from that period the record, that those persons who thus voted were received and considered as lawful and efficient Peers of Scotland.

In this instance, the Royal proclamation may be assimilated to the writ of summons addressed to the Peers of England, for their Parliamentary attendance. It is the only remnant of the Scotch Peerage Parliamentary meeting; and it is to be observed, that without the proclamation, they cannot assemble in a Parliamentary character—which character must attach to the election proceeding, that proceeding being virtually to be deemed equivalent to the admission of the whole body of the Peers of Scotland into the actual House of Lords of the United Kingdom of Great Britain, for the purpose of legislation.

Having said so far with reference to the Earl of Stirling having taken up his title, in conformity to the law and usage of Scotland, and in conformity to the precedented practice of other Peers of the same kingdom, it may be expected something should be noticed as to the Earldom of

Dovan, which he has assumed in addition to that of Stirling.

On this head, a particular Chapter has been given in the subsequent pages, which consequently renders it unnecessary here to dilate upon the important points which it contains. It may be only competent to represent, that the Earl having been served heir to that title, under the terms in which it was created, has acted by the advice of his Counsel, and for the reasons set forth in the said Chapter, has made additament of it accordingly.

It has been asserted, that the Earl of Stirling, claiming through an heir female, cannot be entitled to an honour limited to heirs male. This has been a great error; for, in the usage and important practice of the law of Scotland, it has been found and decided upon, that where an honour or a property is limited, "*heredibus masculis et assignatis*," the heirs male of the body first succeed, and when they have failed, or become extinct, then the heir female (comprised in the word "*assignatis*") of the last heir male becomes entitled to the succession, even though there may be an heir female of an elder heir male at that time remaining.

In this respect, the EARL OF STIRLING stands heir to his family titles and estates, without a shadow of pretence, in preference to any would-be rival or competitor.

The Palatinate property in Nova Scotia and Canada, has likewise formed a Chapter in the following pages; but as some objections have been suggested against the competency of the Charters, under which the same was granted, it may be rather expedient to make some observations in answer thereto;—indeed, it is not a little curious to find, that those objections principally stated, are the very objections urged by the French against the right claimed by the Crown of Great Britain to the territory in question, and which are so very satisfactorily answered in the reply of the British Commissioners, to the frivolous and futile subterfuges of the French Government. The whole may be thus briefly described in their own words:—

As to the first exception* taken by the French Commissioners to the Patent of SIR WILLIAM ALEXANDER, "that the lands contained within it

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* Memorials of the British and French Commissioners, relative to their North American Territories, for 1756, 4to edition, pages 206, 207, and 208.

" being at the time of the grant in the possession " of the French, the Patent became void in itself, " upon that condition in it, which, as they allege, " makes it necessary that no lands to be possessed " in consequence of that grant should be occupied " by inhabitants who cultivated them—which " objection seems to be founded in a mistake of " the words of the Patent, in which King James, " after having expressed his sense of the public " utility arising from the establishment of Colonies, " adds these words, '*Præsertim si vel ipsa regna* " '*cultoribus prius vacua vel ab infidelibus quos ad* " '*Christianam converti fidem ad Dei gloriam interest* " '*plurimum insessa fuerunt.*' These are the " words upon which the French Commissioners " found their objections, though nothing can be " more clear in construction, than that they are " only expressive of a circumstance, which, " where it happens, makes settlements in foreign " countries additionally beneficial to mankind, " and imply no condition at all."

They afterwards allege, " that if no such " condition had been contained in the grant, it " would nevertheless have been void, the French " having settled within it, upon the lands granted " to the Sieur de Monts, in 1603, by the Letters

" Patent of Henry the Fourth (of France)—that " no English settlements were ever made in " consequence of the grant—that the Nova Scotia " granted by King James, is merely ideal, and " had no existence till the Treaty of Utrecht."

These objections are thus easily answered:— " As to the grant being void, as comprising lands " then settled by the Sieur de Monts, if it was a " point worth contending for, it could be easily " proved, that what they call the settlements of " the Sieur de Monts, was nothing more than *a* " *cursory usurpation in opposition to the rights of the* " *Crown of Great Britain;* as it is evident from " Champlain, Part 2, page 266—in which he says, " ' *Les Anglois qui n 'y avoient été que sur nos* " ' *briseés s'etant emparés depuis dix a douze ans des* " ' *lieux les plus signales, même enlevoient deux* " ' *habitations, savoir celle du Port Royal, ou étoit* " ' *Poitrincourt, ou ils sont habitués de present'*— " that the English did make settlements in con- " sequence of this grant; for the Memorial from " which this passage is taken, was presented at " London *in* 1631, in which he says, that the " English had made settlements in Port Royal, " *ten years* before the date of that Memorial— " which will place them *in the year* 1621, *the very* " *year in which King James made his grant.*

"It is also remarkable, that there remain at "this very day, the ruins of a Fort built at that "time, at the entrance into the Basin, *which* "*preserve* the name of 'the Scotch Fort.'

"It is a little difficult to know, in what sense "the French Commissioners would be understood, "when they say, that Nova Scotia had no existence "antecedent to the Treaty of Utrecht. If they "mean only, that France did not call that country "by the name of Nova Scotia, it is true; but "Nova Scotia, descriptive of that country, had "its existence before that Treaty, not only in the "Letters Patent of King James the First, but in "all the English Maps from 1625 to 1700, "and in Laet's History,* and in the beginning "of the Negociation preceding the Treaty of "Utrecht; nor, indeed, is it possible to suppose "France not to have had an idea of the country "called Nova Scotia, after it had been so frequently "mentioned in the best Maps and Histories of "America,—as Purchas's Pilgrim, Laet, and "Champlain."

From these facts and arguments of the British Commissioners, in refutation of the French ob-

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* P. 18.

jections, it is evident that Nova Scotia was claimed, and the right thereto sustained, on the foundation of the Colony, and the occupation of the country by Sir William Alexander, in virtue of his grants thereof, from King James, and King Charles the First. It was demanded, and acquired back, in full plenitude of territory and boundary, as contained in the grants to Sir William Alexander; and in the late question between the American and British Governments, submitted by them to be determined by the King of Holland, the Charter of Sir William Alexander was the one on which the British Government assumed to maintain its boundary line.

Here it may be remarked, that it is not a little curious to see with what ingenuity and pertinacity the British Commissioners urged and supported the validity of Sir William Alexander's Charters, and now to see with what subtlety those very objections of the French, so perfectly negatived, are taken up, and made use of, against the claim to the country, made by the legal heir and representative of the same Sir William Alexander; a subterfuge as unworthy as it is unjust, and the more especially so, when this Colony and Canada

are the only remaining ones possessed by Great Britain out of all her American Territories, and which were founded and added to her dominion by the sacrifice of the private estate of the noble founder.

It has been endeavoured to set up prescription also, in opposition to the right of the Earl of Stirling. On this topic, two very important maxims of English law are directly opposed to it—viz. the rules "*Nullum tempus occurrit Regi*," and "*Nullum tempus occurrit ecclesiæ*"—that is to say, no adverse possession, of however long standing, can be a bar to a prior right of the King or of the Church. In the present instance of claim against the Crown, it would be rather bearing too much upon the exercise of excessive prerogative, to take away property, from some by virtue of a nullum tempus exception, and yet refuse to restore it to others, by not allowing the same exception in favor of those, whose claims are derived from the Crown itself.

But this, like every other negation frivolously started to subvert and overthrow the right of the Earl of Stirling, is nullified by the very words of the Charters themselves, which, by a special clause, suspend prescription altogether,

and seem to have been used for that purpose, so that the law of Scotland was excluded, and the law of England could not apply.

Most probably, the patience of the reader may be rather drawing to an end by this long Address; but it is hoped the subject of it will have explained the peculiar interest in the subsequent Chapters, which, on the behalf of the EARL OF STIRLING, it has been thought expedient to be laid before the Public.

It was here intended to have closed this Address, but the indefatigable and zealous Solicitors* for the EARL OF STIRLING, having just submitted to me two extracts from the Affidavits of the Plaintiff and his Attorney, sworn in the cause mentioned in the early part of this pamphlet, they appear too curious to be passed over without observation.

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* I think it incumbent on me to remark, that to these Gentlemen, Messrs. Webber and Bland, of Ely Place, Holborn, I am much indebted for some important communications and assistance in this Pamphlet; and it is but due to their professional character to say, that their assiduity and attention to the cause and interest of their client reflects the greatest credit upon them, only to be equalled by the talent and ability they have shewn in conducting the business they had undertaken.

Sir Henry Digby, the Plaintiff, swears "that "the writ was executed upon the Defendant with "the intention on the part of the Deponent, of "disputing the right of the Defendant to the "Peerage." Now, if this pugnacious Knight errant of the fair Dowager was solely desirous of entering the list of contention, and placing himself in the front of the battle, for another person, he might have done so in a more courteous and gentlemanly manner, for he might have proceeded otherwise than by bailable process; but no, the Knight swears further, viz. "that the debt for "which the action is brought, will be wholly lost "to the Deponent if he is prevented disputing "this right."

This is another notable assertion, for the Knight has first stated that he lost the money at the instance of his sworn friend, believing the Defendant to be a Peer; an assertion, which, if true, shews that he considered that the Defendant having that rank, would be able to repay him at a future day; yet he has afterwards sworn, that if the Defendant is allowed to be a Peer, this debt will be wholly lost!!! Surely the gallant Admiral would cut a better figure on the quarter-deck, than in the witness's box.

Mr. Potts, Attorney for the Knight, swears that in a conversation with a Mr. Handley, who had been for many years Solicitor for the Downshire family, that personage informed him the Marchioness of Downshire had said, "that from her "infancy she had always been informed by her "guardians, the Lord Robert Bertie, and Lord "Sandys, and other near connexions, that she "would have been entitled to the Earldom if it "had been limited to heirs general."

Assuming that Mr. Potts swears truly, and Mr. Handley informed him in the same way, (and God forbid either of these parties should be supposed not to declare what is true,) the declaration of the Marchioness shews demonstrably, that her family entertained a knowledge of the Earldom being limited to the heir female in remainder, after the failure of the issue male of the Patentee. The constant observation made respecting the title, argues the lamentation of the family that the heirs male were not at that time extinct; for otherwise why talk about an honour that would never come to a female, if it had been limited to descend in the male line only? why fill a child's brain about a matter which never existed? The lamentation, and the frequent

mention of the subject, evince the knowledge had of the Charter of Novo-Damus, and the sole regret that they could not extinguish the male line then living, and deprive it of its inheritance ;— thence the bitterness and persecution the present Earl has undergone, after he made prominently known his right of succession :

" From their own lips shall they be convicted."

I will only add, that though insult and injustice may for a long time prevail, yet the righteous cause will eventually succeed, and the wicked doers be abashed and confounded.

An old adage says,

" Vengeance divine to punish sin, comes slow ;
" Though slow its pace, the surer is its blow."

CHAPTER I.

ON THE AMERICAN PROPERTY.

THE private property of the First EARL OF STIRLING, in Scotland, was very considerable and valuable; but as the great possessions which were granted to him in America were publicly important, as composing a perfect Palatinate of Territory and Jurisdiction, the account of them peculiarly requires the first notice. In which respect, it is to be observed, that the present EARL OF STIRLING, having become heir to this extensive Inheritance granted to his Great-Great-Great-Grandfather, the First EARL OF STIRLING, by Kings James the First and Charles the First, considers, that while he is desirous of furthering those objects, in the zealous promotion of which by his Ancestors, the Charters themselves originated, it may be proper for him to lay this Statement before the Public, for the correction of the erroneous opinions of those who call in question his just pretensions, and, by a concise explanation, shew the extent of the rights which have descended to him from his Ancestors, and of the course by which it has been proved beyond a doubt, that he alone is legally and properly, under the circumstances, entitled to assume and enjoy them.

SIR WILLIAM ALEXANDER, of Menstrie, Knight, and afterwards EARL OF STIRLING, was (as is well known) a person of the first-rate talents and abilities, and of a speculative and enterprising disposition, according materially with the spirit of the times. In the execution of his pursuits, he expended large sums of money in founding and establishing a Colony in North America; and from his consummate knowledge, industry, and zeal in public affairs, became a great personal favourite of King James the First, and his son and successor, Charles the First, in whose reigns he was made a Privy Councillor, Secretary of State for Scotland, &c. &c.

The first Palatinate Grant of the Territory thenceforth denominated Nova Scotia, in that part of North America which then went under the general name of Acadia, was made by King James the First, by Charter, under the Great Seal of Scotland, dated at Windsor, the 10th Sept. 1621:* the preamble, among other things, thus recites, viz. "Propter fidele et gratum dilecti nostri consiliarii DOMINI WILLELMI ALEXANDRI equitis servitium nobis præstitum et præstandum qui *propriis impensis* ex nostratibus *primus externam hanc coloniam ducendam conatus sit* diversasque terras infra-designatis limitibus circumscriptas incolendas expetiverit. Nos igitur ex regali nostra, &c. &c. Dedimus concessimus et disposuimus tenoreque præsentis cartæ nostræ Damus concedimus et disponimus præfato DOMINO WILLELMO ALEXANDER hæredibus suis vel assignatis quibuscunque hæreditarie †Omnes et singulas terras continentes

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* Reg. Mag. Sig. B. 50. N. 36.

† This comprises New Brunswick and Nova Scotia, with Cape Breton, Prince Edward's and other Islands. Maps of the Countries comprised in the Charters to the STIRLING family, copies of the Charters, and all information respecting the matters contained in these pages, may be seen and had at the Nova Scotia Hereditary Lieutenancy Office, No. 53. Parliament-street.

" ac insulas situat et jacen in America intra caput seu
" promontorium cómmuniter Cap de Sable appellat jacen
" prope latitudinem quadraginta trium graduum aut eo
" circa ab equinoctiali linea versus septentrionem a quo
" promontorio versus littus maris tenden ad occidentem
" ad stationem navium Sanctæ Mariæ vulgo *Sanctmareis*
" *bay* et deinceps versus septentrionem per directam
" lineam introitum sive ostium magnæ illius stationis
" navium trajicien quæ excurrit in terræ orientalem plagam
" inter regiones Suriquorum ac Stecheminorum vulgo
" *Suriquois* et *Stechemines* ad fluvium vulgo nomine
" Sanctæ Crucis appellat et ad scaturiginem remotissimam
" sive fontem ex occidentali parte ejusdem qui se primum
" prædicto fluvio immiscit, unde per imaginariam directam
" lineam quæ pergere per terram seu currere versus sep-
" tentrionem concipietur ad proximam navium stationem
" fluvium vel scaturiginem in magno fluvio de Canada
" sese exonerantem et ab eo pergendo versus orientem
" per maris oras littorales ejusdem fluvii de Canada ad
" fluvium stationem navium portum aut littus communiter
" nomine de Gathepe vel Gaspie notum et appellatum et
" deinceps versus euronotum ad insulas Bacalaos vel Cap
" Britton vocat reliquendo easdem insulas a dextra et
" voraginem dicti magni fluvii de Canada sive magnæ
" stationis navium et terras de Newfundland cum insulis
" ad easdem terras pertinentibus a sinistra et deinceps
" ad caput sive promontorium de Cap Britton prædict
" jacen prope latitudinem quadraginta quinque graduum
" aut eo circa et a dicto promontorio de Cap Britton versus
" meridiem et occidentem ad prædict Cap Sable ubi ince-
" pit perambulatio includen et comprehenden intra dictas
" maris oras littorales ac earum circumferentias a mari ad
" mari omnes terras continentes cum fluminibus torrenti-
" bus sinubus littoribus insulis aut maribus jacen prope
" aut intra sex leucas ad aliquam earundem partem ex
" occidentali boreali vel orientali partibus orarum littora-

" lium et præcinctuum earundem et ad euronoto (ubi jacet
" Cap Britton) et ex australi parte ejusdem (ubi est Cap
" de Sable) omnia maria ac insulas versus meridiem intra
" quadraginta leucas dictarum orarum littoralium earun-
" dem magnam insulam vulgariter appellat Ile de Sable
" vel Sablon includen jacen versus Carban vulgo south-
" south-eist circa triginta leucas a dicto Cap Britton
" in mari et existen in latitudine quadraginta quatuor
" graduum aut eo circa. Quæquiden terræ prædict omni
" tempore affuturo nomine NOVÆ SCOTIÆ in America
" gaudebunt quas etiam præfatus DOMINUS WILLELMUS
" in partes et portiones sicut ei visum fuerit dividet
" eisdemque nomina pro bene placito imponet."

The extent and importance of the Territory thus granted is plainly manifest. SIR WILLIAM had possession thereof, and proceeded pertinaciously in the Colonization of the Country; but King James dying about four years after, his son and successor, King Charles the First, being sedulous to promote the success of this Scotch Colony, for the honour and advantage of his native kingdom, strenuously seconded the exertions of SIR WILLIAM, who, at the instance of His Majesty, made a surrender of the aforesaid Charter into his royal hands, for the purpose of a New Grant with some more extensive powers; and accordingly King Charles the First, by another Charter, dated at Oatlands, the 12th July, 1625,* was graciously pleased to re-confirm the said Charter, and to add thereto certain other privileges and prerogatives, with the right of creating the hereditary dignity of a Knight Baronet of Nova Scotia, which was an order of rank then for the first time instituted, and whereof he, SIR WILLIAM ALEXANDER, for himself and successors, was constituted the premier Baronet.

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* Reg. Mag. Sig. B. 51. N. 23.

This Charter, called a Charter of Novo-Damus, after recapitulating the Boundaries, &c. &c., contained in the former Charter, and its divers clauses, thus continues, viz.: "Insuper nos cum avisamento præscripto pro bono "fideli et gratuito servitio nobis per dictum DOMINUM "WILLIELMUM ALEXANDER præstito et impenso et "respectu habito magnarum et multarum expensarum "et sumptuum conferend et impendend in plantatione dict "bondarum dominii et regionis Novæ Scotiæ et earund "sub nostra obedientia reductione aliisque gravibus "et causis onerosis DE NOVO dedimus concessimus "et disposuimus tenoreque præsentis cartæ nostræ "Damus concedimus et disponimus præfato DOMINO "WILLIELMO ALEXANDER suisque heredibus et "assignatis hæreditarie Omnes et singulas prædictas "terras dominium et regionem Novæ Scotiæ una "cum omnibus et singulis castellis turribus fortaliciis "manerierum locis domibus ædificiis exstructis et ex-"struendis hortis pomariis plantatis et plantandis toftis "croftis pratis pascuis silvis virgultis molendinis mul-"turis terris molendinariis piscationibus tam rubrorum "quam aliorum piscium salmonum piscium tam magnorum "quam minutorum tam in aquis salsis quam dulcibus "una cum omnibus et singulis decimis garbalibus earun-"dem inclusis tam magnis quam minutis cum advocatione "donatione beneficiorum ecclesiarum et capellaniarum et "juribus patronatuum earund annexis connexis depen-"dentiis tenentibus tenandriis et libere tenentium servitiis "earund. Una cum omnibus et singulis præciosis lapi-"dibus gemmis cristallo alumine corallio et aliis cum "omnibus et singulis mineralibus venis et lapicidiis earund "tam metallorum et mineralium regalium et regiorum "auri et argenti infra dictas bondas et dominium Novæ "Scotiæ quam aliorum mineralium ferri chalybis stanni "plumbi cupri aeris orichalci aliorumque mineralium "quoruncunque cum omnibus et singulis partibus pendi-

" cuiis pertinentiis privilegiis libertatibus et immunitatibus
" omnium et singularum prædictarum terrarum dominii et
" regionis Novæ Scotiæ cum plena potestate et privilegio
" dicto DOMINO WILLIELMO ALEXANDER hæredibus
" suis et assignatis tentandi et investigandi fodiendi et
" scrutandi fundum pro eisdem et extrahendi eadem
" purgandi repurgandi et purificandi eadem utendi con-
" vertendi ac suis propriis usibus applicandi."

The Hereditary High Offices are thus mentioned in the said Charter, viz.: " Præterea fecimus constituimus et
" ordinavimus tenoreque præsentis cartæ nostræ facimus
" constituimus et ordinamus dictum DOMINUM WIL-
" LIELMUM ALEXANDER suosque hæredes et assignatos
" nostros nostrorumve hæredum et successorum LOCUM
" TENENTES generales ad repræsentandum nostram rega-
" lem personam tam per mare quam terram totius et integræ
" dictæ regionis et dominii Novæ Scotiæ tam durante
" spatio quo ibi remanebit quam in itinere ipsius vel
" eorum ad dictam regionem vel ab eadem et post ipso-
" rum reditum continuo sine intervallo temporis aut loci
" excludendo omnes alios vel per mare vel per terram ab
" usurpatione hujus contrarii vel ab acclamatione alicujus
" juris beneficii authoritatis et interesse infra dictas
" bondas et dominium Novæ Scotiæ vel alicujus judica-
" turæ aut jurisdictionis eatenus virtute alicujus præce-
" dentis aut subsequentis juris aut tituli cujuscunque.

" Nos etiam cum avisamento prædicto fecimus consti-
" tuimus et ordinavimus tenoreque præsentis cartæ nostræ
" facimus constituimus et ordinamus dictum DOMINUM
" WILLIELMUM ALEXANDER suosque hæredes et assig-
" natos hæreditarie nostros JUSTICIARIOS GENERALES
" in omnibus causis criminalibus infra dictam regionem et
" dominium Novæ Scotiæ MAGNUM ADMIRALLUM ET
" DOMINUM REGALITATIS ET ADMIRALITATIS infra
" dictam regionem Hæreditarios etiam SENESCALLOS
" ejusd omniumque et singularum regalitatum hujusmodi

" cum potestate sibi suisque hæredibus et assignatis utendi " exercendi et gaudendi omnibus et singulis præfatis " jurisdictionibus judicaturis et officiis cum omnibus et " singulis privilegiis prærogativis immunitatibus et casual- " itatibus earund similiter et adeo libere quam aliquis " alius justiciarius vel justiciarii generales senescalli admi- " ralli vicecomites aut domini regalitatis habuerunt vel " habere possunt aut possidere et gaudere iisdem juris- " dictionibus judicaturis officiis dignitatibus et præro- " gativis in aliquibus nostris regnis bondis et dominiis " nostris quibuscunque."

Other clauses of a very interesting nature are contained in the Charter, as for the Settlers and their Successors to enjoy the same privileges in Scotland as native-born citizens, the Laws of the Colony to be as nearly similar as possible to those of Scotland, and a power to coin money for the use of the Colony, in the following terms, viz. :— " Insuper nos pro nobis et successoribus nostris cum " avisamento prædicto, damus concedimus et commit- " timus potestatem dicto DOMINO WILLIELMO ALEX- " ANDER suisque hæredibus et assignatis habendi et " legitime stabiliendi et cudere causandi monetam cur- " rentem in dict regione et dominio Novæ Scotiæ et inter " inhabitantes ejusd pro faciliori commercii et pactionum " commodo *talis metalli formæ et modi* sicuti ipsi " designabunt aut constituent et ad hunc effectum damus " concedimus et committimus iis eorumve hæredibus et " assignatis dictæ regionis Locum tenentibus privilegia " monetam cudendi," &c.

There is a clause which dispenses with Non-Entry, and another clause specially uniting and incorporating the Province of Nova Scotia with the Kingdom of Scotland, for the purpose of giving seisin thereof to SIR WILLIAM ALEXANDER, *hæredibus suis et assignatis*, at the Castle of Edinburgh, as the most eminent and principal place of the Kingdom of Scotland; this is followed by the clause

granting power for resignation of Lands, and for disponing of them to such person or persons as SIR WILLIAM might think fit to apportion them, either for individual engagements to aid in the colonization of the Country, or as a qualification for obtaining the dignity and degree of a Knight Baronet of Nova Scotia. The following are the words:—" Et præterea non obstante prædicta unione " licitum erit prædicto DOMINO WILLIELMO ALEX- " ANDER suisque hæredibus et assignatis dare concedere " et disponere aliquas partes vel portiones dict terrarum " regionis et dominii Novæ Scotiæ iis hæreditarie spectan " ad et in favorem quarumcunque personarum eorum " hæredum et assignatorum hæreditarie cum decimis et " decimis garbalibus earund inclusis (modo nostri sint " subditi) tenend de dicto DOMINO WILLIELMO ALEX- " ANDER vel de nobis et nostris successoribus vel in " alba firma feudifirma vel warda et relevio pro eorum " bene placito et intitulare et denominare easdem partes " et portiones quibuscunque stilis titulis et designa- " tionibus iis visum fuerit aut in libito et optione dicti " DOMINI WILLIELMI suorumque prædictorum quæ " quidem infeofamenta et dispositiones per nos nos- " trosve successores libere sine aliqua compositione " propterea solvend approbabuntur et confirmabuntur. " Insuper nos nostrique successores quascunque resig- " nationes per dictum DOMINUM WILLIELMUM " ALEXANDER suosque hæredes et assignatos fiendas de " totis et integris præfatis terris et dominio Novæ Scotiæ " vel alicujus earund partis in manibus nostris nostro- " rumque successorum et commissionariorum prædict " cum decimis et decimis garbalibus earund inclusis " aliisque generaliter et specialiter supra mentionat reci- " piemus ad et in favorem cujuscunque personæ aut " quarumcunque personarum (modo nostri sint subditi et " sub nostra obedientia vivant) et desuper infeofamenta " expedient tenend in libera alba firma de nobis hære-

" dibus et successoribus nostris modo supra mentionat " libere sine ulla compositione."

There is also a clause to create dignities and titles of honour generally, without restriction to the degree; but this rather refers to personal honours to be enjoyed within the province, than to any others to which land is required to be attached, and the privileges to extend out of the country.

With respect to the Order of Knights Baronets of Nova Scotia, it originated under an understood and presettled arrangement between King Charles and SIR WILLIAM ALEXANDER, for the express encouragement of persons of honour, family, and fortune, to engage in and assist to promote the colonization of this vast country, and thereby give effect and energy to the commercial intercourse between those parts and the kingdom of Scotland; the Order was therefore founded and established by Letters Patent under the Great Seal of Scotland, declaring and confirming the rank and privileges to be inherited and enjoyed by the Knights of the Order, which, after having been established a short time, had the peculiar distinction annexed to it, of allowing the Members to wear a jewel, as an external emblem of their honorial degree.

The Royal Warrant conferring this privilege is worthy of consideration, as demonstrating the occupation of the Country, and the exercise of the government of it by SIR WILLIAM ALEXANDER, in the person of his son and heir-apparent, SIR WILLIAM ALEXANDER, then actually residing there.

The following is a Copy of the Warrant:

" CHARLES R.

" Right trustie and right welbeloued Cousin and Coun-
" sellour, right trustie and welbeloued Cousins and
" Counsellouris, and right trustie and welbeloued
" Counsellouris, WEE GREETE YOU WELL.

" WHEREAS, upon good consideration, and for the " better advancement of the Plantatioun of New Scotland,

" which may much import the good of Our service, and
" the honour and benefite of that Our auncient King-
" dome, Our Royall Father did intend, and Wee have
" since erected, the Order and Title of Barronet in Our
" said auncient Kingdome, which Wee have since
" established, and conferred the same upon diverse
" gentlemen of good qualitie: AND SEEING Our trustie
" and welbeloued Counsellour, SIR WILLIAM ALEX-
" ANDER, Knight, Our Principall Secretarie of that our
" auncient Kingdome of Scotland, and Our Lieutenant of
" New Scotland, who these many years bypast hath been
" at greate charges for the discoverie thereof, hath now
" in end settled a colonie there, where his sone, SIR
" WILLIAM, is now resident; AND Wee being most
" willing to afford all possible meanes of encouragement
" that convenientlie Wee can to the Barronets of that Our
" auncient Kingdome, for the furtherance of so good a
" worke, and to the effect they may be honoured and
" have place in all respects according to their patents
" from Ws, Wee have been pleased to authorize and
" allow, as by the presents, for Ws and Our succes-
" souris Wee authorize and allow the said Lieutenant
" and Barronets, and euerie one of them, and their
" heires-male, to weare and carie about their neckis, in
" all time cuming, ane orange tannie silke ribban,
" whereon shall heing pendant in a scutcheon argent a
" Saltoire azur thereon, ane inscutcheon of the Armes of
" Scotland, with ane imperiall Crowne above the scut-
" cheon, and encercled with this motto, FAX MENTIS
" HONESTÆ GLORIA; which cognoissance Our said pre-
" sent Lieutenant shall delyver now to them from Ws,
" that they may be the better knowen and distinguished
" from other persounis. AND that none pretend igno-
" rance of the respect due unto them, OUR PLEASURE
" THEREFORE IS, that by open proclamatioun at the
" marcat croces of Edinburgh, and all other head brughs

" of Our Kingdome, and such other places as you shall " thinke necessar, you cause intimate Our Royall plea- " sure and intentioun herein to all Our subjects; AND if " any persoun out of neglect or contempt shall presume " to tak place or precedence of the said Barronets, their " wyffes or children, which is due unto them by their " patents, or to weare their cognoissance, WEE WILL " that, upon notice thereof given to you, you cause punishe " such offenderis, by fyning or imprisoning them, as you " shall thinke fitting, that otheris may be terrified from " attempting the like: And Wee ordaine that from " time to time, as occasioun of granting and renewing " their patents, or their heires succeiding to the said " dignity, shall offer, that the said power to them to carie " the said ribban and cognoissance shalbe therein par- " ticularlie granted and insert: And Wee likewise " ordaine these presents to be insert and registrat in " the books of Our Counsell and Exchequer, and that " you cause registrat the same in the books of the Lyon " King at Armes and Heraulds, there to remain *ad futu-* " *ram rei memoriam*, and that all parties having interesse " may have authentik copies and extracts thereof; and " for your so doing, these Our letters shalbe unto you " and euerie one of you, from time to time, your sufficient " warrant and discharge in that behalffe. Given at Our " Court of *Whythall*, the 17. of November 1629.

" To Our right trustie and right welbeloued
" Cousin and Counsellour, to Our right wel-
" beloued Cousins and Counsellouris, to Our
" right trustie and welbeloued Counsellouris,
" and trustie and welbeloued Counsellouris,
" the Viscount of Dupleine, Our Chancellour
" of Scotland, the Earle of Monteith, the Pre-
" sident, and to the remanent Earls, Lords,
" and otheris of Our Privie Counsell of Our
" said Kingdome."

That SIR WILLIAM had due and legal seisin of the premises, with all the High Offices, rights, prerogatives, pre-eminencies, &c. &c., is to be ascertained from the entry thereof in the Register of Seisins, now remaining on record in the public Register Office at Edinburgh. And that he exercised his right of resignation of lands, and creation of Knights Baronets, is evidenced from the following copy of several of those Honours granted by him:—

Copy of the Patent by which WILLIAM, *First* EARL OF STIRLING, *created Sir John Browne, of the Neale, in the County of Mayo, a Baronet of Nova Scotia, on the 17th of June,* 1636.

"We, WILLIAM, EARL AND VISCOUNT OF STIR-
"LING, &c., Proprietor of the Country of New Scot-
"land, and Canada, and His Majesty's Lieutenant within
"the same: Forasmuch as by the Feoffment granted to
"me, by our late Sovereign, King Charles First, I have
"full power to dispose of any part thereof to such as do
"undertake to plant there; and understanding the will-
"ingness of John Browne, Esq., eldest Son to Josias
"Browne, of the Neale, in Ireland, for the advancement
"of the said Plantation, we have granted unto the said
"John Browne, and to the heirs male lawfully descended
"of his body, that part of the said Country of New Scot-
"land, bounded as follows, viz. Beginning twelve miles
"from the northernmost part of the Island Anticosti,
"within the Gulph of Canada, extending westward along
"the north side of the Island, six miles; and from thence
"northward, keeping always three miles in breadth; to
"have the Salmon and other Fishings, as well in salt as
"in fresh water; and I do hereby incorporate the said
"proportion of land into a Free Barony and Regality, to
"be called in all times the Barony and Regality of Neale,
"to hold the same by the yearly payment of one penny,
"usual money of Scotland. And whereas I have full

"power and authority granted to me by His Majesty, to "confer Titles of Honour within the said Country of New "Scotland, upon all persons concurring to the advantage "of the said plantation thereof; I do confer upon the "said John Browne, and his heirs male lawfully descended "or to be descended of his body, the hereditary dignity "and style of Baronet of New Scotland, with all and "sundry prerogatives, privileges, precedencies, conditions, "and others whatsoever, that any Baronet of Scotland, "or New Scotland, hath had at any time granted to them. "And we give and grant unto the said Sir John Browne, "licence to wear and carry an orange tawny Ribbon, "the badge of a Baronet of New Scotland, bearing the "Arms of New Scotland in gold, enamelled, with the "Crown Royal above, and this circumscription—*Fax "mentis honestæ gloria.* Sealed with the Great Seal of "New Scotland, 21st June, 1636."

King Charles, by another Charter, dated at Whythall, the 2nd February, 1628,* granted to SIR WILLIAM ALEXANDER, by the description or denomination of *Hereditary Lieutenant of our Country and Dominion of Nova Scotia,* another great district of land in Canada, to hold to him, "*heredibus suis et assignatis hereditarie,*" with the same powers, rights, privileges, pre-eminencies, prerogatives, &c. &c. &c., as were given to him by his Charters for Nova Scotia, which, having been already so amply set forth, are not necessary to be again recapitulated. It may therefore suffice to say, that all these Charters were confirmed by the King and States in open Parliament at Edinburgh, the 28th June, 1633, as the following Copy from the Acts of the said Parliament will shew:—

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* Reg. Mag. Sig. B. 52. N. 110.—This and the two former Charters in the original Latin, with English Translations, are printed and sold by Ridgway, 169, Piccadilly; by Bigg, 53, Parliament-street; and M'Clery, St. James's-street.

"NOVA SCOTIA.

"1st of Charles the First in Scotland.

No. 28.—"Ratification in favour of the VISCOUNT OF "STERLING, *of the Infeftments and Signature,* "*granted to him, of Dominions of New Scotland* "*and Canada in America, and Privileges therein* "*contained, and of the Dignity and Order of Knight* "*Baronets; and Act of Convention of Estates* "*made thereanent.*

"Our Sovereign Lord and Estates of this present "Parliament, ratifie and approve all Letters, Patents, "and Infeftments granted by King James the Sixth, of "blessed memory, or by our said Sovereign Lord, to "WILLIAM VISCOUNT OF STERLING, and to his heires "and assigneis of the Territories and Dominions of New "Scotland and Canada in America, and especially the "Patent Charter and Infeftment granted by His Majestie's "umwhile dearest Father of worthie memorie, of New "Scotland, of the tenth day of September, the year of "God 1621. Item, another Charter of the same, granted "by His Majestie, under the Great Seale, of the date "the twelfth day of July, 1625 yeares. Item, another "Charter and Infeftment, granted by His Majestie of the "Country and Dominion of New Scotland, under the "Great Seale, of the date the third day of May, 1627 "yeares. Item, another Charter and Infeftment, granted "by His Majesty, under the Great Seale, of the River "and Gulph of Canada, bounds and privileges thereof, "mentioned in the said Patent, of the date the second "day of February, 1628 yeares. Item, a Signature passed "under His Majesty's hand, of the said Country and "Dominion, which is to be with all diligence exped through "the Seale, of the date, at Whitehall, the twentie fourth "day of April, 1633 yeares; with all liberties, privileges, "honours, jurisdictions, and dignities, respective therein

" mentioned. Together also, with all execution, precepts, " instruments of seasings and seasings following, or that " shall happen to follow thereupon. And also ratifies and " approves the Act of General Convention of Estates at " Holy-rude House, the sixth day of July in the Year of " God, 1630, whereby the said Estates have ratified and " proved the dignities and Order of Knight Barronet, with " all the Acts of Secret Council, and proclamations fol- " lowing thereupon, made for the maintaining of the said " dignittie, place, and precedencie thereof.

" And His Majestie and Estates aforesaid will, statute, " and ordaine, that the said Letters, Patents, and Infeft- " ment, and the said dignitie, title, and order of Barro- " nets, and all Letters, Patents, and Infeftment of Lands " and dignities granted therewith to any person what- " soever, shall stand and continue in force, with all " liberties, privileges, and precedencies thereof, according " to the tenor of the same, and in als ample manner as if " the bodies of the said Letters Patent, Infeftments, and " Signature above-mentioned, were herein particularly " ingrost and exprest, and ordaine intimation to be made " thereof by open Proclamation to all His Majestie's " Leges, at the Market Crosse of Edinburgh, and other " places needful, that none pretend ignorance thereof."

" *P. Acte No. 28, made in the Parliament held by King* " *Charles the First (in person) at Edinburgh, the* " *twentie eight day of June, Anno Domini One* " *Thousand Six Hundred and thirtie three.*"

The present EARL OF STIRLING having had his special service of nearest and lawful heir in special to his Great-Great-Great-Grandfather, the said SIR WILLIAM ALEXANDER, First EARL OF STIRLING, duly found before a Jury composed chiefly of Members of the Faculty of Advocates and Writers to the Signet, (Gentlemen learned and well versed in the Laws of Scotland,) retoured into the Court of Chancery in Scotland; and in virtue

thereof, by a Precept from His Majesty, directed forth of his said Chancery to the Sheriff of Edinburgh, having been infeft in the whole Country of Nova Scotia, the Lordship of Canada, with all their parts and pertinents, the Offices of His Majesty's Hereditary Lieutenant of Nova Scotia, Canada, (New Brunswick and the adjacent islands included,) &c. by seisin taken at the Castle of Edinburgh, on the 8th of July, 1831, in terms of the Original Grants to SIR WILLIAM ALEXANDER, is, under the said infeftment, in the legal occupation and possession of all the High Offices and of all the Lands not disponed by his Ancestors; and intitled to those passed away, under the usurpation of right pretended by any other person or persons to his prejudice.

CHAPTER II.

DISSERTATION ON THE LAWS OF SCOTLAND WITH REGARD TO RETOURS, OR SERVICES OF HEIRSHIP.

SERVICE OF AN HEIR.

As different competitors frequently claim to be heirs to the deceased, it ought to be proved judicially who has the best right to that character; and therefore he who is truly heir, before he can have an active title to the estate, which was in his ancestor, must be served and retoured heir by an Inquest:—these services proceed upon a brief, which has the special name of the *Brief of Inquest*,* as far back as the reign of Rob. III. c. 1.

GENERAL SERVICE.

This service proceeds on a brieve issuing from Chancery, directed to any Judge ordinary, which must be proclaimed and published at the head-borough of the Jurisdiction within which the heir is to be served; and after the expiration of fifteen days from such publication, the service may proceed before the Judge.

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* Ersk. Inst. B. III. Tit. 8. § 59 et seq.—The 5th edition, folio, 1812, is referred to throughout these pages.

The Jury consists of fifteen persons, who are sworn in by the Judge to act faithfully.

The Inquest being set, the apparent heir produces to them his claim as heir, and they may proceed not only on the evidence offered by the Claimant, but on the proper knowledge of any two of themselves; for they are considered both as Judges and witnesses.

The principal point of inquiry, is, whether the Claimant be the next and lawful heir of the deceased. If it appear to the Inquest that the claim is proved, or verified, they serve the Claimant, *i. e.* they declare him heir to the deceased, by a sentence or service, signed by the Chancellor of the Jury, and attested by the Judge. The Clerk to the Service then prepares a retour (return) of the original claim of service, minutes of the proceedings, and depositions of the witnesses, with the verdict of the Inquest, to the Chancery, (1 and 2, Geo. IV. c. 38,) which, after being thus returned and recorded in the Chancery books, is called the retour—no service being considered complete until it be so retoured; after which, the heir served may get from the Chancery an official extract, as a voucher of his service.—*Ersk. Inst. B. III. Tit. VIII.* § 61, et seq.

The service being a sentence, must be restricted to the claim offered to the Inquest, and the evidence brought by the heir in support of it; and though the retour is considered as a decree proceeding on the verdict of an Inquest, there is no necessity that every decree should express the evidence on which it is founded; it is enough if it be laid before the Judge, before he passes sentence: this, indeed, the law presumes to be done in services, and in fact is never omitted.—*Ib.* § 74.

A general service is competent only to the heir-at-law, and has no relation to any special subject; for it is not intended to carry any proper feudal right of lands, but merely to establish a title in him, who serves, to every

heritable subject belonging to the deceased, which requires no seisin, and to every personal right which had not been perfected by seisin, in favor of the ancestor;—*Ib.* § 63.—Or, in other words, which perhaps give a more clear explanation of the effect and purport of this service, a general service carries to the heir the complete right of all the heritable subjects, on which the ancestor had not taken seisin, though he has not established a right to them in his own person by seisin. For, seeing all personal rights are, *ex sua naturâ*, transmissible *inter vivos* by the owner to the grantee, by simple assignation without seisin; they must also be effectually transmitted from the deceased to his heir, by a service, which is the legal method of conveyance from the dead to the living.

The general service is completed as soon as it is retoured, and all the right which a general service can give, is from that moment vested in the person served.*

Of this description of service LORD STIRLING has been retoured,

1*st*, On the 7th February, 1826, heir to his deceased Mother, HANNAH, COUNTESS OF STIRLING, as heiress to her brother, BENJAMIN, Eighth EARL OF STIRLING, de jure, who was the last heir male of the body of WILLIAM, First EARL OF STIRLING.†

2*ndly*, On the 11th October, 1830, nearest and lawful heir in general of his Great-great-great-Grandfather, WILLIAM, First EARL OF STIRLING.

3*rdly*, On the 30th May, 1831, nearest and lawful heir of tailzie and provision, to his ancestor, WILLIAM, First EARL OF STIRLING.

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* No services are traversible, but are taken as true, until, by regular process of reduction, at the suit of a better claimant, they are falsified.

† These Retours will be found in the Appendix, Nos. I. II. & III.

With regard to this last service, and in explanation thereof, it may be observed, that a *tailzied fee* is a general term, comprehending all *destinations* in which the legal course of succession is altered, or cut off, and one or other of the heirs-at-law excluded, or postponed; and the nomination of a particular series of successors in a certain order (to use the word in a limited sense) is called a *destination*. The person to whom the estate is first given in a destination, is called *the Institute*, and all following, the *heirs or substitutes;* and those who succeed in virtue of clauses of substitution, are all in a proper sense heirs of *provision.—Ibid.* § 21, 43.

It has been shewn, that a general service carries every personal right to heritage, that was vested in the ancestor; but if a party be desirous of being served heir of provision under a particular deed, that is also accomplished by a general service, the claim on which is adapted to the particular circumstances of the case. Accordingly, a service of this description was obtained by LORD STIRLING, in order to take up the title of EARL OF DOVAN, under a precept containing special provisions, (hereafter more particularly mentioned,) which was granted as an additament of honor to the Earldom of Stirling, both to be enjoyed by the same line of heirs.

SPECIAL SERVICE.

A general service cannot include under it a special one, because it has no relation to any special subject, unless where an heir of provision is served in general; and even then, it carries only that class of rights, upon which seisin has not proceeded. But a special service necessarily implies in it, a general one of the same kind and character; thus, a service as heir of line (or at law) in special to a particular estate, includes a general service, as heir of line, to the same ancestor, and of consequence carries all personal rights descendible to the heirs of line.

Where, therefore, the heads necessary to be proved in a general service have been already fixed and proved in the special, there can be no occasion for having them again tried by another Inquest.

The special service is calculated for perfecting the heir's title to special subjects, in which the ancestor died vested and seised; but it carries no right to the heir served, until his title be completed by seisin taken on the retour as after-mentioned.

The special service proceeds also on a brieve, issued from the Chancery, directed to the Sheriff of the County within whose territory the lands lie, to which the heir is to be served; but where the lands lie in different Counties, the special service, which used to be conducted before the Macers of the Court of Session, now proceeds, under the statute of 1 and 2 Geo. IV. cap. 38. § 11, (1821,) "before the Sheriff-depute of Edinburgh, or his "substitute, as Sheriff in that part specially constituted, "whether such service may relate to lands and heritages "situated on or beyond the Sheriffdom of Edinburgh, or "in several Sheriffdoms."

The authority to conduct a service before the Sheriff of Edinburgh, under this statute, is obtained in the manner by which a commission to the Macers was obtained under the former practice, viz. by a bill presented in the Bill Chamber, stating the circumstances, and praying for a warrant on the Keeper of the Chancery, to issue a commission to the Sheriff of Edinburgh. The bill is passed of course, and the commission issued, and the service proceeds in the usual form—the Jury of fifteen being appointed, the claim made, and the evidence offered. The evidence and proof required, is more ample in this, than in the general service; the principal points to be proved, are—That the ancestor is dead, and the precise time of his death, and that he died seised of the lands specified in the claim; of whom the lands are

holden, and on what tenure; the old and new extent, and value of the lands, and in whose hands the fee is at the time of the service, and has been since the death of the ancestor.—*Ib.* § 67.

These heads being proved, the Jury serve the heir, and the Clerk to the Service, along with the verdict, must deliver into Chancery the original claim of service, minutes of the proceedings, and depositions of the witnesses; without which the retour cannot be issued; and an extract from them, as in the case of the general service, is said to be the *Retour* of the heir's service.

This service, as has been observed, confers no right until the title is completed by seisin. Where the lands claimed are holden of the Crown, the heir applies to the Chancery, and upon production of his retour, a precept is issued of course, directed to the Sheriff of the County,* requiring him to infef the heir. On this precept, the heir is accordingly infeft, and his title to the estate of his ancestors thereby completed.

Seisin must be taken on the ground of the lands contained in the precept: "But this rule, may, in cases of "necessity, be dispensed with, by proper authority, as it "was in the seisin of Nova Scotia and Canada, in favour "of VISCOUNT STIRLING, which, by the King's spe-"cial appointment, was taken at the gate of the Castle of "Edinburgh, and afterwards ratified by Parliament, "1633, c. 28."—*Ersk. Inst. B. II. Tit. III.* § 36.

Of this service is the retour of the 2nd July, 1831,† by which LORD STIRLING was served nearest and lawful heir in special of the before-mentioned WILLIAM,

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* By the Charter under which LORD STIRLING takes the American property, it is made part of the County of Edinburgh, for the purposes of seisin, which is directed to be taken at the Castle of Edinburgh, as the most conspicuous place therein.

† Appendix, No. IV.

First EARL OF STIRLING, to take up the fee that was vested in him of the lands comprised in the aforesaid Charters, and upon which retour, on the 8th of the same month, he received, in terms of the same Charters, from the said Sheriff of Edinburgh, upon a precept sued out of Chancery, actual livery of seisin of and in the same lands, thereby completing his title thereto.

The right of some subjects (*i. e.* inheritances), is established in the heir without a service; of which are titles of honour, and offices of the highest dignity, which do not require service, for they descend, *jure sanguinis*, to the heir limited in the grant; but of this in the next Chapter.

CHAPTER III.

OF PEERAGE SUCCESSION IN SCOTLAND, AND OF THE EFFECT OF BEING PERMITTED TO VOTE AT HOLYROOD HOUSE.

BEFORE the Union, by the law of Scotland, a Peerage dignity, being an hereditament, depended upon the course of inheritance to which it lay open—whether to heirs general, and of line, or to heirs special, of tailzie and provision; but in whatsoever way the inheritance was to pass, there was a process provided, to establish the fact, by a service of heirship, in the terms of the limitation contained in the charter of creation; which service, when carried through and retoured to Chancery, invested the party served with the inheritance, who thereupon becomes legally entitled thereto, unless the service was reduced, and set aside, at the suit of a competitor; for it was not traversible (as has been explained in the preceding Chapter).—Thus the Peerage, like any other inheritance, was a civil right, cognizable by the Courts below; and the Court of Session, the highest of these Courts, always entertained and decided upon all cases of controversial claim.

It is to be observed, that while the service of heirship is necessary to the taking up of heritable property, it

is not absolutely so to take up a Peerage honour, although the heir in succession may, for the purpose of shewing his propinquity, expede a service, to put upon record the evidence of his descent.

The ancient Parliament of Scotland consisted of the higher Clergy, and the Barons—the latter title including not only the Nobility, but every man who held territorial property, as the immediate vassal of the Sovereign. It was not until the end of the fourteenth century (1372), that members from the royal burghs obtained places in the assembly. At that time, the duty of attendance in Parliament was felt to be burdensome; and the Acts 1427, c. 102, and 1587, c. 113, and several other old statutes, introduced a system of representation, chiefly as a relief to the lesser Barons. The Peers were not summoned *singly* by the Sovereign's writs, as in England, but edictally, by precepts issued to the Sheriffs of the several shires; and at last, Parliaments came to be called only by proclamation. *(Wight, Lib.* 1, *c.* 2, § 2.)

Accordingly, a Peer of Scotland acquires the dignity, which was enjoyed by his predecessor, without any form of investiture, or the necessity of any other *aditio hæreditatis*, than possession.

The Peerage rank and dignity are cast upon him by descent, and he becomes fully possessed of them in consequence merely of his relationship, and survivance, and may assume the honours at his pleasure, with this qualification, that the authority and grounds upon which he has taken them upon himself, are liable to be called in question, on an allegation, competently proponed, of a nearer interest, and better title, in another party.

In the case of claim of an English Peerage, of whatsoever degree, and howsoever created, the party must apply by petition to the Sovereign, for his writ of summons to Parliament; whereupon his application is referred to the House of Lords—or it may be to the Attorney-General,

to Commissioners, or to the Lord Chancellor;—and from a presumed analogy in this respect, it has been inconsiderately supposed, that the jurisdiction of that House extends to the claims of Peers of Scotland, to enable them to assume their honours; and ground has been taken therefrom, for endeavouring to create a precedent for assimilating to this English practice, the usage in the cases of the Peers of Scotland, and for making it incumbent on them, to act the degenerate part of declining, in favour of a Foreign Tribunal, the natural jurisdiction of the Court of Session, in deciding upon disputed claims to the Peerage, which "were held after, as well as before the Union, to fall within its ordinary department." *(Wall, Lib. 5, § 6.)* It is optional, indeed, in any Peer of Scotland, accordingly as he may be influenced by motives of particular interest, to present an application for acknowledgment of his honours to the Sovereign, who thereupon may be graciously pleased to refer the application to his great council, the Peers of the realm in Parliament, to deliberate and advise.

The House of Lords, as to all matters of a purely Scottish description, "never judges in civil questions, but upon appeal;" and then, *quoad hæc*, it is turned into a Scottish Court of Judicature, administering Scottish law. *(Ersk. Inst. B. III. Tit. 8.)*

The Court of Session, which (as before noticed) is the Supreme Court in Scotland, for the determination of all questions of civil and patrimonial right, is the principal of those Courts possessing an original jurisdiction in questions of the civil rights of the Peerage of Scotland; and it is an article of the Treaty of Union, that that Court "do remain, in all time coming, within Scotland, with the same authority and privileges as before the Union."*

Now, there have not been found, before that Treaty,

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* Act 1707, cap. 7, art. 19.

instances of a claim of Peerage having at any time been brought before a Committee of Parliament, as there are since that period (but on very special causes and occasions) before a Committee of the House of Lords: but the appropriate judicatory was the Court of Session; and there are examples of its exercising the jurisdiction ascribed to it in 1633, and down to a period long after the Union.*

Thus much has been said in proof of the jurisdiction of the Court of Session on Peerage claims in Scotland; but the orders made by the House of Lords in 1822, rendering it imperative on a Peer of Scotland to subject his pretensions to its examination, will be particularly noticed hereafter.

It remains now to be observed, of the Elections of Representative Peers under the Act of Union, and the effect of being admitted to vote thereat.

By the Treaty of Union, a Peer of Scotland has the right of voting at all meetings for the election of the sixteen Peers, to represent the whole body in the Parliament of Great Britain. The Act of the Parliament of Scotland 1707, cap. 8, statutes, enacts and ordains, that the said sixteen Peers, who shall have right to sit in the House of Peers in the Parliament of Great Britain, on the part of Scotland, by virtue of this Treaty, shall be named by the said Peers of Scotland, whom they represent, their heirs or successors to their dignities and honours, out of their own number, and that by open election and plurality of voices of the Peers present, and of the proxies for such as shall be absent; the said proxies being Peers, and producing a mandate in writing, duly signed before witnesses, and both the constituent and proxy being qualified according to law; declaring also, that such Peers as are absent, being qualified as aforesaid, may send to all such meetings, lists of the Peers whom they

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* Vide Lovat Case.

judge fittest, validly signed by the said absent Peers, which shall be reckoned in the same manner as if the parties had been present, and personally giving in the said lists; and in case of the death, or legal incapacity, of any of the said sixteen Peers, that the aforesaid Peers of Scotland shall nominate another of their own number in place of the said Peer or Peers, in manner before and after mentioned:—

"And further statutes, enacts, and ordains, that until "the Parliament of Great Britain shall make further "provision therein, the said (parliamentary) writ (issued "out under the Great Seal of the United Kingdom, "directed to the Privy Council of Scotland) shall contain "a warrant and command to the said *Privy Council*, to "issue out a proclamation in Her Majesty's name, "requiring the Peers of Scotland for the time, to meet "and assemble, at such time and place within Scotland, "as Her Majesty and Royal successors shall think fit, to "make election of the said sixteen Peers; and requiring "the Lord Clerk Register, or two of the Clerks of Ses-"sion, to attend all such meetings, and to administer the "oaths that are or shall be required, and to ask the votes; "and having made up the lists in presence of the Meet-"ing, to return the names of the sixteen Peers chosen "(certified under the subscription of the said Lord Clerk "Register, or Clerks of Session, attending) *to the Clerk "of the Privy Council of Scotland*, to the end that the "names of the sixteen Peers, being so returned to the "Privy Council, may be returned to the Court from "whence the writ did issue."

The Act 6 Annæ, cap. 23, in the first session of the first British Parliament, sect. 1, enacts, that proclamation shall be issued *under the Great Seal of Great Britain;* and sect. 7 enacts, that the certificate of the names of the sixteen Peers elected, signed and attested, shall, by the Lord Clerk Register, or two of the principal Clerks

of the Session, be returned into Her Majesty's High Court of Chancery of Great Britain.

The proclamation must be made at Edinburgh, and at the head burghs of the different Counties in Scotland, twenty-five days at least before the time appointed for election. The Palace of Holyrood House is the place of election. After prayers, the proclamation is read, and the roll of Peers is called over. The oaths are administered to the Peers present by the officiating Clerks, and the evidence that absent Peers who have sent lists or proxies, have taken the oaths, is examined; after which, the votes are collected from the Peers present, and from the signed lists, and the names of the sixteen Peers who have the majority, are declared. These meetings of the Peers of Scotland, for the purposes of these elections, form no Courts possessing original jurisdiction in Peerage questions, so be it the Peers assembled do "not propose to treat of any other matter or thing than the election of their Representatives;"* and only in such a sense as that, any of them may object to, and enter a protest against, votes of the other Peers, which shall be the subject of a petition to the House of Lords, complaining of the return. And the House of Lords, in its judicial capacity, being the highest Court of Judicature in the United Kingdom, a Peer of Scotland, upon appeal taken to that House by an adverse party, stating objections to his title on the grounds of a counter claim, or the like, is bound to obey its orders.

It has been stated, that the service of heirship is not absolutely necessary to establish a right to the succession to a Peerage, but that the honour devolves *jure sanguinis;* consequently, *a fortiori*, where a service shall have been expeded, the Peer is more evidently warranted to take

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* Act 6 Annæ 23, sect. 9.

his seat among his co-peers, provided his title is not questionable by attainder. This right, it has been shewn, may be objected to by a competition as to the course of descent; it can also be questioned by the protest of any Lord; and in both instances, the matter was formerly decided as any other question of civil right, before the Court of Session.

If, however, the Peer be not protested against, but has his place and precedence allowed him, the oaths administered, and his vote received unanimously by the Lords present, he is to all intents and purposes invested in the enjoyment of his Peerage honours, as much and as perfectly as an English Peer, who shall have taken his seat in the House of Lords under a writ of summons, without counter claim of any other Peer objecting thereto, or pretending better right.* There was a negative power which ought to have been adopted against him; but the neglect of it, on the well-known maxim that "*silence gives consent*," must be deemed an approbation of right, conceded by those who on the occasion were judges competent to oppose, or receive him.

If any Peer be protested against by another or others, he or they protesting must make out their case, it being in no instance imperative on the party, against whom the protest is entered, to prove his case. And if the vote, place, and precedence of any Peer be once allowed and recognized, without protest or objection, (even though in error,) it is not competent to any but a bonâ fide claimant of the title, on a future occasion, to call in question his right, by protest or otherwise.

It is only now left on this head to shew, what LORD STIRLING has done in the way of voting at Peers' elections. It must be borne in mind, that having been

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* Vide Clifford, Willoughby of Parham, and other cases.

returned, by special service, heir to his ancestor, LORD STIRLING became entitled to his ancestor's territorial estate, to which his title has been completed by seisin, taken as before mentioned; but that a dignity or title of honour, being a personal right devolving on the heir without a service, the voting at Peers' elections need not necessarily be preceded by a service, though perhaps without it, the vote is more open to objection.

On the 2nd of June, 1825, in obedience to the Royal proclamation, dated at Carlton House, the 20th April, 1825, the Peers of Scotland did assemble at Holyrood House in Edinburgh, to choose a representative Peer in the room of the Earl of Balcarres, deceased; and on the great roll of Peers taken at the Union being called over, when the name of the EARL OF STIRLING was called, the present Earl "claimed to vote as EARL OF "STIRLING, as being heir male of the body of HANNAH, "COUNTESS OF STIRLING, and who died on the 12th "September, 1814; and thereby, under the destination "of a Royal Charter, or Letters Patent of Novo-Damus, "under the Great Seal of Scotland, dated 7th December, "1639, granted by His Majesty King Charles First, in "favour of WILLIAM, EARL OF STIRLING, entitled to "the honours and dignity of EARL OF STIRLING; and "his vote was received by the clerks."* And, curiously enough, the Earl happened to be the premier Peer present, and consequently was the first to sign the minutes of the proceedings.

On the 2nd September, 1830, the Peers of Scotland met, in pursuance of the Royal proclamation, to choose sixteen representative Peers; but the EARL OF STIRLING, being unable to attend personally at Edinburgh to give his vote, applied to Lord Lyndhurst, the

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* Vide Appendix, No. V.

then Lord Chancellor of England, to take the oaths required by law to enable him to vote by signed list. Lord Lyndhurst administered the oaths, but declined giving the usual certificate thereof under the Great Seal, until he had seen the Earl's counsel, who would satisfy him of the Earl's right. This the Lord Chancellor did, and being perfectly satisfied, affixed the Great Seal to the certificate, and apologized for any inconvenience the delay might have occasioned.

At this election, on the name of the EARL OF STIRLING being called, the Earl of Rosebery (the mover of the Resolutions of 1822, after-mentioned) thought proper to make some offensive observations, expressive of his individual opinion of the propriety of Peers claiming dormant Peerages, proving their right in the House of Lords; but as the Earl of Rosebery's opinion on this matter, is no more founded on justice and fact, than his Resolutions before alluded to are upon law, we may dismiss it, with a reference to the Appendix, where LORD STIRLING's answer to it will also be found.* LORD STIRLING'S vote was received and counted.

There was a general election of representative Peers for Scotland also held on the 3rd June, 1831, in pursuance of the usual Royal proclamation, at which LORD STIRLING attended personally, and voted, his vote being received and counted. A protest (or rather desultory observations in the nature of a protest) was, however, entered against the Clerks of Session for receiving it, by the Duke of Buccleuch and Lord Lauderdale; but it was never proceeded upon, and consequently rather strengthens than prejudices LORD STIRLING's case.

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* The minutes of the proceedings at this election being very long, the formal part, and that which relates to LORD STIRLING individually, will be found in the Appendix, No. VI.

This protest, if it did not originate in political motives, to countervail the influence it might have in operating a majority in favour of, or against, some of the contending candidates, may be considered (for reasons not necessary here to be set forth) founded on personal and private causes, to which it was meant to give an insinuating effect. Had the protesters proceeded upon their protest, they must have made out their case. They knew well that it was incompetent to them to protest against the EARL OF STIRLING personally. The protest and the answer are in the Appendix.

It was particularly stated by Serjeant Wilde, on a late occasion in the Court of Common Pleas, that LORD STIRLING'S vote was received under protest; the above explanation will shew that to be untrue. The vote was received, and full efficacy given thereto.

It may be well to mention that the House of Lords, by an order of the 23rd August, 1831, required a return to be made to them of "a Copy of the Union Roll "of the Peerage of Scotland, and a List of all those "Peers who have voted at all General Elections since "the year 1800;"—in which return, printed by order of the House, 5th September, 1831,* the EARL OF STIRLING'S name appears as having voted in 1830 and 1831, as before mentioned.

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* Extracts from this Return will be found in the Appendix, No. VIII.

CHAPTER IV.

ON THE ERRONEOUS STATEMENTS BY THE COUNSEL OF THE PLAINTIFF, ON A LATE OCCASION, IN THE COURT OF COMMON PLEAS;—AND IN ANSWER THERETO.

BEFORE entering on the subject to which it is intended to devote this Chapter, it must be observed, that Vice-Admiral Sir Henry Digby, K. C. B., in the month of July last, directed his attorneys, Messrs. Potts and Son, to take steps to arrest the EARL OF STIRLING, as, and by the name of, "Alexander Humphrys Alexander," upon a promissory note given by the Earl, under the name and style of EARL OF STIRLING, to the Admiral, for money lent; and upon a bill of exchange, drawn by a particular and very intimate friend of the Admiral, upon, and accepted by, the EARL OF STIRLING, for the special accommodation of this friend, and, by an acknowledgment in writing (known to the Admiral), undertaken to be provided for by the said friend, when due, accordingly.

The intention of the parties was discovered by an accidental search at the Filacer's office, where the præcipe of the writ was found. The attorneys* of the

* Messrs. Webber and Bland, 17, Ely Place.

EARL OF STIRLING immediately waited upon Messrs. Potts and Son, and explained to them the public status of the Earl, the acts of Peerage exercised by their client, in proof of his privilege from arrest; and laid before them such official and documentary particulars as they deemed sufficient for the like purpose. During the deliberation of Messrs. Potts and Son, another party issued a bailable writ against the Earl, and a bail-bond being given, a summons was taken out before Lord Tenterden, to shew cause why it should not be cancelled, the defendant being a Peer, and privileged; whereupon, after hearing counsel for the plaintiff, and an affidavit by the Earl read, Lord Tenterden ordered the bail-bond to be cancelled. A copy of this order, and a formal notice of the principal public acts of Peerage exercised by LORD STIRLING, were served upon Messrs. Potts and Son, but all to no purpose, as their instructions were peremptory. These respective communications having proved ineffectual, it became incumbent to prevent the mischief and annoyance so malevolently determined upon; and to save actual arrest, a bail-bond was executed to the Sheriff, to insure LORD STIRLING'S appearance at the return of the writ; and notice of an intended application to the Court, for a rule to shew cause why the writ should not be set aside, and the bail-bond cancelled, was served on the plaintiff's attorneys, and on the first day of last Michaelmas term, the rule *Nisi* was obtained.

Previously to the motion for making the rule absolute, a warrant of attorney was offered to the plaintiff by LORD STIRLING, it being distinctly stated by his attorneys to Messrs. Potts and Son, that the debt itself was not disputed, and that it was not the wish of his Lordship to put the Admiral to any unnecessary expense. This offer, liberal as it was, after the insulting proceeding commenced, was met by the objection, that no warrant of attorney could be accepted, signed by the EARL OF

STIRLING, but that if MR. ALEXANDER would give such a security, the proposal would be considered. Thus was there no alternative left to the EARL OF STIRLING, but an application to the Court to support his privilege: and accordingly, on a motion to make the rule beforementioned absolute, on the 22nd November, Mr. Serjeant Wilde shewed cause against the rule, and on Mr. Serjeant Spankie, counsel for LORD STIRLING, rising to reply, the Court being satisfied, gave judgment in favor of his Lordship's privilege, and ordered the bail-bond to be cancelled, but did not set aside the writ, leaving LORD STIRLING, if he pleased, to bring the question of his right to the Peerage, *de jure*, before the Court, by a plea in abatement; which judgment, transcribed from short-hand notes taken in Court, will be found in the Appendix.*

On this occasion, Mr. Serjeant Wilde indulged in statements (founded, no doubt, on his instructions) as untrue in point of fact, as they were irrelevant in point of law; and no opportunity having been given to LORD STIRLING'S counsel to contradict them in open Court, the language and assertions of the Serjeant, by the report of them in the public journals, have been eminently calculated to produce an equally erroneous impression on the public mind.

The principal of these unfounded assertions, were,

1*stly*, That the EARL OF STIRLING'S vote had been protested against, at the last election of Representative Peers.—This has been explained and answered in the preceding Chapter.

2*ndly*, That LORD STIRLING'S claim to sue as EARL OF STIRLING had been rejected by the Lord Chancellor; and the highest authority in the realm had refused to receive him.

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* Appendix, No IX.

3rdly, That LORD STIRLING had no right to vote at Peers' elections, according to the order of the House of Lords, until his claim had been admitted and allowed by that House.

And, *Lastly*, That he claimed the Earldom of STIRLING in the female line, under the limitations in a Charter which had no existence; and if it had, then, that the Dowager Marchioness of Downshire had a better and prior right of claim.

To this last assertion, a Chapter of ample contradiction, and falsification, will be subsequently devoted.

In answer to the second statement of Mr. Serjeant Wilde, it is to be observed, that LORD STIRLING agreed with a Mr. Maitland for the rental of a house, with the purchase of certain fixtures, &c. contained therein, but in consequence of a dispute arising upon the agreement, Mr. Maitland commenced a suit in Chancery to enforce its specific performance, and prayed the Chancellor to issue the usual letter missive, being the proper notice of such proceeding in that Court against a Peer. This Lor. Brougham refused—but on what ground is a natural question to ask. There was no claim to Peerage set up by LORD STIRLING before him, calling for his decision; the Duke of Grafton might as well direct the sealer of writs in Middle Temple Lane, to refuse to affix his Grace's seal, to a writ issued against my Lord Brougham and Vaux.

When the statement of this fact was made by Serjeant Wilde in Court, Mr. Justice Alderson very appropriately asked, and with surprise, "On what statute does the Chancellor decide on the Peerage claims?" The answer was, of course, "None!" and the subject was very prudently dropped.

The conduct of the learned Lord, so hastily and injuriously adopted, naturally draws to notice some of his celebrated public speeches, when a Commoner; and the

following extract from one of those flourishing declamations, made on the 7th February, 1828, "*on the state of the law of England*," will be read, no doubt, with great interest, as shewing the wonderful variance in the speech of Mr. Henry Brougham, a barrister, and the practice of the Lord Brougham and Vaux, the first law-adviser of the Crown. Among other things, he observed, viz. "He "would shew, that it was not true, as was asserted by "some of our writers on the laws of the country, that the "Crown and the subject came into court on equal terms. "The law said they were equal—but he would shew that "they were not, but that in a variety of important cases, "the subject came into Court under serious disadvantages. "Blackstone said, that the King could no more seize "the estate of a subject, than the subject that of the King; "or if the authority of the King were used in taking the "property of a subject, the subject had his remedy by "writ or petition of right, or by *monstrans de droit*; for, "said Blackstone, *the decent presumption of law was, "that as the Crown could do no wrong, it would, on "hearing the case stated fully, give its direction according "to justice.* He (Mr. Brougham) wished the learned "commentator had not left it to be shewn, that all the "alleged equality was a mere matter of fiction.

"Now, what he would shew was, that all the alleged "equality, and protection supposed to be derived from the "petition of right, existed only in the books in which "they were mentioned, but undoubtedly not in the prac- "tice of the Courts of law; *for this very writ, or petition "of right, could not be used by the subject without the fiat "of the Crown*; and unless this were granted, all the other "steps taken by the party aggrieved, would only be so "much labour lost.

"*The granting or withholding of the fiat was in the "breast of the Attorney-General; and if he should refuse "it, the party had no remedy but to impeach the Attorney-*

" *General,* and take all the chance of that very uncertain " experiment. It might be said, that this was a matter " which seldom happened; *but why should it be left to the* " *breast of any individual to refuse a writ of this kind?* " The power he exercised, should in this case be *merely* " *ministerial;* and the obtaining the fiat for the writ, should " be *as much matter of right,* as the obtaining any of the " other processes, sued out of our law courts," &c.

The ingenious, and all-accusing counsellor, condemns the allowance of the petition of right to be left in the breast of the Attorney-General, *and claims the fiat as a ministerial act of office, due in course to the individual requesting it.* But the exalted Chancellor assumes the arbitrary discretion he denounces in the Attorney-General, and by a super-controuling power, grounded only on his own " *Sic volo, sic jubeo,*" takes upon himself to give a judgment, when he ought to have paused until there was a case for judgment absolutely before him.

The motives of the Chancellor, on this extraordinary proceeding, shall pass *sub silentio;* but on what ground he could assume the authority exercised by him, is well worthy of inquiry. In the month of January, 1831, the EARL OF STIRLING addressed a Memorial to His Majesty, praying to be admitted to his Royal presence, in his character of EARL OF STIRLING; which Memorial was referred to Lord Brougham for his opinion and advice: Lord Brougham reported, that the Earl had had a judgment pronounced against him by the highest authority, and had to his title no pretension of right whatever. It is supposed, that the refusal of the letter missive, and the Report on the reference of the Memorial, just mentioned, originated in the same erroneous views of LORD STIRLING'S case—errors which appear the more extraordinary, when it is considered, that the case was laid before Mr. Brougham, when a barrister, and a favourable opinion actually given by him on LORD STIRLING'S

rights; rights depending moreover entirely on Scotch law, and therefore particularly, it might be fairly inferred, if not attractive, at any rate well understood by Lord Brougham.

There has been no judgment pronounced by the highest authority against LORD STIRLING; indeed, no judgment by any authority whatever. The only circumstance that can be alluded to, is, the Order of the House of Lords of 1762;* this will be more fully noticed in the next Chapter; for the present purpose, it need only be said that GENERAL ALEXANDER, who took part with the Americans in the war for their independence, claimed the title of EARL OF STIRLING in 1760, and on attempting to prove his case in the House of Lords in 1762, failed therein, and was the immediate subject of the said order, which prohibits the acceptance of the vote at Holyrood House, of any one claiming the title through the General. The short pedigree on the next page, will shew the relative situations of the present Earl, and the General—the former being a lineal descendant of the first Earl, and the latter claiming as a collateral, upon evidence got up by fraud and falsehood, for the occasion, through the instrumentality of one equally destitute of just pretensions to the STIRLING honours and estates, but equally capable of resorting to base and dishonourable means, for the attainment of his object. But of this Gentleman more anon; for at present sufficient has been said to shew that the refusal of the letter missive, by the Lord Chancellor, was an act of injustice—an act sanctioned neither by law nor precedent, but having its origin in an off-hand, careless impetuosity, little becoming any judicial character, and much less the first law-officer of the Crown.

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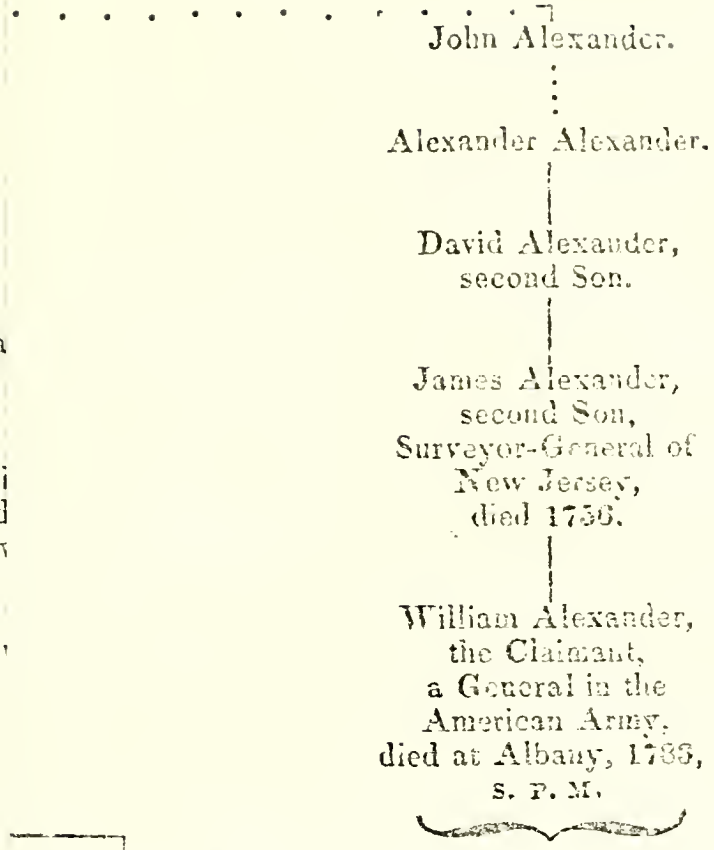
* In the Appendix, No. X.



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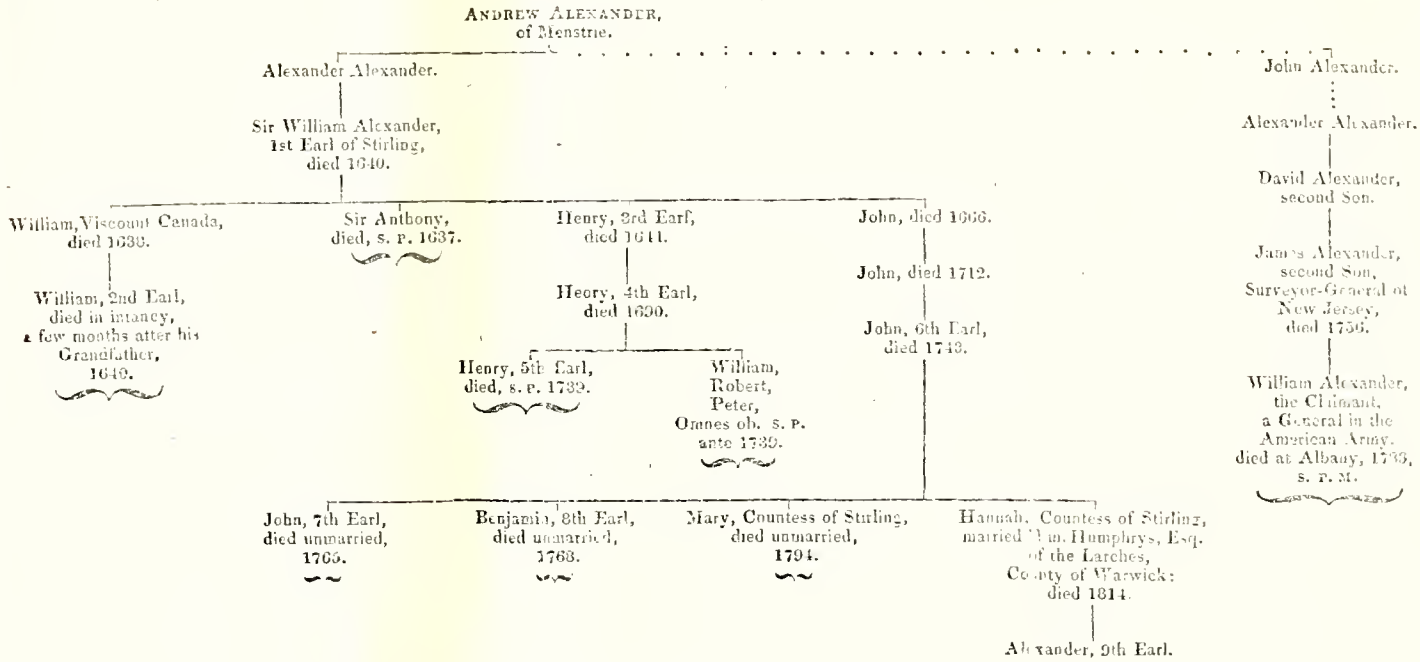
AL ALEXANDER'S *descent.*

PEDIGREE—*referred to in Page* 40.



Note.—*The black lines trace the proved descendants of the First Earl: the dotted line shews the pretended deduction of* General Alexander's *descent.*

It now may be relevant to state the right of the EARL OF STIRLING, to vote at the Peers' elections, without going before the House of Lords for allowance of dignity, under the Resolutions of 1822.

It must be borne in mind, and cannot be too often repeated, that the laws of Scotland have provided services of heirship, as the only means by which an heir can connect himself with his ancestor; and that by these legal forms, LORD STIRLING has proved himself, by the verdicts of four Juries, to be heir of succession to all he has claimed, and consequently entitled to the honours he has assumed. These laws have also provided, that while the special service is the principal act to found the right of heirship, so seisin following the service, is the accessory act to complete the title to the lands claimed; and thus, by having gone through all these forms, the EARL OF STIRLING has become invested with, and sustained in, the right to possess all that he has shewn to be claimable, under the several and respective services before-mentioned.

For explanation of the Resolutions of the House of Lords, by which, as it is erroneously stated, the EARL OF STIRLING is affected, it may be proper to say, that they were moved by the Earl of Rosebery, and stand thus, on the Journals of the House of Lords—viz.

"Die Veneris, 3rd Maii, 1822.

"Moved to Resolve—That no person, upon the decease "of any Peer or Peeress of Scotland, other than the son, "grandson, or other lineal descendant, or the brother of "such Peer, or the son, grandson, or other lineal "descendant of such Peeress, shall be admitted to vote "at the election of the sixteen Peers, to be chosen to "sit and vote in the House of Lords of the United "Kingdom of Great Britain and Ireland, as Represen- "tatives of the Peerage of Scotland, or at the election

" of any one or more such Peers, to supply any vacancy " or vacancies by death or otherwise, until, on claim " made in behalf of such person, his right of voting " at such election or elections, shall have been admitted " by the House of Lords."

" Moved to Resolve—That the right of every person " voting or claiming to vote, or having voted or claimed " to vote, at any election of the Peers of Scotland, shall " be subject and liable to every objection to which the " same would have been subject and liable, had the fore- " going Resolutions not been agreed to."

Now, how do these Resolutions accord with the law of Scotland, as before set forth? They are directly at variance with its provisions, and can only be taken as a sample of the individual opinions and wishes, of the noble Lords forming the majority in favour of their adoption. They are Resolutions (affecting Scottish inheritances) of one branch of the Legislature, which possesses in its own constitution no power or authority by the law of the land, to make orders, which should render it imperative on a Peer of Scotland, to subject his pretensions to its examination, unless they have been specially referred to it by the Sovereign, or come before it upon appeal from the Courts of original jurisdiction. Can one branch of the Legislature give authority to Resolutions, affecting civil rights which are secured by a solemn Act of the whole Legislature, without the consent of the other two branches, so as to have the force of a disfranchising law? If it cannot—and who will assert that it can?—the Resolutions of the House of Lords, above set forth, must be a nullity, without the requisite constitutional sanction, to give it efficacy, and the force of law; and deficient in authority necessary for commanding obedience to the new regulations, which it purports to introduce, and altogether unavailable to effect any change that can legitimately touch the rights of the Peers of Scotland, as they were secured

by the laws, customs, and usages of that Kingdom, established at and before the Union, and as they still remain, unaltered by the Parliament of Great Britain.

It has been contended,* in answer to these arguments, that by the Act of Union, "all Peers of Scotland, and "their successors to their honours and dignities, shall, "from and after the Union, be Peers of Great Britain;" and that the question is, therefore, whether, on their becoming Peers of Great Britain, and partaking of the privileges of Peers of Great Britain, they are not "bound by, *and subject to, such rules and regulations*, "which from time to time may be *made for the due main-* "*tenance of the rank of the Peerage, and the purity of* "*their order.*" This is, indeed, a forced construction of the Act of Union. That Act was final; that is, on the subject before us, there was no reservation, or any allusion to any "rules and regulations," to be subsequently imposed. The law and practice of Retour prevailed before the Union, and at that period were confirmed; whereas, the Resolutions in question, clearly point out a proceeding in supercession of services. "Rules and regulations," for the maintenance of the "purity of the order," may be very necessary; but one branch of the Legislature cannot constitutionally have the power of making such, in abrogation of statutory enactments. It is curious, and may be cited as a high authority, that the Lord Chief Justice Tindal, on the late occasion in the Court of Common Pleas, in giving judgment, said, that the Court could not judicially notice these Resolutions, or engraft them on the Act of Union, upon the provisions of which they seemed to him to entrench.

And why, we ask, could they not be judicially noticed? Because the law of Scotland and these Resolutions are

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* Law Magazine, No. 10, Art. 6.

at variance; and the former has precedence, having been confirmed by the three powers, whose sanction is required by the Constitution to enact laws, while the latter are in fact founded merely on the caprice of one of those powers.

Some individuals claiming Scotch Peerages, studying their own convenience, may, it is true, apply at once to the House of Lords for recognition and confirmation; but that is no ground for an order, rendering it imperative on all to do so. If, from the continued resolution of the EARL OF STIRLING, not to admit of any authority being vested in the House of Lords to interfere in this respect, weakness in his case, or fear as to the result, be presumed, this pamphlet will, it is confidently believed, remove such an impression from the mind of every unprejudiced person. To go to the House of Lords for confirmation of title, now, would be a dereliction of duty on the part of LORD STIRLING, and a throwing of doubt upon his own Peerage character, by himself, who has done so much to establish it. Besides, of what is a Committee of Privileges composed—before whom LORD STIRLING would, in that case, lay his rights for confirmation and allowance? It is composed of Lords, (the Chancellor among the number,) not impanelled like a Jury, and sworn to decide upon evidence; but who give their voice, neither upon oath as Commoners, nor upon their honour as Lords—who are not bound to be present during the whole, or any part, of the time of the investigation of the case, and may only attend on the very last day, when the Resolution of the Committee is to be declared—on which occasion, according to influence, interest, party connexion, or private friendship, or according to spleen, party feeling, jealousy, or personal pique, they may resolve for or against the claim, never having, even on one day before, heard the arguments of counsel, and their learned expositions of the merits and demerits of

the case in question. The following extracts from different Reports made by "the Lords' Committee appointed to "inquire into all matters touching the dignity of a Peer "of the realm," are worthy of insertion :—

In their Report of the 13th June, 1816, is the following :—"In pursuing this investigation, the Committee "have found contradictory assertions of law; and when "facts have been asserted, as evidence of law, they have "found such assertions of facts to have been, in some "cases, false, in other cases, founded on mistake, and "frequently made without reference to any sufficient "authority; the Committee have, therefore, been induced "to apprehend that the whole subject has long been in-"volved in great obscurity, and that probably in some "cases, the House has proceeded without proper infor-"mation—that the Crown, in the exercise of its preroga-"tive, has not always been fully instructed—and that even "the whole Parliament has given the sanction of legis-"lative authority, where it may be doubted, if rightly "informed, that sanction would have been given."

And in the Report of 29th June, 1821, is the following :—"Some of the proceedings have evidently been "had without proper information—some, perhaps, in-"fluenced by personal, or party motives—and many "adopted without that attention to former proceedings, "which was necessary to ensure consistency."

Independently of these general considerations upon the Resolutions of 1822, they cannot apply to LORD STIRLING, on any particular grounds. They only relate to persons claiming collaterally; whereas, LORD STIRLING is the son of a Peeress, and grandson of a Peer, and therefore takes his title, as in a course of lineal descent, prior to the Resolutions of 1822. Besides which, in a preliminary proceeding in the Court of Session in Scotland, instituted for the recovery of extensive property, his

right to sue as EARL OF STIRLING was opposed by the officers of state, on behalf of the Crown, who argued that he had not proved his title before any competent authority, and that by the Resolutions in question, he ought to go to the House of Lords. The thirteen Judges of that Court, however, without considering the invalidity of the Resolutions on general grounds, decided that they did not apply in the present case, and sustained instance (suit) in the name of the EARL OF STIRLING.* The difference in the conduct of the Judges of the Court of Session, as above, and of the Court of Common Pleas, on the late occasion, is worthy of notice. The former did not, on general grounds, object to the Resolutions of 1822; whereas, the Lord Chief Justice Tindal, on behalf of the latter, as before observed, said, that they appeared to him *to entrench upon the Act of Union.*

At the election in September, 1830, on the signed list of the EARL OF STIRLING being tendered, the Earl of Rosebery, as mover of the Resolutions in question, made some extraordinary observations, (before alluded to,) which will be found in the Appendix, as well as the answer to them, entered by LORD STIRLING'S agent. But what did these observations amount to? Nothing but the individual opinion of the utterer, on his own idea of the propriety of claimants previously proving their right in the House of Lords. It is noticeable, that Lord Rosebery did not protest against LORD STIRLING'S vote; indeed, he knew he could not, consistently, it having been received (as he observed) on a former occasion, and he acknowledged his Resolutions did not apply thereto.

In conclusion, it may be stated, that since the Union, the right in all the Peers of Scotland (devolving, or

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* Appendix, No. XI.

ascertainable, as the case may be, in manner before-mentioned) of exercising the Peerage privileges, has consisted in obeying the Royal proclamation to attend at Holyrood House, on the day of election of the sixteen Representative Peers, at a general election, or on a vacancy occurring by the decease or disability of any of the sixteen—the Royal proclamation on this occasion being greatly similar to the writ of summons of an English Nobleman to Parliament. If he take his seat by virtue of it, (of either, we may say,) though in error, his title is acquired.

CHAPTER V.

ON THE PRETENSIONS OF THE DOWAGER MARCHIONESS OF DOWNSHIRE, TO THE STIRLING TITLES AND ESTATES.

THIS Chapter is devoted to the consideration of the pretensions of the Dowager Marchioness of Downshire, to the STIRLING titles and estates, from a necessity of exposing to the public, the falsity of the representations, made by her, or her agents, of her being the heir female, in priority to the present Earl, and of shewing the utter destitution of any right of inheritance in that character vested in her, either under the Charter of Novo-Damus, so insidiously attempted to be questioned, or under any other character, or in any way of law whatever.

This explanation has become the more imperative, as those representations were repeated in the most unwarrantable manner, in the case previously mentioned before the Court of Common Pleas.

In a preceding Chapter, a recital has been given of the Charters granted to SIR WILLIAM ALEXANDER, of date 1621, 1625, and 1628, which shew that the limi-

tation of the property granted by each, was the same, viz. to SIR WILLIAM ALEXANDER, "heredibus suis "et assignatis quibuscunque hereditarie."

Now, the effect and meaning of this limitation have, according to the Scotch law of descent, always been held to carry the enjoyment of the subject limited, in the first instance, to the heirs male of the body of the original grantee, whom failing, to the heirs female of the last heir male, in a similar course of succession.*

By a Patent under the Great Seal, dated 4th September, 1630, King Charles the First conferred on SIR WILLIAM ALEXANDER the titles of BARON ALEXANDER, of Tullibodie, and VISCOUNT OF STIRLING, to hold to him "suisque heredibus masculis." &c.; and afterwards, by another Patent under the Great Seal, dated at the Palace of Dalkeith, the 14th June, 1633, created him EARL OF STIRLING, and VISCOUNT CANADA, &c. with limitation to him, "suisque heredibus "masculis in perpetuum cognomen et arma de ALEX- "ANDER gerentibus." On comparing these limitations, with those in the Charters of the lands, it will be seen that the American property, was granted to a more general and extended series of heirs, than the titles, which were confined to heirs male alone.

This diversity, at first, probably attracted little or no observation; but afterwards, when the First Earl, from the death of his eldest, and two other sons before him, and the precarious state of health of those still surviving, perceived that at no distant period, the honours and estates might become separated, and the former pass into even the most distant collateral male branch of his family, not emanating from himself, this subject seems to have excited his attention; and he accordingly, to

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* Vide Polwarth case, coram Dom. Proc.

ensure their joint descent to the same line of heirs, made resignation thereof (as was a practice then very common in Scotland) into the King's hands, for the special purpose of a new grant to that effect: and His Majesty King Charles the First was pleased, by a Charter under the Great Seal, styled a Charter of Novo-Damus, dated 7th December, 1639, to confer them *de novo* "antedicto "WILLIELMO, COMITI DE STIRLING, et heredibus "masculis de corpore suo; quibus deficientibus, here- "dibus femellis natu maximis sine divisione ultime "talium heredum masculorum et heredibus masculis de "corporibus dict. heredum femellarum respective pro- "creandis, cognomen et arma de ALEXANDER geren- "tibus, quibus omnibus deficientibus, propinquioribus "legitimis heredibus quibuscunque dicti WILLIELMI "COMITIS DE STIRLING, cum precedentia, a decimo "quarto die mensis Junii, anno Domini millesimo "sexcentesimo trigesimo tertio," &c. Which limitation, in point of legal meaning, is precisely the same as that contained in the Charters of 1621, 1625, and 1628, as before-mentioned, and comprised in the words "*heredibus* "*suis et assignatis quibuscunque hereditarie.*"

Thus, the EARL OF STIRLING's right to the American property is the same, either under those Charters specially granting it, or under this Novo-Damus, or regrant thereof; and his title thereto, under the destination in question, has been ascertained by the retours before described, and completed by the seisin taken thereon.

The value of the Novo-Damus, therefore, with reference to the estates, is comparatively of no consequence. Its importance is to be considered only as to relimiting, or rather extending, the line of succession to the Peerage honours; but even the right to these may, on other grounds peculiar to the Scotch laws, be sustained, as the contents of the next Chapter will more explicitly manifest;—but as the originality of the Novo-Damus has

been questioned, it is somewhat material to be shewn, in answer to those who assert that no Charter of this kind ever existed, that such assertion is a fabrication, invented for sinister purposes, to serve the object of a particular individual.

In tracing the descent under this Charter, it must be distinctly observed, that it is only as it may apply to the STIRLING honours—as the American and Scotch lands would have descended to the same course of heirs, equally with, or without that Charter.

It has been shewn what the limitation of the STIRLING honours was by the Patent of 1633, and what by the regrant of 1639, which is denied;—but an inspection of the Pedigree will manifest under which limitation the heirs of the First Earl took the title; and if it is found that the succession was allowed, through the persons of several heirs, to be guided by the latter, it must prove incontestably that such a Charter was matter of notoriety in the family.

The First Earl died in February, 1640, and was succeeded by his infant grandson, only son of his deceased eldest son, WILLIAM, VISCOUNT CANADA, which said WILLIAM, the second Earl, survived his grandfather scarcely six months, when he died under eight years of age, leaving his three sisters his co-heirs, or heirs portioners at common law,* *i. e.* such heirs who would have been entitled to have divided his estates, had they not been limited by a tailzie, or entail, which cut them off, and gave the right of inheritance to their uncle, HENRY, on whom they devolved, and who thereupon became the Third Earl.

This HENRY, the Third Earl, (who was the eldest surviving son of his father, the First Earl,) married a

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* Vide Pedigree, Tab. I. in the Appendix.

lady of considerable fortune in England, and settled there; whereupon, some of his father's creditors in Scotland, by reason of his having been a cautioner for him in various securities given to them, not considering themselves to be able to make legal proceedings against him, as residing out of the Kingdom, without consent of Parliament, presented a petition for leave so to do; and it is worthy of remark, that in the petition, they described him thus, viz.: "HARIE, EARL OF STIRLING, son and "heir male of *Tailzie and Provision*, to umquhile WIL-"LIAM, EARL OF STIRLING, his Father and Brother, "and heir male of *Tailzie and Provision* to the said "WILLIAM, LORD ALEXANDER," &c.* This clearly points out that the creditors were aware of the Charter of Novo-Damus, and of its limitations, connecting the estates with the title; for there is not any record of any entail of the whole of the STIRLING estates to warrant such a description, excepting the Charter of Novo-Damus. Hence there is a well-founded ground, to assume that the entail, or tailzie, contained in the Charter, could be the only destination referred to. For had this Charter not been upon the roll at that period, the creditors could not have acquired this information, to have set forth, so as in any way to have described the said HARIE, EARL OF STIRLING, in the character of *heir male of tailzie and provision.*

Against the petition to Parliament just mentioned, other creditors remonstrated, and the Parliament appointed a Committee to take into consideration the circumstances. This Committee met, adjourned, and met again; but no resolution appears to have been made by them; and the Acts of Parliament do not further notice the subject.

This circumstance is the more noticeable, as the appli-

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* Scotch Acts of Parliament, Vol. V. p. 403, et seq.

cation of the creditors, in charging EARL HARIE, as *heir male of tailzie and provision* (in the very terms of the Charter of Novo-Damus) not only to his father, the First Earl, but to his elder brother, the deceased WILLIAM, VISCOUNT CANADA, puts upon the journals of Parliament the fact of the notoriety of the Charter; for otherwise the Earl might have rebutted the charge, by asserting that though he was Earl, he was not heir in the character set forth, to the estates; but that his nieces were the heirs at law in point of blood, as well of their brother, as of their father, WILLIAM, VISCOUNT CANADA, and of their grandfather, WILLIAM, the First Earl; and that there had never been any tailzie of the STIRLING estates. He, however, allowed the creditors to make apprisings of the Scotch estates, without interposing any demurrer; but, as heir male of tailzie and provision, he held possession of such part of the American property, as was not then in the usurped occupation of the French, and of which property he died seised in 1644, being succeeded therein by his only son, HENRY, the Fourth Earl; which HENRY, the Fourth Earl, died in 1690, having had four sons, whereof William, Robert, and Peter, the three youngest, died without issue, before 1730, and the eldest, HENRY, became the Fifth Earl. He resided in England, where he died in 1730, without issue, and was interred in the chancel of Binfield church, in Berkshire.*

By this Nobleman's death, the whole of the male line of the eldest sons of WILLIAM, the First EARL OF STIRLING, became extinct, and the course of succession vested in the Reverend John Alexander, grandson and heir male of John, the fourth son of WILLIAM, First EARL OF STIRLING; which said John, having been

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* Vide Appendix, No. XII.

joined with his father in various pecuniary engagements, for money borrowed to promote the colonization of the American settlements, was, upon his father's decease, obliged, from the prosecutions of his creditors, to leave Scotland; whereupon, taking with him his only son and heir, John, (whom he had by Agnes, daughter and heiress of Robert Graham, Esq. of Gartmore,) he went into Ireland, where his mother, the COUNTESS DOWAGER OF STIRLING, was then residing, as also his sister Jane, who had married the second Viscount Montgomery, of Ardes.* He afterwards died in Ireland, in 1666.

From the Montgomery MSS. it appears that the same Honourable John Alexander, and his two elder brothers, Sir Anthony Alexander, and William, Lord Alexander, were present at the grand funeral of the First Viscount Montgomery, at Newton Ardes.

This intimacy, with the near connexion of the parties, naturally led to the subsequent domiciliation of this branch of the family in Ireland. Indeed, the respect entertained by the Third Viscount Montgomery (son of Lady Jane Alexander) for his mother's family, was so great, that when he was afterwards advanced to the dignity of an Earl, he chose the title of *Mount-Alexander*, in remembrance of his descent from that distinguished house.

John Alexander, only son of the aforesaid Honourable John, of Gartmore, was afterwards of Antrim, and was married at Donaghedy church, in May, 1682, to Miss Mary Hamilton, by whom he had two daughters, and one son, who was born on the 30th September, 1686, and a few days afterwards, was baptized by the name of John, by the Rev. Mr. Livingston.

This last-named John Alexander, the present Earl's

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* Vide Montgomery MSS.

grandfather, at the period of succeeding his cousin in 1739, and becoming Sixth EARL OF STIRLING, was Minister of the Scots Presbyterian Congregation in Plunkett-street, Dublin, where he was particularly distinguished for his high literary attainments, and profound learning. He was married in England, at the parish church of Hartlebury, in the County of Worcester, by licence, on the 8th day of August, 1732, to Hannah, daughter of the Rev. John Higgs (who was grandson of Dr. Griffith Higgs, Dean of Lichfield in the time of Charles the First): by her he had many children, whereof only two sons and two daughters lived to years of maturity.

Here it may be relevant to remark, that the Rev. John Alexander (just mentioned) being in his life-time heir presumptive to the STIRLING honours, provided his second cousin, HENRY, the then Earl, should die without issue, (which, by reason of his age and infirmities, was to be expected,) employed, in the early part of the year 1723, his friend and agent, Mr. William Gordon, an eminent genealogist, who resided in Scotland, and was representative of Mr. James Gordon, Keeper of the King's Signet in that Kingdom, who had married the first EARL OF STIRLING'S niece, (namely, the only daughter of his brother, Andrew Alexander,) to furnish him with certain information and particulars regarding his family, and their great estates; and in consequence of the communications made by Mr. Gordon, he afterwards employed Mr. Hovenden, a person of eminence, knowledge, and fortune, in the Kingdom of Ireland, to make application to Mr. Conyers, of Catherlough, in the County of Carlow, to give up to him, the Rev. John Alexander, the original Charter of Novo-Damus of 1639, then in his custody, and which had been deposited by the Countess of Mount-Alexander, in his (Mr. Conyers') father's hands, in troublesome times, for safe keeping. Mr. Conyers permitted

Mr. Hovenden to read and examine it, but declined to give it up, without the consent of the then Earl of Mount-Alexander. Mr. Hovenden thereupon compared his excerpt of the limitations, with the original, and Mr. Conyers, in his own handwriting, certified the same to be correct.*

The connexion between the Mount-Alexander and STIRLING families has been explained; and the whole proceedings of Mr. Gordon, Mr. Hovenden, and Mr. Conyers—that is, the genealogical statement of Mr. Gordon; the extracts from the Charter in question, certified by Mr. Conyers to Mr. Hovenden, with the deposition of the latter, of his examination of the extract with the original; and Mr. Conyers's account, how the same Charter came into his possession—properly and legally authenticated, are now in the hands of the present Earl, and must fully satisfy even the most incredulous, of the truth of the grant of the Charter of Novo-Damus of 1639, and of its existence in 1723, though the fact is so industriously attempted to be denied by those who have a sinister purpose to answer at the present day.

After the death of HENRY, the Fifth Earl, in 1739, and the succession to the family honours by the Reverend J. Alexander, this Charter was given up to him, with the consent of his cousin, the then Earl of Mount-Alexander. But as he found on his succession, that the estates in Scotland, which had been apprised by the creditors of the Third Earl, as before mentioned, were not so promptly attainable as to enable him to support his high dignity, and that the property acquired in England, by the marriage of his great-uncle, HENRY, the Third Earl, with the heiress of Sir Peter Vanlore, and which he considered he ought also to have inherited under a deed of settlement,

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* Vide Appendix, No. XIII.

had been taken possession of by the family into which the sisters of his cousin, the deceased EARL HENRY, had intermarried, he therefore chose rather to decline the immediate and public assumption of his rank—although in Scotland, as also among his friends and intimate acquaintance elsewhere, there are proofs that he was well known and reputed as Sixth EARL OF STIRLING. The time he superlived the last Earl (only three years and eleven months) was too short to enable him to prosecute with effect those legal proceedings which were necessary to be adopted, to obtain possession of his ancestral estates in Scotland or America, or of the settled ones in England.

Nevertheless, he collected every proof, with the evidence of Royal Charters, wills, and other documents, adequate to establish the clearness of his right, when he might think fit to assert it. But illness and death prematurely deprived his family of their protector, and cast all his affairs into confusion. He died at Dublin, 1st Nov. 1743, and was there interred, leaving his widow and four children surviving him,* the eldest son being under eight years of age. On her husband's death, his widow (having only a limited income) retired, along with her children, into England, to reside there among her own relations. On this occasion, she brought with her the original Charter of Novo-Damus before-mentioned, and a variety of other valuable documents relative to the family honours and estates, which afterwards were stolen, or in some extraordinary manner abstracted from her custody, as supposed by some servant or agent of Mr. William Trumbull, who, from the circumstances hereafter detailed, there is the greater reason to believe, was strictly the principal contriver of the scheme, and who, with Mr. Lee, had a certain interest therein, provided the issue of the Honourable John

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* Vide Pedigree, Tab. I. in the Appendix.

Alexander could have been got rid of, and Mr. Alexander had never come forward.

John, the eldest son and heir of the Reverend JOHN ALEXANDER, the Sixth Earl, de jure, like his father, was a learned and distinguished Presbyterian clergyman, but died suddenly, unmarried, the 29th of December, 1765, being then only in the 30th year of his age. He was the Seventh Earl, de jure, though he did not assume the title, on the same grounds as his father had temporarily declined it. He was succeeded by his only brother, BENJAMIN, a person of eminent acquirements, who was rising into great public estimation as a physician,* but died before he took up the title, which he had intended to do; he only survived his elder brother, JOHN, about three years, and deceasing unmarried in April, 1768, he was the last heir male of the body of his Great-great-great-Grandfather, SIR WILLIAM ALEXANDER, the First Earl.—Having thus traced the descent of the STIRLING honours into the family of the present Earl, it becomes here requisite to expose to public notice, the history of those persons, who, prompted by motives of ambition, or avarice, came forward to take advantage of the dormancy of assumption of the Earldom, by the family truly entitled to it, and by a bold measure endeavoured to acquire the said title, together with such parts of the property as appeared to them capable of being obtained, considering that influence and connexion might overcome right and justice.

To carry this plan into effect, one William Alexander, a gentleman born in America, and at that time Surveyor-General of the Crown in New Jersey, came over to England, and entered into an agreement with Mr. William

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* He published a translation of Morgagni's work, on "the Causes and Seats of Disease discovered by Anatomy."

Trumbull and Mr. Phillips Lee (the former of whom will hereafter be more particularly mentioned), the nephews of HENRY, the Fifth EARL OF STIRLING, by his sisters, Judith and Mary, to mutually assist each other, and divide the estates.

In furtherance of their collusive design, Mr. Alexander addressed a letter to Mr. Trumbull, dated New Portugal-street, November 9th, 1759, from which the following is an extract,* viz.:—"Whether the right to the claims "which the heirs of the first EARL OF STIRLING have "in America descend to his heirs-at-law, which would be "yourself and Mr. Lee, or whether they descend to his "heir male, which I contend to be, I cannot tell; but, "from *some circumstances*, I should think it doubtful. "However, I think it would be better for us all to act "jointly in any application that is to be made for the "recovery of those rights; and I am willing to come "into an agreement with you and Mr. Lee about the "matter. I will agree that whatever may be recovered "shall be divided, one-half between you and Mr. Lee, "the other half to myself. I shall be glad you will com-"municate this proposal to Mr. Lee, and to have your "and his answer as soon as convenient."

To this letter Mr. Trumbull returned an answer, dated East Hampstead Park, 13th December, 1759, viz.† "I send you a copy of my cousin Lee's letter in relation "to your proposal in your letter of the 9th of November "last; and as he is very willing, so am I, to come into the "agreement you proposed. I have therefore now sent "you up all the writings and papers I have relating to "our North American affairs, as well as a book of SIR "WILLIAM ALEXANDER'S correspondence, while he

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* Vide Appendix, No. XIV.

† Vide Appendix, No. XV.

" was Secretary of State for Scotland. I think a proper " agreement should be drawn up for us all to sign, which " I desire the favour of you to do."

To this letter is attached a list of the papers, &c. sent, viz.:—

Eleven parchments,	marked	A. from 1 to 11.
Eleven papers - -		B. from 1 to 11.
Twelve ditto - -		C. from 1 to 12.
Twenty-eight ditto -		D. from 1 to 28.
A parchment book -		E.

Here, then, is a brief statement of the contract between these persons, wherein it is very easy to see on what grounds they severally considered themselves to have some pretensions, though it was not possible for either to make out a distinct right.

Mr. Alexander, on his part, had to rest on the Patent of 1633, by which the title of EARL OF STIRLING was limited, as before described, to the first Earl, " suisque " heredibus masculis in perpetuum, cognomen et arma," &c.—Now, in order to form any claim thereto under the said Patent, he was obliged to assume that all the male issue from the present Earl's Great-great-Grandfather, John, the fourth son of the First Earl, had failed; and accordingly, that as no issue male of the body of the First Earl remained, he, Mr. Alexander, by pretence of a descent from some uncle of the First Earl, was then the heir male of the family. But at this time (1760) there had been no decision whether the limitation of a Peerage dignity, " heredibus masculis," carried the succession to any males other than the male descendants *of the body* of the person first ennobled; and as Mr. Alexander had only a remote collateral line from which to urge a claim, he found he must go to the House of Lords for allowance of dignity, where several other claims, on similar grounds, were depending. Mr. Alexander's letter to Mr. Trumbull, states the doubt which he entertained, as to

who were the right heirs to the First EARL OF STIRLING; that is, whether they in the female, or himself in the male line. This further doubt evidently arose from the construction which was to be put upon the limitation in the Charter of Novo-Damus of 1639, of which it would seem one of them had possession, and all of them the knowledge. Under this limitation, Mr. Alexander was doubtful, as he could not shew himself to be a descendant of the body of the First Earl, whether Mr. Trumbull or Mr. Lee would not stand in a preferable character to himself, as being heir male of the body of the heir female to HENRY, the Fifth Earl, who died in 1739:—while Mr. Trumbull and Mr. Lee were under similar doubts, that so long as any male of the family remained, the female succession could not take place in favour of them or either of them. Hence the agreement in question between the parties.

The notoriety of the terms of this Charter of Novo-Damus, would appear to have attached to them all; and probably to Mr. Alexander, even before his proposal to Messrs. Trumbull and Lee, from his having seen its copy in the many grants made by James Farrett, agent to the First, Third, and Fourth EARLS OF STIRLING, to divers settlers on Long Island, and other parts of America.

That the original Charter, abstracted as beforementioned, got into the possession of Mr. Alexander, seems manifest, from a very interesting circumstance which occurred after he had taken upon himself the title of EARL OF STIRLING, but before his application to the House of Lords:—Walpole, in his Anecdotes of Painting,* under the head Norgate, says, "The warrant for "restoring the use of the old English March, which I

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* Vol. II. p. 19.

"have set forth in the Catalogue of Noble Authors, was "illuminated by this person (Norgate); but the best "evidence of his abilities, is a curious Patent *lately dis-* "*covered.* The present EARL OF STIRLING (that is, "Mr. Alexander) received from a relation an old box of "*neglected writings*, among which he found the original "commission of Charles the First, appointing his Lord- "ship's predecessor, ALEXANDER, EARL OF STIRLING, "Commander-in-Chief in Nova Scotia, with a confirma- "tion of the grant of that Province, made by James the "First. In the initial letter are the portraits of the "King sitting on the throne, delivering the Patent to the "Earl; and round the border, representations in minia- "ture of the customs, huntings, fishings, and productions "of the country—all in the highest preservation, and so "admirably executed, that it was believed of the pencil "of Vandyke; but as I know no instance of that master "having painted in this manner, I cannot doubt but it is "the work of Norgate, allowed the best illuminator of "that age, and generally employed, says Fuller, to make "the initial letters of Patents of Peers, and commissions "of Ambassadors."

Norgate was Windsor Herald, and Clerk of the Signet to King Charles the First, whom he attended in 1640. He was appointed Windsor Herald in 1633, and *soon after*, illuminator of Royal Patents. From the date of his appointment of illuminator of Royal Patents, it must be clear that the Charter mentioned by Walpole could not be before 1633, but must have been one after that time. The Charters of Nova Scotia granted to SIR WILLIAM ALEXANDER, were long prior to that period, and do not partake of any illuminated representations, as here described. The one alluded to, then, could only be the original Charter of Novo-Damus of 1639, in which *all the previous grants were recited and reconfirmed;* while the account given to Walpole, that it was found in an

old box of neglected writings, received from a relation, corresponds with Mr. Trumbull's letter, already cited, of his having sent to Mr. Alexander (titular EARL OF STIRLING) the very identical box, with the writings or papers enumerated in that letter.

Thus it may be assumed, that Mr. Alexander, by the means before noticed, became possessed of this Charter of Novo-Damus, and other important documents.

In furtherance of his design to substitute himself as heir of the title, and reckoning upon the influence of the Earl of Bute, and the powerful connexion of the Trumbulls, Mr. Alexander presented a petition to the King in 1760,* setting forth the Patent of the 14th of June, 1633, by which WILLIAM, the First Earl, was so created, with limitation to his heirs male general, without restriction, and representing that he was the heir male of succession, being descended from John Alexander, the uncle of WILLIAM, the First Earl. This petition was referred to the Lords on the 2nd May, 1760; and a second petition, in the same words, was referred again to the Lords, the 14th April, 1761.† But Mr. Alexander was unable to prove the descent he had selected; and his agents could not take upon themselves to adduce the satisfactory evidence required by the Lords' Committee for Privileges; and the House thereupon came to the Resolutions of the 10th March, 1762,‡ whereby their Lordships ordered that "the said William Alexander, or "any claiming under him, shall not be admitted to vote "by virtue of the said title, in the election of any Peer of "Scotland, to sit and vote in this House, pursuant to "the Articles of Union," &c.

Thus was injustice defeated, and the rights of the present Earl's branch of the family protected.

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* Journ. Dom. Proc. † Ibid.

‡ Ibid. et ut supra.

Mr. Alexander afterwards retired to America, where he was one of the Generals of Congress against the British arms. He died at Albany, in North America, in 1783, without leaving any male issue.*

After what has been related, it can scarcely be asked if the present Earl is descended from the said Mr. Alexander. The refutation is clear: the Pedigree shews his descent from John, the fourth son of the First Earl, while Mr. Alexander only pretended to be derived from John, an uncle of the First Earl; but whether he really came from the line he chose to date from, or where he came from, or who he was, ceases to be a point of any interest—as, by his death without issue male, every presumption or pretension of the Peerage inheritance terminated with him.

This minute history was necessary to be given, previously to touching upon the unfounded priority of right assumed by the Dowager Marchioness of Downshire to the STIRLING honours.

As has been stated, HENRY, the Fourth Earl, was succeeded by his eldest son, HENRY, the Fifth Earl, who died in 1739, without issue, having survived all his brothers, who had died in his life-time without issue; and was succeeded by JOHN, the Sixth Earl, the grandson of John, the fourth son of the First Earl.

HENRY, the Fifth Earl, had three sisters, whereof Mary married —— Phillips, Esquire, of Binfield; Judith married Sir William Trumbull, Knight; and Jane died unmarried. Mary had a son by Mr. Phillips, being the very Mr. Phillips Lee before mentioned; and Lady Judith had a son by Sir William Trumbull, being the very Mr. William Trumbull, also before mentioned—which gentlemen were the two co-operators with Mr. Alexander.

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* See his alleged descent, Appendix, Pedigree Tab. II.

This Mr. Trumbull married the daughter and coheiress of Montague, Viscount Blundell, by whom he had a daughter, Mary, who married the Honourable Colonel Martin Sandys, and had issue the present Most Honourable * the Dowager Marchioness of Downshire.

Let this Lady's pretensions be now examined:—First, as to the Patent of 1633 to heirs male, it is quite certain the Marchioness cannot be entitled under that description.—Secondly, as to the Charter of Novo-Damus, under which she would pretend a claim as heir female—the limitation is (as already cited) to the heirs male of the body, whom failing, to the heir female of the last heir male, and the heirs male of the body of the last heir female, &c. Supposing HENRY, the Fifth Earl, to have been the last heir male of the body, his eldest sister, Mary, would have been his heir female, and her son, Mr. Phillips Lee, the heir male of the body of the heir female.

And supposing Lady Judith had been the eldest sister of the Fifth Earl—and consequently, under the former presumption, the heir female of the last heir male—her son, Mr. Trumbull, would have been the heir male of the body of Lady Judith, the heir female. But, as both Mary and Judith, the sisters of the Fifth Earl—still presuming him last heir male—(either being allowed to be the heir female of their brother,) had sons who died without issue male, the succession, in that case, would have gone to the nearest heirs whatsoever of the First Earl; but not to the female issue of those sons—in which

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* The title of *most noble* was for a long time generally given to a *Marquess*, or *Marquis*—but that of *most honourable* has latterly superseded the former—for what reason I know not, unless it must be inferred that a party might be noble, yet not honourable; it was, therefore, to preserve the latter to high nobility.

predicament Lady Downshire stands—who consequently is out of the question with regard to any right in her to the succession to the STIRLING honours and estates, under the Charter of Novo-Damus of 1639.

To resume the history of the present Earl's descent:—On the death of the Rev. JOHN ALEXANDER, Seventh Earl, de jure, in 1765, without issue, his brother, Benjamin (the second son of their father, the Sixth Earl), succeeded him as heir, and was Eighth Earl, de jure. He died the 18th April, 1768, only two years and four months after his elder brother. Being unmarried, with him terminated the whole of the male issue descended of the body of WILLIAM, the First EARL OF STIRLING; and thereupon, his two sisters were his co-heirs; but, as under the Charter of Novo-Damus, the limitation of the descent of the honours was, "to the eldest heirs female, "without division, of the last of such heirs male," &c. the right of succession to the Earldom, &c. devolved entire upon Mary Alexander, the elder of the aforesaid two sisters. And here it may be observed, that if the limitation, after the failure of the heirs male, had been to heirs general, the Marchioness of Downshire would not have come in, there being extant the issue of an elder branch, namely, of the sisters of the Second Earl, who were the granddaughters of the First Earl, by his eldest son, WILLIAM, VISCOUNT CANADA, who died in his life-time, and which issue must be the first and the nearest heirs whatsoever in the female line.

The before-mentioned MARY, COUNTESS OF STIRLING, de jure, died unmarried in April, 1794; when her only and surviving sister, Hannah, the wife of William Humphrys, of the Larches, in the County of Warwick, Esquire, became her heir, also sole heir general, and heir of tailzie and provision, to her brothers, John and Benjamin, the two last heirs male in succession to the title and dignity of EARL OF STIRLING.

HANNAH, COUNTESS OF STIRLING, de jure, died 12th September, 1814, leaving ALEXANDER, VISCOUNT CANADA, her only son and heir, who then became, and now is, the present Earl.

After the close of the election in July, 1831, (as has been stated before,) an objection, in the nature of a protest, was entered against the Clerks of Session, for having received LORD STIRLING'S vote—one of the grounds of complaint being, "If the Claim *is founded on an alleged* "*Patent to heirs general* of the original Patentee, *we* "*know* that under these circumstances, *there are others* "who have a preferable claim to the dignity."

Now, the Earl has *never alleged a Patent to heirs general*, but he has alleged a Charter to an heir of tailzie and provision, which, according to the law of Scotland, would, *without the necessity of the words expressed in the Charter*, have been entitled to the succession, *in preference* to the party meant or insinuated by the protesters. For that party, namely, the aforesaid Dowager Marchioness, cannot be the heir male of the STIRLING titles—is not heir general, while the issue of an elder branch is extant—is not heir male of the body of the heir female—and, lastly, is not heir of tailzie and provision,—and therefore has not in her person any quality of heirship whereby to arrogate a preference before or over the present Earl.

CHAPTER VI.

THE EARLDOM OF DOVAN.

In procuring this title to be made co-eval, or rather invested with the Earldom of STIRLING, and which was denominated from the locality of the lands of Tullibodie, upon the river Dovan, it would seem that the intention of the EARL OF STIRLING was to incorporate the principal of his Scotch estates into a territorial honour, descendable along with the Peerage dignity, which had been omitted to be done when the STIRLING honours were first conferred; and, inasmuch as by that omission, the STIRLING titles were merely personal, and not united to the estates, so they might at a future day become separable, and inheritable by distinct persons. To effect this object, the Earl made a resignation of his lands of Tullibodie, and Tullicultrie, into the King's hand, in the manner usual, and conformable to the law of Scotland, for the purpose of a new infeftment of them—which the King granted to him, accordingly, by his Royal Signature, dated at the Palace of Oatlands, 30th July, 1637; wherein, after reciting the resignation, it is thus mentioned, viz.

"Præterea, nos, pro causis et respectibus supra spe-
"cificatis, ex nostra certa scientia, proprioque motu,

" univimus, crexiinus, creavimus, et incorporavimus, " necnon tenore præsentium, cum avisamento et consensu " predict. unimus, erigimus, creamus, et incorporamus " omnes et singulas terras, baronias, aliaque particulariter " et generaliter supramentionat.," &c. &c. " baroniarum " de Tullibodie et Tullicultrie, cum," &c. &c. " in unum " integrum et liberum dominium et comitatum, præno- " minato WILLIELMO, COMITI DE STIRLING, in vitali " redditu duran. omnibus suæ vitæ diebus, et Willielmo, " Domino Alexander, ejus filio, et heredibus suis mascu- " lis et assignatis prædict. COMITATUM DE DOVAN omni " tempore affuturo, nuncupat. et nuncupand. cum *titulo,* " *stilo, et dignitate* COMITIS, secundum datam dicti " Comitis creationis sibi desuper concess. quæ est de " data decimo quarto die mensis Junii, anno Domini " millesimo sexcentesimo trigesimo tertio. Tenen. et " Habend. omnes et singulas terras, baronias," &c. &c. " aliaque particulariter et generaliter suprascript. nunc " unitas, et annexatas et incorporatas in *unum integrum* " *et liberum Comitatum,* COMITATUM DE DOVAN, omni " tempore *affuturo. nuncupat. et nuncupand.* memoratis " WILLIELMO, COMITI DE STIRLING, in vitali redditu " durand. omnibus suæ vitæ diebus, et Willielmo, Domino " Alexander, suo filio, hæredibus suis masculis et assig- " natis prædict. de nobis et successoribus nostris, in *libera* " *Baronia, Dominio, et Comitatu,* imperpetuum," &c.

This Signature was afterwards confirmed in Parliament, and an entry of the confirmation made on the Records of the Acts of Parliament of Scotland, in these words:*

" Quinto Octo^r. 1639.

" Ratifica^o^ne.

" In favoris of the ERLE OF STIRLING, of Tillibody and " Tillicultrie."

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* Vol. V. p. 273, folio edit. 1817.

On paying attention to the words of the Signature, by which the two baronies are specially incorporated and erected into the Earldom of DOVAN, they will be found to be of particular importance, forasmuch as the construction of them may be taken to imply, that the Earldom of DOVAN is made one and the same with the Earldom of STIRLING, and thereby meant to be descendable thenceforth to the same course of heirs—for what else is to be interpreted by the expression, "*Cum titulo, stilo, "et dignitate Comitis, secundum datam dicti Comitis "creationis, sibi desuper concess.*"? It would be anomalous that two Earldoms should be granted to the same person, both of the same date, to be enjoyed with the same privileges, to be made to refer back, the one to a period four years antecedent to the other, and yet with a different line of succession;—the meaning could only be, that the DOVAN creation should refer back to that of STIRLING, to the effect which it would have had in the first instance, supposing SIR WILLIAM ALEXANDER had then been created EARL OF STIRLING and DOVAN, similarly as the Lord Chancellor has been ennobled by the title of Lord Brougham and Vaux, which nevertheless contains but one Peerage dignity. Indeed, this position of the case seems to have been considered by the EARL OF STIRLING himself, as, notwithstanding the additament of DOVAN, he continued to use the title of STIRLING, as the leading one of the family honours.

It may be here observed, that William, Lord Alexander, the EARL OF STIRLING'S eldest son, having died before him, the Earl reflecting, that as merely a portion, and not the whole of his estates, (of which those in America composed a most valuable part,) was, by the aforesaid incorporation, vested in the Peerage dignity; and being desirous that the whole should be united into one common inheritance, he thereupon made a resignation of all his honours and estates into the King's hands, and, by a

Charter of Novo-Damus, (as before noticed,) dated 7th December, 1639, obtained a regrant of them, with an erection of the entirety, viz. titles and estates, into one sole and distinct Earldom, then, and thenceforth, to be styled and denominated the Earldom of STIRLING, with a limitation to the same line of heirs in succession, as would have succeeded to the American property, under the previous Charters thereof, and to the same line of heirs in succession, who would have taken the Scotch lands, under their previous Charters of grant. Thus, excepting the incorporation of all the property with the title, and that title being confined to the name of STIRLING solely, the Charter of Novo-Damus is of little consequence.

Ingenious cavillers, and parties hostile to allowing the justice of the present Earl's rights, have thought proper to raise a doubt upon this Charter having ever had existence, because it has disappeared from the family Charter-chest, although there is very good proof how the abstraction was made, and by whom. But the above statement shews truly, that its absence very little influences the present Earl's claims; and the only reason why his Lordship is engaged in rearing it up from indubitable evidence, is his desire most completely to silence parties, who are ingenious only in perversion, and whose strictures are mere fabrications.

Sink the contested Charter into chaos, still the Earl remains heir in special of tailzie and provision, to the totality of the estates, American and Scotch, and to the Earldom of DOVAN, under the existing Charters, all on record, and confirmed by the Parliament of Scotland.

When WILLIAM, First EARL OF STIRLING AND DOVAN, died in 1640, he was succeeded by his grandson, only son of his eldest son, William, Lord Alexander, already named, who deceased in his life-time. The young Earl died within six months afterwards, not eight years

old; whereupon, he was succeeded by his uncle, HENRY, (of whom mention has been often made before,) who became the Third Earl. If neither he, nor any one after him, used the title of DOVAN, it is a demonstration that the Charter of Novo-Damus was the actual Charter, by virtue of which, he inherited the Earldom, with the aggregated estates; if that Charter had no existence, then, is not the present Earl let into the DOVAN title, and the lands, by a limitation, which is not susceptible of doubt or challenge?

But, to pursue the subject of the DOVAN title, it remains to be considered in what light it should be viewed—whether as a distinct, or as a consolidated Earldom. The limitation was first to the EARL OF STIRLING for life; then to his son, William, Lord Alexander, and the heirs male of his body; whom failing, then to the Earl the father, and his *heirs male and assignees*.

William, Lord Alexander, having predeceased his father, leaving one only infant son, this son, at the death of his grandfather, succeeded as EARL OF STIRLING, by virtue of the STIRLING Patents, and as EARL OF DOVAN, by virtue of the special limitation, before cited, of that Earldom, unless he succeeded under the Charter of Novo-Damus. On his death, his uncle, HENRY, was entitled to be Third EARL OF STIRLING, as heir male thereto, and he was entitled to be Third EARL OF DOVAN, as heir male special of tailzie and provision, under the remainder clause, which, failing the heirs male of the body of William, Lord Alexander, then gave the Earldom to the *heirs male of the body and assignees* of WILLIAM, EARL OF STIRLING, the father.

As EARL HENRY thus became entitled to both honours, through their respective limitations, it may be a matter of notice for what reason he adopted the one, and dropped the other. But this is not so very difficult to be explained—for, by the Charter of Novo-Damus, he

took of right all the family honours and estates, which were erected into one territorial Earldom, with the style, title, and dignity of Peerage, and its concomitant privileges, to be enjoyed together. If they were not so united and incorporated, because the said Charter is impugned, and denied (on account of having disappeared), then it must be plain, that he used the STIRLING title alone, insomuch as the Earldom of DOVAN was, by the terms of its creation, to be deemed and taken as one and the same with that of STIRLING, with the particular addition of having certain Scotch estates annexed thereto, as a subsidiary, to aid the sustentation of the Peerage rank, in its course of succession.

The heirs male of the body of WILLIAM, First EARL OF STIRLING AND DOVAN, having become extinct in the person of BENJAMIN, the Eighth Earl, de jure, (uncle to the present,) who died in 1768, unmarried; the now Earl, as only son and heir of his mother, the sole surviving sister, and heir of the said EARL BENJAMIN, has become the heir of succession, whether it be taken under the charter of Novo-Damus, or the DOVAN creation; and therefore, for the better elucidation and confirmation of his right, obtained a brieve of service, and having presented to the Jury the most comprehensive, and convincing mass of evidence, he was served heir of tailzie and provision to the last Earl, on the 30th of May, 1831; which service, on the finding of the Jury, was duly retoured into his Majesty's Court of Chancery in Scotland, and the nature of his right established in conformity to the Scotch law of descent, warranted by usage, practice, and unvaried precedent.*

There is not a Scotch Nobleman, whose honours and title stand on a surer basis, or have been taken up (except in a few instances, where conveniency was consulted) in a different manner.

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* Vide Polworth case, coram Dom. Proc.

APPENDIX.

APPENDIX.

No. I.

Copy of the Retour of Service of the EARL OF STIRLING *as Heir to his Mother, Heiress of the* STIRLING *Honours, under the destination of the Charter of Novo-Damus, 7th of December, 1639; dated 7th February, 1826—as certified from the record by the proper officer of the Court of Chancery at Edinburgh.*

Hæc Inquisitio facta fuit in Curia Regalitatis Burgi vici Canonicorum Septimo die mensis Februarij Anno Domini millesimo octingentesimo et vigesimo sexto coram Honorabili viro Gulielmo Bailey Armigero uno Balivorum dicti Burgi per hos probos et fideles patriæ homines, viz. Thomam Cristopherum Banks, Honorabilis Societatis Interioris Templi Londini Armigerum, Ephraim Lockhart Armigerum Scribam Sigueto Regio, Henricum Wharton, Joannem Stewart Mein, Georgium Stewart Jack, et Joannem Mason, Scribas in Edinburgho: Alexandrum Adam, Robertum Renton White, Jacobum Smith, et Davidem Kirk, Mercatores ibidem, Joannem Brett Fabrum Lignarium ibid. Gulielmum Muir, Archibaldum Craig, Duncanum M'Kenzie, et Allanum M'Gill, Mercatores in Vico Canonicorum. Qui Jurati, dicunt magno Sacramento interveniente, Quod quondam Hanna Alexander, alias Humphrys, Mater Alexandri Humphrys Alexander de Netherton House, in Comitatu de Worcester, Comitis de Stirling, Vice Comitis de Stirling et Canada, Domini Alexander de Tullibody, &c. &c. latoris præsentium, unici survivēn filii dict'. quond. Hannæ Alexander alias Humphrys quæ uxor fuit Gulielmi Humphrys de Birmingham, et lie de Larches, ambobus in comitatu de Warwick

Armigeri, et ultima survivens hæres femella Benjaminis Alexander ex Basinghall-street, Londini, ejus Fratris Germani, ultimi Heredis Masculi è corpore Gulielmi Alexander de Menstrie Militis Baronetti primi Comitis de Sturling, abavi ejus, succedēn. titulis honoribus et dignitatibus limitat. dicto Gulielmo Comiti de Stirling et Hæredibus Masculis ex ejus corpore, &c. per literas patentes seu Cartam de Novodamus sub sigillo magno Scotiæ de data Septimo die Decembris Anno Millesimo sexcentesimo et trigesimo nono, obiit ad fidem et pacem, S. D. N. Regis. Et quod dict. Alexander Humphrys Alexander, Comes de Stirling, Vicecomes de Stirling et Canada, Dominus Alexander de Tullibody, &c. &c. lator præsentium, est propinquior et legitimus Hæres Masculus ex corpore dict. quond. Hannæ Alexander alias Humphrys ejus matris, et quod est legitimæ ætatis. In cujus rei Testimonium Sigilla eorum qui dictæ Inquisitioni intererant sunt appensa, nec non cum subscriptione Clerici dict. Burgi sub inclusione Sigilli dict. Balivi cum brevi Regio incluso loco die mense et anno prædictis, (sic subscribitur,) John Mac Ritchie, Clerk.

Hæc est vera copia principalis Retornatus super præmissis in Cancellaria S. D. N. Regis remanen. Ext. copiat. et collat. per me Thomam Miller substitutum Jacobi Dundas Deputati prælionorabilis Jacobi St. Clair Erskine, Comitis de Rosslyn, ejusd. Cancellariæ Directoris sub hac mea subscriptione.

THOMAS MILLER, *Subt.*

No. II.

Copy of the Retour of General Service of the EARL OF STIRLING *as nearest and lawful Heir in general of his Great-great-great-Grandfather,* WILLIAM, *the First* EARL OF STIRLING:—*dated* 11*th October,* 1830.

HEC Inquisitio facta fuit in Curia Regalitatis Burgi vice Canonicorum undecimo die mensis Octobris anno Domini millesimo octingentesimo et trigesimo coram Honorabili viro Joanne Robertson Armigero uno Balivorum dicti burgi per hos probos et fideles patriæ homines, viz. Alexandrum Monypenny, Jacobum Dalgleish,

et Gulielmum Fraser, Armigeros Scribas Signeto Regio, Joannem M'Cleish de Maryfield, Armigerum, Philippum Crow, Archibaldum Douglas, Joannem Mason, et Robertum Oliphant, Scribas in Edinburgo, Jacobum Simpson Scribam in Leith, Jacobum Gardner Pharmacopolam in Edinburgo, Gualtenum Marshall Pictorem ibidem, Robertum Latta Exactorem custumarum ibidem, Thomam Workman Mercatorem in Vico Canonicorum, Joannem Sutherland residentem ibidem, et Alexandrum Brodie Mercatorem in Leith. Qui Jurati, dicunt magno Sacramento interveniente, Quod quondam GULIELMUS primus COMES DE STIRLING Atavus ALEXANDRI COMITIS DE STIRLING, Vicecomitis de Stirling et Canada, Domini Alexander de Tullibodie, &c. unici surviventis filij decessæ HANNÆ ALEXANDER alias HUMPHRYS quæ uxor fuit Gulielmi Humphrys de Birmingham et lie the Larches ambobus in Comitatu de Warwick Armigeri et soror germana et ultima survivens hæres femella demortui Benjamini Alexander ex Basinghall Street Londini abnepotis et ultimi hæredis masculi de corpore dicti quondam Gulielmi Comitis de Stirling obiit ad fidem et pacem S. D. N. Regis; Et quod dictus ALEXANDER COMES DE STIRLING lator præsentium est propinquior et legitimus hæres in generali dicti quondam GULIELMI COMITIS DE STIRLING sui atavi; Et quod est legitimæ ætatis. In cujus rei Testimonium Sigilla eorum qui dictæ Inquisitioni interefuerant sunt appensa nec non cum subscriptione Clerici dicti burgi sub inclusione sigilli dicti Balivi cum brevi regio incluso loco die mensis et anno prædictis, (sic subscribitur,) William Fraser, Junr. Clerk.

Hæc est vera copia principalis Retornatus super præmissis in Cancellaria S. D. N. Regis remanēn. Extr. copiat. et collat. per me Joannem Dundas substitutum Jacobi Dundas deputati præhonorabilis St. Clair Erskine, Comitis de Rosslyn, ejusdem Cancellariæ Directoris sub hac mea subscriptione.

JOHN DUNDAS, *Subst.*

No. III.

Copy of the Claim for ALEXANDER, EARL OF STIRLING, *to be served Heir of Tailzie and Provision to his Great-great-great-Grandfather,* WILLIAM, *First* EARL OF STIRLING.

HONOURABLE Persons, and Good Men of Inquest, I, ALEXANDER, EARL OF STIRLING, Viscount of Stirling and Canada, Lord Alexander of Tullibodie, &c. only surviving son and heir male of the body of the deceased HANNAH ALEXANDER, otherwise HUMPHRYS, who was Wife of William Humphrys of Birmingham and the Larches, both in the County of Warwick, Esquire, and last surviving heir female of the deceased Benjamin Alexander, of Basinghall Street, London, her brother german, last heir male of the body of the deceased SIR WILLIAM ALEXANDER of Menstrie, *Miles*, the First EARL OF STIRLING, his Great-great-great-Grandfather, according to my Service duly retoured to His Majesty's Chancery, and heir whatsoever of the said BENJAMIN ALEXANDER, my Uncle, and Great-great-great-Grandson and heir served and retoured to the said deceased WILLIAM, EARL OF STIRLING, Say unto Your Wisdoms, that the said deceased WILLIAM, EARL OF STIRLING, died at the faith and peace of our sovereign Lord the King; and that I am nearest and lawful heir of tailzie and provision of the said deceased WILLIAM, EARL OF STIRLING, my Great-great-great-Grandfather, in virtue of the precept of a charter of resignation, confirmation, de Novo-Damus, &c. under the Great Seal of Scotland, of new giving, granting and disponing, as His Majesty then reigning, with advice and consent therein mentioned, of new gave, granted and disponed, to the before-mentioned WILLIAM, EARL OF STIRLING, in life-rent, during all the days of his life, and to WILLIAM, LORD ALEXANDER, his lawful eldest son, and his heirs male lawfully procreate, or to be procreate of his body, whom failing, to the heirs male and assignees whomsoever of the said WILLIAM, EARL OF STIRLING, all and whole the lands, baronies and others, therein particularly described, and giving, granting and disponing, and in feu farm letting to the before-mentioned WILLIAM, EARL OF STIRLING, in life-rent, during all the days of his life, and to the aforesaid WILLIAM, LORD ALEXANDER,

his son, and to his own heirs male and assignees foresaid, all and sundry mines and minerals also therein particularly described; and uniting, erecting, creating and incorporating all and sundry the lands, baronies, and others therein mentioned, with the mines and minerals foresaid, into one entire and free Lordship and Earldom, in all time to come, called and to be called by the beforenamed WILLIAM, EARL OF STIRLING, in life-rent, during all the days of his life, and WILLIAM, LORD ALEXANDER, his son, and his own heirs male foresaid, the EARLDOM OF DOVAN, with the title, style and dignity of Earl, according to the date of the creation of the said Earl granted to him thereupon, which is of date the fourteenth day of the month of June, Anno Domini One Thousand six hundred and thirty-three, to have and to hold by the beforementioned WILLIAM, EARL OF STIRLING, in life-rent during all the days of his life, and WILLIAM, LORD ALEXANDER, his son, and his own heirs male and assignees foresaid, in manner therein specified; which precept is dated the 30th day of the month of July, Anno Domini One Thousand six hundred and thirty-seven: And that I am of lawful age.

Herefore I beseech Your Wisdoms to serve and cognosce me nearest and lawful heir of tailzie and provision in general of the said deceased WILLIAM, the First EARL OF STIRLING, my Great-great-great-Grandfather, under the aforesaid precept, and to retour my service to His Majesty's Chancery under the most of your seals, as use is.

According to justice, &c.

Copy of the General Retour of the Service of the EARL OF STIRLING, *as Heir of Tailzie and Provision of his Ancestor,* WILLIAM, *the First* EARL OF STIRLING, *in the Earldom of Dovan:—dated May 30th,* 1831.

HÆC Inquisitio facta fuit in Curia Regalitatis Burgi vici Canonicorum trigesimo die mensis Maii Anno Domini millesimo octingentesimo et trigesimo primo, coram Honorabili viro Joanne Christie

Armigero uno Balivorum dict. Burgi per hos probos et fideles patriæ homines, viz^t Jacobum Graham de Leitchtown Armigerum, Davidem Lindsay Waugh, Henricum Wharton, Carolum Stewart, Jacobum Martin et Robertum Oliphant Scribas in Edinburgo, Thomam Miller et Joannem Dunlop Mercatores ibid. Gulielmum Wallace residen ibid. Joannem Crerar Bibliopolam ibidem, Joannem Scott Sartorem ibidem, Joannem Grainger residen ibid. Joannem Buchanan Typographum ibid. Joannem Law Agricolam apud Tranent, Jacobum Syme Opificem ibid. Qui jurati, dicunt magno Sacramento interveniente, Quod quondam DOMINUS GULIELMUS ALEXANDER de Menstrie, Miles, primus COMES DE STIRLING, atavus ALEXANDRI COMITIS DE STIRLING, Vice Comitis de Stirling et Canada, Domini Alexander de Tullibodie, &c. latoris præsentium unici surviventis filii et hæredis masculi ex corpore decessæ Hannæ Alexander, alias Humphrys, quæ uxor fuit Gulielmi Humphrys de Birmingham et lie the Larches, ambobus in Comitatu de Warwick, Armigeri, et ultima survivens hæres femella decessi Benjaminis Alexander, ex Basinghall Street Londini, ejus fratris germani, ultimi hæredis masculi de corpore dict. quond. Gulielmi Comitis de Stirling abavi ejus secundum de servitium suum debite ad Cancellariam S. D. N. Regis retornatum, ac hæredis cujuscunque dict. Benjaminis Alexander sui avunculi atque adnepotis et hæredis deservit. et retornat. ad dict. quond. Gulielmum Comitem de Stirling, obiit ad fidem et pacem S. D. N. Regis. Et quod dict. Alexander, Comes de Stirling, &c. lator præsentium, est propinquior et legitimus hæres talliæ et provisionis in generali dict. quond. Gulielmi primi Comitis de Stirling sui atavi, virtute præcepti Cartæ Resignationis, Confirmationis, de Novodandi concedendi et disponendi pro ut S. D. N. Rex tunc regnan. cum avisamento et consensu inibi mentionat. de novo dedit concessit et disposuit memorato Gulielmo Comiti de Stirling in vitali reditu duran. omnibus suæ vitæ diebus, et Willielmo Domino Alexander, ejus filio legitimo natu maximo et hæredibus ejus masculis de corpore suo legitime procreatis vel procreandis, quibus deficientibus hæredibus masculis dict. Gulielmi Comitis de Stirling et assignatis quibuscunque. Totas et integras terras baronias aliaque eo particulariter descript. et dandi concedendi et disponendi, ac in feudifirma locandi memorato Gulielmo Comiti de Stirling in vitali reditu duran. omnibus suæ vitæ diebus, et præfato Willielmo Domino Alexander ejus filio et hæredibus suis masculis et assignatis prædict. Omnes et singulas mineras et mineralia etiam eo particulariter descript.;

et uniendi erigendi creandi et incorporandi Omnes et singulas terras baronias aliaque eo memorat. cum mineris et mineralibus antedict. in unum integrum et liberum dominium et comitatum prænominato Gulielmo Comiti de Stirling in vitali reditu duran. omnibus suæ vitæ diebus, et Willielmo Domino Alexander ejus filio, et hæredibus suis masculis prædict. Comitatum de Dovan omni tempore affuturo nuncupat. et nuncupand. cum titulo stilo et dignitate Comitis, secundum datum dicti Comitis creationis sibi desuper concessæ quæ est de data decimo quarto die mensis Junii. Anno Domini millesimo sexcentesimo trigesimo tertio. Tenen. et Haben. memoratis Gulielmo Comiti de Stirling in vitali reditu duran. omnibus suæ vitæ diebus, et Willielmo Domino Alexander suo filio et hæredibus suis masculis et assignatis prædict. modo inibi specificat. Quod Præceptum est de data trigesimo die mensis Julii Anno Domini millesimo sexcentesimo trigesimo septimo. Et quod est legitimæ ætatis. In cujus rei Testimonium Sigilla eorum qui dict. Inquisitioni intererant sunt appensa nec non cum subscriptione Clerici dict. Burgi sub inclusione sigilli dict. Balivi cum brevi Regio incluso loco die mensis et anno prædict. (sic subscribitur,) William Fraser, Junr. Clerk.

Hæc est vera copia principalis Retornatus super præmissis in Cancellaria S. D. N. Regis remaneu. extract. copiat. et collat. per me Gulielmum Wilson substitutum Joannis Dundas Deputati præhonorabilis Jacobi St. Clair Erskine. Comitis de Rosslyn, ejusdem Cancellariæ Directoris, sub hâc mea subscriptione.

(Signed) WILLIAM WILSON, *Sub.*

No. IV.

Copy of the Claim of the Service of ALEXANDER, EARL OF STIRLING, *as nearest and lawful Heir in special of* WILLIAM, *First* EARL OF STIRLING;—*with the Verdict annexed.*

HONORABLE PERSONS, and Good Men of Inquest, I, ALEXANDER, EARL of STIRLING and DOVAN, Viscount of Stirling and Canada, Lord Alexander of Tullibodie, &c. Great-great-great-Grandson of the deceased SIR WILLIAM ALEXANDER, of Menstrie, the First EARL OF STIRLING, Say unto your Wisdoms, That the said WILLIAM, EARL OF STIRLING, died last vest and seised, at the faith and peace of our sovereign Lord the King then reigning, in the fee of all and sundry the lands, continents and islands, situate and lying in America, within the head or cape commonly called Cap de Sable, lying near the latitude of forty-three degrees or thereby from the equinoctial line, northward from which cape, towards the sea-coast, tending westwardly to the naval station of St. Mary's Bay, and thereafter northward by a direct line passing the entrance or mouth of that great naval station which runs out into the eastern district of the land, between the Countries of the Suriquois and Stechemines, to the river commonly called St. Croix, and to the furthest source or fountain thereof on the west, which first mixes itself with the aforesaid river; whence by an imaginary direct line conceived to proceed by land, or to run northward to the nearest naval station on the river, or the source discharging itself into the great river of Canada, and from it proceeding eastward by the coasts of the said river of Canada, to the river, naval station, port, or shore, commonly known and called by the name of Gathepé, or Gaspé; and thereafter towards the south-east to the islands called Bacaloes, or Cape Breton, leaving the said islands on the right, and the gulf of the said great river of Canada, or great naval station, and the lands of Newfoundland, with the islands belonging to the said lands, on the left; and thereafter to the head or cape of Cape Breton aforesaid, lying near the latitude of forty-five degrees or thereby; and from the said cape of Cape Breton, towards the south-west, to the aforesaid Cap de Sable, where the perambulation began; including and comprehending within the said coasts, and

their circumference from sea to sea, all the lands, continents, with rivers, brooks, bays, shores, islands, or seas, lying near or within six leagues of any part thereof, on the west, north, or east sides of the coasts and precincts of the same; and from the south-east (where lies Cape Breton), and the south (where is Cap de Sable), all the seas and islands southward within forty leagues of the said coasts thereof, including the great island commonly called Isle de Sable, or Sablon, lying towards the south-south-east thirty leagues from Cape Breton foresaid, in the sea, and being in the latitude of forty-four degrees, or thereby;—which lands foresaid were in all time coming to enjoy the name of Nova Scotia, in America; which also were vested in the said William, Earl of Stirling, according to a Charter of Novo-Damus under the Great Seal of Scotland, of date the 12th day of July, in the year 1625, made, given, and granted by His Majesty Charles, King of Great Britain, France, and Ireland, in favour of the said William, Earl of Stirling, (then and therein throughout named Sir William Alexander,) his heirs and assignees heritably;—and by which Charter it is declared, that the said William, Earl of Stirling, should divide the foresaid lands into parts and portions as it should appear to him, and impose names on them at his good pleasure; together with all mines, as well royal, of gold and silver, as other mines of iron, lead, copper, tin, brass, and other minerals whatsoever; with the power of digging and causing dig from the land, purifying and refining the same, and converting and using them to his own proper use or other uses whatsoever, as it should appear to the said William, Earl of Stirling, his heirs or assignees, or those who in his place should happen to settle in the said lands;—reserving only to His said Majesty and his successors, the tenth part of the metal commonly called ore of gold and silver, which afterwards shall be dug or gained from the land, leaving to the said William, Earl of Stirling, and his foresaids, whatsoever His said Majesty and his successors might any way exact of the other metals of copper, steel, iron, tin, or other minerals, that thereby they may more easily bear the great expences in extracting the foresaid metals; together with pearls and other precious stones whatsoever, quarries, woods, shrubs, mosses, moors, lakes, waters, fishings, as well in salt water as in fresh, of royal fishes, as of other, hunting, fowling, commodities and hereditaments whatsoever; together with full power, privilege and jurisdiction of free regality and chancery for ever, and with the gift and right of patronage of churches, chapels, and benefices, with tenants, tenandries, and services of

free tenants thereof; together with the offices of Justiciary and Admiralty respectively, within all the bounds respectively above-mentioned; together also with the power of erecting towns, free boroughs, free ports, villages, and boroughs of barony, and of appointing markets and fairs within the bounds of the said lands, and of holding Courts of Justiciary and Admiralty within the limits of the said lands, rivers, ports, and seas; together also with the power of imposing, levying and receiving all tolls, customs, anchorages, and other dues of the said boroughs, markets, fairs, and free ports, and of possessing and enjoying the same as freely, in all respects, as any greater or lesser baron in the kingdom of Scotland has enjoyed or could enjoy them, at any time past or to come; with all other prerogatives, privileges, immunities, dignities, casualties, profits and duties, belonging and pertaining to the said lands, seas, and bounds of the same, and which His said Majesty could give and grant, as freely, and in ample form, as himself or any of his noble progenitors did grant any charters, letters patent, infeftments, gifts, or patents, to any subject of whatsoever degree or quality, to any society or community conducting such colonies, into whatever foreign parts, or discovering foreign lands, in such free and ample form as are inserted in the said Charter; making, constituting and appointing the said WILLIAM, EARL OF STIRLING, his heirs or assignees, or their deputies, His said Majesty's Hereditary Lieutenants-General, to represent his royal person, as well by sea as by land, in the countries, seas and boundaries foresaid, in resorting to the said lands, so long as he should remain there, and in returning from the same, for the governing, ruling, punishing and remitting all the subjects of His said Majesty who should happen to go to the said lands, or to inhabit the same, or who shall undertake business with them, or shall remain in the same places; and for the establishing such laws, statutes, constitutions, directions, instructions, forms of government, and customs of magistrates, within the said bounds, as should appear to the said WILLIAM, EARL OF STIRLING, himself or his foresaids, and their heirs and assignees, of erecting, founding and setting up in the government of the said country and the inhabitants thereof, in all causes, as well criminal as civil, and altering and changing the said laws, rules, forms and customs, as often as himself or his foresaids should please, for the good and advantage of the said country, so as the said laws may, as far as they can be made, be agreeable to the laws of the said kingdom of Scotland; and giving and granting free and plenary power to the aforesaid WILLIAM, EARL OF

STIRLING, and his foresaids, of conferring favours, privileges, offices and honours, on the deserving, with full power to them, or any of them, who should happen to make agreements or contracts for the said lands with him, WILLIAM, EARL OF STIRLING, and his foresaids, under his or their subscription, and the seal mentioned in the said Charter, of disposing and gratuitously overgiving any portion or portions of the said lands, ports, naval stations, rivers, or any part of the premises, of erecting also inventions of all sorts, arts, faculties or sciences, or of exercising the same, in whole or in part, as shall appear for their good, of giving, also, granting and bestowing such offices, titles, rights, and powers, as shall appear necessary, according to the qualities, conditions, and merits of the persons; with power to the said WILLIAM, EARL OF STIRLING, and his heirs and assignees, of erecting, founding and building common schools, colleges, universities, sufficiently provided with able and sufficient masters, rectors, regents, professors of all sciences, learning, languages, and instructions, and of providing for the sufficient maintenance, salaries, and living for them, to this effect; as also of erecting prelates, archbishops, bishops, rectors, and vicars of parishes, and parish churches, and of distributing and dividing all the aforesaid bounds of the said country into different and distinct shires, provinces, and parishes, for the better provision of the churches and ministry, division of the shires, and all other civil police; and likewise of founding, erecting, and instituting a senate of justice, places and colleges of justice, senators of council and session, members thereof for the administration of justice within the said country, and other places of justice and judicature; further, of erecting and designing both secret and privy councils and sessions, for the public good and advantage of the said country, and giving and granting titles, honours, and dignities to the members thereof, and creating clerks and members thereof, and designing seals and registers, with their keepers; and also of erecting and instituting officers of state, a chancellor, treasurer, comptroller, collector, secretary, advocate or attorney-general, a clerk or clerk's register, and keepers of the rolls, a clerk of justiciary, a director or directors of chancery, a conservator or conservators of privileges of the said country, advocates, procurators and solicitors, and other necessary members thereof; and further, of giving, granting and disposing any parts or portions of the said lands, country, and lordship of Nova Scotia, heritably belonging to them, to and in favour of whatsoever persons, their heirs and assignees, heritably, with the teinds and teind sheaves included, (only, that

they be the subjects of His Majesty,) to be holden of the said WILLIAM, EARL OF STIRLING, or of His Majesty and his successors, whether in blench farm, feu farm, or ward and relief, at their good pleasure; and to entitle and denominate the said parts or portions by whatsoever styles, titles, and designations, shall appear to them, or be in the choice and option of the said WILLIAM, EARL OF STIRLING, and his foresaids, which infeftments and dispositions shall be approved and confirmed by His Majesty or his successors, freely, without any composition to be paid therefor; moreover, declaring that His Majesty and his successors shall receive whatsoever resignations shall be made by the said WILLIAM, EARL OF STIRLING, and his heirs and assignees, of all and whole the aforesaid lands and lordship of Nova Scotia, or of any part thereof, in the hands of His Majesty and his successors and commissioners, with the teinds and teind sheaves thereof included, and others generally and specially above-mentioned, to and in favour of whatsoever person or persons, (only that they be His Majesty's subjects, and live under his obedience,) and thereupon they shall expede infeftments to be holden in free blench farm of His Majesty, his heirs and successors, in manner above-mentioned, freely, without any composition: MOREOVER, giving, granting and committing to the said WILLIAM, EARL OF STIRLING, and his heirs and assignees, the power of having, and lawfully establishing, and causing coin current money, in the said country and lordship of Nova Scotia, and among the inhabitants thereof, for the readier advantage of commerce and bargains, of such metal, form, and fashion, as they shall design or appoint; further giving, granting, ratifying, and confirming to the said WILLIAM, EARL OF STIRLING, and his heirs and assignees, all places, privileges, prerogatives, precedencies, whatsoever, given, granted, and reserved, or to be given, granted, and reserved, to the said WILLIAM, EARL OF STIRLING, and his heirs and assignees, and his successors, Lieutenants of the said country and lordship of Nova Scotia, on behalf of the Knights Baronets, and remanent portioners and associates of the said plantation, so as the said WILLIAM, EARL OF STIRLING, and his heirs male descending of his body, as Lieutenants foresaid, might and could take place, prerogative, pre-eminence, and precedency, as well before all squires, lairds, and gentlemen of the said kingdom of Scotland, as before all the foresaid knights baronets of the said kingdom, and all others before whom the said knights baronets can have place and precedency in virtue of the privilege of dignity granted to them;—which whole and entire province and lands of

Nova Scotia, with all the boundaries and seas thereof, were united, annexed, and incorporated into one entire and free lordship and barony, to be called in all time coming by the foresaid name of Nova Scotia:—and by which Charter it is ordained that one seisin, to be taken by the said WILLIAM, EARL OF STIRLING, and his foresaids, at the Castle of Edinburgh, in all time coming shall stand and be sufficient for all and whole the country, with all the parts, pendicles, privileges, casualties, liberties and immunities thereof above-mentioned, without any other special or particular seisin to be taken by himself and his foresaids at any other part, as in the said Charter, comprehending divers other conditions, provisions, limitations, and restrictions, with many and great privileges, immunities, dignities, and honours, is more fully contained; and in which lands foresaid, the said WILLIAM, EARL OF STIRLING, was duly infeft, in virtue of the precept or seisin inserted in the end of the aforesaid Charter, according to instrument of seisin following thereon, of date the 29th day of September, in the year 1625, and recorded in the general register of seisins, &c. kept at Edinburgh, the 1st day of October, and year aforesaid;—AND that I am nearest and lawful heir of the said deceased WILLIAM, EARL OF STIRLING, my Great-great-great-Grandfather, in all and sundry the lands and others foresaid; and that I am of lawful age; and that the said country and lordship of Nova Scotia is holden of our sovereign lord the King and his successors, in free heritage, free lordship, free barony and regality for ever, for the payment yearly to our sovereign lord, and his heirs and successors, of one penny Scots money, upon the ground of the said lands and province of Nova Scotia, at the feast of the Nativity of Christ, in name of blench farm, if asked only; and that the said lands and others are now worth the yearly blench farm duty above-mentioned; and were worth as much in time of peace, dispensing with non-entry whensoever it shall happen; provided, however, that the said WILLIAM, EARL OF STIRLING, and his heirs and assignees, within the space of seven years after the decease of their predecessors, or entry to the possession of the said lands and others foresaid, by themselves or their lawful procurators having power to this effect, did homage to our sovereign lord and his successors, and enter to the said lands, lordship, and barony, and others foresaid, and are received by them according to the laws and statutes of the said kingdom of Scotland; and that the foresaid WILLIAM, EARL OF STIRLING, died the twelfth day of February, in the year 1640, and the said lands and others have been from that time in the hands of our sovereign

lord and his royal predecessors, as lawful superiors thereof by reason of non-entry, and of the right of an heir foresaid not having hitherto been prosecuted.

Herefore I beseech your Wisdoms to serve and cognosce me nearest and lawful heir in special of the said deceased WILLIAM, EARL OF STIRLING, my Great-great-great-Grandfather, in the lands and others foresaid, and to retour my said service to His Majesty's Chancery, under the most of your seals, as use is.

According to Justice, and your Wisdoms' answer.

PAT. ROBERTSON, Chancellor.

T. C. BANKS,
For the Claimant, per Mandate.

Copy of the Verdict.

AT EDINBURGH, and within the New Session House there, in the Court-Room of the First Division of the Court of Session, the second day of July, in the year 1831. The whole persons of inquest before-mentioned, being all solemnly sworn, and admitted to pass upon the service of the brieve issued forth of His Majesty's Chancery, for inquiry into the foresaid claim; and having all seen and considered the claim before-written, with the writs produced in Court for instructing thereof; and no person objecting, although legally cited, thrice called, and lawful time of day waited,—they all in one voice, and without variance, find the claim before written sufficiently instructed and proven, and serve the said ALEXANDER, EARL OF STIRLING AND DOVAN, &c., the claimant, nearest and lawful heir in special of the said deceased WILLIAM, EARL OF STIRLING, his Great-great-great-Grandfather, according to the foresaid claim; and ordain the service and the brieve to be retoured to His Majesty's Chancery. In testimony whereof, these presents and the claim, are in their presence, and by their direction and consent, signed by Patrick Robertson, Esq., Advocate, whom they had elected their Chancellor.

PAT. ROBERTSON, Chancellor.

The Sheriff interpones his authority to the premises.

G. TAIT.

Copy of the Act of Court of the Special Service of ALEXANDER, EARL OF STIRLING, *&c.*

COURT of the Service of the Brieve issued forth of His Majesty's Chancery, at the instance of ALEXANDER, EARL OF STIRLING AND DOVAN, Viscount of Stirling and Canada, Lord Alexander of Tullibodie, &c. for serving him nearest and lawful heir of the deceased SIR WILLIAM ALEXANDER, of Menstrie, the First EARL OF STIRLING, his Great-great-great-Grandfather, in all and sundry lands and others, in the fee of which the said WILLIAM, EARL OF STIRLING, died last vest and seised, at the faith and peace of our sovereign lord the King then reigning—holden within the Parliament or New Session House of Edinburgh, in manner after specified.

AT EDINBURGH, the second day of July, in the year 1831, and within the Parliament or New Session House there, in the Court Room of the First Division of the Court of Session, in presence of George Tait, Esquire, Advocate, Sheriff-substitute of the Sheriffdom of Edinburgh, as Sheriff of the Sheriffdom of Edinburgh, specially constituted to the effect after-mentioned—Compeared Thomas Christopher Banks, Esquire, residing at No. 19, Duke-street, Edinburgh, as procurator and mandatory for and in name of the said ALEXANDER, EARL OF STIRLING, &c. according to mandate dated the 28th day of June last past; and thereby specially empowered to purchase a brieve forth of Chancery, and to obtain the said ALEXANDER, EARL OF STIRLING, &c. served nearest and lawful heir of the said deceased WILLIAM, EARL OF STIRLING, his Great-great-great-Grandfather, in the lands and others after-mentioned, and to procure such service retoured to Chancery; and produced His Majesty's commission, by deliverance of the Lords of Council and Session, passed under the Quarter Seal, otherwise called the Testimonial of the Seal, appointed by the Treaty of Union to be made use of within Scotland in place of the Great Seal thereof, making, constituting and appointing the Sheriff-depute of the said Sheriffdom of Edinburgh, or his substitute, Sheriff of the Sheriffdom of Edinburgh, for serving the brieve to be issued forth of His Majesty's Chancery for cognoscing the said ALEXANDER, EARL OF STIRLING, &c. nearest and lawful heir of the said deceased WILLIAM, EARL OF STIRLING, his Great-great-great-Grandfather, in all and sundry lands and others, in which the

said WILLIAM, EARL OF STIRLING, died last vest and seised, as of fee, at the faith and peace of our sovereign lord the King then reigning; and which commission contains a dispensation, with the place and time of vacance, and is dated the 10th, and sealed the 15th days of June last past:—and the said Thomas Christopher Banks, procurator and mandatory foresaid, having desired the said Sheriff-substitute of the Sheriffdom of Edinburgh to proceed to the execution of the office of Sheriff thereby committed to him, the said Sheriff made choice of Ephraim Lockhart, writer to His Majesty's Signet and notary public, to be Clerk for the Service of the said ALEXANDER, EARL OF STIRLING, &c., as heir foresaid, and of George Lindsay Rae, gown-keeper to the society of writers to the said Signet, to be the officer for the Court of the said Service; and who, being both solemnly sworn, made oath *de fideli administratione*: and thereafter the said Court was fenced in the name and authority of His Majesty; and by order, and in name and authority, of the said Sheriff-substitute of the Sheriffdom of Edinburgh, as Judge appointed by the said commission;—and the Court being so fenced, compeared the several honourable and worthy persons after-named, who had been all lawfully summoned before to pass upon the inquest of the said brieve, as being most proper and least suspected, and who best know the verity of the matter; they are to say,

Patrick Robertson, and
James Welsh, Esquires, Advocates;
David Johnson, Esquire, Doctor of Medicine in Edinburgh;
John Renton;
James Balfour;
James Macdonall;
John Dickie;
Henry Inglis, Junior, and
James Souter, Esquires, Writers to His Majesty's Signet;
John Stirling, Esquire, Accountant in Edinburgh;
John Adams;
John Phillips, and
Thomas Ranken, Solicitors of the Supreme Courts of Scotland;
William Wallace Sibbald, Esquire, residing in Edinburgh; and
Joseph Low, Writer there:—

Whereupon the said Thomas Christopher Banks, procurator and mandatory foresaid, produced a brieve issued forth of His Majesty's Chancery, dated the 10th day of June last past, directed to the Sheriff-depute of the Sheriffdom of Edinburgh, or his substitute,

Sheriff of the Sheriffdom of Edinburgh, specially constituted as aforesaid, at the instance of the said ALEXANDER, EARL OF STIRLING, &c., for cognoscing him nearest and lawful heir of the said deceased WILLIAM, EARL OF STIRLING, his Great-great-great-Grandfather, in all and sundry lands and others, in which the said WILLIAM, EARL OF STIRLING, died last vest and seised, as of fee, at the faith and peace of our said sovereign lord; together with an execution of the said brieve under the hands of William Swanston, officer of the Sheriff of the Sheriffdom of Edinburgh, and of James Calder and Donald M'Leod, both residenters in Edinburgh, as witnesses, bearing the said William Swanston to have passed to the market-cross of the burgh of Edinburgh, head-borough of the said Sheriffdom of Edinburgh, upon the 15th day of June last past, being a market-day within the said burgh of Edinburgh, and in open market time, and to have duly and openly proclaimed and executed the brieve, in due form of law;—and which brieve, with the execution thereof, being audibly and publicly read, the said Judge found that the said brieve was duly and lawfully executed:—thereafter the said Thomas Christopher Banks, procurator and mandatory foresaid, exhibited and produced a claim for the said ALEXANDER, EARL OF STIRLING, &c., praying that he should be served and cognoseed nearest and lawful heir of the said deceased WILLIAM, EARL OF STIRLING, his Great-great-great-Grandfather, in all and sundry the lands, continents and islands, situate and lying in America, and others therein particularly described; and for verifying the several heads of the said claim, the above-named Thomas Christopher Banks, procurator and mandatory foresaid, produced the writs after-mentioned, viz. 1mo, Book the 51st of the Register of the Great Seal, containing the record of a Charter of Novo-Damus under the said Great Seal, of date the 12th day of July, in the year 1625, made, given and granted by His Majesty Charles the First, in favour of the said WILLIAM, EARL OF STIRLING, (then Sir William Alexander,) of the lands, barony and lordship of Nova Scotia, in America; 2do, Extract registered Instrument of seisin following upon the precept in the said Charter in favour of the said WILLIAM, EARL OF STIRLING, of date the 29th day of September, in the said year 1625, recorded in the General Register of Seisins kept at Edinburgh, the 1st day of October, and year foresaid;—and lastly, General Retour of the service expede before the bailies of the borough of Cannongate, of the said ALEXANDER, EARL OF STIRLING, as heir of the said deceased WILLIAM, EARL OF STIRLING,

his Great-great-great-Grandfather, which Retour is dated the 11th day of October, in the year 1830, and duly retoured to Chancery; and for instructing the old and new extent of the lands and others contained in the said claim, and in which the said WILLIAM, EARL OF STIRLING, died last infeft, there was produced a Charter under the Great Seal, of date the 10th day of September, in the year 1621, made, given and granted by His Majesty James the Sixth in favour of the said WILLIAM, EARL OF STIRLING, (then Sir William Alexander,) of the lordship and barony of Nova Scotia, in America; which Charter was written to the said seal the 29th day of the said month of September and year aforesaid, and sealed the same day: after production of which claim and writs before-mentioned, the said Sheriff-substitute of the Sheriffdom of Edinburgh, as Judge foresaid, caused the said George Lindsay Rae, officer of Court, call peremptorily and openly in judgment all parties having or pretending to have interest; which being accordingly done, and none compearing to object against the service of the said brieve, and lawful time of day being waited, the said procurator and mandatory protested *contra omnes non comparentes*, that they should be silent for ever after; and also desired that the said claim, and writs produced for verifying the said claim, might be referred and admitted to the knowledge of the Inquest before-named; and the said Sheriff-substitute of the Sheriffdom of Edinburgh, as Judge foresaid, finding the said desire to be just and reasonable, he admitted thereof, and remitted the said matter to the knowledge of the Inquest; and who being all solemnly sworn by the said Judge, they made faith *de fidele administratione*, and then elected the said Patrick Robertson, Esquire, Advocate, to be their Chancellor; and thereupon the said claim was openly read, and compared with the foresaid writings produced for vouching and verifying thereof;—and thereafter the said Sheriff-substitute of the Sheriffdom of Edinburgh, as Judge foresaid, caused the said George Lindsay Rae, officer of Court, call again thrice peremptorily in judgment, at the most patent door of the said New Session House, all parties having or pretending to have interest; which being accordingly done, and none compearing to object, the said procurator and mandatory again protested *contra omnes non comparentes*, that they should be ever thereafter silent;—and then they, the said worthy persons of Inquest, all in one voice, and without variance, by the mouth of their Chancellor, found the foresaid claim sufficiently instructed and proven; and therefore served and cognoseed the said ALEXANDER, EARL OF STIRLING, &c., nearest and lawful heir

in special of the said deceased WILLIAM, EARL OF STIRLING, his Great-great-great-Grandfather, in all and sundry the lands and others contained in the said claim, in which the said WILLIAM, EARL OF STIRLING, died last vest and seised; and that conform to the said claim, and the verdict of the said Inquest subjoined thereto, and signed by their said Chancellor in all points; and ordained the said service, under the hand of the Clerk of Court, with the said brieve, to be retoured to His Majesty's Chancery, and to which verdict and service the said Sheriff-substitute of the Sheriff of Edinburgh, as Judge foresaid, adhibited his authority, and ordained the same to be retoured in manner foresaid:— WHEREUPON, and upon all and sundry the premises, the said procurator and mandatory asked Acts of Court, and asked and took instruments in the hands of the Clerk of Court aforesaid; and the Sheriff interponed his authority to the premises.

(Signed) G. TAIT.
EPH. LOCKHART, N. P. and C. D.

No. V.

Copy of the Minutes of Election of James, Viscount of Strathallan, as one of the Sixteen Peers of Scotland, in the room of the deceased Alexander, Earl of Balcarres.*

AT the Palace of Holyrood House, in Edinburgh, the 2nd day of June, 1825, in obedience to His Majesty's royal proclamation, of date, at Carlton House, the 20th day of April last, commanding all the Peers of Scotland to assemble and meet, at this place, this day, between the hours of twelve and two in the afternoon, to nominate and choose a Peer of Scotland, to sit and vote in the House of Peers of this present Parliament of the United Kingdom of Great Britain and Ireland, in the room of Alexander, Earl of Balcarres, deceased; the Peers of Scotland did assemble between the hours of twelve and two in the afternoon, and the meeting was opened with prayer.

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* Register of Elections of Peers, Vol. II. fol. 228.

The said proclamation, and certificate of publication thereof at the market-cross of Edinburgh, the 6th day of May last, were read; after which the Lord Register's commission, nominating Sir Walter Scott, Baronet, and Colin Mackenzie, Esquire, two of the principal Clerks of Session, and in case of their absence, any other two of the said principal Clerks of Session, to be Clerks of the Meeting, dated the 21st, and registered in the books of Session the 24th day of May last, was produced. The long or great roll of the Peers of Scotland was called over, except those that stand attainted of high treason. Upon the title of Earl of Marr being called, Lord Nairne protested in the same terms as at the election of Lord Napier, on the 8th of July, 1824, respecting the place of the Earl of Marr on the roll.

Upon the title of EARL OF STIRLING being called, Alexander Humphrys Alexander claimed to vote as EARL OF STIRLING, as being heir male of the body of HANNAH, COUNTESS OF STIRLING, who was lineally descended from WILLIAM, First EARL OF STIRLING, and who died on the 20th day of September, 1814, and thereby, under the destination of a royal charter or letters patent of Novo-Damus, under the Great Seal of Scotland, dated 7th December, 1639, granted by His Majesty King Charles the First, in favour of WILLIAM, EARL OF STIRLING, entitled to the honours and dignity of EARL OF STIRLING; and his vote was received by the clerks.

The Peers who answered to their titles, were the

Earls of Stirling,
—— of Leven,
—— of Glasgow,
Viscount of Strathallan,
Lords Forbes,
——— Elibank,
——— Rollo,
——— Nairne.

The oaths and declarations required by law were administered to, and subscribed by, the Peers present.

There was produced a proxy by the Earl of Marr to Lord Nairne.

There were produced signed lists by the Peers following, directed to the Lord Clerk Register, or Clerks officiating at the meeting; and with these lists, the documents and instructions of the Peers subscribing, being qualified as by law directed.

Signed lists by the

Duke of Athol,
Earls of Moray,
—— of Kellie,
—— of Elgin,
—— of Aboyne,
—— of Dunmore,
—— of Rosebery,
Viscounts of Kenmure.
———— of Arbuthnott,
Lords Gray,
——— Cathcart.

There was made out a list of the Peers present, of the proxy, and signed lists; and the votes of the Peers present being called for, they all voted for James, Viscount of Strathallan. Lord Nairne, as proxy for the Earl of Marr, voted for James, Viscount of Strathallan. And the signed lists, having been examined, were all found to name James, Viscount of Strathallan. Thereafter, the Clerks officiating having collected the votes of the Peers present, and of the proxy, and votes given in the lists, they made the certificate or return of the election, which they signed and sealed in the presence of the Peers electors, in favour of James, Viscount of Strathallan, to sit and vote as one of the sixteen Peers of Scotland in the present Parliament of the United Kingdom of Great Britain and Ireland, in the room of Alexander, Earl of Balcarres, deceased; and of the said return the Clerks officiating signed two duplicates on parchment, one to be immediately transmitted to the Clerk of the Crown, directed to him at his office, Chancery-lane, London; and the other to guard against any accident happening to the first, and in the mean time to be placed among the records in His Majesty's General Register House, to manifest this election.

The meeting then dissolved with prayer.

(Signed) WALTER SCOTT.
COLIN MACKENZIE.

Extracted from the Records in His Majesty's General Register House, upon this and the six preceding pages of stamped paper, by me, one of the keepers of these records, having commission for that effect from the Lord Clerk Register.

WILLIAM ROBERTSON.

The election is thus certified by the Clerks of Session to the Court of Chancery, viz.

"*At Holyrood House*, in Edinburgh, the second day of June, one thousand eight hundred and twenty-five years, *in obedience* to His Majesty's Royal proclamation, of the date at Carlton-house, the twentieth day of April last, commanding all the Peers of Scotland to assemble and meet at this place this day, between the hours of twelve and two in the afternoon, to nominate and choose a Peer of Scotland, to sit and vote in the House of Peers of this present Parliament of the United Kingdom of Great Britain and Ireland, in the room of Alexander, Earl of Balcarres, deceased, We, Sir Walter Scott, Baronet, and Colin Mackenzie, Esq., two of the principal Clerks of Session, by virtue of a commission granted to us, the said Sir Walter Scott, and Colin Mackenzie, or, in case of absence, any other two of the said principal Clerks of Session, by the Right Honourable William Dundas, Lord Clerk Register of Scotland, dated the twenty-first, and registered in the Books of Session the twenty-fourth day of May last, appointing us to officiate in his name at the said meeting of the Peers, do hereby certify and attest, that after the oaths and declarations required by law to be taken by the Peers present, were administered to them; and their votes, with those of the proxies and signed lists of the absent Peers, collected and examined, James, Viscount of Strathallan, was elected and chosen to sit and vote in the House of Peers of this present Parliament of the United Kingdom of Great Britain and Ireland, in the room of the said Alexander, Earl of Balcarres, deceased. In witness whereof, we have signed and sealed these presents with our hands, in presence of the Peers electors, place and time above-mentioned.

"WALTER SCOTT. (L.S.)
"COLIN MACKENZIE. (L.S.)"

No. VI.

Copy of the Minutes of Election of the Sixteen Peers of Scotland, 2nd September, 1830.

At the Palace of Holyrood House, in Edinburgh, the second day of September, one thousand eight hundred and thirty years:—In obedience to His Majesty's Royal proclamation of the date at Westminster, the twenty-fourth day of July last, commanding all the Peers of Scotland to assemble and meet at this place this day, between the hours of twelve and two in the afternoon, to nominate and choose the Sixteen Peers of Scotland to sit and vote in the House of Peers in the ensuing Parliament of the United Kingdom of Great Britain and Ireland,—the Peers of Scotland did assemble between the hours of twelve and two in the afternoon, and the meeting was opened with prayer.—The proclamation, and certificate of publication thereof at the Market-cross of Edinburgh, upon the twenty-ninth day of July last, was read. After which, the Lord Clerk Register's commission, nominating Thomas Thomson and Adam Rolland, Esquires, two of the principal Clerks of Session, and in case of absence, any other two of the said principal Clerks of Session, to be Clerks of the meeting, dated the nineteenth, and registered in the books of Session the twentieth days of August last, was produced.

The long or great roll of the Peers of Scotland was called over, except those who stand attainted of high treason. The peers who answered to their titles were

[Here follow the names of the Peers present.]

On the name of the Earl of Stirling being called, the Earl of Rosebery stated, "He should not oppose the reception of the list "signed by the gentleman who had assumed the title of Earl "of Stirling, particularly as his vote had been admitted on a "former occasion. But at the same time, he was desirous of "expressing an opinion, that it would be far more consistent with "regularity and propriety, were those individuals who conceived "they were entitled to dormant Peerages, to make good their "claims to them before the House of Lords, previous to taking "the titles, and exercising the privileges attached to them."—To

which it was answered by the Clerks, that his Lordship's statement should be entered in the Minutes.

The oaths required by law were administered to, and subscribed by, the Peers present.—There were produced proxies for the Peers after-named, with the documents and instructions of their having qualified as by law directed, viz. by the

[Here follow the names.]

There were produced signed lists sent by the Peers following, together with the documents and instructions of the Peers subscribing being qualified as by law directed, viz. by the

[Here follow the names, and among them]

14. Earl of Stirling.

There was made out a roll of the Peers present, and of the proxies and signed lists; and the votes of the Peers present being called for,

[Here follow the names.]

And the signed lists, having been examined, were found to name as follows, viz.

[Here follow the names, and among them]

The signed list of the Earl of Stirling named

The Marquesses of Queensberry,
——— Tweeddale;
Earls of Erroll,
——— Morton,
——— Home,
——— Elgin,
——— Northesk;
Viscounts of Arbuthnott,
——— Strathallan;
Lords Forbes,
——— Saltoun,
——— Gray,
——— Sinclair,
——— Colville,
——— Napier,
——— Belhaven,
&c. &c. &c.

Thereafter, the Clerks officiating having collected the votes of the Peers present, and of the proxies and signed lists, they made the certificate or return of the election in favour of the

Marquesses of Queensberry,
——————— Tweeddale;
Earls of Erroll,
——————— Morton,
——————— Home,
——————— Elgin,
——————— Northesk;
Viscounts of Arbuthnott,
——————— Strathallan;
Lords Forbes,
——————— Saltoun,
——————— Gray,
——————— Sinclair,
——————— Colville,
——————— Napier,
——————— Belhaven;

To sit and vote as the sixteen Peers of Scotland in the ensuing Parliament of the United Kingdom of Great Britain and Ireland; and of the foresaid return, the Clerks officiating, in presence of the Peers electors, signed and sealed two duplicates on parchment, one duplicate to be immediately transmitted to the Clerk of the Crown, directed to him at his office, Chancery-lane, London, and the other duplicate in order to guard against any accident happening to the first, being in the mean time lodged with the Lord Clerk Register's deputies for keeping the Records, to be by them placed among the Records in His Majesty's General Register House, to manifest this election; and then the meeting dissolved with prayer.

(Signed) THOS. THOMSON,
AD. ROLLAND.

After the preceding Minutes had been drawn up, the Agent for ALEXANDER, EARL OF STIRLING, tendered a written statement, entitled a Protest, and intended as an answer to the observations of the Earl of Rosebery, above recorded. That statement is now put up with the other papers relative to this election, and is docqueted as relative hereto.

(Signed) THOS. THOMSON,
AD. ROLLAND.

Extracted from the Records, in His Majesty's General Register House, upon this and the fifty-nine preceding pages of stamped paper, by me, one of the Keepers of these Records, having commission for that effect from the Lord Clerk Register.

GEO. ROBERTSON.

Protest for the EARL OF STIRLING.

I, Ephraim Lockhart, Writer to His Majesty's Signet, specially authorised by ALEXANDER, EARL OF STIRLING, to do all and every matter and thing necessary and pertaining in and to the asserting and maintaining of his right of voting at the then ensuing election meeting, for choosing the Peers to represent the whole Peers of Scotland in Parliament, considering that the said ALEXANDER, EARL OF STIRLING, is a Peer of Scotland, and as such has, by a signed list, named sixteen Peers of Scotland to sit and vote in the House of Peers of the ensuing Parliament of the United Kingdom of Great Britain and Ireland, upon the calling of the great roll, and the production of which signed list, the Earl of Rosebery stated, he should not oppose the reception of the list signed by the gentleman who had assumed the title of EARL OF STIRLING, particularly as his vote had been admitted on a former occasion; but at the same time, he was desirous of expressing an opinion that it would be far more consistent with regularity and propriety, were those individuals who conceived they were entitled to dormant Peerages, to make good their claims to them before the House of Lords, previous to taking the titles, and exercising the privileges attached to them; and considering that the said statement, while it admitted the right of the said ALEXANDER, EARL OF STIRLING, to have his signed list received, and give his vote thereby, contained matter irregularly expressive of the opinion of an individual Peer, and, although received by the deputies of the Lord Clerk Register officiating at the election meeting, was nevertheless invidious towards the person to whose case it referred, as well as derogatory to the dignity of the Peers of Scotland generally, in assuming to dictate to them that they ought to submit the *jus sanguinis* for their honoural successions to previous determination before a tribunal which is invested with no original right of jurisdiction either by the law or by the constitution:—Wherefore, I, the said Ephraim Lockhart, specially authorised as aforesaid, do hereby protest against the

opinion of the said Earl of Rosebery, expressed in the said statement, and maintain that the said ALEXANDER, EARL OF STIRLING, ought not to make good his claim of Peerage before the House of Lords, which to do, would be to confess a doubt of his own character, do what in him lay to surrender the rights of the Peers of Scotland, and concede a jurisdiction, which, in any case of Scottish Peerage, is not recognised by the Act of Union, or made imperative by any other statute of the Legislature:—Whereupon I, specially authorised as aforesaid, take instruments in the hands of Mr. George Robertson, Deputy Keeper of the Records of Scotland, at Holyrood House, this second day of September, one thousand eight hundred and thirty years.

(Signed) EPH. LOCKHART.

A true copy of the original Protest tendered by me to the Deputies of the Lord Clerk Register, written on these three pages.

EPH. LOCKHART.

No. VII.

Copy of the Protest against the officiating Clerks at the Peers' Election, 3rd June, 1831, by the Duke of Buccleuch and the Earl of Lauderdale; with the EARL OF STIRLING'S *Answer thereto.*

COPY of the Protest against the officiating Clerks receiving and giving efficacy to the Votes of a person claiming to be EARL OF STIRLING, at this Election.

First, Because, when we reflect that the House of Lords, in the case of a former claimant to the title of EARL OF STIRLING, "resolved, that it is the opinion of this House that the said William "Alexander ought, to all intents and purposes, to be considered "as having no right to the said title by him assumed, until he "shall have made out his said claim, and procured the same to be "allowed in the legal course of determination; and that in the "mean time, until the same shall be so allowed, the said William "Alexander, or any person claiming under him, shall not be ad-"mitted to vote by virtue of the said title at the election of any

"Peer of Scotland to sit and vote in this House pursuant to the "Articles of Union."

It appears to us evident that the same principle applies to the case of the present claimant of that Earldom, and ought to have guided the Clerks officiating under a commission from the Lord Register, in rejecting his votes, until the same be allowed in the legal course of determination.

Secondly, Because to us it appears that if the claim of the person who voted at this election, under the title of EARL OF STIRLING, is founded on an alleged patent to heirs male, it was his duty to have proved before tendering his votes, that he did not claim as descended from or connected with the said William Alexander; and that without satisfactory evidence to establish this fact, the Clerks of Session, under the resolution of the House of Lords, cannot be justified in receiving and giving efficacy to his votes.

Thirdly, Because if the claim of the person who on this occasion has assumed the title of EARL OF STIRLING, is founded on an alleged patent to heirs general of the original patentee, we know that under these circumstances there are others who have a preferable claim to that dignity. Besides, we have great reason to suspect the authenticity of the documents, such as they are, on which the claimant is said to rest his assumption of that title.

(Signed) BUCCLEUCH AND QUEENSBERRY.
LAUDERDALE.

Copy of the EARL OF STIRLING'S *Answer to the above Protest.*

ALEXANDER, EARL OF STIRLING, answered to the Protest of the Duke of Buccleuch and Queensberry and the Earl of Lauderdale,

First, That the first reason of protest is without application, and wilfully perverted in its statement, for the purpose of misrepresentation—inasmuch as the Resolution of the House of Lords there cited, that William Alexander, assuming the title of EARL OF STIRLING, should not be admitted to vote by virtue of the said title until it was allowed by law, proceeded from the cause that he was at that very time claiming the same title by petition before the House, and as such, until the House had decided upon his petition, he could not be warranted in its assumption, or in exercising any of its privileges. The principle, therefore, acted upon with reference to the said William Alexander, is foreign to the case of the respondent, who has no claim depending for the judgment of the House

of Lords. Further, the respondent is lineally descended of a son of the First Earl of Stirling, while the said William Alexander only claimed as an heir male by a dubious collateral descent.

Secondly, That the allegation that the Clerks, under the said Resolution of the House of Lords, could not be justified in receiving and giving efficacy to the respondent's vote, is contrary to the facts which were particularly stated when the respondent first claimed to vote, on which occasion the said Resolution was publicly read, and explained to have no reference to the respondent. And the respondent having already done all that is required by the law of Scotland, to prove his descent from the First Earl of Stirling, is not bound to prove further the line of descent from any collateral presumptive heir to the said Earl.

Thirdly, The noble protesters were much mistaken in supposing, in the third reason of protest, that the respondent claimed as heir general of the original patentee. He claimed in quite another character; and the unfair and unwarrantable inference there made with reference to the authenticity of the documents in support of that character, is irregular and irrelevant, as well as false, groundless, and malicious; and their selection of the respondent's case for an invidious attack, while there were several cases of Peerages within the late resolution of the House of Lords, as to which no objection was offered to the votes given, was evidently vexatious, and compatible only with a disposition to go any length to answer particular private and political purposes. The interference of the noble protesters on the occasion in question, was inconsistent with their previous approbation of the respondent's right of voting, both of them having been personally present at the general election that took place at Holyrood House on the 2nd day of September last past, as well as other Peers, who all, by their silence, then gave their unqualified sanction to the legal principle of the respondent's right in pursuance of his former admission to vote *causa cognita*.

Separately, The respondent takes leave to submit, that the mere announcement of a protest for reasons to be afterwards assigned, as his Grace the Duke of Buccleuch stated at the time, was in itself null and inefficacious, as the reasons ought to have been set forth before the Parliamentary meeting had been dissolved, when His Majesty's commission was terminated, and all the privileges of the Peers, as to the business of the election, were virtually at an end.

(Signed) STIRLING.

Edinburgh, 4th June, 1831.

No. VIII.

Copy of the Return to an Order of the Right Honourable the Lords Spiritual and Temporal in Parliament assembled, of the 23rd of August, 1831, requiring "that there be laid "before this House a Copy of the Union Roll of the "Peerage of Scotland, and a List of all those Peers who "voted at all General Elections since the Year 1800, "distinguishing each Election;"—ordered to be printed 5th September, 1831.

It may be proper to premise, that on the 22nd of December, 1707, it was ordered by the House of Lords,* that the Lord Register of Scotland "do forthwith lay before this House an authentic List "of the Peerage of that part of Great Britain called Scotland, as "it stood the first day of May last;" and a List, duly attested by the Lord Register, having been accordingly returned, was, on the 12th of February, 1708,† considered by the House in Committee, and thereafter reported to the House, read, and entered in the Roll of Peers.

Again, by an order of the House of Lords, dated 12th of June, 1739,‡ the Lords of Session in Scotland were required "to make "up a Roll or List of the Peers of Scotland at the time of the "Union, whose Peerages are still continuing; and do lay the "same before this House in the next Session of Parliament."

In the Return made to this order, which was laid before the House on the 11th of March thereafter, and ordered to be printed,§ there was given a Roll of the Peers of Scotland, as used in the Parliament of 1706, and also a list of Peers as modified by subsequent attainders, or by the restoration of dormant Peerages.

Since the date of that return, further alterations on the Roll of the Peers of Scotland have been made, in obedience to the successive Orders of the House of Lords; and as it now stands, and was used at the last General Election on the 3rd day of June, 1831, it is as follows:—

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* Journals, vol. xviii. p. 399.
† Journals, vol. xviii. p. 458.
‡ Journals, vol. xxv. p. 416.
§ Journals, vol. xxv. p. 477.

ROLL OF THE PEERS OF SCOTLAND.

H. R. H. the Prince of Wales,
Duke of Rothsay.

Dukes.—Hamilton.
Buccleuch.
Lennox.
Gordon.
Queensberry.
Argyle.
Douglas.
Athole.
Montrose.
Roxburgh.

Marquises.—Queensberry.
Tweeddale.
Lothian.
Annandale.

Earls.—Craufurd.
Erroll.
×× ~~Marischall.~~
Sutherland.
Mar.
Menteith.
Rothes.
Morton.
Buchan.
Glencairn.
Eglinton.
Cassillis.
Caithness.
Moray.
×× ~~Nithsdale.~~
×× ~~Wintoun.~~
×× ~~Linlithgow.~~
Home.
×× ~~Perth.~~
Wigtoun.
Strathmore.
Abercorn.
Kellie.
Haddintoun.

Earls.—Galloway.
Lauderdale.
×× ~~Seaforth.~~
Kinnoul.
Lowdoun.
Dumfries.
Stirling.
Elgin.
×× ~~Southesk.~~
Traquaire.
Ancrum.
Wemyss.
Dalhousie.
Airlie.
Findlater.
Carnwath.
×× ~~Callender.~~
Leven.
Dysert.
×× ~~Panmure.~~
Selkirk.
Northesk.
Kincardine.
Balcarras.
Forfar.
Aboyne.
Newburgh.
× ~~Kilmarnock.~~
Dundonald.
Dunbartoun.
Kintore.
Breadalbane.
Aberdeen.
Dunmore.
Melvill.
Orkney.
Ruglen.
March.
Marchmont.
Seafield.

Earls.—Hyndford.
× ~~Crennarty~~.
Stair.
Roseberrie.
Glasgow.
Portmore.
Bute.
Hoptoun.
Deloraine.
Solway.
Hay.
Viscounts.—Falkland.
Dunbar.
Stormont.
Kenmuir.
Arbuthnot.
×× ~~Kingstoun~~.
Oxford.
Irvine.
×× ~~Kilsyth~~.
Dumblain.
Prestoun.
Newhaven.
Strathallan.
Tiviot.
Duplin.
Garnock.
Primerose.
Lords.—Forbes.
Saltoun.
Gray.
Ochiltree.
Cathcart.
Sinclair.
Mordingtoun.
Sempill.
Elphingstoun.
Oliphant.
× ~~Lovat~~.
Borthwick.
Ross.

Lords.—Sommerville.
Torphichen.
Spynie.
Lindores.
× ~~Palmerinoch~~.
Blantyre.
Cardross.
Colvill of Culross.
Cranstoun.
×× ~~Burghlie~~.
Jedburgh.
Madertie.
×× ~~Pingwell~~.
× ~~Couper~~.
Napier.
Cameron.
Cramond.
Reay.
Forrester.
× ~~Pitsligo~~.
Kirkcudbright.
Fraser.
Bargany.
Banff.
Elibank.
Halkertoun.
Bellhaven.
Abercrombie.
Duffus.
Rollo.
Colvill.
Ruthven.
Rotherfurd.
Bellenden.
Newark,
Nairn.
Eymouth.
Kynnaird.
Glassfurd.

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GENERAL ELECTION, 2ND SEPTEMBER, 1830.

The Peers present who voted, were—

Duke of Buccleuch and Queensberry.
Earls.—Home.
Strathmore.
Lauderdale.
Leven and Melville.
Selkirk.
Northesk.
Kintore.
Roseberric.
Hopetoun.
Viscounts.—Arbuthnott.
Strathallan.
Lords.—Forbes.
Saltoun.
Gray.
Sinclair.
Elphinstone.
Colville of Culross.
Cranstoun.
Napier.
Kinnaird.

The Peers who voted by Proxy, were—

Dukes.—Argyll.
Atholl.
Marquis.—Tweeddale.
Earls.—Morton.
Breadalbane.
Lords.—Belhaven.
Nairne.

The Peers who voted by signed Lists, were—

Dukes.—Hamilton.
Lennox.
Gordon.
Montrose.
Marquises.—Queensberry.
Lothian.
Earls.—Erroll.
Mar.
Cassillis.
Caithness.
Moray.
Kinnoull.
Dumfries & Bute.
Stirling.
Elgin & Kincardine
Wemyss & March.
Airlie.
Balcarres.
Aboyne.
Earls.—Aberdeen.
Dunmore.
Stair.
Glasgow.
Viscounts.—Falkland.
Stormont.
Kenmuir.
Dumblane.
Lords.—Cathcart.
Sempill.
Somerville.
Torphichen.
Blantyre.
Reay.
Forrester.
Rollo.
Ruthven.

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GENERAL ELECTION, 3RD JUNE, 1831.

The Peers present who voted, were—

Duke of Buccleuch and Queensberry.
Marquises.—Queensberry.
Tweeddale.
Lothian.
Earls.—Erroll.
Morton.
Buchan.
Home.
Strathmore.
Haddington.
Lauderdale.
Stirling.
Airlie.
Leven & Melville.
Selkirk.
Earls.—Kintore.
Hopetoun.
Viscounts.—Falkland.
Arbuthnott.
Strathallan.
Lords.—Forbes.
Saltoun.
Elphinstone.
Torphichen.
Colville of Culross.
Napier.
Belhaven.
Rollo.
Ruthven.
Kinnaird.

The Peers who voted by Proxy, were—

Dukes.—Lennox.
Argyll.
Montrose.
Earls.—Cassillis.
Breadalbane.
Aberdeen.
Dunmore.
Earls.—Rosebery.
Glasgow.
Portmore.
Lords.—Gray.
Cranstoun.
Reay.
Nairne.

The Peers who voted by signed Lists, were—

Dukes.—Hamilton.
Gordon.
Earls.—Caithness.
Moray.
Kinnoull.
Dumfries & Bute.
Elgin & Kincardine.
Wemyss & March.
Balcarres.
Aboyne.
Earl.—Stair.
Viscounts.—Stormont.
Kenmure.
Dumblane.
Lords.—Somerville.
Forrester.
Kircudbright.

The preceding Return, extracted from the Records in His Majesty's General Register House at Edinburgh, is attested by me, Clerk to His Majesty's Councils, Registers, and Rolls.

W. DUNDAS, Cl. Regri.

Arniston, 31st August, 1831.

No. IX.

Copy of the Judgment of the Court of Common Pleas, on Motion to set aside the Writ, and Cancel the Bail-Bond, in DIGBY, *Knight*, v. LORD STIRLING.*

Chief Justice Tindal.—The course which the Court mean to take in this case, is one which, under all the circumstances, appears to be that which the defendant has a right to claim at their hands, without pledging the Court to any opinion whatever on the validity of his title:—it appears to us to be quite sufficient, that the defendant should be discharged on common bail, if he is in the eye of the world appearing and acting as a Peer of Scotland, and is allowed to perform that only act of state which a Peer of Scotland, since the Act of Union, is entitled to perform. By the Twenty-third Article of the Act of Union it is declared, that the Peers of Scotland, from and after the Union, and their successors to their honours and dignities, "shall have rank and precedence next and immediately after the "Peers of the like orders and degrees in England, at the time of the "Union;" then it goes on to mention some other privileges—"and "shall have and enjoy all privileges of Peers as fully as the Peers "of England do now, or as they or any other Peers of Great Britain "may hereafter enjoy the same—except the right and privilege of "sitting in the House of Lords, and the privileges depending "thereon, and particularly the right of sitting upon the trial of "Peers." All other privileges, therefore they have; and on looking at the Act that was passed immediately before this, the mode of electing Peers—the sixteen Peers—is regulated by another statute, which forms one of the component parts of the Act of Union; and by that other statute it is enacted and declared, that a warrant and command of His Majesty shall be issued by the

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* This case is reported in Bingham, VII. 55.

advice of the Privy Council, requiring *the Peers of Scotland for the time* to meet and assemble at a certain place named in the warrant. What we have to see, is, whether this defendant did, at the time when any command or warrant of that nature has been issued, "meet and assemble" as a Peer of Scotland. It appears he has done so on three occasions—first in the year 1825, again in the year 1830, and last in the year 1831. On the two former occasions, no objection whatever was taken to his vote; on the last occasion, a protest was made against it; still, however, notwithstanding that protest, he voted, and his vote was allowed to remain on the record. It seems to me the circumstance of the protest does not at all add to the invalidity of the title; but the voting in defiance of the protest, rather has a tendency the other way.

However, upon the general question we propose to give no opinion whatever; but simply mean to say, that as he does perform this act which, by the Act of Union, Peers of Scotland, and Peers of Scotland only, are allowed to perform, we think, on motion to this Court, we must say that his person is to be held privileged from arrest. The objection that has been made to it has been, that any person might appear when a meeting took place, calling himself a Peer of Scotland, and would be allowed to vote. We cannot suppose that is meant in that unlimited manner, because we all know the Peers are a limited body; the Peers of Scotland, and probably the greater part of their persons, would be known to the officers on that occasion. But it has been said that no person has a right to vote there for the first time, unless he comes clothed with an authority from the Chancellor, in obedience to an order of the House of Lords. Sitting here judicially, I do not know that we can take notice of such an order, if it at all breaks in upon, or appears to break in on the words of the Act of Union. If that order has been violated, there is an easy mode of bringing the party who has been guilty of such a violation to an account for it before the House of Lords themselves; but sitting judicially here, we cannot ingraft it as an article on the Act of Union. Without professing, indeed declaring we give no opinion whatever either for the title or against the title, we do not set aside the writ; the defendant may, if he thinks proper, plead in abatement to that writ; but we do set aside the arrest of the person of the defendant; and we think, under all the circumstances of doubt in which this arrest took place, that that order of the Court ought to be made without costs.

Judges Gaselee, Bosanquet, and Alderson, concurred.

Rule absolute accordingly.

No. X.

Copy of the Resolutions of the House of Lords relative to the Claim of WILLIAM ALEXANDER *to the Title of* EARL OF STIRLING, 10*th March*, 1762.

JOURNALS of the House of Lords, Vol. XXX. p. 186.
Die Merc. 10° Martii A. D. 1762, 2nd Geo. III.

THE Lord Willoughby of Parham reported from the Lords' Committees for Privileges, to whom it was referred to consider of the petition of William Alexander, claiming the title of EARL OF STIRLING, with His Majesty's reference thereof to this House—

"That the Committee have met to consider the matter to them "referred; but the agent for the said claimant alleging that he was "not prepared with evidence to make out the said claim, and "desiring further time, their Lordships have put off the further "proceeding upon the said claim till the next Session of Parliament, "and have come to the following Resolutions, viz.

"Resolved—That it is the opinion of this Committee, that the "said William Alexander ought, to all intents and purposes, to be "considered as having no right to the said title by him assumed, "until he shall have made out his said claim, and procured the "same to be allowed in the legal course of determination; and that "in the mean time, until the same shall be so allowed, the said "William Alexander, or any person claiming under him, shall not "be admitted to vote by virtue of the said title at the election of "any Peer of Scotland to sit and vote in this House pursuant to the "Articles of Union.

"Resolved—That it is the opinion of this Committee, that the "said William Alexander be ordered not to presume to take upon "himself the said title, honour, and dignity, until his claim shall "have been allowed in due course of law; and that notice of these "Resolutions and Orders be given to the Lord Clerk Register of "Scotland."

Which Report was read by the Clerk;

And the said Resolutions being read a second time, were severally agreed to by the House, and ordered accordingly.

No. XI.

Copy Extract of the Judgment of the Court of Session, 25th January, 1831.

COURT OF SESSION.

January 25th, 1831.

Summons of Reduction, &c. &c.

ALEXANDER, EARL OF STIRLING, Pursuer;
W. C. C. GRAHAM, and Others, Defenders.

"Under this style and title, he (the pursuer) cannot be permitted "to insist in the present action."

Defences by His Majesty's Advocate, for His Majesty's interest, dated December 1st, 1830. Signed "JOHN HOPE."

Lord Justice Clerk.—The pursuer has brought a new action, and called the officers of state; and he comes to Mr. Cunningham Graham, and claims a particular barony of his estate, which had been usurped by him or his predecessors; and he has secured attention to that by putting a patrimonial interest at stake. He has again taken his title of EARL OF STIRLING. The service to the First Earl has been carried through since the summons was executed; and it is stated positively, that at an election in 1825, the pursuer voted without protest: and in the next place, that he proceeded, in 1830, before the Lord High Chancellor in England, to take the oaths, and was received and qualified as a Peer, and certainly has got the usual certificate; and at the last general election,* his vote was received without protest. The observations that any noble Lords choose to state in their deliberations, and the notices taken of them by the Clerks, your Lordships will never admit to have the same validity with a protest. If your Lordships were satisfied that that step was allowed to be taken contrary to the Resolution of the House of Lords, then the point would be brought back to the state in which I conceived it to stand when the former summons was

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* In June, 1831.

before us. But a statement being merely made in a minute, and no protest entered, we have pretty real evidence that my Lord Rosebery, who moved the Resolution, was convinced and well knew it did not apply to a case in this situation, I have not a doubt that his Lordship was quite satisfied that it did not apply to dormant Peerages, and that they were not the claims which should have been excluded. I will act upon this Resolution still, which prevents a Peer from going down to Holyrood House to give his vote, if I am satisfied that he has no right to that dignity which he has assumed. But it is admitted, that its application is in existing Peerages, and not in dormant ones; and therefore this case is brought back to the former practice in regard to those titles of Noblemen standing upon the Union Roll—according to which, I apprehend, we would have no ground whatsoever for refusing to the Claimants the entertaining of actions describing themselves by the names of any individual Peers, and who took the oaths, and voted, and were actually enrolled by the Clerks acting as the representatives of the Lord Clerk Register.

"Edinburgh, February 9th, 1831.—The Lords having heard "Counsel on the first preliminary defence against this action, "sustain instance in the name of ALEXANDER, EARL OF STIRLING, "and appoint the case to be again put to the Summar Roll, that "parties may be heard *quoad ultra*.*

(Signed) "D. BOYLE, J. P. D."

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* This case is reported in Shaw and Dun's Reports, Vol. 9, p. 3.

No. XII.

Copy of Epitaphs in the Parish Church of Binfield, County of Berks.

"Here lies the Rt. Hone. The Lady Judith, Countess Sterline,
"Daughter of Robert Lee, of this Parish, Esqre. was married
"to the Right Honorable Henry, Earle of Sterline; and
"Grandson of William, Earle of Sterline, Privy Counsellor
"of England and Scotland, Sole Secretary of State for the
"Kingdom of Scotland.—She had Issue six Sons and four
"Daughters, of which four Sons and three daughters are now
"living, and died in childbed.—She departed this life De-
"cember 15, 1681, aged 38."

"Here lieth the Body of the Right Honorable Henry Alexander,
"Lord Alexander, Viscount Canada, and Earl of Sterline, of
"the Kingdom of Scotland.—He married Elizabeth Hobby,
"Widow of John Hobby, Esquire, of Bisham Abbey, in this
"County, and died without issue on the 4th day of December,
"1739, aged 75 years."

The Proof of the Extinction of the male issue of HENRY, *Third* EARL OF STIRLING, *&c. &c.*

WILLIAM TRUMBULL, Esquire, of East Hampstead Park, in the County of Berks, aged about fifty years, who, being solemnly sworn and interrogate, depones as follows:—He is only son of the late Sir William Trumbull, by the Lady Judith Alexander, Daughter of HENRY, EARL OF STIRLING, who died in or about the year 1690; and further depones and says, that he has been informed, and verily believes, that his Grandfather, the said HENRY, EARL OF STIRLING, was buried at the parish church of Binfield, in the said County of Berks, and left issue four sons, viz. Henry, William,

Robert and Peter; and also three daughters, viz. Mary, Jane, and Judith, the Mother of this deponent: And further depones and says, that he hath been informed that his said Uncle HENRY succeeded his said Grandfather in his estate and title of EARL OF STIRLING, and died in or about the year 1739, and was buried in the aforesaid parish church of Binfield, leaving no male issue: And further depones and says, that his said Uncle HENRY was, as he verily believes, the last person who enjoyed the dignity of EARL OF STIRLING; And that his three other Uncles, the said William, Robert and Peter, died in the life-time of the said HENRY, his Uncle, leaving no male issue; And further depones and says, that he verily believes his Great-Grandfather, HENRY, EARL OF STIRLING, had no other Son besides the said Henry, his Grandfather; for that he, this deponent, has often heard his Mother talk of the family, but never heard her mention any such other Son, which he verily believes she would have done if there had been any such other Son:—And this is the truth, as he shall answer to God.

(Signed)

W. TRUMBULL.

This Deposition was taken under a Commission from the Right Honorable Walter, Lord Torpichen, Sheriff-depute of the Sheriffdom of Edinburgh, dated 23rd June, 1758—directed to Alexander Wedderburn, Esquire, Counsellor at Law; Mr. Henry Dagg, Attorney at Law, and several other persons; and was sworn at London, on Thursday, the 13th of July, 1758.

No. XIII.

Copy of Mr. Hovenden's Deposition, and Mr. Conyers's Declaration, relative to the Charter of Novo-Damus of the 7th December, 1639.

HENRY HOVENDEN, of Ballynakill, in the Queen's County, Gent., aged sixty-six years or thereabouts, came this day before me, and made oath that he is immediately acquainted with the Rev. Minister John Alexander, grandson and only male representative of John Alexander of Gartmore, the fourth son of WILLIAM, First EARL OF STIRLING, in Scotland, which said John Alexander was formerly of Antrim, but is now dwelling in Warwickshire, in Great Britain; and this deponent further deposeth, that having lately received information from the said Rev. John Alexander, that the original Charter of the Earldom and estates of the aforesaid WILLIAM, EARL OF STIRLING, was in the possession of Thomas Conyers, of Catherlough in the County of Carlow, Gent., he, this deponent, in pursuance thereof, and by the said Rev. John Alexander's particular desire, did go to the house of the said Thomas Conyers, on the 10th of this instant July, and, after some discourse, was permitted to see the aforesaid original charter, whereupon this deponent did most minutely examine the contents; and deponent further deposeth, that the said Charter, *written in Latin*, is dated 7th December, 1639, and contains a Novo-Damus of the titles and dignities of EARL OF STIRLING, VISCOUNT OF STIRLING AND CANADA, &c. &c. and of the lands of the Earldom, consisting as therein described, of the Earl's whole estate in Scotland, and the extensive possessions granted to his Lordship in New England, and other parts of America. And this deponent saith, the following clause (copied from a paper produced) is a faithful translation of the original in the Charter, which limits the descent of the Earl's estates and titles "to him and "the heirs male of his bodye, which failing, to the eldest heirs "female, without division, of the last of such heirs male hereafter "succeeding to the titles, honours, and dignities aforesaid, and to "the heirs male to be procreated of the bodys of such heirs female

" respectively, bearing the surname and armes of the family of " ALEXANDER, which they shall be holden and obliged to assume; " which all failing, to the nearest legitimate heirs whatsoever of the " said WILLIAM, EARL OF STIRLING, with precedency from the 14th " June, 1633."

Jurat coram me, 16 die July, 1723.

HEN. HOVENDEN. J. POCKLINGTON.

I, Thomas Merefield, public notary, dwelling in the city of Dublin, in the kingdom of Ireland, do hereby attest and certify, to all whom it may concern, that I was personally present, and saw the within-named Henry Hovenden subscribe and swear to the within affidavit, before the Hon. John Pocklington, Esq. one of the Barons of His Majesty's Court of Exchequer in Ireland.

Witness my Hand and Seal of Office, this 16th day of July, 1723.

(L. S.) THOMAS MEREFIELD, Not. Pub.

I willingly bear testimony to the truth of this statement, made in the within affidavit. LORD STIRLING's Charter was trusted to my late Father in troublesome times, by ye deceased Mary, Countesse of Mount-Alexander. I cannot therefore give it up to the Rev. Mr. Alexander, without the present Earl's consent.

Carlow, 20th July, 1723. THOMAS CONYERS.

No. XIV.

Copy of Letter from Mr. Alexander (alias LORD STIRLING*) to Mr. Trumbull, 9th November,* 1759.

DEAR SIR,

As you was pleased to desire that I would give you in writing the proposal I made you a few days ago, relating to the rights the heirs of the First EARL OF STIRLING may have in North America, that you might communicate it to Mr. Lee, I shall now state the matter to you for that purpose.—The rights of which the First Earl died possessed in America, I conceive, were three separate tracts of land, an immense country, to which, within these hundred years, several people have laid claim, as having right, under one Claude De la Tour, a Frenchman, to whom, it is said, the Earl conveyed all his right in 1629. But I have found sufficient evidence that the country was regained from the French in 1631; that a new grant of it passed to the Earl in 1633; and that the Earl died possessed of it in 1640;—since which, I believe, nothing has been done by his descendants to invalidate their title—Henry, the ancestor of your branch of the family, being averse to having any thing to do with his father's affairs, which were much involved by the expences he had run into for settling this new colony.

The second tract was Long Island, a country now inhabited by several thousands of families: here the Earl had his Deputy-Governor many years; and when he died, it was a thriving colony. After his death, his Governor held possession many years for the family; but Henry, for the reason before-mentioned, neglected it, and, about the year 1662, conveyed his right to the Duke of York, on consideration of his paying the Earl £300. per annum; the consideration, *I am told,* was never any part of it paid. Whether Henry had any right to make such conveyances seems doubtful, as he never was served heir to his father, which is a form in Scotland absolutely necessary to invest him with the rights of his father. However, the Crown has, ever since James the Second's time, been possessed of this island, and have enjoyed the quit-rents of it.

The other tract, of which the Earl was possessed, is the Country of St. Croix, or Sagadahook, adjoining to Nova Scotia, on the west of it. After EARL HENRY had made the agreement with the Duke of York for Long Island, the Duke obtained a grant from the Crown, of the Province of New York, and in it was to include Long Island, as a confirmation of his right to it. It seems the Earl lent the Duke his original grant of Long Island, to enable him *to make use of the same words* for describing it; and that in the same instrument that contained the Earl's right to Long Island, was also contained his right to the Country of St. Croix; and that the Duke, in his new grant from the Crown, inserted not only the description of Long Island, but of the Country of St. Croix also; thus, whether designedly or not, the Duke obtained a pretence of a right to this third tract, which has since remained in the hands of the Crown, but is not possessed by any of its subjects—which is a circumstance much in our favour, as the restoring of it to us will be attended with the less inconvenience to the Crown, than if it had been settled.

This, from the best intelligence I have been able to collect, is the situation of the claims the heirs of the First EARL OF STIRLING have in America: whether the right to those claims descend to his heirs at law, which would be yourself and Mr. Lee—or whether they descend to his heirs male, which I am found to be—I cannot tell; but *from circumstances before-mentioned, I should think it doubtful* whether Henry had any legal right to make the agreement with the Duke of York, or whether he could have any legal right to any part of his father's possessions, as he would not suffer his service of heir male, nor be subject to any of his debts, which occasioned his estates in Scotland to be divided between his creditors; and the only thing that secured his American estate from the like sequestration, was its remoteness, and the little value of lands in that country at that time. However, I think it will be best for us all to act jointly, in any application that is to be made for the recovery of those rights; and I am willing to come into an agreement with you and Mr. Lee about the matter.

I will agree that whatever may be recovered, shall be divided, one half between you and Mr. Lee, and the other half to myself; and, as I shall have some leisure time this winter, I will take all the trouble and expence of searching the matter to the bottom, and of prosecuting it, so far as we shall jointly think it prudent.

I shall be glad you would communicate this proposal to Mr. Lee, and to have your and his answer as soon as convenient; for

American matters, which formerly were but little regarded by the Ministry, are now become an object of their attention; they will now be glad to have the titles of their American Colonies well settled. Besides, I shall set out for America next spring, and perhaps we shall never again have an opportunity of acting jointly in this matter. These circumstances seem to make this the proper time for doing something in it.—When you write Mr. Lee, be pleased to make my most respectful compts. to him. Had I been in Yorkshire this summer, I should certainly have had the honour of waiting on him, and am not without hopes of having that pleasure before I leave England.

I am, very truly,
Sir,
Your much obliged humble Servant,
(Signed) STIRLING.

New Portugal Street,
Nov. 9th, 1759.

To William Trumbull, Esqr.

No. XV.

Copy of Letter from Mr. Trumbull, in answer to Mr. Alexander, of Novr. 9th.—Dated East Hampstead Park.

"I HAVE returned you LORD STIRLING's letter, to whom, when "you write, I desire you would present my respects. As to his "Lordship's proposal, if you approve of it, I shall readily come into "it, and am willing to sign any agreement necessary to the carry-"ing it into execution.

"York, 28th Novr. 1759."

MY LORD,

Above is a copy of my cousin Lee's letter in relation to your Lordship's proposal in your letter of the 9th Novr. last; and as he is very willing, so am I, to come into the agreement you proposed. I have therefore now sent you up all the writings and papers I

have, relating to our North American affairs, as well as a book of Sir William Alexander's correspondence, while he was Secretary of State for Scotland. I think a proper agreement should be drawn up, for us all to sign—which I desire the favour of your Lordship to do.

I am

Your Lordship's most obedient humble Servant,

East Hampstead Park, 13th Dec^r 1759. (Signed) W. TRUMBULL.

Eleven parchments,	marked	A, from 1 a 11.
Eleven papers,	ditto	B, from 1 a 11.
Twelve ditto,	ditto	C, from 1 a 12.
Twenty-eight ditto,	ditto	D, from 1 a 28.
A parchment book,	ditto	E.

Letter from William Philips Lee, Esq. to the EARL OF STIRLING—*Dated York, January 12th,* 1760.

MY LORD,

Upon receiving the honour of your Lordship's letter, I writ to Mr. Trumbull, mentioning some trifling alteration in the copy of the agreement you was so obliging as to send me. My cousin has since been in London, but was not so happy as to meet with your Lordship; he will soon, I hope, be more successful, when I doubt not but a very few words will entirely settle the affair. The honour of your Lordship's correspondence will be at all times extremely acceptable to,

My Lord,

Your most obedient humble Servant,

(Signed) W^M. PHILIPS LEE.

TABLE, No. II.

PEDIGREE—*shewing the alleged Descent of* GENERAL WILLIAM ALEXANDER.

JOHN ALEXANDER,
of Gogar,
Uncle to William, 1st Earl of Stirling.
(Vide Table I.)

⋮

Alexander Alexander,
in Milnab,
born in 1602.

David Alexander,
in Ward of Muthiel.

James Alexander, ob. 1756, formerly Surveyor-General of New Jersey. = Mary, daughter of John Sprott, of Wigton.

William Alexander, who claimed the Earldom in 1769; but his claim was rejected by the House of Lords, March 10th, 1762. He married Sarah, daughter of Philip Livingstone, Esquire, and died at Albany, in New York, 12th January, 1783, without issue male.

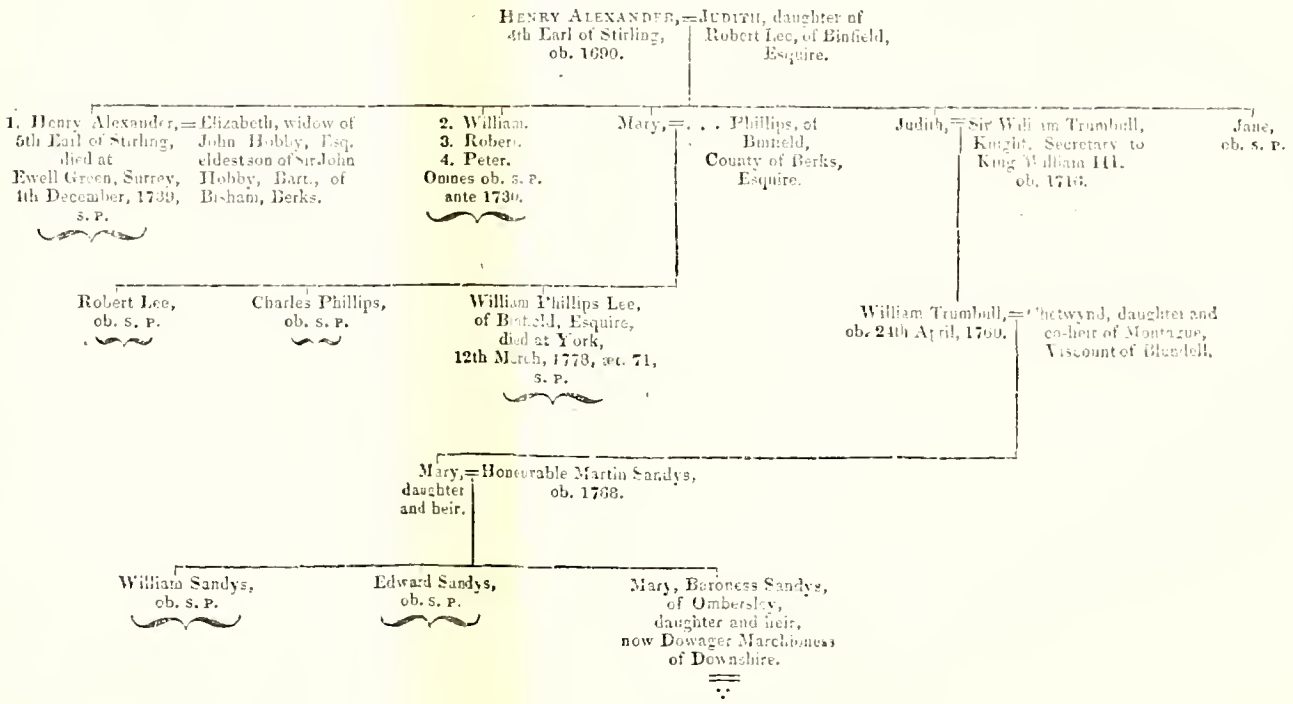
:am Trumbull,
Secretary to
Villiam III.
, 1716.

Jane,
eb. s. p.

Shetwynd, daughter and
co-heir of Montague,
Viscount of Blundell.

TABLE, No. III.

PEDIGREE—*shewing the Descent of the* DOWAGER MARCHIONESS OF DOWNSHIRE.



HOWLETT AND BRIMMER, PRINTERS, 19, FRITH STREET, SOHO.