

I.

NOTES OF SOME CURIOSITIES OF OLD SCOTTISH TENURES AND
INVESTITURES. BY COSMO INNES, Esq., F.S.A. Scot.

Some cases of disputed seisin which were argued lately in our Court led me to look a little into the history of symbolical delivery of heritages and of symbols generally.

Long before the feudalising of land had produced some methods of publishing its transference—such as resignation and delivery in the Court of the overlord, and the much later inventions of seisin by public notaries

—before even written grants had been introduced—shall I say before the introduction of writing?—heritable property was possessed and transmitted, bought and sold, and given in gift.

To mark and call attention to its transference was of course very necessary for the security of the parties; and as the transference could not be by handing over of the subject itself, and as writing was not used, or used only for sacred purposes, the tradition must be by symbols.

The reason of the thing is indeed so plain that we are saved guessing or hunting for authorities. When a man bought a sack of corn or a suit of armour, or a horse or a cow, he at once removed his new acquisition, and all the world (or that part who cared) became aware that he had done so openly, and of course honestly. But when the subject transferred consisted of an estate in land, castles, and towns, rights of forest and fishing, the purchaser could not take up his purchase and carry it away. That the transaction might not rest on the bare assertion of party, something was wanting to give it publicity, to call the attention of the neighbours to the fact, the time and manner of transference, and, so far as possible, to preserve the memory of a change of property which was followed by no outward change of the subject.

I suppose the earliest instance of taking *corporal* possession—for in this instance it can hardly be called *symbolical*—is preserved in the legend of St Oran. You know that Saint Columba, when he had got a grant and begun his settlement in Iona, expressed his desire that the island should be set apart and secured—that the roots of his family should strike in the soil; and he said to his followers, “It is permitted to you that some one of you go under the earth of this island to consecrate.” Then Oran arose quickly, and thus spake, “If you accept me, I am ready for that.” Oran then went to heaven, and his body was buried in the cemetery, which has ever since borne his name, and is still known as the *Relig Oran*. I know that this incident is otherwise interpreted, but I find in it simply an early case of seisin given by real and corporal possession of the soil. But I will not stay to argue upon legendary matter, but pass on to a recorded case.

We have the date of our case from Wyntown, who records that in the year 820 Hungus, the King of Picts, in honour of his great victory over Athelstane,

“ In his devotioun,
 Ekyd the dotatiowne
 Of St Andrewis kirk in fe,
 With landis in regality.”

The greater register of St Andrews, again, gives the manner of the endowment, and informs us how Hungus, the great king of Picts, gave to the Church of St Andrew as its *parochia* or territory many lands described and bounded, though now, alas! forgotten, but altogether, apparently, constituting the territory of Kilrimonth, with waters, meadows, fields, pastures, moors, and woods, in perpetual alms. Whereupon the Bishop sung an hallelujah, that God might protect and guard to him for ever the land so given; and in memorial of the gift, and of the privilege with which it was accompanied, the king, Hungus, cut a turf and offered it upon the altar of St Andrews in presence of the nobility of the Picts, his subjects; and the narration further records, that this was done before these witnesses, Thalarg, son of Ythernbuthib, and other Picts of very hard name, all stated to be of the royal race—*ex regali prosapia*.

Again, when the kingdom of the Picts had passed away in that unintelligible manner so lightly mentioned by our chroniclers, and when St Andrews was ruined and reduced to poverty, when there was no priest to serve at the altar, and no mass said save on the rare occasions when some king or bishop came there, when the Culdees celebrated their office in their manner in a mere corner of the church, King Alexander I. (whose reign, you know, is in the first quarter of the twelfth century) renewed the gifts and offerings of the old Pictish king, and, in particular, bestowed the much-valued territory called the *cursus apri*; and his brother David (who is now our king, writes the recorder) concurred in the gift. Then, in memory of the gift, the king commanded his servants to lead to the altar his royal Arabian horse, with his own bridle and saddle, a shield and lance of silver, and covered with a great and precious pall, and with them to give the Church in vestiture of the lands, liberties, and privileges, he then bestowed. He also gave Turkish arms of various kinds, which, with his shield and saddle, are to this date (says the recorder) preserved in the church of St Andrews, and are frequently shown to people coming thither from all quarters, lest the memory of the king's benefits should in any way be lost.”

Even the splendid memorials of investiture dedicated by Alexander are not without many parallels in England and abroad; but of course, as a turf of the land was equally effectual, it was in more common use; and the French antiquaries assure us that the treasuries of their greater churches were filled with these turfs of investiture, square turfs and round turfs, black, brown, and red, varying with the soil. The foreign antiquaries, who are our guides and masters in such inquiries, tell us that next after a turf of the land, the most common memorial or symbol of investiture was a bough or branch, indicating a grant of wood or forest land; and from that symbol they deduce the use of the staff or baton, which came among us to be almost the peculiar and exclusive symbol of resignations made in the hands of the superior. I am not quite prepared to admit such an origin of this symbol. Take one early instance. In the middle of the tenth century, Edgar, King of England,¹ conferred a gift on a church in this manner. He offered on the altar of the church his own rod of office or sceptre (*lituum proprium*). It was of ivory, beautifully wrought, and adorned with gold ornaments; and after he had presented this memorial or symbol of investiture, the king broke the staff in two, that it might not be taken away, and might not serve for reconveying the land he granted. Somewhat later (1291), we find among the furniture of the royal treasury of Scotland a silver cup, three ivory horns, and *the staff* with which Eustace de Vescy seized Alexander, King of Scots, in the earldom of Northumberland, when besieging Norham.

But in early times, anything personal, anything clearly connected with the donor, was used in memory of him and of his gift. Whatever came first to hand—*ad manum* is the phrase—was put in evidence; and nothing more frequently than a knife—that *cultellus* or whittle which was the constant companion of our Saxon forefathers, as the *skein dhu* is of the modern Celts. There are two of these preserved at Durham among the rich collection of charters there.² In the middle of the twelfth century, Sir Stephen de Bulwer acknowledged the right of the priory of Holy Island to the tithes of Lowick. People were now able to write, and a memorandum of the acknowledgment was written on a scrap of vellum. Signing and subscription were hardly yet introduced, and sealing not

¹ Malmesbury, E, 959-75.

² Raine, p. 77, Appx. 135.

established, or at least not universal; for, instead of seal, there is attached to the writings, *in testimonium*, Bulwer's knife—the very knife, as Mr Raine observes, with which he carved his food; and upon the substantial and still glossy horn haft, in a coeval hand, is carved a brief abstract of the transaction which it was required to seal and certify. The blade has suffered by time and rust.

In like manner, a convention between the Prior and Convent of Durham and Robert of Saint Martins, dated in 1148, is testified on the part of the layman by a whittle with a black haft of glossy horn, of three inches long, appended thereto.

At a still earlier time, before written instruments were known, or at least common, the gift was recorded (if I may use the word) by the mere offering and preserving a knife, a horn, a cup, a bow, an arrow, a sword, a glove, a girdle, a spur, or other personal furniture of the donor.

Sometimes the gift was inscribed on the symbol or memorial, and many instances of instruments so inscribed were preserved in the Continental churches before the Revolution. Some are still found in England. In some cases the knife was broken, for the same reason which induced King Edgar to break his ivory rod.

A curious memorial was a tag of leather or skin, upon which the donor tied a knot, *in testimonium*. Sometimes the knot was tied upon the tag of a deed as we now put a seal on the tag of a charter.

I must not trespass on your time with English and foreign examples of these curious and I think interesting *memorials*. You will find them in great variety collected in Ducange, under the word "Investitura," and a good set of English examples in a communication by Sir H. Ellis, in the "Archæologia."¹ Let me pass at once to the Scottish instance of investiture with a knife.

The charter of King Alexander II. to Alan and Margaret de Lani,² was copied by Mr Riddell of Friar's Carse (well known as the friend of Burns, and of his friend Francis Grose the antiquary) in 1791. It was then in the possession of the Buchanans of Arnprior. It grants to them the lands of Lany, as formerly held "in vertue of a small sword which King Culenus of old gave symbolically to Gillespie Moir, their predecessor, for

¹ Archæologia, vol. xvii. p. 311.

² Leny.

his singular service." The small sword, which was then also in the possession of the Arnprior family, is described as made of silver, and a drawing of it by Mr Grose is given in the "Archæologia."¹

I grieve to say both charter and symbol have disappeared, and we must take them on the description of two gentlemen, not sufficiently critical, though quite incapable of wilfully deceiving. I think it possible that some doubts of the authenticity of the charter might be removed, if we could examine the original. In any such inquiry, of course, the authenticity of the charter is quite a separate question from the truth of its narrative. The story of King Culenus, who, Mr Riddell assures us, succeeded to the throne about the year 965, may have been an accepted myth in the time of Alexander II. as well as now.

When writing and written charters had been long in use, grants of importance to the Church were sometimes delivered with a solemnity that seems to anticipate the publication of seisins.

Thus Duncan, Earl of Fife, in the year 1332,² granted the patronage of Kincardine-O'Neal to the Bishop of Aberdeen in pure and perpetual alms, and having affixed his seal to the charter, he with his own hand offered it on the altar of the Cathedral in perpetual memory of the gift, and in sign of possession transferred from him and his heirs to the Cathedral church.

Hitherto I cannot find that in the very various memorials of investiture there is much of *symbolization*, or much affinity between the thing granted and the memorial (except indeed in the first and most common, the turf). But towards the end of the fourteenth century, the law as well as the custom of investiture underwent a notable change, and evidence came to be required by probative writ of the transference of possession. The change may with sufficient accuracy be fixed at the end of the fourteenth century. At first, but for a short period only, the fashion was for the lord to direct his bailiff to give the vassal heritable state and seisin, and in sign thereof to affix his seal on the second tag of the precept. Another manner was for the bailiff to certify the fact of giving possession by a separate writ³ under his seal. But the instances of this last manner are rare, and both plans soon gave way before the notarial instrument, which we find quite

¹ *Ibid.* vol. xi. p. 46.

² *Regist. Aberdon.* p. 65.

³ *Melros.* p. 487; *Morton*, p. 157.

formal and well established before the middle of the fifteenth century, in the shape which it has borne ever since.

Along with the fixing of the legal form of conveyancing, the symbols for common kinds of property became almost equally uniform. Earth and stone for lands, a penny money for rents, clap and happer for mill, the house-key for houses, hardly vary.

In the more incorporeal subjects of property, however, the symbol naturally was more fluctuating. Early in the fifteenth century, the master of the schools of the burgh of Aberdeen was instituted in his office by the Chancellor of the Diocese, who gave him his bonnet (probably a doctor's bonnet) in sign of induction.¹ At the beginning of the next century, the same officer (now dependent on the magistrates) received institution from the provost of the burgh, who presented him with a rosary of beads for prayers.

The same burgh, whose ancient records are a mine of information to the antiquary, furnishes us with another investiture peculiar to burgh and burgal subjects. The seisin is called per *In-toll et Ut-toll*, and is found in old burgal titles of Glasgow and elsewhere. But in the records of Aberdeen we have it explained as that mode of entry where the outgoing proprietor receives a penny—*denarium de Ut-toll*, and the successor pays a penny *denarium de In-toll*.