

I.

ON THE AUTHENTICITY OF THE LETTERS PATENT SAID TO HAVE BEEN GRANTED BY KING WILLIAM THE LION TO THE EARL OF MARR IN 1171. By WILLIAM F. SKENE, LL.D., F.S.A. Scot.

This deed was first made known by the learned antiquary John Selden, who printed it in his "Titles of Honor" (p. 700) to illustrate his remarks upon the title of Thane. It is in the form of letters patent, and not of a charter; and is addressed by William, King of Scots, to all bishops, earls, abbots, priors, barons, knights, thanes, and provosts, and all other good men of the whole land, as well cleric as laic. It then narrates that Morgund, son of Gillocher, formerly Earl of Marr, had come before the king at Hindhop Burnemuthe, in his new forest, on the tenth day of the calends of June, in the year of grace 1171, demanding his right to the whole earldom of Marr, before the common council and army of the kingdom of Scotland there assembled: that the king had caused inquisition to be made into his claim by several men worthy of credit, who were barons and thanes of his kingdom, and who found that Morgund was the lawful son and heir of the said Gillocher, Earl of Marr; upon which the king granted and restored to Morgund the whole earldom of Marr, in which his father Gillocher had died vest and seized, to be held by the said Morgund and his heirs of the king, and his heirs in fee and heritage, with all pertuents, liberties, and rights, as freely, quietly, fully, and honourably as any other earl in the kingdom of Scotland; he and his heirs rendering to the king and his heirs the "forinsecum servitium videlicet servitium Scoticanum," as his ancestors had been wont to render to the king and his ancestors. Further, on the same day and at the same place, after doing homage before the common council of the kingdom, the said Morgund demanded that right should be done him for the whole

earldom of Moray, in which Gillocher his father had died vest and seized; upon which petition, inquisition having been made by several men worthy of credit, who were barons, knights, and thanes of the kingdom, they found that Morgund was the true and lawful heir of the earldom of Moray; and because at that time the king was engaged in the heavy war between him and the English, and the men of Moray could not be subjected to his will, he was unable to do justice to Morgund, he promised that, when he could terminate the war between him and his enemies, and subjugate the rebels of Moray, he would well and truly recognise the right of Morgund and his heirs to the earldom of Moray. And in order to certiorate to others this deed, the king gave these letters patent to the said Morgund. They then conclude with these words: "Teste meipso eodem anno die et loco supradicto." This is undoubtedly a very remarkable production, if genuine; and Selden adds: "I have it writ in parchment in a hand of the time wherein it is dated, but without any seal to it." It is referred to by Lord Hailes in his additional case for the Countess of Sutherland, without any doubt being expressed as to its authenticity; and no suspicion seems to have attached to it till the late George Chalmers assailed it in 1819 in a paper printed in the nineteenth volume of the "Archæologia" (p. 241). In this paper he proposes to show that this document is supposititious. He states his objections to it under nine heads, and concludes that Selden had been imposed upon with a spurious deed. His first objection relates to the orthography of the document; the second to the formula of the address; the third to the history of the earldom; the fourth to the minuteness of the date; the fifth to the received services; the sixth to the claim to the earldom of Moray; the seventh to the allusion to the war with England; the eighth to the form of letters patent; and the ninth to the words "teste meipso," which is peculiar to letters patent as distinguished from charters, which at this period invariably have a list of witnesses. The form "teste meipso" first occurs, he says, in 1190.

Professor Cosmo Innes, in his preface to the first volume of the "Acts of Parliament," alludes to this document, "the authenticity of which," he says, "however, is very doubtful"; and he prints it in a note with the following remarks: "Selden's authority is not lightly to be rejected; and some of the reasons against the genuineness of this charter, urged by

the late Mr Chalmers in a paper in the 'Archæologia,' founded on the spelling, &c., are of no weight. But it is open to serious objections, whether we consider the narrative or the occasion, and the time and place of its granting and the manner of testing. For instance, it is almost certain that in 1171 there was no war with England. On the other hand, it is difficult to devise a motive for inventing such a document. If it should be considered a very early forgery, it is scarcely less important than if admitted to be genuine" (p. 13). Professor Innes' authority on such a question is of course very great; and not less so is that of the late Dr Joseph Robertson. He says, in the "Antiquities of the Shires of Aberdeen and Banff," vol. iv. p. 691, that "Earl Morgund is said to have been the son of Gillocher, Earl of Marr. But this rests only on the letters patent of King William the Lion, first printed by Selden, which I think it is impossible to receive as authentic. The facts which they set forth may perhaps be true in part, but as a whole I don't see how they are to be reconciled with what is elsewhere recorded on undoubted authority. Nor do I think that the letters can be successfully defended from the objections to them on other grounds—such as their style, the time and place of granting, and the manner of testing. I must, therefore, believe them to be spurious. It is obvious, at the same time, that they were forged at an early period. The learned and accurate Selden thought them to be in a hand of the time, and they seem to be alluded to in the year 1291. They may have been forged at that time, or more probably during the contests for the earldom of Marr between the earl in possession and Thomas Durward before 1228, and between Earl William and Alan Durward in 1257. These contests supply what seems to have been thought wanting—'a motive for inventing such a document.'"

In the main I concur with the opinions of the late Professor Innes and Dr Joseph Robertson, and especially with that of the latter, which shows his usual acuteness and sagacity. I consider that the first and second objections made by Chalmers have no weight. With regard to the third, which is that the deed is inconsistent with the known history of the earldom, there is good reason for thinking that some such transaction really took place; for Sir Francis Palgrave prints, in his "Documents and Records relating to the Affairs of Scotland," preserved in the Treasury of Her Majesty's Exchequer, an appeal prepared in the name of the seven

earls of Scotland, and of the community of the realm, to Edward the First of England, which concludes with the following memorandum: "That when William, King of Scotland, restored to Morgund, son of Gyloclery, the predecessor of the Lord Dovenald, Earl of Marr, this earldom of Marr, according as the same is contained in a writing which Dovenald, Earl of Marr, possesses, there was wanting then to the said Morgund, and there is still wanting to the earl, three hundred pound land, partly in domain and partly in holdings and more, for which he claims that right should be done him" (Palgrave, p. 21). The writing here referred to seems to have been this very deed. The fourth and fifth objections have also no weight. Hindhop Burnemuthé is a hamlet on the coast about five or six miles south of Berwick, and there is no improbability in there having been a royal forest there while Northumberland belonged to the Scottish king. With regard to the sixth objection, that the Earl of Marr could have no claim to the earldom of Moray, the documents printed by Sir Francis Palgrave, in connection with the competition for the crown, do show that the earl at that time did claim to represent the earldom of Marr; for in the same document Dovenald, Earl of Marr, appeals in name of himself as one of the seven earls of Scotland, and *in name of the freemen of Moray*, and the other relations, connections, and friends of the said earl. But while I reject all these grounds of objection as not conclusive, I am obliged to admit that the seventh objection, which relates to the allusion to the war with England, and to insurrection in Moray; is fatal to the authenticity of the deed. The war with England did not commence till two years afterwards, in 1173; and the insurrection in Moray broke out after the captivity of the king in 1174, and Moray continued in a state of rebellion from that year till 1181. But during the first eight years of King William's reign he was at peace with England, and there was no appearance of the royal authority not having been recognised in Moray. Unfortunately it is during this period that the supposed letters patent are dated. Then as to the last two objections, which relate to the form of the deed as letters patent, and form of the testing, "teste meipso," there is no instance, so far as I am aware, of this form being used at as early a period as the reign of William the Lion.

It is somewhat remarkable, that while these distinguished antiquaries

were discussing the question of the authenticity of the letters patent as printed by Selden, it seems never to have occurred to any of them to endeavour to ascertain what became of the original, which Selden said he possessed, and whether it might not be recovered. Selden left his papers to Sir Matthew Hale, and Hale left his to the benchers of Lincoln's Inn, by whom they were deposited in their library. The search was therefore not a difficult one, and on examining these papers the so-called original was at once found. I have had it photographed by the autotype process, and now present a copy to the Society. It is undoubtedly a very old document, but not so old as the reign of King William the Lion. The handwriting is, I think, that of the early part of the reign of King Alexander the Third, and it must have existed prior to the document printed by Sir Francis Palgrave already quoted. In this reign, too, there are frequent specimens of deeds in the form of letters patent with the form of "teste meipso." Three of them are printed in the National MSS. of Scotland, Nos. 62, 63, and 64, and dated respectively in 1261, 1275, and 1282, and if the handwriting is compared it will be seen at once that this document belongs to the same period. The Earl of Marr at this time was William, grandson of Morgund, by his son Duncan. He was one of the most powerful barons of Scotland at the time, and was chamberlain of Scotland in 1252. He was one of those who were removed from the administration of affairs in Scotland at the instance of King Henry the Third of England in 1255, being replaced, among others, by Alan Durward. He was recalled to the king's council in 1257, and took a leading part in Scotland till the year 1273, when he appears to have died. Now we find that in 1257 a question was raised between Alan Durward and William, Earl of Marr, as to the right of the latter to the earldom. A Papal rescript issued in that year, directing an inquest to be held, proceeds on the narrative that "Our beloved son the nobleman Alan called the Dorrward hath signified to us that, whereas the nobleman William of Marr of the diocese of Aberdeen hath withheld the earldom of Marr of right belonging to the aforesaid Alan, and the same doth occupy to the prejudice of him the said Alan, and that Morgund and Duncan deceased, to whom the said William asserts his succession in the said earldom, were not begotten in lawful matrimony." William, however, remained in possession, and certainly the

production of a charter finding that Morgund was the lawful son and heir of his father, and containing a grant of the earldom to him and his heirs, would be most opportune in determining this question, and, if a genuine deed of this kind did not exist, probably the earl would neither have much difficulty or much scruple in producing one that would pass muster. If the letters patent are a forgery, I think it must have been manufactured about this time, and I am not sure that we have far to seek for the forger. A charter by William, Earl of Marr, confirming a grant by his grandfather, Morgund, in 1267, is witnessed among others by "Magistro Ricardo Veyrement." This Master Richard Veyrement was one of the canons of St Andrews, and I have shown in the introduction to Fordun's Chronicle that he is probably the author of a "Historia" which existed in the Great Register of St Andrews, now lost; and the veritable Veremundus, from whom Hector Boece says he derived a great part of his fabulous history. His connection with William, Earl of Marr, at this very time, and his witnessing a charter confirming a grant by that Morgund whose legitimacy was challenged, certainly leads to the suspicion that the clever manufacturer of these letters patent was no other than the arch forger of the spurious history of Scotland, and that if he had not been unfortunate in the selection of his date, it might even now have escaped detection.

The following is the text of the document:—

Willielmus Rex Scotorum universis Episcopis Comitibus Abbatibus Prioribus Baronibus Militibus Thanis et Praepositis et omnibus aliis probis hominibus totius terrae suae tam clericis quam laicis salutem eternam in Domino : Sciatis presentes et futuri Morgundum filium Gillocheri quondam Comitidis de Marre in mea praesentia venisse apud Hindhop Burnemuthe, in mea nova foresta decimo kalendarum Junij Anno Gratiae MCLXXI. petendo jus suum de toto Comitatu de Marre, coram communi Consilio et exercitu Regni Scotiae ibidem congregato. Ego vero cupiens eidem Morgundo et omnibus aliis jura facere secundum petitionem suam jus suum inquisivi per multos viros fide dignos, videlicet per baronias et thanos Regni mei per quam inquisitionem inveni dictum Morgundum filium et haeredem legitimum dicti Gillocheri Comitidis de Marre per quod concessi et reddidi eidem Morgundo totum Comitatum de Marre tanquam jus suum haereditarium sicut praedictus Gillocherus pater suus obiit vestitus et saisitus; Tenendum et habendum eidem Morgundo et haeredibus suis de me et haeredibus meis in feodo et haereditate cum omnibus pertinentis libertatibus et rectitudinibus suis adeo libere quiete plenarie

et honorifice sicut aliquis Comes in Regno Scotiæ liberius quietius plenarius et honorificentius tenet vel possidet ; Faciendo inde ipse et hæredes sui mihi et hæredibus meis forinsecum servicium videlicet Servicium Scoticanum sicut antecessores sui mihi et antecessoribus meis facere consueverunt. Eodem vero die et loco post homagium suum mihi factum coram communi Consilio Regni mei prædictus Morgundus petiit sibi jus fieri de toto Comitatu Moraviæ de quo prædictus Gillocherus pater suus obiit vestitus et saisitus super qua petitione sua per quamplures viros fide dignos Barones Milites et Thanos Regni mei inquisitionem facere feci et per illam inquisitionem inveni dictum Morgundum verum et legitimum hæredem de comitatu Moraviæ et quod eodem tempore propter guerram inter me et Anglicos graviter fuisset occupatus et Moravienses pro voluntate mea non potuissem justificare dicto Morgundo nullum jus facere potui. Sed cum guerram inter me et adversarios meos complere et rebelles Moravienses superare potero et dicto Morgundo sibi et hæredibus suis promitto pro me et hæredibus meis fideliter et plenarie jus facere de toto comitatu Moraviæ. Et ut hoc factum meum aliis certificaretur prædicto Morgundo has literas meas dedi Patentis. Teste me ipso eodem anno die et loco supra dicto.