

III.

NOTES ON "ANE INFORMATIONE," DRAWN UP BY SIR JOHN DALRYMPLE, FIRST EARL OF STAIR. BY GEORGE LORIMER, F.S.A. Scot.

The document, which, on behalf of the West Church Kirk-Session, I have now the pleasure of handing to the Society, is one of a series of papers, all referring to the same subject, which were lately discovered by me in the examination of a mass of receipts and other written matter belonging to the church, which has been slowly accumulating during the last two centuries.

I have identified it as a paper, the original of which was drawn by Lord Advocate Dalrymple, afterwards first Earl of Stair, and infamous for all time coming as one of the principal authors of the Massacre of Glencoe. There is, I think, no room for doubt in the matter, owing to the existence in the same bundle of papers of a statement of law expenses incurred by the Kirk Treasurer, Mr James Elies, in which it is specially mentioned.

Referring to it, I find the following entries:—

"Given to Sir John Dalrymple to draw ane informatione, 14. 10. 00."

"For writing 14 doubles of the informatione, . . . 4. 04. 00."

The title "Informatione for Mr James Elies of Stanhope-milnes and ye Poore of ye Paroch of ye Weste Kirk against Sir Patrick and Harie Nisbet," corresponds with the entry in the account, while that of none of the other papers would do so. The account, I may mention, refers solely to the expenses incurred in the action in question, so that it is

practically impossible to err ; but to make the matter still more certain, it so happens that no fewer than four out of the fourteen doubles, each more or less in a perfect state, have come down to us, while, of the other papers, in no case has more than one copy been found.

I have already mentioned the fees paid, and I may mention, in passing, that their amount, as well as those of other items in the account, would seem to show that, at the time, at least in matters legal, fees were calculated neither in pounds nor merks, but in dollars,—either in rix dollars, the equivalent of which, in Scots money at the time, was £2, 18s., or in leg dollars, which were worth two shillings less. Thus Sir John Dalrymple's fee is exactly five rix dollars, that paid for copying the fourteen doubles being a leg dollar and a half.

Here, perhaps, I should stop, as the "Informatione" itself, however interesting as a specimen of the style of written pleadings then in vogue, would, I fear, be found rather tedious if read *in extenso*. The matter to which it refers has, however, at least in regard to its sequel, an interest of its own quite apart from matters antiquarian, and I believe that a brief outline will not be found unacceptable.

Sir Patrick Nisbet of Dean, the defendant in the action, was a cousin of the well-known legal luminary Sir John Nisbet of Dirleton, and was descended from Henry Nisbet, who was Lord Provost of Edinburgh in the reign of James VI. He figures frequently, seldom in a creditable manner, in the West Kirk records during the last twenty years of the seventeenth century, and from these, and contemporaneous notices of him elsewhere, it seems clear that he was a man of very indifferent character. Thus in 1677, Fountainhall records that he was accused of perjury. Through the good offices of a friend, the proofs were made away with prior to trial; but his case was at the outset considered so desperate that his cousin, who was Lord Advocate at the time, privately advised him to give his accuser, Hepburn of Humbie, 4000 merks, in order to get a discharge of the process.

The dispute between Sir Patrick Nisbet and the West Kirk Session arose in this way. For seven years previous to 1680, the funds belonging to the West Kirk poor had been intrusted to the care of one Alexander Shed, a maltster in the Water of Leith. During the whole of

this period no account was rendered by him of his intrusions, though latterly it became notorious that he was heavily embarrassed, and a majority of the Kirk-Session were clamant for the appointment of a new treasurer. This was strenuously opposed by Sir Patrick Nisbet, who, supported by Mr Gordon, one of the ministers, and several of the Kirk-Session, who like Shed, were mere creatures of his own, and quite subservient to his authority, remained master of the situation, until the interference of the Bishop of Edinburgh had been sought and obtained by his opponents.

At the time Shed was heavily indebted to Sir Patrick, Sir Patrick in turn being due the West Kirk poor the sum of 2000 merks, and the reason of the latter's long objection to the production of Shed's accounts seems to have been the difficulty which he found in persuading him to agree to a scheme which he proposed for the purpose of recovering his own debt at the expense of the poor. This was ultimately carried out, and Shed, as kirk treasurer, gave Nisbet a discharge of his bond for 2000 merks, receiving presumably from him an equivalent discharge *pro tanto* of the amount due by him to Nisbet. He also, in respect of his other indebtedness, granted to Nisbet a bond over his property in Water of Leith for 4600 Lbs. Scots, whereby Sir Patrick was infest as vassal to Shed, though he himself was Shed's superior. This heritable bond was transferred to his son, Harry Nisbet. Before this could be fully carried out, however, Shed had been compelled to produce his long-delayed statement of accounts, and these showed that he was a defaulter to the extent of no less than 2500 merks, for which sum he gave a bond over the same property. In addition to these, it was discovered, on his death, which occurred shortly after, that he had granted several other obligations, and a great amount of litigation ensued, the different bondholders competing for preference.

Mr James Elies of Stenhope Mills, who succeeded Shed in the office of treasurer, lost no time in seeking to undo the evil work of his predecessor, and at once raised two different actions—the first against the Rev. Mr Gordon, Shed, and Sir Patrick Nisbet, in which he sought to obtain a reduction of the discharge of Sir Patrick's debt to the poor, which Shed, acting, it was said, in collusion with the others, had

granted; the second for the purpose of proving that the bond granted by Shed over his estate in favour of the poor should rank prior to that granted to him about the same time to Sir Patrick.

The former of these actions was soon settled in favour of the Session, and on the 22nd February 1681, Sir Patrick gave his bond for the full amount, and thirteen years later cleared it off with all arrears of interest. The discharge then granted him was a very full one, and purported to be for "the hail soumes due be him to the Kirke Session." The second action proved a much more tedious affair. Sir John Dalrymple, on behalf of the poor, as we learn from the "Informatione," took up the position that Sir Patrick Nisbet, by the very fact of his being a member of Session, and thereby a guardian of the interests of the poor, was precluded from doing anything in the way of preferring his own interest to their detriment, and, in addition, not merely brought out the fact that in the execution of the corroborative bonds which followed upon the first, had there been several serious irregularities, but even alleged that the deeds in question had been ante-dated, and were therefore fraudulent. The case was again and again before the Court until, on the 18th February 1682, it decided that, though right in point of law, Sir Patrick had used indiscreet means for getting himself preferred to the poor of the West Kirk, and therefore ordained that the poor should come in equally with him, and the maills and duties be divided equally betwixt them.

In this position the matter rested until 1687, when Sir Patrick, on what grounds I have not been able to discover, raised an action of reduction against the claims of the West Kirk poor upon Shed's lands. No papers in connection with this third action have come down to us, and no reference is made to it by Fountainhall; but I think there is very little doubt but that it was successful, and to all appearance the matter was finally settled—was indeed, so far as the actual possession of the land. It remained in the Nisbet's possession, and in the valuation roll of 1726, Patrick Nisbet, jun., is entered as proprietor of "Alexander Shed's lands" in Water of Leith, rated @ 110 Lbs. Scots.

From the pages of the West Kirk records it is easily seen that Sir Patrick Nisbet was not merely in his own opinion, but was in reality, a

man of very great importance in the West Kirk parish. On one occasion we find him gratuitously assuring the Session that he had no objections to their censuring a disorderly person thought to be under his protection; and so surprised and annoyed was he by the vigorous action taken by Mr Elies against him, that in the middle of the litigation he actually stopped him on the public highway and threatened to nail his lugs to the Tron. Times were changed after the Revolution, for the sturdy Presbyterian ministers who succeeded to the charge of the West Church were men of a different stamp from Mr Gordon; but still Sir Patrick, as the largest heritor in the parish, was a man of consequence, and some years thereafter, when one of the church members was rebuked for permitting him and another to drink in his premises during divine service, not a word is mentioned as to there being any censure meted out to the principal offender himself.

Unfortunately, Sir Patrick got into a much more serious scrape than this not long after, in the autumn of 1695. By this time he must have been a pretty old man; thirteen years previously, his son's first child was born, and giving due weight to that fact, it is rather startling to find that he was now accused apparently on very strong evidence of having been guilty of a very grave indiscretion of conduct. Into the details of the matter, it is unnecessary for me to go, but I may mention, that the party, whose name was associated with his own in the matter, was no other than the wife of the church beadle. The scandal was of course tremendous, and the promised spectacle of the principal heritor in the parish sitting in the place of public repentance, in such company, must have been eagerly looked forward to, and in anticipation enjoyed by every Mrs Grundy for miles around.

A business of such importance could, however, only be discussed in a very full meeting of Session, and it proved so very difficult to get a full meeting, that at last the case was remitted to the Presbytery of Edinburgh. Whether it was ever adjudicated upon or not, it is impossible to discover, the minute books of the Presbytery, for the time, being no longer in existence. One thing is certain, that the case is never again referred to in the records of the West Kirk. The edifying spectacle of

Sir Patrick's public repentance was destined not to be, but it must not be too hastily inferred therefrom that he escaped scot free. Alexander Shed had been dead for nigh twenty years, Sir Patrick in undisputed possession of his land for nearly half that time, while his own old debt to the Session had been finally paid but a twelvemonth ago, and a discharge, as before mentioned, then granted to him for "the hail soumes due be him to the Kirke Session." How was it then that he, just at this time, comes forward and—spontaneously admitting a liability the existence of which he had previously denied, which the Court had refused to recognise, and which, by their long silence on the subject and their recent discharge, the Session no longer insisted on—proposed to refer to arbitration, whether or not he was bound to make good the 2500 merks, due by Shed to the poor, the bond for which, by the interposition of his private claim, he had rendered worthless. This was what he did, however.

The matter was, by his consent, referred to Sir John Foulis and another, and by them decided that Sir Patrick should repay the whole sum. No easy task it was, but, at last it was accomplished, the final instalment being only paid in 1703. It is hardly possible to avoid the conclusion that this large sum of money was neither more nor less than smart money, a fine paid by the mighty laird of Dean in preference to undergoing the indignity of sitting in the place of public repentance along with the beadle's wife, and so in a most unlooked-for-way the "West Kirke poore" had their own again.