

II.

NOTICE OF THE EARLY SYSTEM OF REPLEGIATION AS EXERCISED
IN SCOTLAND. BY JOHN STUART, Esq., LL.D., SEC. S.A. SCOT.

In the early Celtic period of our history, when the population was divided into numerous tribes, each of these had its brehon or judge, who administered justice to the men of the clan, and the men of one tribe could not have been called to answer a suit in the court of another.

When the feudal system had for some time been established in Scotland, it became a custom for the Crown to grant to the great barons large tracts of land with the rights of regality, in which was included the right of courts of exclusive jurisdiction. The same rights were also granted to the bishops and abbots, as owners of lands, at an early period. Thus in the reign of Alexander the First a royal charter invested the Abbey of Scone with the right of a court, and of giving judgment by combat, by iron, or by water, and with an exclusive jurisdiction over all the men of the abbey lands.

This power enabled the abbot, and all who enjoyed like rights, to vindicate their rights even in the King's courts, so as to exclude the interference of the royal judges.

The act by which the lord of regality enforced his rights in a foreign court to which his man had been summoned was called replegiation. It is recognised, and the proceedings under it are described, in one of our early codes of law known as *Quoniam Attachiamenta*, or the Laws of the Barons (§ ix. Acts, vol i. p. 284), where it appears that a claimant was bound to find surety that the law would be fully followed out in the court of his own lord to which he desired to be remanded. This surety or broch was known in our old law as a *culrach*.

The most remarkable instances in our history of replegiation are connected with the Law of Clan Macduff. Of this law, which seems to have combined the early Celtic idea of privilege of blood or kinship with that of girth annexed to a cross, we learn from Wyntoun that the black Priest of Wedale, the Thane of Fife, and the Lord of Abernethy, were the three judges.

We have two records exhibiting to some extent the working of the

"Law." In the earliest we see Sir Alexander Moray, who was called before the King's justiciaries in the year 1391, accused of the slaughter of William of Spaldyne, protesting that he had already been indicted for the crime, and repledged to the Law of Clan Macduff by Robert, Earl of Fife; and in the next, when Hugh Arbuthnot and his accomplices were accused of the murder of John Melville, Laird of Glenbervy, we find that by a writ dated 1st September 1421, the Stewart of Fife received them to the benefit of the Law of Clan Macduff, they finding three sicker burroise or sureties, the first that they were law-worthy, the second that they were entitled to the privilege, and the third that they should "fulfill the lawes as the law will."

It thus happened that the barons or ecclesiastics who had received their lands with the right of regality, rescued, not only from the courts of other barons but from the royal courts, any of their men who happened to be cited into these foreign courts.

We have an early example of the exercise of this right in a case where in 1299 Sir John Comyn, Earl of Buchan, then Royal Justiciar of Scotland, was holding a court beside the Castle of Aberdeen in the place called the Castlesyd, and sitting in judgment on Adam de Fisto and four others, dwelling on the lands of Tulielt at Tarves, the property of the Abbot of Arbroath, accused of theft, when John of Pollok, the Abbot's steward, appeared and reclaimed the accused as men of the said Abbot, dwelling within his regality of Tarves, to the Abbot's court of said regality. (Chart. of Arbroath, p. 164.)

Other instances occur among the papers of the Earl of Airlie. Thus on 17th November 1537, David, Abbot of Arbroath, granted authority to William Graham of Fintray and others to appear before the King, Council, or Great Justiciary at Edinburgh, and repledge James, Lord Ogilvy of Airly, the Abbot's tenant and indweller of the lands of Balischen and Brekko, and the said lord's tenants and subtenants, to the courts of the regality of Arbroath. And on 8th April 1543 Cardinal Beaton, as Commendator of Arbroath and the convent thereof, empowered James, Lord Ogilvy of Airly to repledge an indweller in the regality of Arbroath from the Governor of Scotland or Justiciaries of the same, he having been cited to Edinburgh by warrant of the Queen.

The following extract from the registers of the burgh of Dundee, dated

6th June 1521, affords an instance of the proceedings under a claim of replegiation :—

Curia balliuorum burgi de Dundee tenta in pretorio eiusdem per Willelmum Gubit et Andream Barry balliuos, vj^{to} die Junii anno etc. quingentesimo xxj^o.

Quo die comperit Robert Meill and interit James Spalding to the instance of Margaret Moncur lady Telling as he that was souerte anent the clame of ane oix perseuit be hir on the said James and Hew Maxwell of Telling, his maister askit hym to be replegit to his court and it was fundyn be ward of court that he suld haf him replegit, and this efter the allegatione of Maister Daue Robertson forspokare for the said Margaret that he suld nocht be replegit, and the said lard offerit James Cunningham colreth and cautione for the said James that the said Margret suld haf ane day and court affixit to hir and iustice to be ministerit, the quhilk the said Maister David refusit.

In process of time many abuses arose from the exercise of these conflicting jurisdictions, and various enactments were made in Parliament for their regulation and restraint. In 1449, it was ordained that when regalities came into the hands of the king (as by ward) they should be holden as royalty, and that justice should be dispensed by the king's judges so long as they remained in the king's hands. In 1455 it was provided that all regalities then in the king's hands should be annexed to the royalty, and that in time to come no regalities should be granted without deliverance of Parliament (Acts, vol. ii. pp. 36, 43). Two years later, another ordinance provided that all privileges of regalities should be kept according to their foundations, and "gif ony lorde haifande regalite abuse it in prejudice of the kingis lawis and brekin of the cuntre that they be punyst be the king and be the law as efferis. (Ib. p. 49.)

One of the documents exhibited by Mr Martin, and which has suggested the foregoing remarks, is an Instrument of Replegiation by Robert, Lord Semple, bailie of the Abbot of Paisley, of a man of his regality accused before the king's judges, and then tried and acquitted in the court of the abbot. The process must have been a frequent one, but instances of the instruments themselves are comparatively rare :—

Robertus dominus Symple balliuus ac Justiciarius Regalitatibus de Pasleto ac Abbatis et conuentus eiusdem Vniuersis et singulis ad quorum notitias presentes

¹ See for various instances of replegiation, "Pitcairn's Trials," i. 382.

litere peruenerint salutem Noueritis quod comparens coram nobis Arthurus Maxwell filius Gavini Maxwell in Badyland perprius summonitus coram Justiciario supreme Domine nostre regine suisve deputatis ad subeundum jura die decimo quarto mensis Nouembris anno Domini millesimo quingentesimo quinquagesimo sexto apud Edinburgh pro arte et parte crudelis necis et interfectionis quondam Joannis Sklater filii Roberti Sklater in Meikilriggis prout in literis supreme Domine nostre regine latius continetur Quo die dictus Arthurus coram magnifico viro Joanne Campbell de Lundy milite Justiciario deputato nobilis et potentis domini Archibaldi comitis Argadie domini Campbell et Lorne Justiciarii Generalis prescripti comparuit et ad curiam justiciarie dicte regalitatis ad subeundum jura pro dicto asserto crimine cautione inuenta pro justicia ministranda coram nobis replegiatus. Et dies decimus quintus mensis Januarii proxime sequens ad huiusmodi effectum prefixus fuit, Quo die ipso Arthuro in facie iudicii coram nobis comparente nostram curiam in defectu acti adiornalis vsque ad diem duodecimum mensis Februarii proxime sequentem continuauimus Quo die adueniente comparens coram nobis dictus Arthurus in dicta nostra curia Justiciarii dicte regalitatis de Paslay perprius indictatus et summonitus vigore prefatarum literarum demum replegiatus ut premittitur et nunc accusatus et calumniatus pro arte et parte crudelis necis et interfectionis dicti quondam Joannis Sklater asserte commisse per eundem in mense vltimo elapso Quamquidem necem et calumpniam Idem Arthurus in facie Iudicii omnino denegauit et per condignam assisam quietus inde factus fuit penitus et immunis Et hoc omnibus et singulis quibus interest notum facimus per presentes In cuius rei testimonium sigillum meum proprium vnacum mea subscriptione manuali presentibus est affixum apud Paslay die duodecimo mensis Februarii anno Domini millesimo quingentesimo quinquagesimo sexto.

ROBERTUS LORD SYMPYLL, balze.

The other two papers exhibited by Mr Martin may be thus described:—

Charter by John, Archbishop of St Andrews, primate of Scotland, *legatus natus*, and Abbot of Paisley, in favour of Arthur Maxwell, son of Gavin Maxwell in Bradyland, of the lands of Bradyland (reserving the usufruct of the said lands to the said Gavin during his lifetime), extending to a twenty shilling land of old extent, in the regality and barony of Pasley and shire of Renfrew: Held of the granter and his successors in feufarm and heritage for ever, for the yearly payment of 20s., also 18 poultry and 12 pence for the same in autumn, and one long carriage, with 2s. 6d. in augmentation of the rental in name of annual feufarm: extending in whole, besides the said poultry in autumn, and one long carriage, to

22s. 6d. Contains a precept of sasine, and is dated at the Monastery of Paisley 25 September 1567. After the date and testing clause, the Archbishop adds with his own hand that he reserves to himself and his successors the power of quarrying and leading stones from the quarries of the said lands. (Signed) Joannes Archiepiscopus Sanctiandræ. Alex. Tayt, prior. Willelmus Leper, Willelmus , Augustinus Pog , Johannes Hamyltoun, Johannes Alexander, Archimboldus Hamiltoun, Thomas Locheid, Joannes Hammyltoun, Bathcat, Joannes Hammyltoun, Lythgow, dominus Alexander Bane.

A note at the foot, signed "Hewatt," bears that the charter was produced before the Lords Commissioners at Edinburgh, 9th July 1576. And another note on the back states that it was produced by James Park, writer, and a minute thereof taken and recorded in the books of Exchequer by W. Purves, at Edinburgh, 25th March 1656.

Charter by Claud, Lord Paisley, in favour of Alexander Muir, grandson of Alexander Muir in Thruscraig, burgess of Paisley, natural son of the late Alexander Muir, son lawful of the said Alexander Muir in Thruscraig, of a tenement of burghal land, with garden, lying in the Vennel called the Burnegait of the said burgh, between the public way on the east, the tenement now of Stephen Cuming on the south, the burn called Saint Mirren's Burn on the west, and the tenement now of James Adam on the north: Reserving the liferent thereof to the said Alexander Muir in Thruscraig: Held of the granter and his successors in feufarm heritably by the said granter, and the heirs of his body lawfully begotten, whom failing, to Muir, lawful son of John Muir, burgess of Irving, brother-german of the said Alexander Muir in Thruscraig, for the yearly payment of 21 pence in name of feu farm, with service of courts. Contains precept of sasine, and is dated at the Place of Paisley 20th April 1597. Witnesses, John Lokhart, apparent of Boghall at Air, William Hamilton called of Inchmache, etc. The granter's seal is appended, nearly entire.

While there is thus nothing of special importance in the documents now exhibited, they have various points of interest about them, and I feel sure that the members will convey to Mr Martin their thanks for the opportunity which he has afforded of an inspection of them, and that they will make it known that the Society will at all times be pleased to have such documents brought under their notice. It seems to me that in this way many isolated papers of historical importance may be brought to light and turned to historical account.