

I.

AN INCIDENT AT THE ERA OF THE REFORMATION; FROM A CONTEMPORARY MANUSCRIPT. BY ALEXANDER LAING, Esq., F.S.A. Scot., NEWBURGH.

The manuscript which I am enabled to lay before the Society was found among the papers of the Flemings, Earls of Wigton. It evidently forms only a part of a process at law, at the instance of the Bishop of Dunblane, against Jane, Lady Fleming, for repayment of a loan of £250, which she refused to pay until the bishop restored to her a gold chain that she had lodged with him in security.

Apart altogether from the interest which attaches to it, from its allusion to occurrences at an eventful period in the history of the Reformation, the manuscript is interesting from the specimen it affords of the vigorous vernacular of the period, and also for the legal arguments adduced by the bishop for insisting on payment of his loan without restoration of the wed or pledge. I have caused search to be made in the records for the decision of the Court, unfortunately without success; but perhaps some of the members of the Society, conversant with the law, may be able to say whether the Bishop's pleas would be sustained by modern jurisprudence.

The Bishop of Dunblane here referred to was "William Chisholm, second son of Edmund Chisholm, of Cromlix, who was a son of Chisholm of that Ilk in Roxburghshire." He succeeded his brother James in the bishopric on the resignation of the latter in 1527, of whom it is said, "a severe censor he was of the corrupted manners of the clergy, and recovered many lands and possessions which were sacrilegiously taken from the Church before his time."¹ Bishop William's character is a complete contrast to that of his brother. Bishop Spottiswoode, in his "History of the Church of Scotland," says that he "was a wicked, vicious man, who, for the hatred he bore to the true religion, made away all the lands of the bishopric, and utterly spoiled the benefice."² We learn from Bishop Keith that he gave most of the Episcopal patrimony "to

¹ Spottiswoode's "History of the Church of Scotland," vol. i. p. 215, Spottiswoode Soc. edition.

² *Ib.*

his nephew, Sir James Chisholm, of Cromlix. He likewise gave great portions to James Chisholm of Glassengall, his own natural son, and to his two natural daughters, one of whom married Sir James Stirling of Keir, and the other to John Buchanan of that Ilk."¹ One of the consequences of this spoliation is, that there is no chartulary of the bishopric of Dunblane, and any information regarding the possessions which belonged to it can only be gleaned from scattered sources.

Notwithstanding the Bishop's character, we find him in prominent positions in the affairs both of Church and State. In 1543 he was appointed one of the Privy Council when the Earl of Arran was made governor of the kingdom on the death of James V.² He was one of three commissioners for negotiating a peace between Scotland and England; the other commissioners were Richard Maitland of Lethington and James Macgill, Clerk of Register. They met the English Commissioners at Dunse, and sat there from July to October 1556.³ And, which exhibits the sudden changes of the statesmen of that day, we find him in 1560 signing the resolution of "The Commission of Estates," to move Queen Elizabeth to take the Earl of Arran to her husband, and for establishing perpetual friendship, "he being of the lawfull blood of this realme, and failyeing of succession of the Queen, our Soverain Ladie's body, next his father, the Duke's Grace of Chastellerault, declaird be Act of Parliament, second person of the realme, air apparent to the crown."⁴ The Earl of Arran, whose cause the bishop here espouses, being the same person who he states in the manuscript, made the raid on his residence at Dunblane, "accumpanit with ane gret nowmer of horsmen and futmen upon the ix. day of November last by past, come to our said place of Dunblane, and enterit thairintill be sik force as we nicht nocht resist they brak up the duris thairof, and all coffers being thairintill sarsit, and soucht all the secret places thairof, reft, spulyeit, and away tuik at thair plesour all gudis being thairintill perteing to ws or ony utheiris, and caryit ovr awin body to Striviling, and thairefter to castell cambell presoner, and after lang sersing and seking thair apprehendit the said

¹ Keith's "Catalogue of Scottish Bishops," pp. 178-179.

² Keith's "Affairs of Church and State of Scotland," vol. i. p. 80, Spottiswoode Society's edition.

³ Ib. p. 163.

⁴ Ib. vol. ii. p. 6.

chenye with our vtheris silver, &c. . . . and sua the said chenye was be maner foirsaid reft fra ws without ony fraud or falt quhilk we ar haldin to." The bishop died in 1564.

Lady Fleming, the defendant in this action, was Jane or Janet Stewart, a natural daughter of James IV., and Agnes Stewart, daughter of James, Earl of Buchan. She married Malcom, third Lord Fleming, who was appointed Lord High Chamberlain on the death of James IV. He was possessed of large estates, and took a chief part in most of the important negotiations during the reign of James V. That monarch paid his sister Lady Fleming's tocher, which, we are told, was £400. Lady Fleming was left a widow in 1547, her husband being slain at the battle of Pinkie, as was also her daughter's husband, the Master of Livingstone.

After the disastrous defeat at Pinkie, the young Queen was removed from Stirling Castle to that of Dumbarton, and shortly afterwards to France. She was accompanied by Lady Fleming, her natural aunt, as governess, and four young maidens of the families of Livingstone, Fleming, Seton, and Bethune, well known in history as the Queen's Maries. During her residence in France, Lady Fleming became entangled in a *liaison* with Henry II. Henry d'Angouleme, Grand Prior of France, is understood to have been the offspring of this amour. Lady Fleming returned to Scotland in 1555, and took up her residence at Boghall.

Such is the history of the two actors in the plea; but the chief interest attaching to the manuscript which has called forth these notes, is the incidental allusion which it makes to the proceedings of the Congregation at an eventful period of their history. Those who are conversant with the history of the period will remember that in a skirmish which took place between the forces of the Congregation, headed by the Earl of Arran and Lord Stewart, and the French, then in garrison at Leith, "the former were almost totally surrounded in the marshes betwixt Restalrig and the Palace of Holyrood, and in that jeopardy the whole company narrowly escaped being cut in pieces; however, there were only about thirty killed and some few taken prisoners." This defeat disheartened the adherents of the Congregation, "and accordingly they all departed from Edinburgh that same day [6th November 1559] towards midnight, marching directly to Stirling, and so great was the panic that seized them

that they never halted till they arrived there. On Wednesday the 8th November Mr Knox gave a sermon to the Congregation, who, he tells us, were much erected by his discourse.¹ It was on the day after the delivery of this discourse that the raid was made on the Bishop of Dunblane, of which we have found no record in any history, or anywhere, save in the manuscript which is now laid before the Society.

[Dorso]: Copy of the Bischope of Dumblain's bill contra Lady Fleming.

Apud Edinburgh xxvij februarij anno 1559 [1560]. Ordains to ansuer to this complanit . . . Allegit the ordour is nocht gud, but suld abide the ordour of the table, th . . . ordour gud aneuch.

My Lordis of counsale vnto your lordships humlie menis and schewis William bischop of Dumblane that quhair Jane lady Fleming borrowit fra ws the som of tua hundreth and fifty punds money of this realm for furnessing of certane hir besines for the tyme in the moneth of Aprile last bipast and than promessit ffaithfully to refund content and pay the samin to ws betuixt that and the first of midsomer last bipast nixt thairefter And albeit the said terme of payment be ellis bipast and that we haif oftymes desirit pament of the said some awand to ws Nocht the les the said Lady postponis and differris to mak ws pament thairfoff without scho be farther compellit Heirfor we beseik your lordships to haif consideratioun how we ar debarrit fra the proffettis of our benefices and flemit of the cuntre quhair the samin lyis and hes na thing instantlie to leif on for vphalding of our honour That thairfour sen the said lady is present in this toun that we may haue command to ane maser to warne hir to comper befoir your Lordships at ane certan schort day as your lordships sall pleis assigne to heir hir decernit be your decretit to refund content and pay to ws the forsaid some ije L. lib money forsaid Or ellis to allege ane ressonabill caus quhy scho suld nocht do the samin with certificatioun to hir scho failye thairin your Lordships will direct Lettres simpliciter on hir to that effect or at the lest lettres to poid hir landis and gudis thairfor in form as efferis according to iustice and your ansuer humlie we beseik.

[Below the above in another hand is written]—

S. dixerit
Cathenam
spoliatam
per hostes.

Responditur, hos tantum esse hostes contra quos habemus justum bellum depredatores erant de incolis regni contra quos habet actionem. Item tenetur

¹ Keith's "Affairs of Church and State," vol. i. p. 244. Spottiswoode Soc. edition.

ad exactam diligentiam et de levi culpa quam effugere potuit, exponens huiusmodi tam facile ad probandam scilicet abscondens in horto eo tempore tantum invasionis ubi faciliter percipi potuit Nullis suis sumtibus rebus ibi repositis sed suis catheris auro et similibus alibi et tutius reconditis.

[Dorso] quarto marcis anno Domini etc. lix. [lx.]

Examinatouris Restalrig et Provand The quhilk day Jane lady Flemyng suorne and examinat Deponis that about the moneth of Aprile last bipast the deponer borrowit fra my lord of Dumblane the soum of tua hundreth pundis and fyftie mony of this realme quhilk sowme wes ressaut by William Sterk hir seruand fra master David Gourlaw seruand to the said bischop quhilkis Alexander and William at the ressait of the said money deliuerit to the said maister Daid in wed of the said money ane chenye of gold weyand xxxvj vnces and ane half of gold and than hir said seruandis ressaut the said maister Daidis writting of the ressait of the said chenye and as to the payment of the said soume agane at ony prefixt tyme sche rememberis nocht that scho promiseit to haue pait the said soume at midsomer nixt thairefter as the bill beris and forther deponis that be hir menis industrie and laubour scho hes recouerit agane of the said chenye xxj vnces ane croune wecht les and sua wantis yit thairof xv vnces and ane half and ane croune weycht And yit nochtheles is content my lord Dumblane allowed of the ij^e and L. pundis sa fer as the inlaik of the chenye extendis to pay the rest of the said soume or refoundand agane als mekle als gude gold with the fessoning thairof at the sycht of cunning craftismen scho is content to pay to him ye haill soum.

6 Marcis 1559. [1560]

My lord of Dumblane acceptit this aytht sa fer as it makis for him and in speciall hir confessioun contenit thairin of the ressait of the ij^e and fiftie pundis and siclik protestit that quhateuer scho hes deponit by the bill hurt nocht nor preiuge nocht the bishop.

Ws Williame bischope of Dumblane ansuerand to the pretendit depositioun and allegiance contenit thairintill maid be Dame Jane Lady fleming for elyding of the actioun intentit be ws agains the said lady for payment of the sowme of ij^e and fifty lib lent be ws to hir &c Berand that scho gaif to ws in ved of the said sowme ane chenye of gold quhilk is nocht füllelie restorit to hir and thairfoir can nocht be compellit to pay the said soum quhill it be restorit etc.

Primo. Sais the said allegiance is nocht relewant and suld be repellit for mony causses—first giffand that the said chenye had bene laid in wed yit scho can nocht be way of exceptioun foundit upon the nocht deliuering thairof elyd

the petition of the det Bot hes actionem pignoratitiam for repetitioun of the said wod as scho may of the law efter payment of the det.

Secundlie, we are nocht oblist to rander the said chenye becaus the samin is tint but our fraud or falt sik as we ar oblist to vpone the law be ressonne that efter ressauing of the said wod quhilk wes about the tyme of the lending of the money libellat nocht grantand the awaill thairof we did our diligence in keping of the samin as become ane diligent man vnto the day and tyme efter specifit in sa far as we keipit it in our awin place of residence within Dumblane quhair

Non exprimitur quantum auri uel argenti nec quia in eodem loco cum cathena

Item fuit in culpa non faciendo vt aliidiligentes sed non reponendo in aliquo fortalicio vbi Jocalia monasterii et sua ponebat nec sufficit posuisse tunc primum in terracum predones aduen erunt quia terra nouiter fossa se manifestat et per hoc non maiorem diligentiam fecit quam si permisisset in suo hospitio.

Item serui eius manifestabant pro conseruatione aliarum suarum rerum auri sed absconditi Juxta eundem locum intra quatuor pedes.

we remanit in propir persone haiffand thair diuers vtheris gudis with gold and siluer cunyeit and vncunyeit pertening to ws in keping etc. *And fering the inuasioun* of the Congregatioun taking and spulyeing of our place be violence we befor the tyme efter specifit causit hyd the said chenye *with vther gold and siluer pertening* to ws within the yard of our said duelling place vnder the seittis of the samin as ane place lyk as it was of veritie mair sure and mair secret to haif kepit sik thingis nor ony vther pairt of our said duelling place the quhilk being sua put in keping as our awin proper gudis and apperandlie in maist suretie and quhair it suld best eschapit the reif and spulyie of vtheris and being thair put for the samin caus the Erle of Arrane' accompanit with ane gret nowmer of horsmen and futmen vpon the ix day of nouember last bypast come to our said place of Dumblane and enterit thairintill be sik force as we mycht nocht resist quhilk company forbes being then capitane thairof vnder the said erle thay brak up the duris thairof and all cofferis being thairintill sarsit and soucht all the secret placis thairof reft spulyeit and away tuik at thair plesour all gudis being thairintill pertening to ws or ony vtheris, and caryit our awin body to Striuling and thairefter to Castell Cambell presoner and efter lang sersing and sekung thair apprehendit the said chenye with our vtheris siluer in the said place quhair it was put in keping as said is, and reft and spulyeit and away tuik the said chenye with our awin vther siluer to ane gret quantite and sua the said chenye was be maner foirsaid reft fra ws without any fraud or falt quhilk we ar haldin to and thairfoir we are nocht haldin to restoir the samin and the wanting thairof makis na exceptioun agains our petitioun.

Thridlie, nocht passing fra the allegiance aboue writtin bot vnder protestatioun that euirilk ane thairof be discussit in thair awin ordour and vnder protestatioun that gif ony of the saidis other exceptiouns be fund relevand that we be nocht astrictit to pruf the allegiance efter following, Sayis we are nocht oblist to restoir the said chenye becaus the samin was tanè fra ws be the force and violence aboue writtin at the tyme aboue specifit without ony fraud commitit be ws in the taking thairof albeit we lang befor diuers tymes efter the feist of Midsummer last bypast and efter the termes of payment of the said sowme lent be ws to the said Dame Jane requirit' and causit requyr hir in our name be our

writtingis and vther wayis to haif payit to ws our said money and to haif ressauit hir said chenye quhilkis scho did nocht and sua was in vera mora non soluendi debitum et recuperandi pignus And thairfoir the said wod being tane fra ws and reft be the violence and force forsaied at the said tyme without ony fraud of ws we ar nocht oblist to restoir the said chenye albeit we had bene slouthfull or committit falt in keeping thairof by fraud and thairfoir the said dame Janes depositioun elyde's nocht our petitioun etc.

Ansueris for my Lady Fleming to the allegiance maid be ane reuerend fader in God William bischop of Dumblane contra hir.

To the First allegiance berand that the said lady can nocht propone be way of exceptioun that the said reuerand fader aucht nocht to haif hir compellit to restoir hir ijc and fifty lib. lent money without he deliuerit again to hir hir chenye gevin to him in plege of the samin Bot suld persew be way of actioun etc.

It is ansuerit that the contrair thairof is of veritie et multo fortius si potest experiri per actionem potest vti exceptione, as alsua as geif the said lady wald requyr hir chenye agane he mycht vse exceptioun contrair hir and als hir libell war nocht relevand askand hir plege without scho libell that scho had payit the money or offert the samyn.

Secundlie, to the second it is alluterlie generall and captius and nocht relevant On naways exprimand how lang of befoir the invasioun specifit thairin the said reuerand fader causit hyd the chenye in the saittis of his yaird for gif it was than recentlie done at the tyme of the invasioun it wald manifest the self to deligent seircheouris and gif it was lang of befoir it was exposit to gret perrell And sua always it was na diligence Bot manifesta culpa saltem leuis nor yit exprimand quhat vther money or jewellis was hyd with the said chenye in that self place nor yit the quantite thairof Or that samekle gold and siluer was hyd thairwith nor that ony was hyd thairwith bot menis that thair was gold and siluer hyd in the samin saittis quhilk mycht be verifiit be litill gold or siluer and that the sam war in sindry places.

Alsua the said allegiance is alluterlie irrelevant be ressonne that nochtwithstand- ing the samin war of veritie or maist pairt thairof (as is nocht grantit) the said reuerend fader can nocht be excusit fra culpa non adhibendo exactam diligentiam pro dicta cathena custodienda ad quod tenebatur de jure et de leui culpa tenetur Be ressonne that he beand had with gret hatrant be the congregatioun and gret men thairof as he grantit yisterday in jugement and haiffand oft and diuers tymes of befoir the allegit spoliatioun of the said chenye distroyit diuers places abbayis kirkmen and places suld nocht (gif he had bene diligent)

haif lipnit nor hald in keping in the place of Dumblane sik ane Jowell as the said chenye, lyk as he on nawayis allegis that he had sik vtheris Jowellis into the said place other pertening to himself or to the Kirk of Dumblane, lyk as vtheris prelattis had transportit and lyk as him self did transport ther pretius Jowellis and principall pryssis furth of thair abbayis and duelling places to houssis of strenth, and sua levand the samin in his said dwelling place at sik trublus tymes fering invasioun of the Congregatioun As he grantis in his said allegiance was in manifesta culpa and on nawayis can excuis the samin be hyding thairof in the foirsaidis saittis in the yard Bot appeiris to be in maiori culpa makand the samin patent to euery body considering that new handillit or deluit erd wald mak manifest sum thing to be hyd thairintill Et consequenter to be apprehendit and away taking And suppois he thoct it maist sure for the tyme to hyd the samin in the said place That inferris na surenes and suppois he thoct it mair sure nor his awin place inlykwyse that inferris na surenes nor that the same was surelie and diligentlie kepit (as he aucht to haif done) and gif he couth do na better for suddante of tyme Imputatur ei qui se in tali necessitate posuit. Considering he suld haif preventit the samin, according to the occasions of feir quhilk he had of sic chانس and haiffing consideratioun of vtheris trublis and destructionis done to vtheris prelattis and kirkmen apone thair abbayis and places.

Item, vnder protestatioun nocht passand fra the allegiances foirsaidis It is ansuerit to the said secund allegiance that in sa far or gif the said chenye was takin away be the erle of errane and his company The said reuerand fader may haif actioun for the (samin) and sua may nocht vse aganis me the said secund allegiance.

And attour gevand and nocht grantand that the said chenye was takin away as said is, serchit and fund in the said place That was be help assistance and reveling of his awin seruandis quha alsua pairtit the said chenye with capitane Forbes suddartis, for quhais falt and negligence he aucht to ansuer quhilk apperandly was done for savite and conseruatioun of ane vther purs allegit had be the said Reuerand fader neirby the said place, quhair the chenye was lyk as he grantit that he had ane vther purs with gold hid neirby the samin place in presens of your Lordships and of the said ladyis procuratouris diuers tymes, quharthrow the away taking of the said chenye and negligence committit in keping thairof suld nocht be imput to the said Lady bot to the said Reuerand fader quha had the samin in keping for his securitie quhilk gif the said Lady had had in hir keping the samin had nocht bene tain away In respect of the quhilk

the said lady on nawyse aucht to mak payment of the foirsaid sowme on to the tyme that the said Reuerand fader mak hir deliuerance of hir said chenye.

As to the Third allegiance, the same is generall nocht specifand quhan he maid the said requyring quhither the tyme that scho was haille or in seiknes for it is notourlie knaun that scho was oft tymes in vehement seiknes nocht myndful of wardli purpoissis quhen dew requisitioun couth nocht be maid nor scho thairby constitut in mora And suppois scho had bene in mora solutionis that can infer na thing that scho suld nocht haif hir said chenye again scho deliuerand the lent money nocht withstanding the allegit amissioun thairof culpa ipsius Reuerendi patris vt supra.