

I.

ARTICLES BY ROBERT, BISHOP OF CAITHNESS, AGAINST GEORGE, EARL OF CAITHNESS, FOR VARIOUS EXCESSES, AND BREACHES OF SANCTUARY, WITH THE EARL'S ANSWERS AND THE BISHOP'S REPLIES—A.D. 1549. FROM THE CHARTER-ROOM AT DUNROBIN. WITH REMARKS ON THE RIGHT OF SANCTUARY IN SCOTLAND BEFORE THE REFORMATION. BY JOHN STUART, Esq., LL.D. SECRETARY.

The document which I have now to bring before the Society was first noticed by me in the course of an examination of the charters at Dunrobin for the Historical Manuscripts Commission made in the year 1870. It is noticed in the second Report of the Commissioners,¹ and as it appeared to me to contain many curious illustrations of the condition of the north of Scotland about the middle of the sixteenth century, I was led to apply to the Duke of Sutherland for permission to bring it under the notice of the Society of Antiquaries, and in consequence of his ready sanction, it was forwarded to me some time ago by Mr Joass, the minister of Golspie, for that purpose. It is as follows:—

Certane articulis send be ane Reuerend fader in God Robart Elect con-fermat of Cathenes to ane noble and potent lord George Erle of Cathenes his wassall and tennent of the baronie of May to be performit conforme to his hand gevin to the said reuerend fader and his successouris for him his airis and assignais Erlis of Cathenes of the dait at Dornocht xij^o Augusti

¹ Appendix to Second Report, p. 177.

anno etc. xlix°. The said noble lordis anssueris thervpon, and the confutatione thereof following.

The first article.

Inprimis the said reuerend fader desiris the said noble and potent lord Erle of Cathenes to keip and fulfill his said band maid to him be the quhilk he aucht to put Daid Sinclar his principale seruand and baillie within the boundis of Cathenes to libertie and fredome violentlie handlit be his lordship, and inordourlie kept within his firmans instantlie.

The anssuer of the said lord.

To the first I did nay wrang in taking of my brother albeit the same had [] trew becaus he wes and is my awn seruand and had my fee as is [] knawn and maid me sic offenssis as deseruit takin therfor ye ar oblist [] fortifee the same be your bandis quhilkis ye are sworne to.

The confutatioune of the ansuer.

Quhare the said Erle allegis that he did nay wrang in taking of Daid Sinclair baillie and speciall seruand to the said reuerend fader be resson the said Daid had fee of the said Erle and gef him his band therfor. It is onderstandin be the said reuerend fader and his weil av [] counsale that the said Daid is to be done for be him, because he [] the quenis grace fre liege and his lordship's speciall seruitour inordourlie [] and presonit nocht being convict for onye cryme conforme to the law [] efferis and that the said Erle aucht to put the said Daid Sinclar to libertye conforme to his forsaid band, quhairin the said Erle of Cathnes his airis and assignais ar oblist onder panis contenit tharin to fortifie [] manteine the said reuerend fader his seruandis and baillies etc. and thocht the said baillie mycht be foundin concurrand in maner of equale band with the said Erle. It gevis him nay place to handle the said baillie inordourlie bot rather to haif menit his offenss to the said reuerend fader and to haif desirit his lordship to haif pvneist him or ellis to haif concurrit to his pvnischement thairfor conforme to justice. And if the said Erle wilbe obstinat in the said reuerend faderis desiris of his first article it is thocht expedient his lordship vse the panis contenit in his band.

The second article.

To desyre the said Erle to deliuer Arche Keyth to justice for violent handis putting on schir Alexander Mernis his awn curat within sanctuarii of the Kirk of Wyk in the moneth of December in anno etc., Imo be the quhilk violence the kirk and kirkyard thair of wes suspandit within the said Erlis boundis within twa mylis to his principale place of Gernego. Quhilk Arche thairefter nocht being perschewit be the said Erle conforme to his band bot erar fortifiet and mantenit be him efter he wes requerit be the said reuerend faderis seruitouris conforme to the said band through quhilk occasione of the said Erlis mantenance of the said Archeis iniquitie he crewallie slew Schir Johne Simsone seruand and chamerlane to the said reuerend fader, godfader and gossep to the said Arche, and after the process of hornying wes impetrat and execut upon him for the said crewalteis and special charge of autorite to cerss and seik him our all quhare within the boundis of the dyocy of Cathenes drect to the said Erle for fulfilling of his said band, the said Erle ressait him within his place and fortlice of Gernego, and thairefter mantenit him in his steding of Substerwyk in hie contemptioun of the autorite and violatioun of his band forsaid.

The ansuer.

To the second I causit the bishoppis baillie forsaid chalmerlane and messenger to cerss and seik my place of Gernego I being myself in Substerwyk efter the bruit raiss, quhar as I belief thai fand nocht Archebald [] as I haif instrumentis to shaw, and past with the said baillie etc. efter ressait of the autorite to cerss him quhar I beleuit to haif foundin [] said Arche conforme to my promess and band albeit I com hwlie [] And as to the probatioune of the second article I refer me thairto.

The confutation of the second ansuer.

To the second thare misteris litill ansuer sen it is confutit within it self contenand bot vain saingis and the artikle beand mater in deed and notourlie knawn that the said Arche Keyth wes and is nocht onlie ressait be the said Erle in his place of Gernego bot als hes bene and is mantenit be him in his awn howss and steding of Submister lyke as may be clerlie

provin, and the cersing and instrumentis allegit be the said Erle ar colorit and wayne in violatioune of his promes and bandis as the hale cuntre can testifee. Quharefor it is thoct expedient that the panis contentit in the said band be set forthervartis or ellis the said Erle to fulfill the said article.

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Item the violent hand putting on the curat of Bowar on pasche day in anno etc. liij^o within the sanctuarii of Wattin be the said Erlis tenent callit Johne Williamson and his complices in Vestmistar conforme to the said Erlis band to be remedit.

The Erlis ansuer vpon the third article.

To the thrid I beleif the same is nocht trew becaus the curat is nocht plenteous and that I hard nay vord therof.

The confutacioune.

Quhare the said Erle makis ane ansuer vpon his beleif that the thrid article is nocht of verite the beleif falis and the article is trew as may be provin and aucht to be reformit conforme to the said band or ellis the panis thairof to be vsit And the said Erlis denying of the horning of the said violence committing is planit be his lordship, vthervais vnder colour of ane amendis making to the pair preist without respect of the fulfilling of the said band.

The ferd article.

The said reuerend fader desiris the pollution of the kirk and sanctuarii of Far to be amendit, sen that the said Erle nocht only gart tak away all insyct and geir put thairin in keping bot als tuik out of the samen xvij personis agit and decrepit men and bairnis onder colour of saifty be vertu of his gret aytht sworne in presens of ane gret auditour and incontinent thairefter gart crewallie dispone one thaim and als to caus restore the pulze of the chalice chrissumstok Eucharest and ornamentis of the altaris of the said kirk of Far sen the sacramentis can nocht be ministrat for want thairof quhilk desyre is conforme to the said Erlis band forsaid.

The ansuer vpone the ferd artikle.

To the ferd thair wes nocht sic geir in the kirk at my cuming, and to the brekking thair of I deny, and albeit I had tane out the geir that wes in the samen I did nay wrang, for thair causis, first, thair brek kirk thame self or euer the same wes sterit by ws, secundlie the geir that wes within the samen pertenit to ws Cathenes men Thridlie thair come furth of the said kirk and maid fyre etc. And thair tuik refuge at the samen quhilk suld be nane of the law And ferdlie we did nay wrang becaus we had the autorite for ws to tak thame selfis and there geir quhare thair mycht be apprehendit.

The Confutatioone

The senister ansuer vpon the ferd article confutis the same ansuer In singe thair of the said Erle may caus Marie Geolachis sone callit Johne Sutherland in Barredale restoir the messe buik of the kirk of Far, and vtheris Cathenes men the ornamentis of the altar thair of Quhilk sanctuarii the said Erle and his complicitis had nay power be autorite nor vther, vasis to violat, and thocht his lordship allegis in the first vainlye that the personis that wes takin out of the said Kirk brek the samen or euer he or his sterit it etc. that pairt requiris nay ansuer becaus it is knawn iniust and nocht of verite and nocht his lordships honour to haif allegit sic. To the secund pvnct gif the geir beand in the said kirk and sanctuarii, si pro non pertenit to Cathenes men It becom nocht to thame to mell with the same violentlie in brekking of sanctuarii bot rather to seik thair to be the lawis The allegeance to the thrid pvnct that the said auld and decrepit personis and bairnis come furth of the said kirk and maid fyre etc. The fyre within the said Erlis boundis wes nocht maid nor committit tua or thre daiis efter the saidis pvir decrepit men and bairnis wes crewally dispoit on Quhare it is allegit in the ferd pvnct that the said Erle did nay wrang becaus he had the autorite for him to tak the saidis personis and geir quhar thair mycht be apprehendit The commission of the autorite gevin to the said Erle is wrang onderstanding quharby he has nay power to persheue onye bot thame that war at our souerane ladeis horn as the saidis feble and decrepit men and bairnis wer nocht And thair gudis and geir to be inbrocht to his grace behuiff and nay violatioune of santuarii contentit thairin nor spulze of the orna-

mentis of kirkis, birnyng of feild chapellis, nor takkin out of sanctuarii all the pwir preist of Farris insyght cleding and geir to his vtir herschip, suay the said Erle hes violat his said band and incurris the panis contenit thairin.

The fyft article.

Item the said reuerend fader desiris the said Erle to amend the fail maid on his land of Deran that quhar William Keyth tenent thare wes avand certane ground det for the quhilk David Sinclar baillie to the said reuerend fader causit to arrest his corn vpon the said ground of Deran quhilkis cornis the said Erle causit his officeris and seruandis thresche down and tak of the ground violentlie and apply to his lordshipis vse in violatioun of his fayth and band forsaid

The Erlis ansuer

To the fyft I maid nay spulze of the ground becaus I had ane precept drect be the baillie to be pait of certane restis that William Keyth aucht me conform to ane decrett gevin be certane auditouris of compt.

The confutatione thairof.

The said ansuer to the fyft article is nay les nor strange and apperis to be vnderous wrang becaus David Sinclar baillie forsaid maid the complent of the said violent spulze and all officeris perteing the said reuerend fader denyis that onye precept wes drect to thame or onye ane of thame, to allowiss the arrestment contenit in the said article or to be present at the said spulze committing suay the said Erlis ansueris ar bot wain and his lordship aucht [nocht] allanerlie to mak payment of the said William Keythis ground det to the said reuerend fader bot als to mak conding mendis to his lordship for the said violent spulze or ellis the panis contenit in his band forsaid to be vsit in his contrar.

The sext article.

Item the said reuerend fader desiris the pvir auld preist schir Thomas Cormaksone to be restorit to his dwittie of his ruid seruce of the kirk of Wyk conforme to his possessione thairof the space of xl or l. yeris bigane quhill the said Erle laillie, the said reuerend fader being in France,

maid derogatione thairto in violatioune of his band forsaid And it is beleuit the said pvir preist be colationat of the said ruid seruice be presentatioune of the parrochinaris.

The Erlis ansure to this article.

To the article pertenyng the parrochinaris of Wyk towart the ruid seruice the parrochinaris gef nay presentatioune thairof or yit pertenis the same to the bischope to gif colatioune, nor I astrikkit thairto in my band, becaus in the tyme of the geving thairof I haif instrumentis as vtheris hes that I appoint me to it that ves done in your senze towartis the ruid seruice and protestit in the names of all the barronis and thare groundis that the same suld do ws nay hurt.

The confutatioune.

Quhare the said Erle makis ansuer to this article allegeing nay ruid seruice to be obseruit nor dwittie thairof to be ansuerit his lordship hes litill rome becaus of his band forsaid quhairin he his airis and assignais erlis of Cathenes ar oblist to manteine and defend all laudable actis and constitutionis of the dyocy of Cathenes accustomit vsit and vont of celebrat memory in King James the fyft his tyme quhais saule God assolze ay and quhill that the saidis actis and constitutionis be cassat annullat in generall or provinciall counsallis lesum statute ordanit and celebrat and sen the ruid seruice contenit in the said article is of auld custome and conforme to the synodale actis of bishoppis of Cathenes thairfor the said Erle is oblist be his forsaid band to mantene and defend the same or ellis the panis contenit thairintill to incur.

The vij article.

Item it is desirit that the said Erle reforme his actis and proclamationis maid [] his curtis that nane tak teindis within the boundis of Cathenes without his lycence quhilk is aganis the liberty of halie kirk incurring cursing by the violatioune of the said band.

The Erlis ansuer.

To that article quhar I mak actis as is allegit that nay man in Cathenes tak teindis by my avyss quhilk is aganis the liberty of halie kirk and my

band, thai that informis yow thair of falis, for thare is nocht sic actis, nor yit am I astrikit nocht to mak actis as I pleis to astrik my tennentis conforme to the law as I pleis And albeit that it wer trew as for this act as ye allege the same thrallis nocht halie kirk albeit it thrall my tennentis to do my command bot makis the liberty mair and conforme to my band for the weill of your kirk that nay tennentis bot thai that is responsale tak teindis And gif thai that ar nocht responsale salbe hereit throch taking of teindis and the bischope to want payment quhilk is hurt to the halie kirk and nay liberty to the same and suay do I nay wrang becaus I am nocht oblist to caus my tennentis to tak the bischoppis teindis.

The confutation.

It is nocht honorabill to the said Erle to deny the making of the actis contentit in the article sen the same wilbe provin to gidder with the proclamatiounis quhilkis wer diuerss tymis publist in cartis at the command of the said Erle in violatioun of his band forsaid quhare he his airis and assignais erlis of Cathenes ar oblist to fortife and manteine the said reuerend fader and his kirkmen to put thair landis and teindis to thare vtilitie and proffet and quhar the said Erle ryannis about the busse in his ansur to excuis his faille schawing be the making of his actis he makis the liberty of the kirk mair. Trewlie quhen his lordship is condinglie pvneist for violatioun of his said band and incurring censouris it will set the said liberty forthervartis and mak it mair to be knawin And quhar the said Erle allegis that teindis wald harry pvir tennentis, quhilk vayn saingis can nocht excuis his said faille becaus teindis helpis pvir men and nocht harreis thame To the takin the said Erle and vtheris riche men reiffis the teindis fra the pvir men in preiudice of his said band and incurrand thairthrow the panis contentit thairin.

The viij article

Item the said reuerend fader desiris the said Erle to reforme his faille in reiffing of the teindis of Wyk efter thai wer set to the tennentis lauboraris of the ground thair of and tane actit for payment of the same the said reuerend fader being in France quhilk violattis the said Erlis band:

The Erlis ansuer.

Item quhar ye allege I brek my band in intrometting with the teind of Wyk I noder causit intromet thairwith nor wes in the cuntre quhen the same wes tane nor by ane tytill I tuik it nocht, quhilk I sall schaw albeit the Erle of Sutherland vald nay that he gef his gude will thairto, quhilk I beleif he will grant.

The confutation.

It is merwellit that the said noble and potent lord Erle of Cathenes schamis nocht to allege vntrew saingis to gloiss his faling in the article sen it is knawn that my lord Erle of Sutherland wes nocht cumin out of France quhen the said teindis of Wyk wes reft fra the tennentis thairof and quhar the said Erle of Cathenes allegis ane tytill thair is actis to testifee that allegiance vayn quharefor he incurris the panis contenit in his forsaid band.

The nynt article.

Item quhar it is complainit to the said reuerend fader havelie be all his tennentis be north the Ord how thai ar dailie trublit be the said Erlis officeris at his command and takis thair mertis and pvindis to brawe his lordshipis place and dailie bosting to put thame crewallie to deith and sum laitlie tane furth of the gyrd and crewally slane by ordour of law at his command.

The Erlis ansuer.

The same is done for the veill of the countre and for pvnissing of dissobearis gif suay be done quhilk suld be your pairt als well as myne and is sworne to the same becaus it is my action gif I had nocht the autorite, and as to your allegit tennent quhilk I wait ye will nocht grant becaus of the generall band, he is at the horne and I haif autorite on him quha hes cumin sindrye tymis furth of the gyrth and done sic thingis as the cuntre knawis, Therfor I trow and watis the gyrth suld nor is nay gyrth to him, nor yit wes tane furth of the gyrth and suay I haif done nay wrangis praing yow to consider the first band maid in Scrabister quhilk ye ar sworne to, or ye allege brekking of my band

maid to yow, for trowlie at the last thare wilbe foundin nay fail tharin be me.

The confutatione hereof.

Quhare the said Erle allegis the violence done to the said reuerend faderis tennentis contenit in the article preceding, done for the weill of the cuntre and pvnissing of dissobeiaris It is thocht gif the saidis tennentis had commit crymes deseruing pvnischment thai suld haif bene perschewit tharefor before ane juge competent and thai or onye ane of thame beand convict to haif pvnist thame tharefor conforme to the lawis and the said reuerend fader and his baillies to haif assistit thareto conforme to his band contenit in the said Erlis ansuer quhilk reuerend fader grantis the tennent contenit in the same his, becaus he wes vnworthylic tane out of Sanct Magnus gyrth and nocht acusit nor convict, crewallie slane without confessione, for quhilk he oft tymis cr[yit] as is planelie knawn, The said reuerend fader is nocht oblist be onye band to assist to the said Erle in onye vranguss or ongodlie besines the hole article is newtralie knawn and wilbe clerlie provin Quharefor the panis contenit in the said band suld nocht be allanerlie set fordervartis on the said Erle, bot als all vther persuit that may follow be the Law tharevpon.

And thocht the said reuerend fader hes diuerss vtheris thingis to put to the said Erlis charge sic as the wythhalding of the few male of byrsbanis myln, the brekking doun of his myll of Ormelye, and wranguss bigging of ane vther myll on his land of Papingo, and casting doun of the howss pertenying Johne Swanesone his tennent thare, stopping of the bigging of ane myll in litill Wlgrame pertenying to the said reuerend fader, inuist withhalding of ane strath of gyrss and ane watter fisching callit sleacht pertenying to the said toun certane landis reft maisterfullie fra the tennentis of Deran and Vyke be the said Erle and his tenentis, and ane mert tane fra ane pvir man in Stamistar and ettin be the said Erle in Brawle The said reuerend fader will omitt the same and mekle mair hoping his Lordship will reforme freindlie the contentis in the forsaidis artikillis with remembrance that the said Erle hes offendit in his band maid to the said reuerend fader and his successouris for him his airis and assignais Erlis of Cathenes, quhen that he manisit and bostit his commissar be north the Ord nocht to vse his jurisdiction thare as efferit

as wilbe provin be his lordship's hand wret to the violatiōne of his said band and incurring the panis and censowris contenit tharin etc.

The reverend father in whose name the articles proceed, was Robert Stewart, brother to the Earl of Lennox, who had been elected to the See of Caithness on the death of Bishop Andrew Stewart, a son of the Earl of Athole, in the year 1542. At this time the bishop elect was only a youth, and having taken part with his brother, the Earl of Lennox, against the Earl of Arran, he was deprived of the bishopric, and lived in banishment for twenty-two years. He was never ordained, and on his return to Scotland he joined the party of the Reformation. He, however, retained the title of Bishop of Caithness, and enjoyed the revenues of the See till his death in 1586.

George, fourth Earl of Caithness, against whom the bishop's complaints were directed, was a notable character for the many acts of violence and cruelty which he perpetrated. He was one of the jury who acquitted the Earl of Bothwell in April 1567, and his oldest son was married to the Earl of Bothwell's only sister.

During the unsettled times which preceded the Reformation in Scotland, it was the custom of the great Churchmen to appoint as their baillies the members of some powerful family, or to enlist their aid by obtaining from them bonds of maintenance. These were expected to protect their property from eneroachment, and their vassals from the tyranny of their neighbours. At all times the allegiance of these baillies and maintainers was precarious, and at the time of the Reformation, when the ideas of property became unsettled, they contrived in many cases to appropriate as inheritances for their own families the lands which had been entrusted to their keeping or protection.

It so happened in the case of the barony of Mey, referred to in the bishop's complaint; as we find that in course of time it became the property of William, the second son of Earl George, who thus founded the family of Sinclair of Mey. The earl's eldest son, the Master of Caithness, was unfortunate in his career; for having fallen under his father's displeasure, and being persuaded to seek his father's presence at Girnego and clear himself from the suspicions which had arisen, in the words of Sir Robert Gordon, "The very same night that they

arrived at Girnigo (now called Castell Sinckler) the Earl of Catteynes, as he was talking with his sone the. Mr, caused, by a secret signe, a company of armed men rush in at the chamber doore, and apprehend the Master, who wes presentlie fettered in sure bands, and thrust into prison within that castle; wher he was keiped in miserable captivitie for the space of seaven yeirs, and died at last in prissone by famine and vermine, as a disasterous subject of a cruell fortune."

In December 1556 the earl had a remission from the Queen for many crimes committed by him, some of them being those of which he was accused by the bishop, and which he denied in his answers to the bishop's complaint. Thus there was remitted to him his part of the cruel slaughter and murder of Sir John Symssoune by his servant, Archibald Keith, in the Weik; for besieging and taking the fortalice of Akirgill, belonging to William, Earl Marischall; for taking and imprisoning Alexander Keyth in his place of Girnego; for taking David Sinclair, his brother, the baillie of the Bishop of Caithness, and imprisoning him in the said place for a long time; for the cruel slaughter of William Murray, captain of the Queen's House of Scarnclet, committed "on suddenty," and various other crimes.²

It will have been remarked that several of the bishop's complaints related to deeds of violence committed on churchmen by the earl, and to his alleged breaches of the privilege of sanctuary.

In the second article the earl is accused of resetting Arche or Archibald Keith, who had slain Sir John Simsone, the bishop's chamberlaine, and godfather to Archibald himself, and for his share in this the earl gets the remission which I have quoted. It would seem, however, that Archibald had previously laid violent hands on Sir Alexander Mernis, his own curate, within sanctuary of the kirk of Wyk, whereby the kirk and kirkyard were polluted, and their use suspended.

The third article complains of violent hand-putting on the curate of Bower on Easter day, in the year 1552, within the sanctuary of Watten, by one of the earl's retainers. The fourth describes the earl's invasion and consequent pollution of the kirk and sanctuary of Far, where eighteen people had taken refuge, and whom the earl took furth, "and

¹ The Genealogy of the Earls of Sutherland, pp. 163-4.

² Pitcairn's Criminal Trials, i. pp. 394-5.

incontinent thairefter gart crewallie dispone on." He was also accused of carrying away the vessels and ornaments of the church, so that the sacrament could no longer be ministered.

The ninth article accuses the earl of cruelties to the bishop's tenants north of the Ord, some of whom "he had laitlie tane furth of the gyrd and crewally slane," and specially he had taken one of his tenants out of St Magnus' gyrd,¹ neither accused nor convicted, and cruelly slain him without confession, for which he had frequently cried.

I am led to take the opportunity of making a few remarks on the nature of the right of sanctuary as understood in Scotland before the Reformation, and to indicate the change of feeling with which they had come to be regarded.

By the ancient ecclesiastical law of Scotland, every church having the right of baptism, or where there is a cemetery, was declared to be a sure refuge to every one having a lawful right to it, for thirty paces around the cemetery.²

But besides this ecclesiastical immunity, the sovereign could confer on a church special rights of sanctuary—as Malcolm the Maiden did on the church of Inverleithen, when he granted to it the same right of sanctuary through all its territory as was enjoyed by the church of Stow in Wedale, or that of Tynningham in Lothian. These were churches to which probably a very early reverence was accorded, the former from its possessing an image of the Blessed Virgin, supposed to have been brought from Jerusalem by King Arthur, and the latter as the church of St Baldred, the great apostle of the Lothians. Among our Celtic forefathers the reverence for the founders of churches continued fresh long after their day, and out of this feeling arose such extensive rights of sanctuary as are ascribed to that of St Malrubha at Applecross, while we may detect a like result from the same feeling of reverence among the Northumbrians for their great saint, St Cuthbert.

¹ The church of S. Magnus is in the parish of Halkirk, and was originally attached to an hospital named after this saint, situated near the foot of a hill called from it Spittalhill. Its cemetery was the burial place of the clan Gun, the members of which carried their dead to be interred in it from great distances.

² Statuta Eccles. Scotie. vol. ii. p. 46.

At times the limits of the girth were defined by four crosses, as at Lesmahagow and Torphichen.

The original idea of the privilege conferred by sanctuary was much the same as that possessed by the cities of refuge among the Jews, not to confer an immunity on all sorts of malefactors, but to protect the life of one who had committed unpremeditated slaughter and without malice.

The privilege was the subject of legislation in Scotland at various periods, and when thieves as well as murderers enjoyed it. By a law of Alexander II. it was ordered that a thief who took sanctuary, if he confessed and was shriven, restored the stolen property, paid the king's fine, and swore upon the relics or the Gospels never to thieve again, might depart to his home scathless. If he was unable to pay the king's fine he still escaped with life and limb, but he was to leave the country, and remain an alien to his native land until he could make his peace with the king.

However beneficent the right might be in times of disorder and violence, it was one which came to be greatly abused, and a statute of King James III. sets forth that "meny personis comittis slachteris upone forthocht felony in trast that thai salbe difendit threw the Immunitie of holy kirk and girth and passis and remanis in Sanctuarie,"¹ so that it was necessary to provide that in all cases of forethocht felony, where the culprit places himself in girth for safety of his person, the sheriff shall come to the ordinary in places under their jurisdiction, and in places exempt, to the lorde maisters of the girth, and apprise him that such a man has committed a crime of forethocht felony—*tanquam incediator viarum et per industriam*, for the quhilk the law grants nocht nor allows such persons to enjoy the immunity of the kirk, and the sheriff shall require the verdict of an assize, whether the crime be forthocht felony or not, and if it be found to have arisen from "suddente," the accused is to be restored again to the freedom and immunity of holy church and girth.

An Act of James V.² is entitled "The remeid for deliverry of thame

¹ Acts of the Parliament of Scotland, vol. i. p. 71; Robertson's Scotland under her Early Kings, vol. ii. p. 47; Acts, vol. i. pp. 95-6.

² Acts vol. ii.; p. 348.

that fleis to girthe," and provides that for the more speedy punishment of those who commit slaughter upon forethought felony and flee to girth, conform to previous acts made theranent, which often take no effect through pretence of excuse of the masters thereof, spiritual men, who will not deliver the said trespassers to the king's officers, all masters of girths shall appoint responsible baillies or masters of girths, who shall be bound to deliver all committers of slaughter upon forethought felony and flees to girth, and other trespassers who cannot claim the privilege thereof conform to the Canon Law, and Acts of Parliament, to the king's officers to underly the law.

Latterly the right came to be viewed with jealousy by the civil courts, as appears in the case of a claim by the Black Friars of Glasgow in 1553, for the precinct of their convent, that it should have conceded to it the right and privilege of sanctuary, at least for recent and sudden crimes, in which they affirmed that the right had been enjoyed past memory of man, and observed so reverently that it had never been violated by any sort of person. They added that its recognition would be a public benefit, "nane uthir [sanctuarie] being in the west partis of the realme fra Torphiching west bot the said place allanerlie."¹ The Lords of Session, however, before whom the action was brought, called on the Friars to produce a written grant of the immunities which they claimed, and on failing to do so gave judgment against them.

Although the reverence for sanctuary did not hinder the Earl of Caithness from violating their privileges, and although they had ceased in general to be regarded with the feelings which led to their original institution, yet it seems plain that the poor husbandmen of Caithness still expected a protection to themselves and their goods, which the law could not afford when they took refuge within the boundaries of the sanctuary at Far.

I may close these remarks with the following story from "Fordun's Chronicle," which shows how very strong was the regard for sanctuary in the early part of the 14th century, when it could even lay its hand on the revenge of English soldiers in their pursuit of Scottish murderers:—

In 1337, when the Castle of Edinburgh was in the hands of an English garrison, Robert Prendergest, a Scotsman, after killing the marshall and

¹ Statuta Eccles. Scotie. vol. ii. p. 262.

mortally wounding three of the English soldiers, took refuge in the sanctuary at Holyrood, which, as at Durham, was by the ringing of a bell. His pursuers, the English, found him on his knees before the altar, and although out of reverence of God, they desisted from farther pursuit, yet they made a sure watch, and shut up the culprit, prohibiting any one from bringing him food, and at night, when he was overtaken with sleep, they poked him up with long wooden goads, that thus, being without sleep and food, he might the sooner end his miserable life. Thus matters went on for twelve days, during which the sacrist, when the brethren were at lauds, ascended the roof, and tying certain victuals in a rope, he let it down unperceived to him who was confined. At last, one night the sacrist, taking two of the canons with him, let down a stronger rope, which the prisoner tied round his body, and then was speedily raised aloft by the canons. Having clothed him in the habit of a canon, and in the early morning gone out with him as if to walk, they led him to Salisbury Park, and let him go free.¹