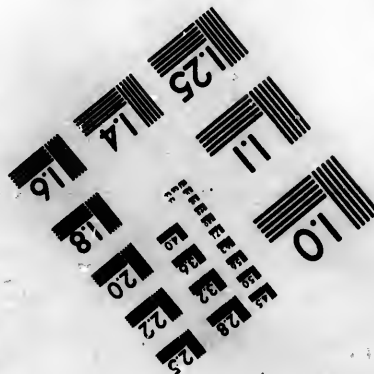
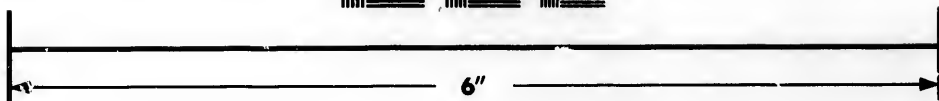
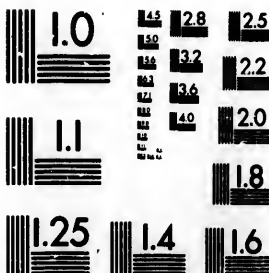


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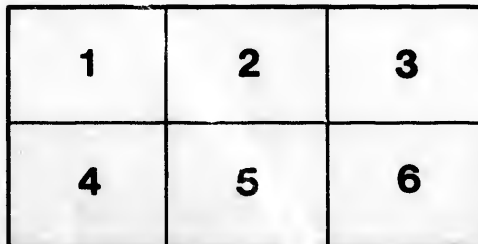
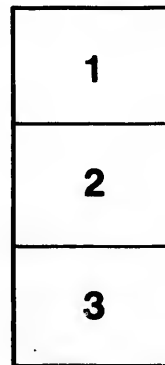
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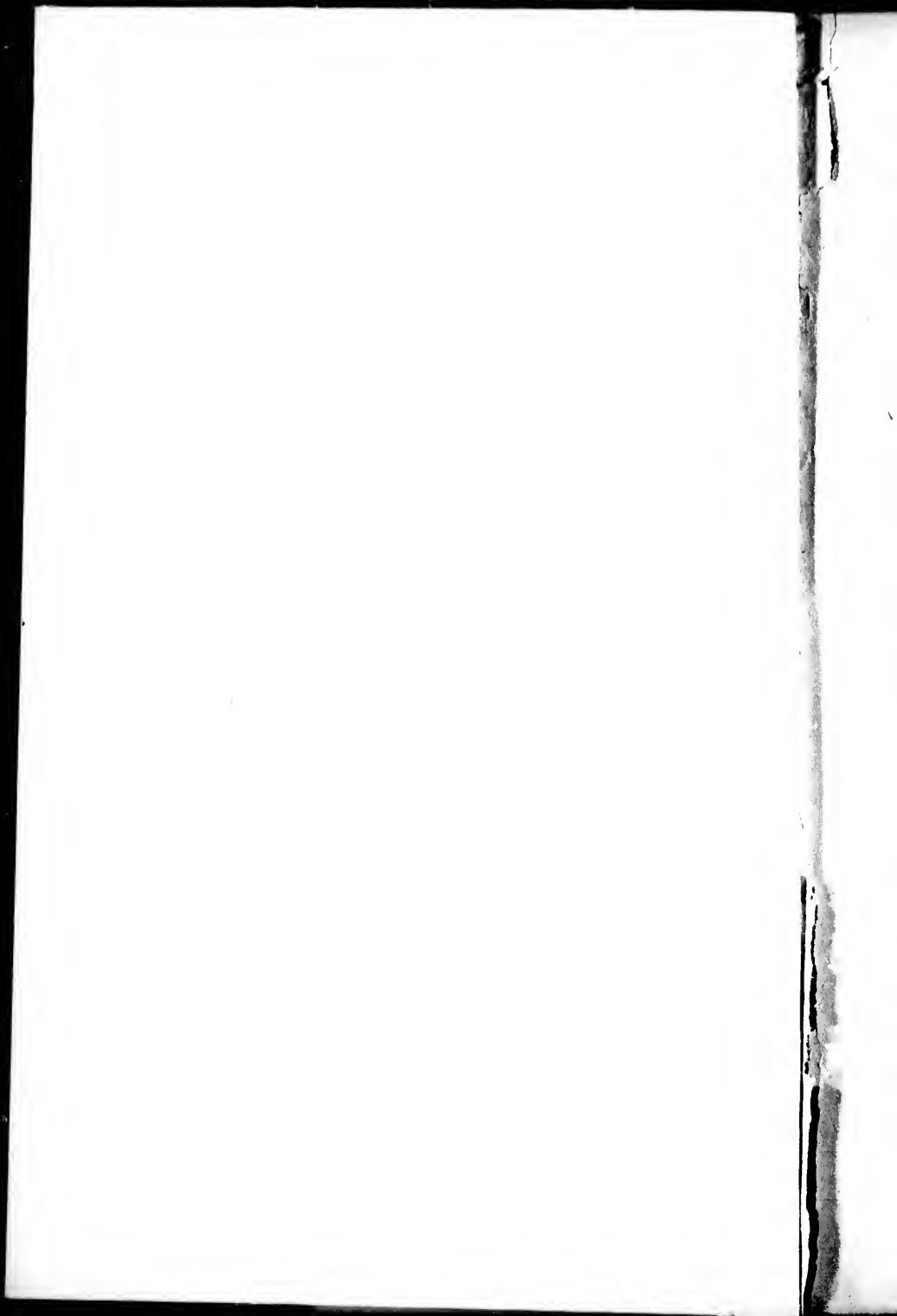
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R E M A R K S
ON
THE TRIAL
OF
THE EARL OF STIRLING,

At EDINBURGH, APRIL 29th, 1839,

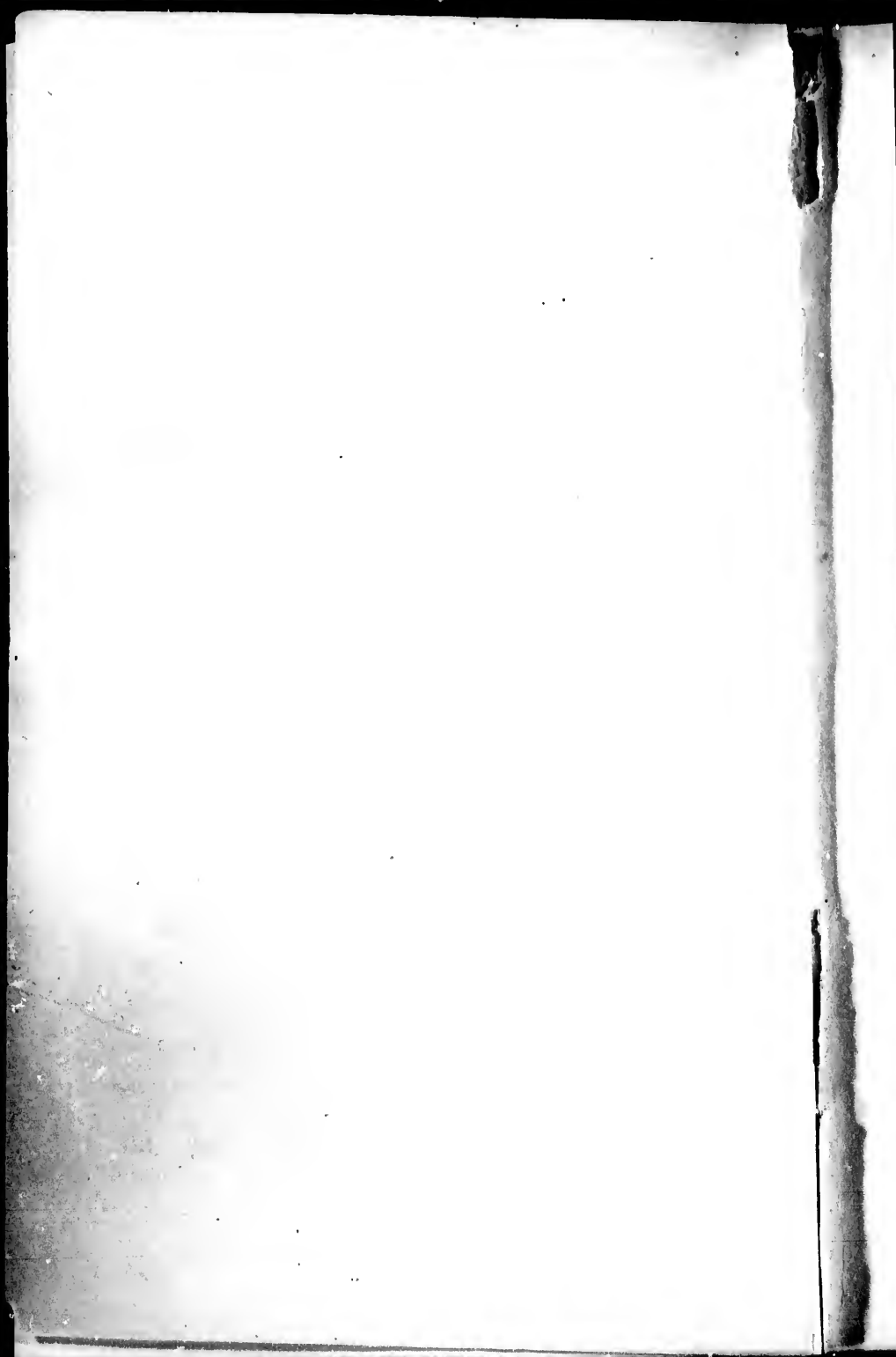
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BY AN ENGLISH LAWYER.

“ Of all injustice, that is the greatest which goes under the name of
“ Law; and of all sorts of tyranny, the forcing of the letter of the Law
“ against the equity, is the most insupportable.”—*Sir R. L'Estrange.*

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M D C C C X X X I X .



P R E F A C E.

FEW cases have excited a stronger feeling of interest in the public mind, than the one of which we are about to submit a slight review. The appearance of several works, purporting to be reports of the extraordinary trial to which it is our object to invite the reader's attention, unaccompanied, as they are, by any satisfactory explanations as to the origin of the criminal proceedings, or the actual position of the parties concerned, induces us to step forward, and set the whole matter in its proper light; feeling, as we do, convinced that the case, notwithstanding all the discussion which it has received, has been very imperfectly understood, and, consequently, that very erroneous impressions have been produced. A case,* strongly resembling the present, occurred in Scotland some years ago, and the

* That of Crawford.

party accused was banished his native country for fourteen years, but the documents were, afterwards, shown beyond a doubt to be genuine. It is hardly possible, therefore, to act with too much caution in analyzing the multitude of facts and inferences which present themselves in a case of so much nicety and complication as the present; and it is this consideration, principally, which has led us to devote some time to an examination of the evidence given upon the trial. An additional motive was supplied by the illegal and unconstitutional conduct of the Crown lawyers, and by what appears to us to be the imperfect and injudicious defence which Lord Stirling's counsel offered on behalf of his client. It is very possible that the observations which we shall feel called upon to make, will not find a ready echo. The mere fact of a man having been grossly deceived and ill-treated, too often brings down upon his head additional persecution and contempt; while wealth and power are sure to enlist the sympathy of the public on their side. Nevertheless, we shall freely lay the facts of the case before the world, and leave the decision to the impartial verdict of posterity.

R E M A R K S ,

&c. &c.

IN the following pages it will be our object to state, as shortly as possible, the history of the production of the documents alleged to be forged, and to show that there is no substantial ground for the charges which have been so lavishly brought forward against the Earl of Stirling. To take up, however, every false statement or insinuation thrown out in the course of the trial, would be as useless a waste of time as tiresome to the reader. We shall content ourselves, therefore, with answering the leading points which actually bear upon the truth or falsehood of the charge, and with a slightly notice, and in as respectful terms as possible, the irregularities which peculiarly characterized the proceedings in and out of Court.

But before entering into particulars respecting these documents, it is necessary to state a few facts which preceded their discovery.

On the 20th of December 1836, Lord Cockburn, Ordinary, after a long pleading, gave a judgment against Lord Stirling, reducing his services, in general and special, to his ancestor, Sir W. Alexander, afterwards Earl of Stirling, on the ground of the insufficiency of the evidence produced to the juries. His Lordship limited the question to two links

of descent; namely, whether Lord Stirling's grandfather, the Rev. John Alexander, of Dublin, was the son of John Alexander, of Antrim; and this John, of Antrim, the son of the Hon. John Alexander, of Gartmore. And he adds, "*The whole of the defender's case depends upon the genuineness of these two descents.*"*

We cannot, here, enter into a discussion as to the soundness of the views taken by his Lordship as to the sufficiency of the evidence before him, nor need we allude particularly to the style and temper of the note in explanation of his Lordship's reasons, which accompanied the Interlocutor. Some points it may be necessary, in the after parts of this review, to notice in connection with the case of the Crown lawyers; but, at present, we shall only observe, that an appeal to the Upper Division of the Court of Session was instantly lodged for Lord Stirling.

In April following, some documents of importance, alleged to have been stolen from Lord Stirling's father, were given up to a member of the family; and in July (same year) intimation was received of the recovery, in France, of a document of considerable importance. Applications were accordingly made to the Court of Session for a delay, in order to consider what steps should be taken before submitting this new evidence in the case to their Lordships. The appearance of these documents immediately after the decision of Lord Cockburn, has subsequently formed an argument in favour of the Crown counsel; but, without considering the utter impossibility of inventing, as well as of fabricating, such complicated and numerous writings within so short a period, it has been kept out of view, that, some months *previously* to this unfavourable decision, a

* Cockburn's note, Appendix, p. xxii.—*Swinton's Report*.

document, purporting to be the inscription upon the tombstone of John Alexander, of Antrim (the chief party in dispute), was discovered, and put in as evidence for Lord Stirling. If no new evidence had been produced for years, if no effort had ever been made by searches and enquiries to obtain further proof, this argument, without looking further, might have some weight. The recovery of this inscription was followed by an enquiry at Newtown, in Ireland, for the tombstone itself, by Lord Stirling's agent, who, in June 1836, received a letter from an Architect named Campbell, intimating that he had been employed, some years previously, to pull down the old church, and that, in the chancel, he found a part of a tombstone bearing an inscription to Mr. John Alexander. In this chancel was the vault of the family of Montgomery, Earls of Mount Alexander, and in it were buried the old Countess of Stirling; her daughter, Lady Jane Alexander, wife of Viscount Montgomery; and others of the Alexanders, who settled in Ireland. The tablets containing the inscriptions were against the walls of the church, and the architect says, the one he saw was taken down and laid in the floor of the new Court-House, and, he believes, "dressed over," to match the other stones. A Commission was granted to take the evidence of this man, and several persons of great age and competent knowledge of the parties, from former connections with the Montgomery family, to prove the existence of such tombstone. On arriving in Ireland, however, Lord Stirling's agent learnt, to his surprise, that this important witness was to give evidence for the Crown! Campbell, it appears, however, on being called upon refused to swear for either party, and Lord Cockburn ordered his letter, which had been produced in Court, to be withdrawn.

We have stepped a little out of our way in giving these particulars, but we hope they will not be uninteresting, or useless in showing the history and nature of the proceedings in the cause. We will now return to the French evidence, as being the first in importance and interest. The packet of papers received in London, through Messrs. D. Porquet and Co., had been lodged in Court, after having been opened before a Proctor and competent witnesses. Whether the precaution taken in opening the packet was considered sufficient to protect such family documents from suspicion, or if, on the contrary, their reception as evidence appeared doubtful without more confirmation, the course adopted, of putting them into Court, is now, certainly, to be deeply regretted. At present, however, the verdict of the jury removes the imputation cast upon them in the indictment, and we shall pass, for the present, from the consideration of this portion of the evidence, to show how Lord Stirling's situation became suddenly involved in uncertainty and trouble, by the unfortunate production of the map of Canada in the Court of Session.

Lord Stirling happened, at the period of the discovery of these documents, to be in Paris. He had been staying for some months in England, at the house of a friend, but though at the time in bad health, he removed to the Continent previously to Christmas, as visitors were expected.

Immediately after he received intimation of the existence of these autographs, and had been permitted to examine them, he obtained and forwarded copies to his third son, desiring him to show them to his London Solicitors, Messrs. Tennant and Harrison, of Gray's Inn Square. He did so, and requested those gentlemen to advise him as to the proper mode of rendering such French evidence legal evidence in

England and Scotland. Almost in due course of post Mr. Tennant replied, recommending Lord Stirling to get the autographs "authenticated by the highest legal authority in France, with the most minute attention to every official form."

No time was lost in obtaining the perfect authentication of the documents; and the most important, namely the handwriting and signatures of the illustrious Fenelon, Archbishop of Cambray, and Flechier, Bishop of Nismes, together with the few lines of a marginal note by Louis the XV. King of France, were recognized, and fully verified, and the signatures of the attestors duly legalized by the public authorities of Paris. Two of the most learned, eminent, and respectable men now living in that capital, Monsieur Daumon, Keeper-General of the archives of the kingdom, and Monsieur Villenave, one of the Presidents of the Historical Institute, whose collection of autograph letters, and other original documents, is the largest and most valuable possessed by any private gentleman in France, were the verifiers of the autographs alluded to upon the map.

It appears that, at this stage of the proceedings, the legal gentlemen wished the map to be sent to Scotland, with a view to consider, before proceeding further, what more was required to verify and establish it, in order to its being used as legal evidence in that country. Lord Stirling, however, does not appear to have coincided in this view of the case, otherwise than by laying the document before counsel, he having been recommended by an eminent French lawyer to return it to France, with a view, if necessary, to take some step for bringing forward the supposed owner of the autographs. The same wish seems to have been entertained by Mademoiselle Lenormand, and, at an early period, some pro-

ceedings to accomplish that object were commenced, though discontinued for want of the document itself. The map was then brought over by a son of Lord Stirling, who had been sent over to fetch it about the close of October 1837, and presented on the 25th of November to the Court of Session. This step appears to have been premature, and Lord Stirling, who looked upon such presentation to the Court as a mere form to break the seal of the cover in which it was enclosed, was surprised to learn that the Clerk of the Court had taken possession of it, and that, instead of sending the document back to France as originally intended, a commission would be applied for to Paris in order to obtain and complete any other verification. He was told that it would be imprudent, as well as impossible, to send the document otherwise, such proceeding being the *regular course according to the law of Scotland*. Thus the document, in a sort of *half-proved* state, was literally impounded.

The consequence of this hasty proceeding has been since severely felt. This course, however, having been pursued, Lord Stirling in vain demanded, from November 1837, permission to proceed to proof by commission; he was really tied hand and foot. And it is scarcely to be believed that, in any other case, an application of so reasonable a nature, an application too in conformity with the usual course of proceeding in Scotland, could have been refused by the Crown counsel. Why such a course was refused Lord Stirling it is not difficult to imagine. Had he failed to prove the document in the manner required, it would *then* have been the time, properly speaking, for proceedings against him, if the Crown thought it had any ground for so doing. They would have had an opportunity, and ought to have produced, or, as the Scotch lawyers have it, have *led*

their evidence *at the same time before the Commissioner*, trusting to their French witnesses being as bold in their declarations *at Paris*, as they were in Scotland; and the Civil Court, once fully enlightened, would have judged according to the truth. But the Officers of State took another course, and were only gaining time during eighteen months, to build up a case of a totally different description.

In the meantime, Lord Stirling, on finding the importance of ascertaining the name of the party who gave up the document, made unceasing demands for that purpose; and a course of action was recommended by eminent French counsel, for solving any doubt or difficulty about the document, which, had it been pursued, might have saved Lord Stirling from the unpleasant proceedings that followed. The true cause of the delay in this step was the want of sufficient funds for so expensive a proceeding, and also the hope that the commission to take evidence would still be granted, and that thus, under better circumstances, the advice might be more easily complied with.

It is clear that this document, which is a *French* document, never, of itself, could be judged of fairly in this country; that the conclusive proof of its genuineness could only be found in France, and that to produce it here, in the state it then was, for the judgment of persons who were strangers even to the very language in which it was written, was a most absurd proceeding. Several most eminent lawyers at the French bar have expressed themselves in the strongest terms of reprobation at the imprudence which had been manifested by lodging the documents in Court. Having pointed out the course to be followed in the enquiry, it is deeply to be regretted that his Lordship's pecuniary situation was such as to prevent their advice being pursued,

whether the commission to get the autographs proved were granted or not.

The earliest accusation made about this evidence was to the effect that a *portion* only of the note of Mallet, and a *portion* again of a letter of John Alexander, of Antrim, had been taken out, and the present writing inserted to suit this case! and that Lord Stirling and his sons had been in Paris together, and had bought the map of Canada with the autographs upon it. The reader will afterwards find in this charge a singular resemblance to another, of which we shall have to speak, both being the suggestion of the same mind. In the first place it would appear that the writings were not considered as *altogether* forgeries. The wish may, afterwards, have created the belief. A thing, however, utterly impossible was to be represented; namely, that, by some *chemical* means we suppose, several lines of writing had been expunged, and others written in their place! The *whole* of these writings are now alleged to be forgeries; at least, it is asserted that they have a most suspicious and extraordinary appearance. Yet not only were they attested as genuine by most eminent individuals, not only were they examined and approved by many friends of Lord Stirling, but his very opponents were, after the most scrutinizing examinations, ready to admit them as the good and veritable handwritings of the parties whose signatures were attached. *Now*, however, hardly an individual unacquainted with the case is to be found who does not regard them with surprise and suspicion; so *altered*, so metamorphosed have these "respectable" writings, to use an expression very frequently dropped respecting them, become. This point at present passes all understanding, for (See Apperdx, No. 12) one scientific and experienced artist who has had frequent oppor-

tunities of examining the writings since first produced, states, that the general appearance of the document is quite altered, and even the *style* of the handwriting of some parts, and that he considers no such alteration could have arisen otherwise than by design.

This brings us to consider, shortly, another point; namely, the accusation formerly directed against a document being an affidavit of one Henry Hovenden, at one time considered of great importance in the case. This document was in Lord Stirling's possession more than four years, and during the whole of that time was shown to many of his friends as a curiosity, being once in the possession of his grandfather, and as clear and distinct as any old document could be. Nevertheless, after it had been sent to Scotland to be used there as evidence in Lord Stirling's descent before several different juries, it became so totally altered, that when Lord Stirling was called up from England at the instigation of the Crown lawyers, to *abide* by his productions in March 1834, in the presence of Lord Moncrief, he could not at first recognise his own document! Of this fact all parties are quite aware. The injury done to this affidavit formed the first excuse on the part of the Crown to oppose Lord Stirling, after he had completed his titles according to law. Indeed the Officers of State do not seem to have well understood what to do to get a footing in the case, for, in a crude and careless sort of way, they charge *all the productions* in the case as forgeries, even a deposition of Lord Stirling's own living sister! Having eventually settled down upon Hovenden, they alleged that the whole, or part, of the writing of one side of that document had been taken out and altered, though it was never attempted to be shown how that could be done without injury to the signatures, and to

a writing of some length *exactly at the back*, all admitted to be *genuine*. This writing also refers distinctly to the contents of the affidavit. Yet Lord Cockburn would, on the absurd and contemptible testimony of chemical men, who, on the late trial, contradicted themselves most flatly, have passed over this document on the ground of *suspicion*, says,* “ The evidence of this charge of fabrication (which “ is not directed against the defender personally)† consists “ of the appearance of the paper, and of the uncontradicted “ testimony of Dr. Fyffe and Dr. Gregory, two chemical “ gentlemen of undoubted character and skill. The Lord “ Ordinary is very unwilling to hold this painful charge to “ be legally established, and therefore he carries the result “ no further than this, that the paper is exposed to a degree “ of suspicion which makes it unsafe to rely on this docu- “ ment.” And yet, when in consequence of the vague style of this note, the counsel for Lord Stirling recounted to his Lordship the injury that had been done to their client by this accusation, and the necessity of some decision upon the point, his Lordship, we understand, complained of being pressed, and urged in excuse for refusing to entertain it, that “ no such charge was seriously intended.” If we are to rely at all upon chemical testimony, the facts ought to be laid before these gentlemen more fully. An eminent chemist named Kempt, of Edinburgh, was consulted for Lord Stirling upon this document. We have not his opinion now in our hands, but we recollect that, at first,

* See Lord Cockburn’s note. Appendix, p. xxv.—*Swinton’s Report*.

† His Lordship seems to insinuate throughout his note, that the defender’s *ancestors* might have been the forgers! For particulars of their well-known Christian character see the sketch, appended to this work, of Lord Stirling’s branch.

being unable to account for the appearance of acids on the paper, on its being stated that the document for some time after it had been in Lord Stirling's possession was covered with a coating or crust of powder like brine, which, on being rubbed with the finger, came off, he gave it as his opinion that the whole of the appearances could at once be accounted for, either by the document having been saturated with salt water in crossing from America, or by long exposure to damp. Here then the difficulty is in some measure solved, and this latter opinion agrees with that given by various persons connected with the keeping of old papers, who state that long exposure to damp in cellars will produce the same effects. The paper then, by imbibing damp from the atmosphere, assumes different appearances, occasioned by the separation of the acids. There are, however, in this affidavit evident appearances of the application of *tests*.

The question very naturally occurs, to ask how such injury could have been effected? Whether by the application of tests privately, so as to change the colour of the inks, or whether designedly, to excite suspicion against their genuineness? However it may be, it only rendered it the more necessary that every facility should have been given to obtain more positive testimony respecting the injured documents. Why prevent Lord Stirling from doing so? No doubt these suspicious circumstances have given a colouring to the conduct of the Crown lawyers, and they have very skilfully availed themselves of them. But will any person think this a sufficient motive to have countenanced them in the previous refusal to allow the proof to be completed? If the document had been, as pretended, actually forged, no one can doubt that the efforts of the Crown lawyers in Paris for so many months to get up their case, would have been

successful. We will go further, and admit, for a moment, the possibility of the autographs being forgeries;—is it probable that such a change could have taken place in their appearance as in this instance? The writings must have remained the same now as when first produced. But it is even asserted that they are very bad and glaring forgeries. Still worse, and still more inexplicable!

It appears singular that such men as Daunon and Villenave, and many others both English and Scotch who examined *these very bad* forgeries, should have been deceived, and it is particularly striking, that each person who saw them originally expressed himself so highly pleased with their “respectable” appearance! This feeling was evidently pretty strong, or why was it represented in Paris by the industrious agents of the Crown, that Lord Stirling had not put the original documents in Court, the writings on which had been declared genuine, but had substituted an imitation,—a bad copy? Why did not the Crown prove this? This was a strange argument certainly, and used, no doubt, to shake the confidence of those who believed and attested the genuineness of the writings. We have seen, also, two sets of fac-similies—one first struck off, bearing the best representation of the document, the other a daubed, ill-got up copy, put into the hands of Villenave and others, evidently with no good motive.

The first step taken by the Crown lawyers in order to gain time after the map of Canada was put into Court, was to get fac-similies made, by making a representation to the Court that it would take only *three weeks*, and in this way *six months or more* were lost to Lord Stirling. He found himself at the end of the long vacation, from July to November 1838, with no better chance of obtaining permission to prove

his evidence than at the end of the preceding November, although the agent for the Crown had obtained copies some months before, to forward their own projects in Paris.

The first step taken by the Crown agent was to visit all the different parties whose names were found upon the document, and to offer to Mademoiselle Lenormand *any money she chose to demand*, on condition of her declaring the document a forgery: then, to proceed to M. Villenave,* and *make him the same offer*.

As these offers met with anything but a favorable reception, the agents of the Crown were obliged to turn to more complicated methods of making a case. Various charges were bandied about, for some months, without any apparently fixed design. The first assertion, that Lord Stirling and his sons were in Paris together, fell to the ground, owing to the fact of his Lordship's sons never having been in Paris with him at any time since they were children. The proof too where they were could have been instantly produced. Nevertheless, previously to the trial, when the Crown's witnesses came first to Edinburgh, they (Lord Stirling's sons) were paraded before one of these easy-minded gentlemen, who had been ready to swear to any thing put to him, in order to identify them. It is needless to say that the attempt was laughed at.

In connection with this attempt to implicate Lord Stirling's sons in the charge of forgery, let us, before going further

* In the report for the Crown, edited by Mr. Swinton, and revised by the Solicitor-General, it is said, "if the alleged autographs of these eminent men, and the note attributed to Louis XV. are, in reality, forgeries, it is not a little remarkable, that they should have been executed with such skill as to deceive several eminent French antiquarians, and, especially, Monsieur Villenave, a gentleman of the highest respectability, who possesses a considerable collection of autographs."—See *M. Villenave's Letter, Appendix No. 1 and 2*.

into the question of the French documents, make some remarks in reference to the Digbeth document, sent to Mr. Eugene Alexander, third son of Lord Stirling. In the note accompanying this packet, it is stated it was stolen from Lord Stirling's late father, Mr. William Humphrys, at the time of his removal from Digbeth-house to Fair-hill, about fifty years previously, and that the seals had never been broken. The fact of the loss of a sum of money (about £300) and various documents of importance, is recollected by many persons; among others, by Mr Corrie, of Birmingham, one of the witnesses for Lord Stirling. The robbery seems to have occasioned great grief to Mr. Humphrys, from the fact of the title deeds of an estate, belonging to his family in Ireland, having disappeared at the time. It was the more distressing, as he was the next heir to the property; which is now altogether lost to the family. The documents never could be traced, though a suspicion existed, for some time, that a clerk had stolen them at the instigation of some interested party.

A letter was published in the evidence from Mr. E. Alexander to his father. In that letter he details the circumstances attending the receipt of the papers, and the precautions he took in getting them opened before a notary. This latter step has been a sore point to the Crown party. Unable to forgive it, they used every effort, though in vain, to give the impression to the jury that Mr. Eugene Alexander must have known of these documents, and Lord Meadowbank so far forgets himself, as to assert that he considers "the son hoodwinking the father." What! does his Lordship think a young man, under twenty at the time, could get up four documents, could beautifully paint a portrait and pedigree,—although he never handled a brush in his life!—

could, *intuitively*, tell the name of the second wife of John Alexander, of Gartmore, a name hitherto unknown to the family; could make up a case that would puzzle any learned gentleman; and all that to agree perfectly well with the rest of this long and complicated case, of which, without meaning any offence, we must say it is impossible for him to understand all the bearings? Why did not the Crown, who had summoned him and his brother Charles to Edinburgh as witnesses, examine him upon this point? He was then ready to reply, and to show them another letter addressed to his brother of the same date with that to his father, detailing the same circumstances; but adding, that, but for his accidentally seeing the parchment through the slight outer cover, he should have broken the seals. This letter had been long in the hands of the agents, but not produced. How much absurd and discreditable argument might have been avoided by this simple statement! Out of what trifling errors do great evils arise!

That Lord Stirling's family should act with extreme caution is in no way surprising, after what they had previously suffered. Mr. Lockhart, the Scotch agent in the case, was in London at the period of the receipt of the packet; and, on Lord Stirling's son communicating his suspicions to him, advised him as to the course to be pursued.

So strong has been the feeling produced in the minds of Lord Stirling's family and friends by the previous conduct of the Officers of State, that the utmost precaution is used in every thing relating to the case. When the French documents were put into Court, counsel was advised to make a special application not to permit the agents, or others, on the part of the Crown, to apply to the Court for an order to inspect, or, as the Scottish lawyers say, to *borrow up* the map

of Canada, but that it should be seen and examined only in the presence of some trusty person. The grounds for this application were the unaccountable change in the appearance of Hovenden's affidavit, and the fact ascertained that tests had been applied, privately, to the documents, by steaming or heating them, thereby altering their general character. The application was made, but not listened to, on the ground that "it would not do to throw suspicion on the Officers of State." More of this hereafter.

Let us now resume the history of the production of the French documents;—Lord Stirling had been long anxious to make searches in France relative to any document which might have been carried away by the French from Nova Scotia, and which would be likely to throw some light upon the existence of the great charter of Novo Damus, about which there is now so much dispute. At present we wish merely to observe, that, in that object of searching the French archives, Lord Stirling had been urged by his legal advisers for years so to do, but owing to the expense, and the manner in which the case had been involved by the treachery of various parties, no steps whatever were taken in it until about 1836 or 1837. It was at this period that Lady Stirling wrote to Mademoiselle Lenormand to ask her advice, and whether she could recommend any one to make the necessary researches. A favourable answer was returned, and a few particulars were given, the result of which was that, on the 11th of July, 1837, the present French evidence was sent to Mademoiselle Lenormand's house. It is unquestionable that very considerable researches were made, and that a great deal of attention was drawn to the subject by that lady's exertions. The importance of the evidence in question is chiefly derived from the information given of

the family. In making the researches above mentioned, no expectation had ever existed that any particulars, otherwise than relating to the charter and possessions of the family in America, could have been obtained. What Lord Stirling looked for was some authentic account or copy of the charter of *Novo Damus*, which it is well-known in his family, and by many friends, was lost with numerous other papers, and a large pedigree of the family, from his grandmother's (widow of the Rev. John Alexander, of Dublin) house in Birmingham, at the period when a General Alexander claimed the title and property. There were, a few years ago, alive two old ladies (a Mrs. Teverill and a Mrs. Rogers) school-fellows of Lord Stirling's mother, who recollected perfectly well the disappearance of the papers. One of them was in the house at the time the discovery was made by the family. She had often seen the great pedigree, and described it to be from eight to ten feet in length, that is, about the length of the little room in which she used to sit.

It has been suggested that Mademoiselle Lenormand got the writings on the map fabricated in order to serve Lord Stirling. This is plausible enough ; but this lady's conduct in the affairs does not look very like it. Nor can we believe it possible that any party would run such a risk to serve another. On the contrary, it appears that when danger threatened lately, this lady urged Lord Stirling, in the strongest language, to send some one over to take the proceedings recommended by French counsel, in order to investigate the genuineness of the writings, and bring forward either the owner or some unquestionable proof of authenticity. And again, on each occasion that Lord Stirling's second son went over but for a few days to Paris, she could not rest unless he went with some competent person to make

inquiries and searches relative to this very document. Such conduct certainly does not look like that of a person who had fabricated the writings. Lord Stirling was, on his part, not less urgent in his demands; but the same impediment, want of sufficient resources, prevented any steps being taken until within three weeks or a month of the late trial. Consequently very little was done in a matter that, we are told, would require at least six weeks or two months, if the inquiry was regularly commenced as advised. Thus it will be seen that from unfortunate circumstances, and constant disappointment, no steps whatever were taken until too late to avert the evil that followed.

The agents for the Crown in Paris, aware of the importance of searching there, have been most active for many months past in obtaining information and documents from the public archives in that city. Immense sums have been paid for this object, and a constant transmission of papers has been going on between that place and Edinburgh. The object of these researches on the part of the Crown is clear.

We come now to the period of the trial which has attracted so much attention, the proceedings relative to which are of so suspicious and tyrannical a character. After a twelvemonth had been wasted in doing nothing, the tales got up about the new evidence, accompanied by the assurance of proof being in the hands of the Crown, had created so much suspicion in Scotland, as well as in England and France, that it became evident, unless great exertions were made, Lord Stirling would not have fair play. The refusal to allow proof in the case, and the determination, now quite clear, to swamp the case altogether by a *coup àc main*, alarmed all friendly to the family. The statements of a more powerful or richer party almost invariably obtain credit,

however untrue they may be in point of fact. Such was the case here; no one would believe either Lord Stirling or his friends, while his opponents declared they had proof to back all their assertions.

Suspicion now ripe, Lord Stirling was, on the 18th of December 1838, brought before the Court of Session to be judicially examined regarding this evidence. It became at once evident by the questions put, that the correspondence between Lord Stirling and Mademoiselle Lenormand had been violated. This was accomplished *by opening the letters addressed to Lord Stirling* in Scotland; and by means of a servant in that lady's household, who was not in good favour with her mistress, they obtained copies of letters and papers addressed to her. The girl, Melanie Fontaine, carried the letters, at night, to a watchmaker in the neighbourhood, named Villemain. This man was connected with the police, and was an agent of the Officers of State in getting up their case. It is to be regretted that Lord Stirling's counsel consented to this examination. We must say that we think he was not defended either in that, or in subsequent proceedings, so judiciously as he should have been. A certain timidity, which is ever too prevalent in Scotland when the Crown is an opposing party, and a want of confidence in the case, owing, perhaps, to the representations so publicly made by Lord Stirling's opponents, seem to have thrown a weakness over the whole defence.

As soon, however, as this was over, one of the counsel for the Crown, Mr. Cosmo Innes, hurried over to Paris, to arrange the case, for which Lord Stirling's declaration necessarily furnished them a foundation; and it was to meet particular points in that statement, that certain witnesses were brought over to Edinburgh to be arrayed against him.

We will, bye and bye, show who, and what *respectable* persons these are.

Lord Stirling was arrested on the 14th of February, 1839, upon a charge of having fabricated all the English and French documents, (*seventeen* in number) "in the house of Mademoiselle Lenormand, between December, 1836, and July, 1837." Three French witnesses were brought up to support this singularly vague and random charge, upon whose equivocal testimony Lord Stirling was committed!

The case *was still in dependence in the Civil Court*, where there had been no decision pronounced; but, for more than a twelvemonth, a successful evasion of all efforts to bring the case to some sort of trial, either by allowing proof to be taken, or by the rejection of the evidence in toto, as incompetent at that stage of the proceedings. At any rate, Lord Stirling thought himself secure under its protection, neither did his advisers apprehend such a proceeding as that taken by the Lord Advocate. It was done on his Lordship's responsibility, at least so it was said. Lord Stirling's counsel protested against it in writing, on the ground of its being "*illegal and unconstitutional*;" the case being still in dependence in the Civil Court, from which it ought not, and could not, rightly, be removed so summarily. All this, however, was disregarded. No person was allowed to approach Lord Stirling, and his own counsel were compelled to petition to see and advise him, and were refused!—the boon, be it recollected, being one which is always conceded, as of right, to a murderer or a traitor. Lord Stirling was then cross-examined two or three times during a week. Mr. Lockhart and one of his sons also were examined. Lord Stirling *was at no time confronted with his witnesses*;

they were stealthily introduced, with other parties, who were, without having a right, constantly present, picking up scraps of information for the Crown agents. The whole matter was conducted with a degree of secrecy and underhand dealing, which the most prejudiced person must consider highly reprehensible. And what attempt was made, at any time during the trial, to haul over the coals these Officers of State, for their *illegal* and *unconstitutional* proceedings? Lord Stirling was told that it could not be helped; but that a full disclosure would be made to the jury, who would be sure to disapprove of it! but when the trial came, either the courage or the memory of the advocate failed him. Lord Stirling here again, in his usual candid manner, did not hesitate to answer the questions put to him; thus, unintentionally raising arms against himself by the information he was giving, which his opponents were not slow to twist and turn to their advantage.

Lord Stirling's correspondence was also seized and examined. Without hesitation he sent his keys by the public officer; who, with his assistants, rummaged his desks and deed cases, and carried away a number of letters, and some papers. The sensation created by his Lordship's arrest, among his friends, was greatly increased by the grossness and harshness of this attempt to injure him by such means. This is about as bad as any thing that has occurred in the case. What! seize letters written unguardedly*—the letters of one friend to another! expressing private feelings and opinions, sending information or giving advice in difficulties;

* One remark here, will not be out of place. We will ask, would not these very letters alone, have fully criminated Lord Stirling, had he been guilty of dishonest practices? more particularly those notes from Mdlle. Lenormand.

which it was never intended that others should see ; and, moreover, perhaps utterly at variance with the ideas and inclination of the party addressed ! Seize these and read them, with the replies to the questions put at the inquisitorial examinations, in Court, as *evidence* against Lord Stirling ! Such a dangerous power ought to be abolished as soon as possible. In England its exercise is very properly confined to cases of treason.

If any good shall arise from this matter, it may be in regard to the questions of the *legality* of this prosecution, and thus draw attention to the absurd and dangerous powers of the Lord Advocate for Scotland, which have lately been described as “utterly repugnant to every principle of freedom,” and in no way “consonant to the spirit of a free constitution.” We are, certainly, of the same opinion. And viewing merely the illegal and unconstitutional measures in this case, the power that he and those acting under him exercise, even in the Civil Court ; judging by the extreme timidity and apprehension displayed by some of Lord Stirling’s defenders, and the perfect confidence of the opposing party, some of whom did not hesitate to represent, and openly speak of, the trial as a “mockery,” we think it quite time, for the credit of enlightened Scotland, that a check should be put upon the proceedings of Crown lawyers, particularly when the advocacy of its interests may happen to fall into the hands of persons incompetent, either in station or character, to maintain them in a respectable manner.

But let us proceed. Two French witnesses appeared at the trial to give their opinions as to the genuineness of the map and writings. We will first make some observations respecting these persons. Jean Baptiste Théodore Alexandre Teulet, Attaché aux Archives du Royaume, was the

first. To give weight to this gentleman's testimony, he came over by direction of a French Minister. This was well arranged—it gave *effect* to his evidence. He did not receive *any* reward; no, merely his expenses! Yet, by some unaccountable mistake, his friends in Paris were boasting of his splendid treatment in Scotland at the expense of the Crown, and of his receiving 2,000 francs a month, exclusive of travelling expenses, while, by the interest of Government, his salary at the Archives was going on as usual! Well might they talk of such liberality. “M. T., a man of pleasure, received every attention he could wish.”

This gentleman's testimony was very strongly given, indeed too strongly. His experience in old writing, dates from one thousand eight hundred and *thirty-three*, not *twenty-three*, as stated in some of the other reports. That his authority is not considered *quite* decisive, may, perhaps, best be shown by an extract from Swinton's Report, revised by the Solicitor-General. “It is believed that the question “regarding the authenticity of these French documents “has excited considerable interest in Paris, and the public “have probably not yet seen the close of the controversy.”* Need we add more?

Stanislas Jacobs, Engraver to the Archives, speaks chiefly to the *impossibility* of engraving the words “Premier Geographe du Roi,” after the impression had been thrown off. In his precognition, or private examination, he distinctly admitted the possibility. Had he continued in this opinion, he would have agreed with many other persons consulted on both sides, who state that, at a former period, it was a *common practice* to insert new titles in old maps; and that there is no doubt De l'Isle, like many others,

* Swinton's Report, Preface, p. xxiii.

assumed that title long before he had any patent, which merely reiterated what he had long borne. De l'Isle was appointed to teach geography to the King's son twenty years at least before getting his patent, and was on all occasions consulted by the Court. The quotation from the Crown report is here equally applicable.* The stress laid at the trial upon the insertion of these words after the map had been printed, appears to us to present the most extraordinary feature in the whole case. How it could have escaped the penetration of the counsel or the Court, that the words were probably added (long after the disputed documents were written on the back of the map) *in order to enhance its value to the chance customer*, is indeed astonishing. Such things are done every day. Lord Stirling had witnesses to disprove the testimony of these persons, and actually to engrave the words in Court if required; but they were not called.

We now come to the three notable witnesses first brought over. Legouix, Print and Mapseller, is, in fact, a hawker of maps, &c. in the street. He has a stall against a dead wall on the Quai Voltaire, upon which these articles are hung. This he calls his "shop." He has lately taken a small place on the Quai D'Orsay, where he sells gentlemen's caps and hats. He swears to selling a map of Canada like the one in process. He *may* have done so, but some persons who have made enquiry of those about him, do not doubt but he has made a mistake. He said and *insisted* at his precognition, that he sold it in one thousand eight hundred and *twenty-seven*—in Court he said it was in one thousand eight hundred and *thirty-seven*. On enquiry of the Police, we find that he is known not to be worthy of

* Preface. p. xxii.

belief, and that he is, in fact, under their surveillance. This man's name first appeared at Lord Stirling's judicial examination. A short time after, his Lordship's second son went over to Paris, with directions to ascertain who this party was; and, by the able assistance of a French lawyer, he obtained every particular respecting him. They found that he had been some time in communication with the agents of the Crown, and that a considerable reward was offered the man to go up to Edinburgh, to recognize Lord Stirling. In this part of his business he failed, and asserted that the Englishman who bought the map from him, was a short thick man, like himself, and spoke indifferent French; all which description is the very reverse of his Lordship. At his precognition, this man so confused, blundered, and contradicted himself, that the counsel were obliged to dismiss him abruptly, being unable to make head or tail of his statement. There is another circumstance which, alone, renders this man's story improbable. The map in dispute is beautifully illuminated about the title, and in all the researches made for De l' Isle's map, such another has not been found out of the public archives, where there are two of the same character in existence; which seems to point out that this copy must, formerly, have belonged, as stated, to the cabinet of the king.

There is, in some of the reports of the trial, a mis-translation of a letter from Mademoiselle Lenormand; she writes, "Seulement on a découvert l'homme du Quai, on veut le faire partir pour l'Ecosse, &c." The first "on," has been given "they," instead of "we," that is, "her friends," who, with Mr. Alexander, had found out the man, and the object and wishes of the Crown party regarding him. On the discovery of the man, Mademoiselle

Lenormand testified great joy, as it was first supposed that he was a person of importance in the business. The variety of assertions made by this man and the people about him, are almost too ridiculous to recount ; at one time he was to be authorised to put the autographs on the map, or employ persons to do so, or only a portion of them. Eventually the map was to be sold without anything on it, he was to recognise merely the map ; and Mademoiselle Lenormand, and a young student in medicine, related to her, whom she employs occasionally as an amanuensis, were to be the fabricators. And this was positively asserted to the last moment, owing to a mistake about a copy of the autographs, made in two or three days by this young gentleman for Lord Stirling, at the time the map was discovered. Consequently, on discovery of the error, the Crown lawyers, who twice altered their indictment, threw the glory of this undertaking upon his Lordship, giving him from December, 1836, to July, 1837, to accomplish it in Mademoiselle Lenormand's house. Knowing that no such fabrication (if *possible*, by the bye,) could have been accomplished where Lord Stirling then was ; they made the two following witnesses support their charge, by asserting that Lord Stirling was constantly in Mademoiselle's house, at particular hours of the evening.

First, Bobaix, (savatier, or cobbler) formerly porter at Mademoiselle Lenormand's house, swears to have seen Lord Stirling *almost every night*, until October or November, 1837! As it happens, his Lordship left Paris early in August, was *present at the election for Scotch Peers, on the 25th of the same month*, and has continued to reside in Edinburgh from that day to this. Lord Stirling brought over his landlord, an Englishman of most respectable character, who keeps an establishment for education, to prove,

by his books, when he was at home and when out; that at the time mentioned by these individuals, he was rarely, if ever, from home; and, finally, to prove what were his occupations, the books he bought for him occasionally, &c. &c,* but—and again we are obliged to notice the extraordinary management of the case for the defence—*he was not called.* Melanie Fontaine, was servant to Mademoiselle Lenormand. She had taken her into her house from pity, at the recommendation of another person. She had been dairy-maid, and employed to tend and milk the cows at the country residence of Mademoiselle, before she was admitted into her house as waiting-maid. She never behaved well, and had been suspected, at different times, of stealing money and property. Her character showed itself finally at Edinburgh, having been detected in a theft at her lodging, to prove which four witnesses were in attendance at the Justiciary Court. The clerk of the criminal agent for the Crown was instructed to *arrange* the matter, and did so. He, also, attended as a witness to prove the fact, but was not called, as this woman was not allowed to make her appearance, the Officers of State having *judged it prudent to withdraw her.*

These three *highly respectable* witnesses received 1,000 francs, or £40, a month each, for going to Scotland, besides their expenses of travelling and living cleared at a price greater than was necessary. The evidence of these parties was objected to on the ground of bribery, very ably, by Lord Stirling's counsel, but, as usual, was overruled. The Court held that £40 a month was not too much, under the circumstances, for Bobaix and Legouix, as their *business* might suffer from their absence. We should have liked to

* See the affidavit of Wm. Benner, Esq., B.A. Appendix, No. 4.

see what pretext would have been put forward if La Fontaine had been called. *She* had no business to lose.

The thieving servant-girl, or cow-driver, the cobbler, and the street-hawker of maps, may well be grateful for the treatment they met with in Edinburgh. The ladies of the Crown counsel invited them to their houses day after day, took them to the theatre, showed them about the town!—in short, nothing could equal the attention paid to these lions, whose *elegant* manners and accomplishments must have been highly gratifying. We must not forget to mention that they were all newly clothed at the expense of the Crown. One cannot but be amused at the change from their appearance in their working dresses in Paris. Enough, however, of these *witnesses*; we will now advert to other points in the case.

Stress is laid in the Crown "report," on the statement of a Crown witness, named Tyrrell, that *he*, when Lord Stirling's agent, borrowed £13,000 for him. This man was employed to represent his difficulties in a most exaggerated light, and to show that he existed upon the money borrowed through *him* (Tyrrell); it was also stated, that, besides the sum already mentioned, many thousand pounds worth of bonds were given for pictures. Of this money, scarcely as many hundreds ever reached Lord Stirling's pocket—only a portion of the money, less than half, was ever paid—and of this his Lordship was robbed at the moment of payment by the very people who pretended to supply it. The securities were given for pictures represented to be of the great masters. A sham sale took place, from which, according to Tyrrell's own account, seventeen of the best paintings had been privately removed. Lord Stirling demanded his bonds back, he could not get them; he asked

for a list of the pictures, he could not get it; nor had he ever one of them in his possession. He insisted on an account from this very man, the Crown witness, and because he would not give it he dismissed him, and commenced a suit in Chancery for an explanation of his accounts. The man became bankrupt, and the suit is to this day pending.

It may, at first, seem extraordinary how Lord Stirling happened to be so deceived; but it must be borne in mind that he was an entire stranger to those facilities for swindling which our laws afford. Having resided so many years abroad, and living in a very retired manner, on his return to England he was in a great measure off his guard. But in addition, he had the misfortune to have lawyers who betrayed him—a connivance existed, unknown to him, with these swindlers, and thus, at the moment he thought every thing fair, he was frequently overreached. Lord Stirling is not the first man that has been made the dupe of these scoundrels. How many of our nobility and gentry, placed in circumstances which should render an application to such men unnecessary, have been their victims!

But what led to Lord Stirling raising money at all? The advice of his lawyers, who pointed out to him the impossibility of managing such a case with his limited resources. It was at the strong recommendation of Sir Henry Digby (whom Tyrrell says he *introduced* to Lord Stirling) that he was employed. He represented himself as a *retired Colonel*, and even ventured to show his name in an old army list, as being; at a former period, on the staff in Jamaica! All this turned out to be false. He was born in England, on the property of one of Lord Stirling's greatest opponents, and, while acting for his Lordship, was in constant attendance at the office of their lawyers. This fellow

is then made to say that Lord Stirling represented his claims to lands in America as settled, and that he expected to gain certain properties in Scotland. There is this much of truth in this person's statement, that Lord Stirling was at one time strongly urged by others to push his claims to property in America and Scotland, but it is not his intention to disturb a single individual. What he claimed from government was a compensation in waste lands or otherwise, as most convenient.

There were, also, some reflections made upon the opening of an office in London for the sale of lands, and it is added that "*debentures*" were issued for the purpose of raising money. As this was new to us, we demanded an explanation: in reply, Lord Stirling says, he never heard of such things, and if any exist, pretending to bear his signatures, they are forgeries! Respecting the office, we may shortly say, that the obstinacy of Government in refusing, without giving any reason, to meet the application for an arrangement made by Lord Stirling, after he had completed his titles, and was by law in possession of his lands, induced his advisers to hit upon some plan for bringing the question to an issue. Government was afraid to face the case in any shape; this course was recommended, not very wisely perhaps, and never being carried out as originally intended, fell, of course, into discredit.

Another agent of the Crown is Thomas Banks, a man who, though verging on eighty years of age, is still following up his *peculiar* career with all the ardour of former days. He is a person of very low extraction, but of considerable ready talent and powerful memory, and he has got at his fingers' end, the history of most of the leading families of Great Britain. His employment in several cases

of peerage have brought him conspicuously before the House of Lords, where his conduct in the Leigh, as in other cases, drew down upon him a severe exposure from the leading counsel of the claimant. He has thus become well known to all persons connected with their Lordships' house.

Banks had been employed for some years by Lord Stirling, to whom he obtained most flattering introductions. After having acted for him for about ten years, he, in the autumn of 1834, left him, owing to Lord Stirling's refusal to supply him with the money he demanded. It appears that some years before he had been receiving money for papers and information collected by him, while travelling in Ireland and America, at the expense of his client. His extravagance was as great as his industry was unceasing in searching for evidence; and he seems to have spared no artifice that ingenuity could suggest to obtain money. Some discoveries eventually led to a coolness and unwillingness to advance the usual supplies, and the old man became an open, instead of a secret, enemy. He then set to work to review his correspondence with his unfortunate client, and he has, by erasures, by insertions, and by explanatory paragraphs, (some we have strong reasons for believing in pretty close imitation of Lord Stirling's hand) so turned the meaning and intentions of the writer, that, without having the letters in hand to detect the imposition, such interpretations would be beyond explanation. These letters, Banks, at night, generally amused himself with reading to any persons whom he could get about him, and copies of them, in this state, were sent round to different persons supposed to be particularly friendly or unfriendly to his Lordship's claims.

It was this Thomas Banks, this notorious character, that was to be seen, day after day, in the office of the Crown agents, working side by side his worthy friends, assisting them in getting up their absurd charge. Both Banks and Tyrrell *were sent for* by the Crown agents, to some of whom the former appears to be well known, he having formerly given advice of which these respectable gentlemen did not hesitate to avail themselves in bringing their action. Banks, in 1826, while writing the most hypocritical letters, couched in language of interest and affection for the family, was, by his conduct in America, giving Lord Stirling a most equivocal reputation; and there is good reason to believe, that the first abusive attack that was made in the public papers against his Lordship, on taking his title, fourteen or fifteen years ago, was from the pen of this old man.

All the difficulties of this case, all the trouble and anxieties that Lord Stirling and his family for so many years have endured, are chiefly due to the zealous exertions of these two men, Banks and Tyrrell. The Crown lawyers, to their discredit, have acted in a great measure during their opposition to this case, upon the false and treacherous information which these parties have communicated.

One cannot, then, be surprised, that when counsel offered to read Banks's letters to Lord Stirling, relating his pretended discovery of the Excerpt charter, the Crown lawyers should have objected to it; and that, as usual, the objection, in spite of remonstrance, was allowed! We cannot help noticing the remarkable fact, that incessant efforts were made to prevent Lord Stirling's proof being admitted; which we do not hesitate to say, in common fairness, could not have been refused in another case. Neither can we

shut our eyes to the fact, that the greatest part of the flimsy evidence of the Crown was liable to serious objection, nevertheless, no remonstrance could prevent *its* admission.

“ Thus hath the course of justice wheel'd about.”

To attain the one great object were these acts done in open Court, and called forth, to use the words of the Crown report, the excited feelings of the public, “ in a manner scarcely consistent with judicial decorum.”

Why did these immaculate Crown lawyers dread the reading of their agent's (Banks) letters to the jury? Did they know when Banks first produced this document, that it was a forgery, got up to deceive Lord Stirling? Why did they not prosecute Banks if they wanted the truth exposed? One thing they know full well, that Lord Stirling had been for years searching for the charter of Novo-Damus, and on receiving the excerpt of it from Banks, he instantly went up to London with his Scotch and English lawyers, *and laid it before the Lord Advocate!* Would he, would any man, producing a document knowing it to be forged, go at once, and throw himself, as Mr. Robertson cleverly expressed it, into the “ tender arms,” of the public prosecutor (the Lord Advocate)?

It seems to us very extraordinary, that after so many years of continuous proceeding in the Scottish Law Courts, this case should scarcely be understood, either by judges or counsel on either side! To the grievous mistakes made in Lord Stirling's defence must, certainly, be attributed a great deal of the injustice that he has suffered, though, beyond doubt, such mistakes must have been unintentionally made. Of what avail is it now to assert, after the trial is passed, that no one understood his case but Lord Stirling; that he

ought to have pleaded for himself? Every blunder, every false statement made, was taken up and corrected by him; why were his notes and instructions not attended to? Had prompt and *bold* interference been determined upon and persevered in, the trial need not have occupied the Court half the time it did. The duty of a counsel is to defend his client as he would himself; much more so, when the case is one of undisguised and open oppression. But we will proceed.

A serious error has been committed by mixing the Peerage question with the *only* question before the Court, that of pedigree. The judges in the Civil Court ought, from the beginning, to have confined their attention to that object; the jury in the Criminal Court had only to decide, upon the evidence brought forward, *whether the documents produced by Lord Stirling in the civil process, as evidence in support of PEDIGREE*, were or were not forged by him, or uttered by him knowing them to be forgeries. But the jury, under the direction of Lord Meadowbank, exceeded their powers, when they found the writings upon the map and excerpt charter forgeries. They were not called upon, in the indictment, to declare further, than whether the *charge* against *Lord Stirling* was proved or not proved. Thus was he most unfairly dealt with. The peerage case and status, are subjects with which the Courts Civil, or Criminal, had nothing whatever to do. The *services of heirship*, general and special, which, for more than *six years*, it has been the object of the Officers of State to reduce, were obtained upon evidence of descent from the Honorable John Alexander, of Gartmore, fourth son of William, first Earl of Stirling, and *not* under the limitations and destinations of the charter of Novo-Damus of the 7th of December,

1639, *but under the destination of the three original charters of the 10th of September, 1621, the 12th of July, 1625, (Novo-Damus of the first) and the 2nd of February, 1628; all which charters were granted to Sir William Alexander before he was raised to the peerage, and are all upon record in the register of the Great Seal.*

Under these circumstances, it was most unjustifiable and unfair on the part of these Officers of State, to rake up the excerpt copy of the charter of Novo-Damus, for the purpose of charging Lord Stirling with having fabricated it, and afterwards occupying uselessly upwards of two days of the trial, in examining witnesses, and trying chemical experiments *upon that document*, for no other object than to get it decreed a forgery; using the opportunity thus afforded them, to make the jury, the auditory, and the world in general, run away with the idea that Lord Stirling founded his claims, and had been served heir, under a charter *not upon record, and not believed (by them) to have ever existed.* The Crown lawyers and Court must have known perfectly well that the excerpt was a document used only before Sir Wm. Rae, when Lord Advocate in 1829, and in the action for proving the tenor, in the early part of 1830, being instantly and finally abandoned by Lord Stirling, the moment he was led to suspect its genuineness! It was never used in other proceedings, and *not one* of his Lordship's services was obtained by exhibiting it!

The letters of Banks to Lord Stirling and Mr. Lockhart, were convincing proofs of the manner in which it came into his Lordship's possession, and ought to have been read.

Mr. Ivory was very bitter in alluding to the general and special services of heirship. This is a subject which would take up, at present, too much time and space, to examine in

detail. It is still a question *whether the Crown had any right to attempt the reduction of those services at all, not being warranted to do so BY COMPETITORSHIP*, and having tacitly acquiesced in the propriety of all the proceedings taken to obtain them, by not interposing *at the proper time* the slightest opposition, and by having, on the contrary, allowed the royal precept for giving Lord Stirling seizin of the whole Nova-Scotian property, to be regularly sued out of Chancery. But, independently of these circumstances, one cannot help remarking how artfully and ingeniously this gentleman laboured to persuade the jury, that the same useless excerpt was the document *founded on* at these services! and that, without it, Lord Stirling had no character of heir! Now, as before stated, *the three other charters* upon record were the charters *founded on*. Four juries found Lord Stirling to be the only true heir. First, on the 7th of February, 1725, to his deceased mother, as heiress of her brother Benjamin, last heir male of the body of William, first Earl of Stirling. Second, on the 11th of October, 1830, as nearest and lawful heir in general of the said Earl. Third, on the 30th of May, 1831, as nearest and lawful heir of tailzie and provision to the same. Fourth, on the 2nd of July, 1831, as nearest and lawful heir in special to the same William, Earl of Stirling. The first and third of these services have never been challenged, and after the most careful examination of historical facts regarding the succession, separately, to the peerage and to the property, which is found to have been observed in the Stirling family, as well as in the Scotch law of descent, counsel have confirmed, by their opinions, the findings of the juries. But this instance of unfairness is not the only one of which Lord Stirling has to complain.

A remarkable example of the unscrupulous conduct of the Crown lawyers was elicited early in the trial. A scientific witness, Dr. Fyffe, was asked whether he could give an insight into the coloring of the excerpt; to which question he immediately replied, "I have seen the deed before; *from experiments that I have performed upon it*, I think the coloring proceeds from some vegetable or animal substance—organic matter." This avowal of having *already performed experiments upon the deed*, drew an exclamation of surprise from Lord Stirling's counsel, and well it might indeed! The Crown counsel looked disconcerted, and the agent who was named as the person by whom the experiments were authorized, and the document allowed to *remain two days* in Dr. Fyffe's hands, looked unutterable things, at the same time coloring to the eyes! This discovery, so openly, of a practice by no means new in this case, of tampering with the documents, and thus rendering them suspicious by their appearance, made a great impression on the minds of Lord Stirling's English and foreign friends. The matter becomes infinitely worse, when it is considered that several weeks previously, application had been made to Lord Stirling, his counsel, and some of the judges, *to have chemical experiments made on the whole of the documents*, which had been in each instance refused. In the face of this prohibition, did the Crown lawyers send the excerpt to Dr. Fyffe, as they had also done other documents, to be submitted to these chemical operations. It may be asked how could such acts be perpetrated? Because there seems to have existed so positive a conviction, that Lord Stirling, to use their own words, "was already condemned," that his trial would be a "mere mockery," that any such mischief might be attempted with impunity. Dr. Madden, another

chemical witness for the Crown, flatly *contradicted* Dr. Fyffe, and asserted that he had found the very same coloring matter in old paper which he had experimented upon, thus bringing a proof in support of the age of the excerpt. He had "found little difference between it and other paper of the same age." Dr. Fyffe is the gentleman whose testimony is so much relied on by Lord Cockburn.

We will now notice a few errors and mis-statements of other witnesses. Mr. Richard Makenzie, W. S. for the Crown, being asked if he ever knew any charter under the Scottish Crown giving lands in New England, replied, "*Of course*, I know nothing of the kind;" and Mr. Thomas Thomson, Deputy-Clerk Register, when nearly a similar question was put to him in the following words, "was New England ever held to be a parcel of Scotland?" immediately answered, "No; under a genuine Scotch Charter I should hold such a grant *pro non scripto*." This was intended to show that it was impossible such a charter as a charter of *novo damus* of 7th December 1639, could ever have existed. But what are the plain and undoubted facts? Why, that not only New England, but, also, nearly the whole of New York, Pennsylvania, and other States of the Union, were included within the boundaries of a charter, which bears date 2nd of February 1628; consequently nearly twelve years anterior to the *novo damus* in question; and by which Sir William Alexander obtained a grant of the Lordship of Canada, comprising those lands, and the vast territories now known as the provinces of Upper and Lower Canada. More information may be had by perusing the charter itself, which, we presume, Mr. Thomson will admit, is a "genuine charter," since he has the facility of referring to the record

of it in the Register of the Great Seal. It may be added, in regard to this charter, that there surely could be no just ground of surprise at "the Mainland" of New England, in other words, the lands of Sagadahoc, or district of Maine, as now called, being included in that charter, since the Earl had obtained a grant of that district in *one thousand six hundred and thirty-five*, following upon a surrender made by the Plymouth Company, by the express command of King Charles the First, who made compensation to the Company elsewhere.

In the charge to the jury, their attention is called to the use of the word "ancienne," as applied to the charter in Mallet's note and as referring to a family tradition in John Alexander's letter to the Marchioness de Lambert. We conclude that the reason the Crown lawyers did not rely on this argument was because they had ascertained its untenableness. To bring this in when too late to reply and correct to a jury, who could not be expected to understand the language, was, at any rate, very clever. Now, with great deference to the learned Judge, who animadvertes upon this use of a word, which his Lordship conceived no mortal man ever heard of being applied to a document of sixty years old, or to the tradition of a thing that happened fifty years before, we beg leave to say, and we appeal to the learned amongst that nation, where the word in its several meanings is, *as their own*, best understood, that French readers of Mallet's note, and John Alexander's letter, would see nothing improper in the term "ancienne," as it is there applied. Differing from the word "ancient" in English, "ancien" and "ancienne," are invariably applicable to old and young persons, or to things and events of *very ancient*, or of *comparatively recent*, occurrence. For

example, we might properly say, in speaking of a former deputy, or minister, or of a servant retired, "Monsieur un tel ancien député"—"C'est un ancien ministre," meaning a minister who was formerly such, but now in a different situation. "Une ancienne femme-de-chambre," or a woman who was formerly a lady's-maid. It is used when referring to things and events, not only when of very ancient date, but when ancient by opposition to what is very new or modern: thus, to Mallet, the charter was "une ancienne charte;"—to John Alexander, what he had heard verbally, in his boyhood, of the loss of the boxes of records at sea, during Cromwell's time, was "une ancienne tradition." Moreover, this gentleman, Mr. John Alexander, passed the greater part of his life abroad, and therefore, from familiarity with the language, the term "ancienne," was, no doubt, felt and used by him as it would have been by a native of France. We refer to an extract from the "Return of the Lords of Session to the House of Lords, dated 12th June, 1799,"* for some particulars relative to the accident by sea, as establishing that fact, as also other points bearing upon this case. The learned Judge also remarked† upon the statement of Caron St. Estienne, that the copy from the record of the charter extended to *fifty pages of writing* (his Lordship always said *fifty-EIGHT*;) though this appeared to his Lordship an absurdity, yet we have seen copies of charters written by lawyers or their clerks, which, though occupying but a few pages in the close small writing upon the register of the Great Seal, are extended in the copies to nearly, if not quite, as many pages, as was apparently the copy made at Annapolis, from the register of Acadia.

* Appendix, No. ii.

† Swinton's Report, p. 311.

We cannot pass another singularity. It happens that Lord Stirling's uncle, Dr. Benjamin Alexander, finishes one of his letters to his brother, dated, London, August 20th, 1765, thus:—"Please to give duty and love to "mamma, love to sisters, and *be yourself healthy and content,*" &c. The last five words struck the learned Judge as being unnatural; nay, we think his Lordship said, they looked like a translation from a foreign letter!* Verily, his Lordship must have fagged hard to pick out such holes in the case! Thus then, the "vive vale" of Horace, must appear unnatural when in its English dress. Be that, however, as it may, he certainly used the same words, "be yourself healthy and content," in several other letters, which are among Lord Stirling's family papers. The expression was in no way of unfrequent use formerly; nevertheless, with the jury, into whose minds such a multitude of confused arguments were being poured, it *might*, for a moment, have weighed.

Mr. Lizars, engraver, and witness for the Crown, being asked, whether, in his opinion, the writings were genuine, replied, that "he thought them genuine," and that they appeared to be written in "a natural hand." This gentleman was employed to take off the "inscription" from the back of the map, with the consent of both parties. Underneath was found a small note, alluding to John Alexander, which Lord Meadowbank† represented to the jury, "after its fabrication, to be a failure," and "was at first attempted to *be torn off* from the back of the map, on which it had been

* This passage does not appear in Swinton's Report, but it appears from the Preface, p. xxiv. that his Lordship was so kind as to *revise* the report of his charge to the jury.

† See Swinton's Report, p. 340.

fixed ;” there does not appear, however, any proof of such an attempt, and if it had been made, nothing on earth could have been easier than to accomplish it. His Lordship said, “ That it was so exactly covered by the inscription, that, “ although this map had been examined over and over again, “ by persons of the first skill and talent, and scrutinized with “ the most minute attention, the writing, which was thus “ covered up, escaped detection, till, *by the extreme heat of “ the Court- House yesterday, or some other cause of a “ similar nature*, a corner of the inscription separated from “ the map, &c.” Whatever might be the cause, or whatever might be the reasons for raising the inscription, we know that the corner was raised *some days before the trial* commenced, and that in Court, *the date and signature* at the foot of this note were torn off by one of the *anxious* parties who meddled in the operation.

We might go on discussing, line for line, the address of Lord Meadowbank, and extend it full “ fifty pages ;” but as we believe there exists but one opinion as to the merits and impartiality of his Lordship’s summing up, we shall merely allude to one or two more very important mistakes made by him.

“ In the course of Lord Stirling’s examination,” says Lord Meadowbank, “ he was asked, when he was first made “ acquainted with the note issued by Lord Cockburn, December the *tenth*, 1836.* ‘ Declares that he was not made “ ‘acquainted with that, (*the note*) until the month of March “ ‘or April following, except as to its general import, “ ‘which he had learned from letters addressed to him from “ ‘his own family.’ The question was repeated to Lord “ Stirling *several times*, whether he did not hear of the note

* See Swinton’s Report, p. 340.

“ of the *tenth* of December? ‘ Declares that he was not, “ ‘ and even now,’ observe gentlemen, these material words “ are used by the pannel on the 18th of December, 1838, a “ year after the productions are made, and two years after “ the date of Lord Cockburn’s interlocutor; ‘ even now,’ “ he says, ‘ he knows not anything of the particulars of that “ ‘ note.’ And again, ‘ until then (March or April) he had “ ‘ no idea as to the extent to which Lord Cockburn’s judg- “ ‘ ment was unfavourble.’ So that here,” says Lord Meadowbank, “ you have his renewed admission, after solemnly “ denying all knowledge of that judgment, that he got letters “ from his family, with a copy of the papers, of the judg- “ ment, and the note itself, in April 1837, and that then he “ perfectly understood both the nature and extent of the “ judgment of the Lord Ordinary.”

We have rarely met with such a *stretch of the imagination*, as is to be found in the whole of these arguments. The reader must know that Lord Stirling went over to Paris in December 1836, and arrived there on the *twenty-first* of that month; that, therefore, the Crown lawyers seized upon this admitted date, as proving that Lord Stirling, having heard of Lord Cockburn’s note of the *tenth*, shot over to Paris to fabricate these writings. Observe that Lord Meadowbank never mentioned to the jury *any date for this note* but the *tenth*. The reader, then, will be astonished to learn that the *real note* of Lord Cockburn did not appear until the *twentieth* of December; that that was the day by which the judgment was known; that in speaking and writing, on all occasions, no allusion is ever made otherwise than to the celebrated manifesto of the 20th of December. His Lordship keeps this date *entirely* out of view. Lord Stirling brought up his landlord to prove, by his books, that

the first application made for his rooms was on the 28th of November, consequently before any *note* was dreamt of; some days after Lord Stirling had notice that his lodging was ready for him. We must here mention, that his Lordship had been staying for some months with some friends in the South of England, where he had been for some weeks laid up from illness. Owing to visitors being expected, Lord Stirling, though in a weak state of health, resolved to leave his kind friends, and, on his lodging in Paris being engaged for him, he set out for the continent. He had announced this removal to his family, consequently no letters passed between them until he made known his arrival in Paris. It happened that, having to travel across country, his Lordship was detained longer on the road several days, by a severe snow-storm, or he would have been in Paris much sooner. The jury were told Lord Stirling *started* for Paris on the *eighteenth* of December! though they knew he did not reach the *sea-side until that day*, after a long and difficult journey across country. On the 10th of December, the Lord Ordinary (after the pleadings) "appoints the cause to be enrolled at the end of the motions on Wednesday next;" then follows a short *note*, in which, after saying "he formed an *unfavourable opinion* to "the defendant's case, in so far as the general service is concerned;" adds that "he lodges with the clerk a draft of a "proposed interlocutor, and the object of the enrolment is "to know whether either of them has anything to suggest." Then follows, on the 20th, the "*proposed interlocutor*," and the *note* attached, in which, at considerable length, Lord Cockburn gives his *reasons* for judgment. The journey of Lord Stirling, and the uncertainty of the note of the 10th, of a half dozen lines, caused his Lordship not to hear of

that production. His family, alarmed at the language and temper of *the* note of the 20th, wrote to him timidly, encouraging him with hopes of that production being soon reversed in the Upper Division; in fact, "misled" his Lordship, to use his own expression in a letter to his family after receiving the papers, "into the impression" that it was not half so strong or injurious as it was in reality. This conduct may have been injudicious, but it was certainly very natural. His Lordship, unable to get satisfactory answers to the letters he wrote for further information, desired that a copy of the printed papers should be sent to him; and then it was, after considerable delay, that he, Lord Stirling, saw, in its full force, the note of Lord Cockburn, and strongly blamed his family for not acquainting him with the real state of the case.

What added to the confidence of Lord Stirling and his family, that this judgment would be speedily reversed, was the fact that the note was represented to them, *as a reply to the "narrative" of his persecutions*, written by Lord Stirling; and on the appearance of which, his case, *which hitherto, under the most frivolous pretences, had been put off from term to term, was at once hurried on, and decided in the strong manner we have already spoken of.*

Every person who was present at Lord Stirling's examination, is perfectly aware of the embarrassment occasioned by the question of the note of the *tenth*; it was necessary at length to explain it, Lord Stirling denying repeatedly that there was any other NOTE than that of the 20th, which, in truth, was the only note likely to attract attention. Now where is the "renewed admission" alluded to by Lord Meadowbank to the jury, "after solemnly denying all knowledge of that judgment?" Why did not his Lordship men-

tion the *real* date of the note, the *twentieth* and *not* the *tenth*? The whole apparent discrepancy would then have been explained.

Again, upon the parchment packet were three black seals, all bearing the same impression—being that of a seal known to have been used by, and in the possession of, John Alexander, of Antrim. This seal was also used by the Rev. John Alexander, of Dublin, his son; from whom it went to his only surviving child, Lord Stirling's mother. At his death, previously to his Lordship's return to England, it came into the possession of her youngest daughter; and she, in 1825, at the period of Lord Stirling's return from first voting at an election of Scotch Peers, brought the old seal down, and showed it to him, and a number of friends then present, as a great curiosity. From that time to this, the seal had remained as carefully treasured up as before, and not any of his Lordship's sons, though fully acquainted with every letter and paper in their father's possession, had ever seen either the seal itself, or an impression of it. It was discovered afterwards that there was a partial impression of it in process upon a letter of one of Lord Stirling's uncles. Finding this seal to be upon some of the newly discovered documents, Lord Meadowbank would have it that some one connected with the family put it there! Yet Lord Stirling's sister attended to prove that the seal had never been out of her possession, nor ever used within her recollection, *but she was not called*. This is well known by the family; as Lord Stirling, many years ago, on first coming forward, would have been glad to have had the seal as a curiosity. The learned Judge* concluded his reflections by these words. "Nor will it escape your recollection, that the prisoner's

* Swinton's Report, pp. 338 and 339.

“ son, Eugene, in the important letter he wrote to his father on obtaining the London packet, denies the similarity of the impressions of the seal, now admitted to be identical.” We will quote *the actual words of the letter*, to show that the son could neither have denied, nor admitted, what he knew nothing of. “The parchment packet was sealed with three black seals; all the same impression; evidently my grandfather’s seals; not like those we have. I cannot describe them.” Thus, after *guessing* that they were his grandfather’s, (Mr. Humphrys’) seal, he acknowledges, that he cannot describe them—he never saw them in fact before. Where, then, is the “denial of the similarity now admitted to be identical,” by Lord Stirling, who supposes, or admitted it to be, *his* grandfather’s seal, which is a very different thing. Lord Meadowbank, we presume, does not require to be told that Lord Stirling’s grandfather, and the grandfather of Lord Stirling’s son, are not one and the same person.

The Lord Judge is severe upon the letters from Mademoiselle Lenormand found at Lord Stirling’s house, and his Lordship thinks that lady wished to avoid investigation, whereas her letters are filled with indignation and reproaches, that the investigation demanded in France is not consented to by the Court. *This is in every letter.* Lord M. says, “For these productions sufficiently demonstrate Lenormand’s anxiety to avoid investigation. ‘The documents,’ she says, ‘may turn out to be false, then why investigate?’ plainly exhibiting her own dread of the result.” In answer to this quotation, we will give the *exact words* of the letter. “Si cette carte est bonne, pour-quoi en douter? S’ils jugent le contraire, à quoi sert

* Swinton’s Report, p. 348.

“ tant d'investigations ! C'est une enquête légale devant
 “ des magistrâts, qu'il faut faire entendre sur le mérite des
 “ autographes—non des conversations.” Why, she says
 with truth, if the Crown really believes the autographs bad,
 why not declare so—why not reject them ? What is the
 object of such investigations ? It is a *legal enquiry that is*
necessary, and *not* falsehood and invention, such as the
 agents of government circulated in every direction ! pre-
 paratory to their project against Lord Stirling. She con-
 tinues, “ although, *according to them*, (the Crown lawyers)
 “ stript of your titles by the judgment of Lord Cockburn,
 “ you are not the less in my eyes a perfectly honest man ;
 “ and I sincerely hope the English government may treat
 you with kind consideration, and that the House of
 “ Lords, if there, (torn) may indemnify you for your pro-
 “ tracted misfortunes, and do justice to your demands !”
 &c. There are no such words to be found as translated by
 Lord Meadowbank, “ the documents may turn out to be
 “ false, then why investigate.”

We have taken all these quotations from the Crown
 report, as there is considerable difference here and there,
 between this and other accounts of this trial.

One word more to show the extent of Lord Meadowbank's
 imagination and ingenuity. There is a letter of Mademoiselle
 Lenormand's, in which are these words: “ as to M. T., he
 “ could have wished to be sole negociator!! Confidence
 “ ought to be discreet, and not unlimited. Beware of
 “ giving offence ; he is a *Janus*, *but to be carefully*
 “ *treated !!!*” Whom does the reader think Lord Meadow-
 bank would have M. T. to be ? Why the young good tem-
 pered medical student, M. Triboul, whom Mademoiselle
 employs occasionally as her amanuensis, having made a copy

of the documents on the map of Canada, for Lord Stirling, into whose hands this French lady refused to give the original, that it might never be out of her sight, M. Triboul is to be dragged in as an assistant in the forgery! for it is clear one or two hands could not have forged such a variety of writing. And his Lordship tells the jury, that Lord Stirling, on being shown the initials "M. T. on one of these letters," said "put him in mind of a communication he had made relative to M. Triboul." Now see," he continues,* "what is stated in the letter of Lenormand to the pannel, of the 13th of August 1838, as to M. Triboul." Then read the words first quoted. Now reader what think you? this *latter letter is another letter*, and not the one on which are the letters M. T. referred to as a memorandum by Lord Stirling! The words are, "and his attention being drawn to the letter of the 4th of February 1839, declares, that the marking on the back of it, 'Monsr. T.' is a marking by him, to put him in mind that he had received a letter from Monsieur Triboul, by desire of Mademoiselle Lenormand, communicating some similar information," &c. (respecting enquiries about Legouix.) Who then is M. T.? Mademoiselle says a *Janus!* Therefore we must be careful, at any rate we may tell the reader we have seen the letter that brought this reply, and that M. T. or rather Mr. T. is an *Englishman*, by whom Lord Stirling has been rather hardly used, and of whom Mademoiselle Lenormand had scarcely ever heard before! To those who wish to know more of M. Triboul, we can refer to the very respectable M. Villenave, whose letter is No. 1 in the Appendix.

Thus did the learned judge, as he thought, completely lead the jury to a conclusion, that, if the pannel did not forge

* p. 349.

the documents, at least he must have known them to be forged! We believe him when he says he never bestowed more attention on any case in his life. It is no easy thing to fill up with suppositions so many points, that must otherwise have spoken in Lord Stirling's favour; which, from not having been noticed by the Crown counsel, *could not* have met with an explanation previously to the learned judge's summing up. No one will forget the scene in that Court, when the crowd, unable to restrain their impatience at the constant interference to put Lord Stirling's counsel down, expressed their disapprobation; when his Lordship, flinging his arms with rage at the people, and dashing his pen upon the table among the lawyers below, threatened, that whatever was the rank or condition of the persons, "he would commit them to jail." Several times did his Lordship clear the gallery.

We have done with the Crown *Judge*, let us now bestow a little attention on the Crown *counsel*. The Jury was asked by him to consider *who was the prisoner at the bar?* and then, not being able to get over such evidence as was given of Lord Stirling's parentage and character by his friends, their attention was drawn to *reverses* of fortune, to the straitened circumstances which had obliged him to keep an establishment for education for a few years, to his after embarrassments, and his struggles against the villainies of a pack of swindlers, &c. &c. Let us in our turn ask, "who was James Ivory." The son of a clockmaker, a clerk in the office of a writer to the Signet, who, seeing some talent, pushed him on in the world. Shall we throw his parentage into his teeth as a reproach? God forbid! Yet we cannot help remarking, with what a cruel pleasure, with what a savage eagerness, men, rising from nothing,

will often put themselves forward to persecute some unfortunate individual of family, who, by accident, shall be thrown in their way, and, in a degree, in their power! Why has it been represented hitherto by the Crown lawyers in Scotland, for the purpose of mischief both in Court and *out of Court*, that Lord Stirling was a *poor, miserable, and low* man? Why did the Solicitor-General, James Ivory, sneer at the proudest act of an honourable mind? Why does James Ivory show, at all times, such an excessive zeal in the cause of the Crown, and forget *himself* in the midst of his acrimonious sallies upon another's misfortunes?

Lord Stirling's father was descended from a family as ancient as the Alexanders; they had possessed considerable estates in Ireland full five hundred years; they had a pedigree broad and long enough for any man's pride. Would Mr. Ivory disparage that? Lord Stirling is connected, by marriage, with one of the most illustrious families on the continent. His misfortunes, and the prosecution of this great claim, with the persecution attending it, have kept him and his family in an endless whirlpool of torment and trouble, far from that high situation in life to which, by right of succession and connection, they had, of course, been obliged to look. The "reverse of fortune" which changed Lord Stirling's destiny, and blighted his prospects in life, was occasioned by the French revolution, which swept away a large portion of his father's fortune, and the ungenerous and unfeeling neglect of the British government, which now so cruelly persecutes him, allowing his father, and many other worthy English, taken by Buonaparte without arms in their hands, to linger in detention, and die broken-hearted at Verdun, in France: no effort, worthy of the name, was made by the government to get these harmless

travellers released. Lord Stirling did not return until after the peace in 1815. The confusion in the family affairs, and the dispersion of much of his father's remaining property, compelled him to look to other means of existence; and we must say, that we regard Lord Stirling's conduct, in this respect, as highly honourable to him. Having obtained, in the performance of the duties which he undertook, the respect and regard of many young men, who are now filling distinguished situations at home and abroad, he need not blush at the taunts of Mr. James Ivory, the quondam clerk to a writer to the Signet, and now, God save the mark! her Majesty's Solicitor-General for Scotland.

We have already alluded to the affidavit of Henry Hoven-den. This document, as containing a statement respecting the disputed charter of Novo-Damus, was produced by the Crown lawyers, and read with Lord Cockburn's observations in his celebrated note of the *twentieth* December 1836, to the jury. At the time this note was issued there was no evidence that the subscription of Thomas Conyers was a genuine signature. That might have had an effect, Mr. Robertson observed, upon his Lordship's mind, and he had no doubt would have its effect upon the minds of the jury. The attestation written and signed by Mr. Conyers, on the back of the affidavit, is of importance. He says,* "Lord
 " Stirling's charter was trusted to his late father in trouble-
 " some times, by the deceased Mary, Countess of Mount
 " Alexander. I cannot give it up to the Rev. Mr. Alex-
 " ander, without the present Earl's consent. 20th July,
 " 1723." Mr. Robertson continued, "I am entitled now,
 " having proved Mr. Conyers's hand-writing, to read that
 " attestation by him it proves that a person dead

* Appendix to Swinton's Report, p. xxxvii.

“ above a hundred years ago, set his hand to a paper, giving an account of the charter in question.” The Solicitor-General objected to this. Having read his side of the case, he objected to Lord Stirling’s proving, by this important evidence of Conyers’s hand-writing, the truth of the disputed document. The affidavit is also signed by Baron Pocklington. Lord Cockburn, in his note, says,* “ It bears to have been taken before a person of the name of Pocklington, who (though it be not otherwise proved) was admitted by the pursuers, at the debate, to have been a Baron of the Exchequer at the time.” The same remark was made by his Lordship of another person, Jonas Percy, who attests another affidavit, “ described, *but not proved* to have been an officer of Chancery in Ireland.” Now the signatures of the parties *were admitted by the Crown to be genuine, because the proof was in process*, and, therefore, it was useless to dispute it; but his Lordship, we presume, did not see it! Now, because proof of Pocklington’s signature was not again produced in this stage, the Officers of State, who before admitted, would object upon that very ground.

Mr. Robertson argued that he was entitled to read this document in evidence, on two grounds. What he proposed to read were the two attestations of Thomas Conyers, bearing date 1723, and referring to the charter of *Novo Damus*, the excerpt of which the pannel was accused of forging. He submitted that he was entitled to refer to every thing on that paper, in order to take off the effect of the observations of my Lord Cockburn in the note, which had been produced in evidence in this prosecution. He puts the argument on a second ground, that though the attestations may

* Appendix to Swinton’s Report, p. xxii.

not prove the existence of the charter itself in a question of civil right, they will prove that in 1723 these documents themselves existed, saying that there was such a charter. "But when I am charged criminally with the guilty issuing of the excerpt from this charter, knowing it to be forged, is it not of consequence, in reference to my guilt or innocence, that I should be able to prove the existence of these documents, which refer to this very charter as existing a hundred years ago?" This appears fair enough.

The Judges retired to consult together; and Lord Meadowbank stated, "the Court is of opinion that the counsel for the pannel are entitled to prove the handwriting of Thomas Conyers, and that, if it is proved, the attestation to which it is appended, may be read, but not to the effect of proving the truth of any fact which it sets forth." Mr. Robertson. "Then I cannot read it to the jury."

Lord M. "We do not say that it may not be read, but that it cannot be read to prove a fact."

Mr. R. "It is proof that Conyers signed this attestation."

Lord Cockburn, (who, by the bye, *was one of the Judges at this trial,*) "*But not that he did so in good faith !!!*"

Consequently Mr. Robertson would not even prove the handwriting, since it was to prove nothing!

Letters were then produced from Banks to Mr. Lockhart and Lord Stirling, relative to this excerpt, but successively rejected as evidence. Mr. R. said, after the decision come to by the Court as to the letters to Mr. Lockhart, he knew those to Lord Stirling would also be rejected; but he was bound to tender them in behalf of his client, to see whether they would be objected to. Lord Meadowbank said, "the jury know their duty too well, to be in the least influenced by the apparent wish to produce any documents which

“ are held by the Court not to be admissible as evidence, “ and which are not before them !” These letters we have already mentioned as proving that Banks alone could account for the excerpt. There are other letters of his, not produced at all, which we have seen, and which would bring the matter still more home to him, did the Crown choose to prosecute their own agent. Thus will it be seen that the object of the Crown was to trace the document to Lord Stirling, and not to the person who imposed it on him !

It has been considered that the evidence produced by the Crown was decisive as to the non-existence of such a charter at the period stated. But, besides the proof given by the affidavit alluded to, of the existence, a *hundred years* ago, of such a charter, Lord Stirling possesses such a variety of information derived from distinct sources, each corresponding with the other, that it is impossible to doubt the existence of such a charter. We may say too, that this is matter of notoriety, a circumstance well known to those acquainted with the history of the family. Some persons allege that if there was not a charter, there was a patent or regrant of the Earldom, with the limitations stated in the charter ; and we have seen a note written by a most respectable clergyman named Johnston, that he had heard of the existence of such a patent from a friend of his who had seen it, and who was struck with the singular circumstance of this patent, or regrant, reciting, at some length, with the extended limitations of the title, the extent of territory granted in reward for Lord Stirling’s services to his country. There lived twelve or fifteen years ago, two old ladies, who were schoolfellows of Lord Stirling’s mother. They both recollected the loss of the documents collected by the Rev. John

Alexander, from the house of his widow in Birmingham. One was present when the loss was discovered. They both recollected the great family pedigree, on account of its being so beautifully emblazoned, and also the "re-grant" of the honors and lands, the name always given to it by Lord Stirling's mother, whose friends often heard her lament the loss of these valuable papers.

One of the strongest and most singular incidents that can be mentioned in relation to this document is the following. It had always been supposed, and the supposition has been strengthened beyond a doubt, by the discovery of some letters between General Alexander and a Mr. Trumbull, acknowledging the receipt of a number of old documents, pretended to have been found in an old box by a friend, that the agents of that gentleman, or his friend, obtained possession of the papers by bribing a servant. This was in 1759, when General Alexander was prosecuting his claim, and, as Mr. Swinton, in the Report,* correctly observes, was hesitating whether to connect himself *with John, the son, or John, the uncle, of the first Earl*. The widow of the Rev. John Alexander was then residing with her young children in the greatest retirement, having only £200 a-year. General Alexander, in his pedigree, and before the House of Lords, admits the existence of *John Alexander, of Antrim*, as a son of John, of Gartmore. This is the man most disputed by the Crown. That pedigree is proof of that point; it was made up hardly forty-seven years after his death, when many persons must have been alive who could have remembered him; and General Alexander, taking advantage of the youth of the grandsons and position of the widow after the loss of papers, adds, that he (John, of

* Preface, p. v.

Antrim) died without issue, thus cutting out the Rev. John Alexander. Now it was always stated by Lord Stirling's mother, and her old friends and school-fellows, that the widow, at this time, was urged "to put her sons forward," but the expense, and loss of papers, deterred her from so doing. The Rev. Dr. Armstrong, a distinguished and highly talented minister of Dublin, whose family were well acquainted with Mrs. Alexander, says, in his Account of the Presbyterian churches in Dublin, "Mr. Alexander inherited claims to the title and estates of this family, (the Earl of Stirling) and was engaged, at the time of his decease, in collecting the proper documents for substantiating his pretensions." Thus it remains merely for Lord Stirling to show that his grandfather was the son of John Alexander, of Antrim. Now to the point we were about to mention. A lady, who, by some mistake, put "honourable" before her name, descended from the General Alexander, rather more than thirty years ago, supposed herself to be entitled to Countess of Stirling, by virtue of the limitations of this very charter or re-grant, the existence of which is now denied. Previously to assuming the title, she employed a gentleman of considerable property to make enquiries for any descendants of the Rev. J. Alexander, some of whose papers she stated to be in her possession. This gentleman traced the widow to Liverpool, and no further; and, on accidentally meeting with Lord Stirling, while a prisoner in France, promised him, as the descendent of the Rev. J. Alexander, every assistance in the prosecution of his claim. The lady soon after abandoned her pretensions and returned to America.

Thus the existence of this charter or re-grant, first mentioned to Lord Stirling by his mother, in 1799, was con-

firmed to him beyond a doubt by this singular circumstance. The jury were told that Lord Stirling knew nothing of his claim until after his return to England in 1815! Although his right seems to have been pretty publicly known *before* that time by persons acquainted with the family.

But it is said, the Crown proved that such a charter, of that date and of that nature, could not have existed! Can their *proofs* be trusted? Some of the books are known not to be correct—others are asserted to be in the same condition. Supposing the charter should eventually be proved to have existed, how would these learned gentlemen account for it? It is a fact perfectly well known, that there are charters in existence, of which there is not the remotest proof upon record. We know of a Scotch charter having been found in the Tower of London, of which there was no account in Scotland. It would be monstrous, therefore, to trust to any proofs of the nature brought forward upon the trial, in respect to the existence, or non-existence, of such a document.

We again refer the reader to the "Return of the Lords of Session," Appendix, No. 11, for a confirmation of our statement, and to show the absurdity of relying upon the registers or records produced in evidence.

At the cross-examination of M. Herald De Pages, who brought over from Paris, for Lord Stirling, a number of original writings of Louis XV., Fléchier, and Fénelon, the following questions were put:—*

Lord Meadowbank. Did you ever read Voltaire's History of Louis the Fifteenth?

A. Yes, I have.

Q. What does he say of Louis the Fifteenth's handwriting?

* Swinton's Report, p. 103.

A. I think he says he did not spell correctly.

Q. Does he not say that he never wrote above two words in his life, and that these were "Louis" and "Bon?"

A. He may say so; but I do not recollect it.

Q. Does he not say that Louis the Fifteenth, in writing private notes to his mistresses, made use of his Secretary to write his billets?

A. I don't recollect that. I have not the work by heart. After a few more questions, Lord Meadowbank adds:—

"It is right that I should state to you, gentlemen of the jury, that though I put these questions as to the statement of Voltaire, that Louis the Fifteenth never wrote but two words in his life, Voltaire is not an author to be depended upon, and the statement may, very probably, be altogether false." To this observation is attached, in the "Report," the following note:—

"This imputation on the literary fame of Louis the Fifteenth, was referred to in the answers for the Officers of State, to the minute lodged for the defender, in the action of reduction-improbation, where it is said of the writings on the back of the map of Canada, 'They are further dignified by a note, which is gravely said to be in the hand-writing of Louis the Fifteenth, a prince who is believed to have written only two words in his reign, his own name, *Louis R*, and the word '*bon*,' as an approval of any documents submitted to him; his disapproval was marked by a line deleting the proposal, to save the fatigue of further penmanship, which, indeed, he so carefully eschewed, that even his notes to his mistresses were written by a secretary.' No passage to this effect has been found in Voltaire's '*Siècle de Louis XV.*' The statement cannot apply to the whole of the reign of

“ that monarch ; and it is doubtful whether any credit “ is to be attached to it.” This note speaks for itself. The quotation is an admirable one, as giving a good specimen of the *style*, and the correctness of the assertions made, often even in writing, by the Crown lawyers. We could give many instances—one will suffice. We have already alluded to an application having been made to have the map of Canada placed under safe keeping, so that no *private examinations* might be taken upon it ; and that it failed, as it would not do to “ throw suspicion upon the “ Officers of State.” Some months afterwards, when mischief was brewing, and the redoubtable quotation already given, was put forth, the late Lord Advocate said to the Court, by instruction, no doubt, that *they* had made an application to have the document detained on its being put into Court. This was not true ; that application was made by Lord Stirling’s agent, from fear of these gentlemen, who, at the time, and for long after, did not suppose the writings to be forged.

Such are a few of the exaggerations, misrepresentations, misquotations of dates, names, &c., which particularly characterize the speech of the Crown counsel, and the charge to the jury. No report, however, and no observations upon a report, however minute, can possibly convey to the mind that unpleasant impression, which their delivery produced in the minds of the numerous persons who crowded, each day, into the Court of Justiciary.

The efforts made on that occasion make us shudder, when we think that the happiness and existence of a whole family depended upon the chance of a jury unravelling the artful web woven for them by legal ingenuity. Every trick that could be devised was brought to bear against the

panel. Mr. Ivory spoke against time, prolonging his speculations and suspicions, his abusive attacks and indecent language, full six hours; wearying the whole auditory by his incessant repetitions, and perpetual stammering and stuttering, until he thought he had succeeded in so reducing the time which remained for Lord Stirling's counsel to plead, as to prevent his entering fully into the defence. In this manœuvre he too entirely succeeded; for Mr. Robertson, having an engagement to defend another client at Dundee, found it necessary to avoid noticing several of the most important points in the case, in order to conclude his address in time to leave the Court, and set out, at a fixed hour, for that place. *Seventeen* out of two-and-twenty of Lord Stirling's witnesses, were not called. The case was perilled, the documents sacrificed, and, but for the honesty and int'ligence of the jury, (for, in that respect, Lord Stirling was most fortunate,) the consequence of not stating other vitally important facts to them, in his excessive hurry to depart, might have been fatal to his client.

However, he found time to make a speech, but we can say nothing favourable of it, further than that it was exceedingly clever. We cannot regard it as the sort of speech that ought to have been made; and giving the learned gentleman all credit for his sincerity, we must say, with very many others who have attentively read that composition, that we think it did more harm to Lord Stirling than all the accusing, surmising, and guessing, of the Crown lawyers. In fact, a more unfortunate address, one more completely seconding the object of the Crown, could scarcely have been put together. The learned gentleman, on Mr. Ivory concluding, appears to have been quite desperate; he seemed to take every accusation to be true, and dealt out his reproaches

upon Lord Stirling's former legal advisers, among whom had been several of the most eminent men at the Scottish bar, as if they were all a pack of "blockheads." He seemed to think, that because the Crown was determined upon sacrificing Lord Stirling, because they laid down the law in such *singularly distinct* terms to the jury, that he could not do better than treat everybody, and everything, connected with the case, with contempt and ridicule; and thus, by sacrificing the dreaded case to the vengeance of the Crown lawyers, appease, in some measure, their fury. It was ill-judged at the best. The learned gentleman admitted also some points, argued by the Crown, to be true, which he need not have noticed, since he was unable, from want of sufficient knowledge of the French language, or of the particular facts themselves, to correct them. Having finished his speech, Mr. Robertson departed for Dundee, and, on arriving there, found that the case could not proceed for want of the appearance of Mr. Ivory, who was engaged on the opposite side.

We must now make some observations upon the conduct of the Crown lawyers generally, in their opposition to this case; but, before we do so, we shall take notice of a passage in Mr. Swinton's Report for the Crown. We have already quoted from that, as the authorized and approved version; the speeches of the different learned gentlemen having been revised by themselves, and the work, generally, by Mr. Ivory, now Solicitor-General, who had it in his possession many weeks.

It is admitted* in the Report, that the controversy respecting the insertion of the words "Premier Geographe du Roi" is doubtful, and not likely yet to be decided. Yet *upon*

* Preface, p. xxiii.

this point did the Crown lawyers rest their accusation of the writings being forgeries! without that they would have considered them genuine! Really, this is a pretty time to make the admission, after torturing Lord Stirling for hours at judicial examinations, after he has been thrown into prison for eleven weeks, and tried as a criminal!

We shall now proceed to touch lightly upon the proceedings which have been taken in this case generally, in order to give the reader a more just idea of the nature of this opposition.

The present action is on the part of the Crown against Lord Stirling, to reduce his services of heirship of the 7th of February 1826, 11th of October 1830, 30th of May 1831, and 2nd of July 1831. The second and fourth of these services were followed, on the 8th of the same month, by actual seizin, upon a royal precept issued out of Chancery, of the lands comprised in the charters to Sir William Alexander, (afterwards Earl of Stirling.) And it is these two services in particular which the Crown is anxious to reduce. The Crown action commenced in March 1833, being nearly *two years* after Lord Stirling *was in legal possession of his territory.*

It is worthy of remark, that, while it was alleged that this action was brought on the ground of the insufficiency of the evidence produced to the juries, Lord Stirling's agent never could bring these gentlemen to meet him in Court, except when they wanted to manœuvre for time! Years passed away in doing nothing. Every new term brought new excuses for delay, while these gentlemen, by means of their agents, were squibbing Lord Stirling in the newspapers, and gradually, by these insinuations and attacks on his private character, creating prejudice and suspicion against his case.

In no way could Lord Stirling understand the meaning of these proceedings, and his urgent enquiries were only answered by complaints of the manner in which the case was conducted by the other party. Lord Stirling's agent, a gentleman well known and highly respected by every one, was compelled to make repeated remonstrances to the principal Crown counsel. Perhaps there never was an instance in which the *interests* of the Crown were conducted in a manner so unfair and ungentlemanly. The general reply was, "*such were their orders*;" and, on one occasion, it was accompanied with a taunt that they intended *making a run upon Lord Stirling's resources*. Complaint was made to a nobleman then high in office, and now still higher in public estimation.* An apology was made, and, until he quitted office, things went apparently better.

The game playing by the Crown now became evident. The object of their action was to exhaust Lord Stirling's means, while, by extrajudicial measures, through the medium of their agents in London, they expected *to bring him down*, and thus get rid of him and his case. The stories circulated about his evidence, were as a blind to screen them from the odium of such a proceeding. Had there been the slightest truth in them, Lord Stirling and his claims would have been crushed instanter. It is well known that the Crown's right to interfere in the manner they have done, has been denied, and is still denied; and it is extremely doubtful, if, in another case, this pretended right to oppose Lord Stirling, after completing his titles, would be allowed. A competitor only, if able to show a better and preferable title, should have been permitted to attempt the reduction of these services. That the Crown lawyers felt their weakness in this respect, is

* Lord Stanley, then Colonial Secretary.

evident from their proceedings at an early stage of the case. If they thought the evidence insufficient, they might have defeated the case years ago! What is the actual question between Lord Stirling and the Crown? Is it really whether the evidence produced be sufficient? or is it the question, how can that evidence, which to four juries was satisfactory, be reduced and destroyed?

But the Crown representatives in Scotland have said, lately, that they should not have brought this action at all, but for Banks, and Lord Stirling having made him a Baronet! Why was this done? Lord Stirling's offers of arrangement and compromise with government had been continually frustrated. He was advised to try the question, first, by this proceeding. He and his friends at that time believing in Banks's respectability and sincerity, thought no one more worthy to try the question than he. The conduct of Banks, however, was, at it now appears, continually opposed to any arrangement. He was ever exciting the animosity of the government and its supporters against his client. The result has been, that the whole blame of this man's conduct, and all the imprudent steps taken in the case, have been laid at the door of Lord Stirling. All the hatred and vengeance of the defenders of the Crown's interest, have been directed against the man who has been—perhaps with their knowledge—deceived!

Banks brought an action against the Officers of State, called an action of *declarator*, to compel the Crown to acknowledge the resignation made to him. They alleged that this action gave them a footing in the case,* and, accordingly, they commenced one against Lord Stirling, in the meantime sisting Banks's action until that was decided.

* The probability is, that this was a concerted plan.

This was the strongest argument on their side, but it in no way clears them of the disgrace which attaches to their conduct in this case. And after Lord Cockburn's celebrated note of the *twentieth* of December 1836, the Officers of State applied for Banks's action to be withdrawn; and, in July following, the judges gave the necessary order. Strictly speaking, the action against Lord Stirling, *which was founded upon the former*, ought also to have fallen to the ground by this step of the Crown lawyers; but, though the junior counsel in this case, Mr. Adam Anderson, was clearly of that opinion, the senior counsel, unhappily, took a different view of the case; and it was argued in reply, that it would appear like weakness and want of confidence in the case to attempt it! Thus Lord Stirling, who might have been freed from this eternal action, and left to take more judicious and effectual measures for the success of his claims, being of course obliged to defer to his counsel's opinion, remained exposed to the tender mercies of the Crown lawyers.

Distressed beyond measure by the delays always taking place, and seeing the hopelessness of bringing his opponents into Court, Lord Stirling consulted several of his friends, and, upon their advice, he prepared a narrative of his case for publication. Without entering into a consideration of the prudence of this work, it is sufficient now to say, that the exposures contained in it were such as to create the utmost rage, and increase the animosity and prejudice already existing against Lord Stirling. The cause, hitherto so timidly viewed by the Officers of State, was instantly hurried on, while the impression caused among the supporters of Government gave them courage and confidence in the result. But did they expect so triumphant a

judgment as the one they got? The learned Judge's note appeared, and, as a pleading, we do not hesitate to say, it was extremely ingenious. Had his Lordship been counsel instead of judge in the cause, the errors into which he fell might have been corrected. His Lordship would have seen, what the Officers of State saw, and therefore admitted, that the proof of Pocklington being a Baron of Exchequer in Ireland, and Percy an officer of Chancery, was in process. Neither would his Lordship have said that the affidavits were "not alleged to contain the statements of any member of the family," but of "mere strangers, of whose cause of knowledge we know nothing." Yet the affidavits bear to be made by the woman who nursed John Alexander, who lived twenty years in the family, and knew the family for many more years, and by Mr. Hovenden, a gentleman of property, who was employed on account of his "intimacy" with the Rev. John Alexander, to apply to Mr. Conyers for the charter. Can nothing else be said of the testimony of these "*strangers*," than that the "prospective manufacture of evidence, in the form of written statements, calculated to establish particular facts, are only rendered the more suspicious, by their being made to assume a judicial appearance?" This argument will apply to all the evidence in the world. "These documents, and much of the other evidence in this case, show that somebody was uneasy about this pedigree, even in 1722, and was trying to correct its defects!" Unable to get over the difficulty of the genuineness of these documents, which even the chemical testimony could not shake, his Lordship would have it that the Rev. John Alexander, the man who, of all others, bore the best of characters as a Christian and a gentleman; who, unfortunately for this argument, was particu-

larly distinguished and revered for his piety; must, at the time, 1722, when the thing would instantly have been detected, have got up these documents, *in order that his grandson*, the present Earl, should make use of them to establish his own particular case. But why did the Rev. John Alexander get the affidavits drawn up? For the simplest of reasons. Because, as every one very well knows, in the civil wars in the north of Ireland, the Papists, as they were then called, made a point of destroying all the registers and documents of every description belonging to Protestants, that they could find; so that, even at that time, being about thirty years after the last rebellion, there was not a register to be found over that part of the island.

Again, his Lordship is very hard upon the tombstone inscription. He says "even Lyttleton's handwriting is not proved." There is no such handwriting upon it. The inscription is neatly *printed*, and it is said Mr. Lyttleton, an eminent solicitor near Birmingham, did it for the young Rev. John Alexander. Evidence was taken of the former existence of the tombstone. We have already spoken of the architect's, (Charles Campbell,) letter to Mr. Lockhart upon it, and his after refusal to give evidence. An old woman named M'Blain had heard of this tombstone between forty and fifty years before. This person had been in the Montgomery family when young, she is now nearly ninety. and to persons who have patience to listen to her, she has an unceasing fund of anecdote to relate of this family and the Alexanders. She says her husband, a builder, saw the stone broken. "But this evidence is disproved." How, may we ask? "James Dalzell and David Dalzell, stone cutters, never saw it." His Lordship forgot their ages, the one was thirty-five, the other forty-six! Mr. Cassidy, a

clergyman, could speak to twenty-seven years! "It is true
" that his twenty-seven years takes us back to the year 1808,
" and that M'Blain spoke of part of the stone as standing
" in 1792. But Mr. John Turnly and Margaret M'Cully go
" back each to the year 1765, *when they were born!*" These
parties and very many others may not have seen the stone,
but Campbell found it while taking down the church, and
it is stated elsewhere that it was taken down and buried by
the agents of General Alexander in 1759. We might go on
thus ad infinitum. But the "uncontradicted" chemical
testimony seemed to have been originally the ground-work
and chief support of the Crown case. The plan of applying
chemical tests to old writings, (particularly after they have
been injured) appears to be the novel invention of the present
Officers of State, who, from the beginning of the action,
seem to have been unable to meet this case on any *rational*
ground. We have already noticed with deserved contempt
this kind of testimony, and that, at first, all the documents
produced, even a deposition of Lord Stirling's own living
sister, were charged as forgeries! Nothing proves more
clearly the fact that the charge was made at random for the
sake of saying something.

In Scotland the law of evidence is not so strict as in
England, and we cannot but be struck with the fact, that
where the former was found not to fit the object of rejecting
Lord Stirling's evidence as inadmissible or incompetent,
the custom and law of the latter country was always called
in and quoted. The Crown seemed resolved to be satisfied
with no evidence that could be produced.

It was argued, that affidavits could not be received as
evidence; but the celebrated Andrew Skene was of opinion
that the affidavits in this case, being *ancient documents*,

were receivable and good evidence. The evidence of several witnesses was treated in much the same way. Cruise on Dignities,* says, in regard to evidence led in England, "Hearsay evidence, though not generally admitted in other cases, is received in support of a pedigree, because the exclusion of such evidence, in cases of this kind, would prevent all testimony whatsoever.....there is no other way of knowing the evidence of deceased persons, than by the relation of others of what they have been heard to say." Mr. Justice Buller was of the same opinion, and extended it even to persons not of the family.

Lord Kenyon differs from him, unless the person lived "in habits of intimacy" with them. Lord Erskine was also of the same opinion, and observed that "in cases of pedigree, therefore, recourse was had to a secondary sort of evidence, the best the nature of the subject will admit, establishing the descent from the only sources that can be had."

"It has always been held," says Cruise, "that direct and positive proof of the fact of marriage is not necessary in cases of pedigree;" yet, in this case, do the Officers of State insist upon *proof* of a marriage which took place in the North of Ireland in *one thousand six hundred and forty*, between which period and 1722, when the Rev. John Alexander was "*uneasy*" about his proofs, owing to the death of all his cousins, one after the other, without issue, there had been *two* civil wars, in which historians *particularly* mention the destruction of the registers as a grand object of the rebels! This is, in fact, to demand what they know cannot be got, under pretence that, in a case of such importance, a "point must be stretched." There is another *mode of action* on the part of the Officers of State which is highly repre-

* Cruise, pp. 239, 240.

hensible, and, what makes it worse, was adopted at the very outset of the case; we allude to a system of detaining the documents in the hands of the Officers of Court, so that neither Lord Stirling nor his agents have it in their power to use or *borrow up* their own documents, which, probably, while the Court was not sitting, they would be inclined to do, from a desire of their greater security. The all-powerful Officers of States had access every where with greater facility than any other party. The documents lodged, as it were, in their own hands, are in a degree at their mercy. Their applications have always been granted in spite of opposition, and now, at the end of the case, (so far as Scotland is concerned) they renewed their demand for the documents to be detained in the hands of the Court, which was granted! Several of the most important documents have clearly been "*tested*," to use the mildest term.

After the criminal trial, towards the end of last June, a note was put into Court in reply to a demand by the Officers of State for the enrolment of the cause for a final hearing and decision in the Civil Court, stating, that as the verdict of the jury cleared a portion of the documents charged to be forged, the Court was bound either to receive them as evidence, or give directions for further proof to be led respecting them; that, moreover, for reasons stated, the counsel in the case could not be prepared so soon. The first points, though most important, were *entirely overlooked*, and a day fixed for the hearing. Lord Stirling was advised, accordingly, to take no step; and the Court, by form, confirmed the judgment of Lord Cockburn. The case thus goes by appeal to the House of Lords.

But why did the Crown lawyers renew their application for the detention of the document? what right had they to

prevent Lord Stirling possessing himself of the map of Canada? They knew very well that the map had been demanded, and would be sent back to France to have proper steps instituted to ascertain its genuineness; what right had they at all to detain that document after the judgment of the jury? Why was the application granted without asking whether Lord Stirling's agent or counsel had anything to say in objection? Such things as these are *never done in any case*, it is out of all common practice, and unnecessary under any circumstances; but here, evidently to put Lord Stirling to a disadvantage, to keep his documents within their own reach, "to deny and resist," as a minister expressed it, his claims, old rules were put aside to please the powers that be. Such has been the prevailing spirit of this opposition, such the conduct of those who uphold the interest and respectability of the Crown!

Mr. James Ivory, now Solicitor-General, has been the chief adviser of the Crown throughout the case. This gentleman has shown himself extremely unfavourable to Lord Stirling; the more so, because his Lordship was advised to make bitter complaints a few years ago, to the late Lord Advocate, of the manner in which the Crown case had been conducted in Scotland. There is a striking similarity in the charges brought against the documents first produced in the case in 1833, and those lately produced. The accusation in both instances was, at the first, that a *portion* of the writing had been taken out *chemically*, and other lines inserted to suit the case; showing, most strongly that the charge was brought without in the least knowing how to support it, and that it was the suggestion of one mind, bent upon, and zealous for, the defeat of the case at any cost. That the decision of the jury was a most *bitter* disappoint-

ment to several of the opposing party, has been particularly evident; and of *this*, the gentlemen who composed that body *were not left unacquainted*.

The working counsel for the Crown, latterly, was an advocate named Innes. This gentleman displayed an excessive zeal throughout the criminal proceeding, and his extreme, and somewhat ludicrous, anxiety during the trial, could not pass unobserved. As it happened, however, less was said about the Paris journey and witnesses than might have been. His profound knowledge of certain historical facts, hitherto unknown beyond the satirical effusions of some libellers of royal talent, and *some not even there*, (see note p. 188, Crown Report, already quoted) must be duly appreciated by every lover of truth. Had this gentleman confined his labours to such puzzle-brain work, all would have been well; but ambition led him on to visit Paris, in order, at that seat of learning, to obtain the materials which he fancied would blow Lord Stirling and his case to atoms; while as a second, or rather leader, (for he, poor man, was a non-entity in that part of the intrigue,) he had the zealous and able assistance of—his wife, Mrs. Cosmo Innes!

Here, expatiating in the most splendid suite of apartments at Meurice's, did these highly important personages conduct the Crown enquiries. No one will forget the lady's activity in the honorable cause of her husband—the skill with which she made her diplomatic arrangements—her persuasive language—(she was interpreter on all occasions)—her tempting imagery of the wealth that might be gained by a communication with our commercial country—and, above all, the admirable champagne breakfast, which cost the trifling sum of eighty-five francs, given, on the day of departure, to the thieving servant girl, alias cow-driver, the cobbler, the

street hawker of maps, and the policeman. Her unceasing attention, her constant enjoyment, day after day, for many weeks, of the society and elegant language, at dinner, at tea, at home, or at the theatre, of these truly amiable and honest folk, with their friend and *very close* attendant, the policeman, must always be gratefully remembered. When we reflect upon this, and consider the enlarged benevolence that must have prompted this petting and patronizing, we cannot help feeling how inadequate must have been the reward for so much voluntary perseverance. But we must mention that there were several ladies employed in this intrigue! Imagine the Whig Crown lawyers distrusting their own abilities, modestly yielding the government to the ladies. Truly, though the means were rather of the dirtiest, the object was a laudable one—the destruction of an honest man's good name, and the ruin of an innocent family!

Of a verity, ladies, though unsuccessful you *shall have your reward!*

It was suggested that it would be advisable to place Mrs. Cosmo Innes in the witness box. Nothing could have been better, in order to expose the game playing by the Crown; but some of Lord Stirling's counsel would not hear of it. It *ought* to have been done in a case so serious as this was. The jury should have been thoroughly informed of every thing. But here, again, we have an instance of the usual deference for those who happen to be in power.

These gentlemen once in Court talked of the expenses of this case. The Crown agent stated *three years ago*, openly, that their opposition had cost £50,000, and that they were ready to spend *as much more*, sooner than Lord Stirling should succeed! This may have been idle bragadocio, but the sums really expended have been very large. The state-

ment was intended to discourage his friends. The same statement, as every one knows, has been repeated boastfully in Paris, accompanied by the same expressions. £50,000. in *mere* law expenses; in Scotland too, where the *law* is so much cheaper than in England. How much of the *other* £50,000 is there yet to be spent? Mr. Wallace moved, in the House of Commons, for a minute return of the expense in the case. We have not seen it so minutely given, but there is an item sufficiently striking in the grant made by the House, namely, nearly £16,000 for expense lately *in the office of the Lord Advocate!* To what purposes *must* the greater part of this money have been applied? Within *two* years money has been lavished most wantonly in Paris and other places. It has been thrown about, right and left without hesitation; and well may the Crown agents have observed, that they could make a Frenchman swear to anything they pleased! It will, at once, be clear to any intelligent person, that if this case was, as pretended, without foundation, such extravagance was uncalled for; and that the advisers of the Crown must have grossly trifled with, and neglected, their public duty, in not bringing this case at the *earliest moment* to decision, had they really supposed it to be ill-founded or insufficient. We are no longer surprised that their own extravagance and Lord Stirling's perseverance, should drive them mad! and we trust that the exposure of these circumstances will lead to a thorough investigation into this squandering away of the public money, among rogues and prostitutes out of the streets of Paris.

But Lord Stirling has more to complain of. He has been thus kept at bay for years in lingering suspense and anxiety; his own prospects, and more particularly the prospects of his children, have been seriously injured, even partially blighted,

by the difficulties and uncertainties which such a state of things has necessarily occasioned. Lord Stirling was induced to prosecute his claims, because he was morally certain that the Stirling honors centred in him. No other consideration on earth would have induced him to sacrifice the best years of his life, and to leave a tranquil and certain position, for such a tedious and exhausting trial of his patience. The claim once made, he was compelled, in defence of his own character, to repel the charges which his opponents brought against him. He had, in fact, no remedy but in resistance. He felt, that on the ground taken by his opponents, his very existence, and the existence and happiness of his family, must be blighted for ever, and his name and their names handed down to posterity tainted and dishonored. Can any one blame him for his determination? If his case had been fairly met at the outset, when he stood on more equal ground with his opponents, he would have patiently submitted to an adverse decision; but, as it is, he is right to persevere. But to return from this digression.

After these specimens of the conduct and extravagance of the Crown advisers, after driving Lord Stirling so hard and so unfairly as we have seen, would these gentlemen *rest their reasons* for continued opposition, upon the fact of his having incurred large obligations to various parties, which the accumulating interest of years, and the monstrous extortions that money-lenders ever practice upon persons having great expectations, has necessarily given rise to? Had the matter been fairly looked in the face at the beginning, and settled equitably, Lord Stirling would have been released from the fangs of such people. There was a time when, had judicious measures been adopted, government might have been willing to give some just and reasonable

compensation. But, though Lord Stirling employed several eminent and talented men, he was not well advised. In this has been his great misfortune. He knew not the course of proceeding himself—other persons, *in his name*, by the steps they took, gave great offence, caused ill-will towards the case, and gave the impression, that Lord Stirling was a troublesome, discontented man, whom nothing would satisfy.

Before concluding, we must make a few observations now upon the title that Lord Stirling has borne for *fifteen years*. No man could be placed in a situation more difficult and extraordinary. He has followed exactly the advice given to him in the course he has pursued all along.* He has voted many times at elections of Scotch Peers. On several late occasions, protests were entered against his vote being received by the Clerks of Session; but it has always been received and counted. This system of protesting was never carried further, though desired by Lord Stirling; and, therefore, can only have been intended to keep up a doubtful impression about the peerage. Had it been carried to the House of Lords, Lord Stirling would have appeared there to defend himself, and not as a petitioner claiming the title, which is not strictly in conformity with Scottish law. He has been recognised by various authorities, judicial and otherwise.† After all these public acts, he is now told, on the one hand, that he is *not* a Peer, and on the other, that *he is*—by one, that he must go before the House of Lords; by another, that in so doing, he would be acting contrary to the law and practice of Scotland. Again, that

* See Appendix No. 5, for opinion of Baron Bolland, and No. 6 and 7 of James Wilson, now Chief Judge at the Mauritius.

† See Appendix No. 8 and 9.

had he, on first coming forward, and voting without protest on the 2nd of June 1825, immediately proceeded to St. James's Palace to be presented to his Majesty, George the Fourth, there would have been an end to all cavil and doubt. This, we verily believe; but happening to be misadvised as to the importance of the point, and thinking to do so at a more convenient opportunity, the door was left open for his opponents to arrange their plans, and strew with thorns the path he had to follow. We are surprised at the opposition made now by the Crown, as if Lord Stirling was pretending to, or taking from, some of its own rights and honours. This title has been a wonderful engine of mischief in their hands throughout, and even in opposition to a solemn judgment of the fifteen Judges of the Court of Session, sustaining his right to sue and be sued in that Court, as Earl Stirling,* the Officers of State deny it, and, in the same spirit, persist in calling him by the family name of his father, a name, he does not now bear at all, having changed it sixteen years ago by Royal license.

In the case laid before Mr. Baron Bolland, were the following observations: "The right of voting at the election for the Representative Peers of Scotland, is the only parliamentary privilege left to the Scotch nobility since the Union; similarly as an English nobleman, on the like occasion, would apply for his writ of summons in Parliament."

"If a person answering to his title when called over, is received *without protest*, he is invested in his peerage dignity; but if protested against, the *party protesting* is to make out his objections upon legal evidence, and the peer protested against, is to maintain himself in his

* See Apudix No 10.

“ peerage dignity, and to show he has competent grounds for the privileges thereof to be confirmed to him.”

“ The personal attendance at Holyrood House, to claim and exercise the right of voting, seems not only to be politic, but to be a public act necessary for every one to adopt, who shall assume that a Scotch Peerage has descended to him.”

Lord Stirling has been subjected to the strangest series of contradictions and childish animosities, in relation to this title, that ever environed an individual in the world ; and it must be admitted, that there exists, either the grossest perversion of law and practice on the part of his opponents, or imperfection in the system by which honours are resumed in Scotland, and by which so many other noble families are, at this moment, enjoying theirs undisturbed.

Upon consideration, therefore, of the usual practice in Scotland, and the manifest weakness of the Crown as displayed in the whole of their irregular proceedings, we are led distinctly to the conclusion, that the Crown lawyers had no legal right to question Lord Stirling's services. The case of Bell, reported by Murray, (vol. 2, p. 130) argued before Lord Cockburn, seems clear enough on that point, that the Crown, not being a competitor for the character of heir, could not interfere to disturb a service ; and that if they could do so, they were bound, at least, to make out a case by positive proof against Lord Stirling. To this the only answer was made that could be made. Lord Cockburn supposes the argument to be “ that the mere insufficiency of the defensive proof, was no ground for setting the verdict aside.” This is not it ; the argument of Lord Stirling's counsel was, as to the right of the Crown *to interfere at all*. His Lordship continues ; “ Bell's was the only case he was

“ aware of, in which the reduction of a service was referred
 “ by this Court to a jury, as an ordinary action of reduction.
 “ *Happening to be dealt with in this way*, (so printed in
 “ the original) the doctrine ascribed to the judges who tried
 “ it may have been proper.” Thus there is a law for one
 case, and a law for another upon the same point.

It has been argued that the claims are of such magnitude as to be altogether inadmissible, and that, therefore, it is not surprising government should “ stretch a point.” This is, however, both ridiculous and monstrous. What has he claimed ? if he claims *anything*, he must claim *all* ; but what does he ask ? a recognition of the right being in himself, and such a reasonable compromise as government may consider it in their power to give. Is Lord Stirling unreasonable, because his enemies misrepresent and exaggerate his views ? if he has been misled by designing persons, is he to be railed at, and treated as one out of his senses ?

Looking at the conduct of the Scotch Crown lawyers in the most favourable point of view, supposing them to be right in law in their opposition to the case, they are not an iota less to be blamed for the disgraceful manner in which they have trifled with, and we may say, as far as lay in their power ruined, their opponent.

English people will not easily form an idea of the animosity that a claim like this produces in the North, particularly if there be any property at stake. Now Lord Stirling has no claim to property in Scotland that is at all likely to be available, nor does he wish persons long in possession to be disturbed ; but the Officers of State, *knowing the strength of this feeling*, have represented and got a witness (the notorious John Tyrrell) to say that Lord Stirling expected and intended to proceed for the recovery of certain family estates.

We have seen millions upon millions of acres of waste land in America, granted away at different times within these few years. Surely Lord Stirling is not unreasonable for demanding such a portion as he is entitled to as the representative of the first colonizer of the British American Provinces ; a portion sufficient to support his family in its proper station of respectability and independence !

But enough. The case is now in the hands of the public, and their judgment will ultimately prevail. It is impossible to rise from a perusal of the report of the trial, without lamenting the subserviency displayed to the authority of the Crown, and the arbitrary and unconstitutional proceedings which characterized the conduct of the Crown lawyers. It was next to a miracle that Lord Stirling escaped their toils.

Lord Stirling, however, more fortunate than the gentleman to whose case we alluded at the commencement of this work, as having afforded a precedent for the Crown lawyers, escaped, through the honesty and intelligence of the jury, the fate which they also intended him. It speaks volumes in his favour, that, in spite of the efforts made to deprive him of his friends by calumny, by discouragement, and even by good appointments, there were men found, who, through all these years of constant struggling, never changed ; and, at the last desperate attempt to overwhelm him, came forward, regardless of expense, inconvenience, or distance, and stood by him until the storm had passed !

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GENEALOGICAL ACCOUNT
OF THE
NOBLE FAMILY OF ALEXANDER
IN SCOTLAND.

Antiquaries and genealogists trace this family from a very early period, deducing it from Somerled, King of the Isles, who lived in the time of Malcolm the Fourth, and was slain in battle about the year 1164. He left by his wife Effrica, daughter of Olavus the Swarthy, King of Man, a son, Reginald, King of Man and the Isles,* father of Donald, whose eldest son, Angus, Lord of the Isles, was ancestor of the Earls of Ross and Antrim, and of the Lords Macdonald. His second son, Alexander Macdonald, founded the tribes or clans of Macalister of Loup, in Argyllshire, and of Alexander of Menstrie. This Alexander Macdonald was lineal ancestor to Thomas Alexander of Menstrie, in the shire of Clackmannan, who flourished in the reign of King James the Fourth of Scotland. His son, Andrew, was father of Alexander Alexander, who, by his wife Elizabeth, granddaughter of Sir Robert Douglas of Lochleven, had a son,

* Vide Sir Walter Scott's very entertaining and curious notices of this family in the notes to his poem "The Lord of the Isles."

Andrew, father of another Alexander Alexander, who lived to an advanced age, and left issue at his death in 1594, (besides a younger son, Andrew,) William, afterwards Sir William, his eldest son and heir, founder of the Stirling honours.

This Sir William Alexander, from his infancy, was much distinguished for the quickness of his parts and talents, and when but a very young man, was selected on account of his accomplishments to accompany the then Earl of Argyle on his travels on the continent. Shortly after his marriage he became a frequent attendant at the Court of James VI. where his accomplishments, and especially his poetical talents, speedily raised him into a high degree of favour with his sovereign. James loved flattery, and was surrounded by poetical flatterers: but Alexander did not make his court by adding to their number. The themes to which he chose to string his lyre, were such as are rarely heard in Courts; not the grandeur, but the vanity of ambition; not the pleasures of wealth, but the sweets of virtue; not the pride of conquest, but the glory of making nations and individuals happy. It does credit to the good sense of James, that amidst the clouds of incense in which he was enveloped, he could discern any merit in truths so valuable, yet lowly and unobtruding as these. His Majesty characterised Alexander well, by calling him his "philosophical poet."

On the accession of King James the Sixth to the throne of England, he followed the Court to London, and there, in 1604, published a quarto volume of poems, plays, &c., and afterwards wrote a variety of other works. He was soon advanced to be one of the gentlemen ushers of the presence to Prince Charles, and further was appointed by his Majesty,

Master of Requests, and knighted. From this period, he is lost sight of as a poet, but he is found busily engaged in a series of worldly projects and engagements. The object which first attracted his attention, was the settlement of a colony in North America, in a part of the council of New England's patent from King James, which they were desirous of surrendering. Of this great tract of country he had a royal grant, dated at Windsor, the 10th of September 1621, by which the said country was then given to him, to hold hereditarily, with the office of Hereditary-Lieutenant, and other high offices, and was thenceforth to be called Nova Scotia.

This grant, after the death of King James, was confirmed by King Charles the First, who, by a charter dated at Oatlands, the 12th of July 1625, ordained Sir William Alexander, and his heirs, in the office of Lieutenant aforesaid, to have *precedence of all baronets* of the recently instituted order of Nova Scotia, or more correctly, perhaps, to be the hereditary Grand Master of the order. His Majesty likewise, by letter to his Privy Council of Scotland, dated the 19th of July 1625, fixed the quantity of land that Sir William might grant to the said Baronets, as the qualification, and to sustain the title, to be "three myles in breadth, and six in lenth, of landis within New Scotland, for their several proportions." A few of the patents by which Sir William Alexander exercised his power of creating Baronets of Nova Scotia are preserved; but, as some persons have denied that such extensive privilege was ever given to him, it may not be amiss to quote the clause in the charter, by which he and his heirs were empowered to do so, and even to confer any titles they might please in Nova Scotia. These are the words: "And that men of honorable birth

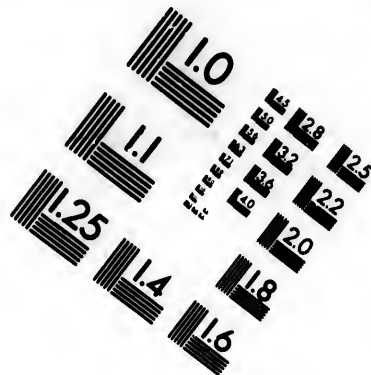
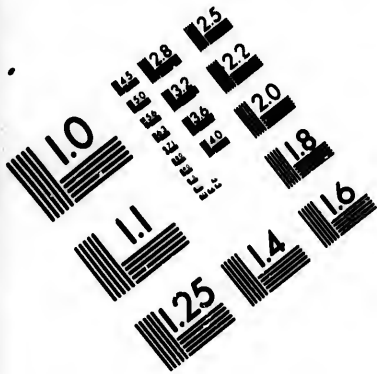
“ may be incited to the undertaking of that expedition, and
 “ the settling of planters in the said lands, we, for us, and
 “ our heirs and successors, with advice and consent afore-
 “ said, in virtue of our present charter, give and grant free
 “ and full power to the aforesaid Sir William Alexander and
 “ his foresaids, of conferring favours, privileges, *offices*, and
 “ *honours*, with plenary power of disposing and overgiving
 “ to them, or any of them who shall happen to make the
 “ foresaid agreements or contracts for the said lands with
 “ him, Sir William, and his foresaids, under his subscrip-
 “ tion, or theirs, and the seal undermentioned, any portion
 “ or portions of the said lands, ports, naval stations, &c.
 “ And also of giving, granting, and bestowing, such *offices*,
 “ *titles*, rights and powers, &c, as shall seem to him and his
 “ foresaids expedient,” &c. And again, in another clause
 they were authorized to make grants and infestments, &c.,
 by “ whatever *styles*, *titles*, and designations, shall seem to
 “ them fit, or be in the will and option of the said Sir
 “ William Alexander and his foresaids, which infestments
 “ and dispositions shall be approved and confirmed by us
 “ and our successors, freely, without composition to be paid
 “ therefore.”

Such was the power granted to Sir William Alexander and
 his heirs, to confer titles. The fact has been disputed, pro-
 bably on the ground that the grants of such title of Baronet,
 though following, in the first instance, in consequence of the
 voluntary surrender of Sir William, before or after he became
 Lord Stirling, were afterwards held of the Crown, by charter
 of *Novo-Damus* to the respective parties. That is certain;
 but no Baronet obtained such grant from the King, without
 having previously obtained the portion of land for its qualifi-
 cation from the grantee of the Crown, who was lord pro-
 prietor of the country.

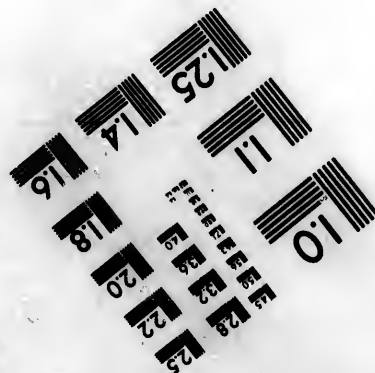
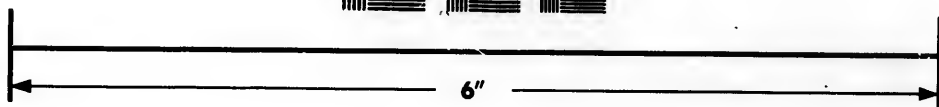
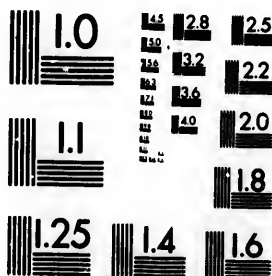
In 1626, Sir William Alexander was appointed Principal Secretary of State for Scotland. On the 2nd of February 1628, he had another charter, under the great seal of Scotland, in which he was described as the King's Hereditary Lieutenant of Nova Scotia, and had a grant of certain lands and territories, the bounds of which were most extensive; and the whole were erected into an entire and free lordship, then, and at all times thereafter, to be called and designated the "Lordship of Canada," from the great river then bearing that name, and on both sides of which lay the territories granted. This colony, and likewise that of Nova Scotia, were founded and established at the sole private expense of Sir William Alexander, the grantee; and both grants were confirmed to him by the Parliament of Scotland in 1633.

On the 4th of September 1630, he was created Lord Alexander of Tullibodie, and Viscount of the town of Stirling, in the kingdom of Scotland; and afterwards, with a view to perpetuate the name of the Lordship of Canada in his family, the King, by other letters patent, dated the 14th of June 1633, created him Viscount of Canada and Earl of Stirling. In 1637, by a privy seal precept dated the 30th of July, the Earl was created Earl of Dovan in Scotland, with precedence from June 1633; but the year following he is supposed to have made a surrender of all his honours and estates into the hands of King Charles, who regranted them to the Earl, to hold to himself and the heirs male of his body, whom failing, to the eldest heirs female, without division, of the last of such heirs male, and to the heirs male of the bodies of such heirs female respectively. The date of this regrantee bears to be, 7th of December 1639. Shortly after this he died, in February 1640.





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The Earl continued in the office of Secretary of State for the long period of fifteen years. It was a period rendered of peculiar delicacy by the struggle for pre-eminence which was then waged, with no ordinary bitterness, between episcopacy and presbytery; but his Lordship is allowed to have acquitted himself with so much ability and discretion, as to be respected, if not beloved, by all parties. From a poetical authority we further learn, that in the discharge of his official duties he was singularly indefatigable, and, in all his views of policy, actuated by an earnest desire for the improvement and prosperity of his native country.

The place which Lord Stirling holds among the older poets of Scotland, is one of a very enviable eminence. His works, along with those of his contemporary, Drummond, are all that Scotland has to sustain its poetical reputation for nearly a century, which elapsed between the time of Montgomery and Ramsay.

The title by which King James was pleased to distinguish Lord Stirling is as expressive as any one that could be employed of his quality as a writer. He was a "philosophical poet." All his works, with the exception of his "Aurora," were, in fact, treatises of philosophy in verse; distinguished by vigour of thought, depth of feeling, and richness of expression. (See "Lives of Eminent Scotchmen.")

By Janet, his wife, daughter and heiress of Sir William Erskine, Knight, the Earl had seven sons and three daughters. William, Count of Canada and Lord Alexander, the eldest son, was appointed an extraordinary Lord of Session, in room of his father, 27th Jan. 1635. He was a young nobleman of great expectations. He went to America to establish a colony on the river St. Lawrence, and in

Nova Scotia, of which he was President. He suffered great hardships, and died of the effects thereof, at London, in March (18th May) 1638, and was buried at Stirling. He married Lady Margaret Douglas, eldest daughter of William, first Marquess of Douglas, and by her he had a son, William, second Earl of Stirling, and three daughters.

Anthony, the second son, was knighted, and also died before his father, without issue; Henry the Third, became Earl, as hereafter-mentioned, John, the fourth, was ancestor to the present Earl; Charles, the fifth, had an only son, Charles, who died without issue; Ludovick, the sixth, died in infancy; and James, the youngest, died without male issue.

William, the eldest son, having died in the lifetime of his father, his only son, William, succeeded his grandfather, as the second Earl, but died within six months after, under eight years of age. Whereupon his uncle Henry, as heir of tailzie and provision, in virtue of the charter or regrant already mentioned, became possessed of the Earldom. He died in 1644, leaving an only son, another Henry, who was the fourth Earl, and died in 1691, leaving issue four sons, whereof Henry, the eldest, succeeded as the fifth Earl, but died without issue, 4th December 1739; when his three younger brothers, having also died without issue in his lifetime, the titles devolved upon his second cousin, the Rev. John Alexander, of Dublin, only son and heir of John Alexander, of Antrim, only son and heir of the Honourable John Alexander, of Gartmore, fourth son of William, the first Earl of Stirling: which John, after the decease of his father, had settled in Ireland, whither his mother, the Dowager Countess, had previously gone to reside with her

favourite daughter, Lady Jean, married to Hugh, the second Viscount Montgomery, in that kingdom.*

The Honourable John Alexander, fourth son of the first Earl, married first, Agnes Graham, only daughter and heiress of Robert Graham, Esq., of Gartmore, Scotland, by whom he had one daughter, Janet. He united very zealously with his father in the great enterprise of colonizing Nova Scotia, &c., and resigned to him, with the consent of his wife, the estate of Gartmore, of which the Earl obtained a charter, dated 23rd July 1636. Agnes Graham, died in 1637.

He married secondly, in 1639, Elizabeth Maxwell, daughter of — Maxwell, Esq. of Londonderry, whom he first met at Comber, near Newtown Ards, the residence of his brother-in-law, Lord Montgomery. By her he had one son, John. “ Mr. John Alexander, of Garthmore, a son of the “ Lord Sterline, in Scotland, came to see my Lord (Montgomery) and brought with him his ownely son,” &c.

Having joined his father in various pecuniary engagements for money borrowed to promote the colonization of the American settlements, he was obliged some time after the decease of the Earl, from the persecution of the creditors, to leave Scotland. He does not appear to have taken up his residence in Ireland altogether until 1646. These circumstances, and the near connection with the Montgomery family, led no doubt to his domiciliation in that country. The respect entertained by the third Viscount Montgomery for his mother's family was such, that when he was after-

* In the Montgomery MSS. is a very interesting account of the grand funeral of the first Viscount Montgomery, of Newtown Ards, in May 1536, at which the Honourable John Alexander, Sir Anthony Alexander, and William, Lord Alexander, were present.

wards advanced to the dignity of an Earl, he chose the title of Mount-Alexander, in remembrance of his descent from that distinguished house.

Mr. John Alexander, known in the county as "Mr. Alexander, of Gartmore," died at Derry, in 1666. His only "son," John, afterwards of Antrim, received his early education at Londonderry, under the "watchful eye of Mr. Maxwell, his maternal grandsire." At the age of sixteen, the Dowager Countess wished him to be sent to Glasgow College, but at last it was thought better for him to go to a German university. He went to Leyden. There he attained high distinction as a scholar, remained many years abroad and visited foreign courts. He married at Donaghedy Church, in May 1682, Miss Mary Hamilton, eldest daughter of the Rev. Mr. Hamilton, of Bangor, a connection of the Ducal House of Hamilton. He then took up his abode at Antrim. By this marriage he had three children. Mary, born in 1683, died unmarried; Elizabeth, born 1685, married F. M. Skinner, Esq. and died 1711, leaving issue; John, born 1686. While visiting his friend, the Rev. Mr. Livingston, at Templepatrick, four miles from Antrim, he was taken ill, and died there, for he could not be removed, the 19th of April 1712, and was buried in the chapel at Newtown, in the vault of the Mount-Alexander family. This Mr. Livingston, a "very old friend of the family," wrote the inscription.

Here lieth the Body of
John Alexander, Esquire,
Late of Antrim,

The only son of the Honourable John Alexander,
Who was the fourth Son of that most Illustrious

And famous Statesman,
 William Earl of Stirling,
 Principal Secretary of Scotland.
 Who had the singular merit of planting, at his
 Sole expense, the first Colonie in
 Nova Scotia.
 He married Mary, eldest daughter of the
 Rev. Mr. Hamilton, of Bangor,
 By whom he had issue one son, John, who
 At this present time is the Presbyterian Minister
 At Stratford-on-Avon, in England ;
 And two Daughters,
 Mary, who survives, and Elizabeth, wife of
 John M. Skinner, who died 7th Jan. 17th,
 Leaving three children.
 He was a man of such endowments as added
 Lustre to his noble descent, and was universally
 Respected for his Piety and Benevolence.
 He was the best of Husbands ;
 As a Father, most Indulgent ; as a Friend,
 Warm, Sincere, and Faithful ;
 He departed this Life
 At Templepatrick, in the county of Antrim,
 On the 19th day of April 1712.*

* Memoranda in the handwriting of the Rev. John Alexander, son of the above.

An.D. 1710-11. On the 7th of Jan. my second sister Elizabeth, wife to John Mee Skinner, dyed of a fever, leaving 3 children, a boy and 2 girls. She was an early convert: and her example, by the blessing of God, was useful to me. She lived and dyed an understanding and eminent Xtian, and left a savoury memory behind her.

1712. On of April my Hond. Father left this present e-vil world : tho' he had for some time longed for this happy release, yet his death was

The Rev. John Alexander of Dublin, was born at Antrim, the 30th of September 1686, and a few days afterwards was baptized by the Rev. Mr. Livingston of Templepatrick. He received his early education in Ulster, and then went to Leyden in Holland, to prepare himself for the church, at that university. Having a strong predilection for the ministry, he was encouraged in it by his father, and became one of its brightest ornaments. He was licensed at an early age, and settled as pastor of the presbyterian congregation of Stratford-upon-Avon. In this place he had the direction of an academy for the education of students for the ministry. He was distinguished for his zeal in the cause of religion, and for his extensive knowledge of the Oriental languages, in which he was one of the first scholars of the day. In Boyne and Bennett's History of Dissenters, is an interesting account of him.

He was married in England, at the parish church of Hartlebury, in the county of Worcester, by license, on the 8th day of August 1732, to Hannah Higgs, of Old Swinford, daughter of the Rev. John Higgs, (who was grandson of Dr. Griffith Higgs, Dean of Lichfield, in the time of Charles the First.)

not only a great loss to his family, but to the interest of religion in the place where he lived.

Of him, the Rev. Mr. Livingston, the minister of the place, says, in a letter to me upon the melancholy occasion. ' I reckon myself the sufferer, ' next to your family: He was my wise, tender, affectionate, and faithful ' friend, whom I could trust for judgment and integrity in all things relating ' to me,' &c.

AN. 1724. Jul. 2. To day I had the first account of my mother's death, who, on the 1st of June last, peacefully resigned her spirit, and fell asleep in Jesus.

I believe she dyed in the year of her age that is commonly called the grand climacterick.

By her he had many children, whereof only two sons and two daughters lived to years of maturity.

Previously to this event, namely, on the 2nd of May 1726, the presbyterian congregation in Plunket, Dublin, resolved to prosecute a former call which they had made to him, to undertake the pastoral office in conjunction with their then minister, the Rev. Thomas Macquay. Mr. Alexander, however, at this time declined accepting the call, assigning among other reasons, that he had undertaken the education of young men intended for the dissenting ministry, by which means he might be useful to many churches. About four years afterwards, namely, on March 29th, 1730, the call was again renewed, and was finally accepted; not, however, without strenuous efforts on the part of his neighbouring fellow ministers in England, the Rev. Thomas Cole and the Rev. Charles Blackmore, to keep him near them at Stratford-on-Avon, on account of his " eminent ministerial usefulness in that district."

From this period until the death of Mr. Alexander, nothing is found recorded of him particularly worthy of notice, except a very diligent and faithful discharge of his pastoral duties. He appears to have inhabited a house in a place called Weaver's or Clothworker's Square, which he rented from Mr. John Lowton,* a member of Euston Street congregation.

His death took place on the 1st of November, 1743, and the charges of his funeral were defrayed by the congregation, as a mark of affectionate respect for his memory. At the subsequent meeting of the synod of Ulster, June 22nd 1744,

* 1741. Nov. 17th. John Lowton died. He bequeathed, for the support of the Ministers of Plunket Street, the sum of £500, and the house in Weaver's Square, which, as it is stated in his will, was then inhabited by the Rev. John Alexander.

the moderator, the Rev. Mr. Carlisle, was directed to write to the congregation of Plunket Street, in the name of the Synod, a letter of condolence on the death of their minister; a remarkable proof of the high estimation in which he was held by his brethren.*

His cousin, Henry, fifth Earl of Stirling, died the 4th of December, 1739, without issue, and his brothers, Robert and Peter, having died previously, the first in 1710, the other 1729, also without descendants; the Rev. John Alexander, as next heir, was preparing at the time of his death to take up the honours. He had, it appears, at this time a considerable number of documents, but it was not until his succession, and with the consent of his cousin, Lord Mount Alexander, that he obtained the charter or regrant, the ancient pedigree, and other important papers.

He found that the estates in Scotland had been appraised by the creditors of the first Earl, as before-mentioned, and could not easily be recovered to enable him to support his dignity, and that the property acquired in England by the marriage of Henry, the third Earl, with the heiress of Sir Peter Vaulore, had been taken possession of by the families into which the sisters of his cousin, Henry, the fifth Earl, had intermarried. The American property was equally beyond his reach, owing to the encroachments of the French, who did not relinquish their pretensions until 1763. Thus

* The above particulars are taken from the "Minute Book of the Session of the Plunket Street Meeting House," and from the Rev. Dr. Armstrong's account of the Presbyterian churches in Dublin. In the Rev. Dr. Armstrong's work is a note to his account of the Rev. John Alexander, published 1829. "Earl of Stirling. Mr. Alexander inherited claims to the title and estates of this family, and was engaged, at the time of his decease, in collecting the proper documents for substantiating his pretensions."

situated, with an inconsiderable income, and the prospect before him that his assumption of the honours must lead to a litigation for the recovery of the estates, without which they could only be a burden, he did not immediately take them up, but occupied himself, during the three years and eleven months that he survived his cousin, in preparing and collecting the evidence of his right to the property. It was the anxiety occasioned by this disagreeable state of things, and the necessity of proceeding to secure the rights of his children, that hastened his death, when he was on the point of taking active measures. There are many proofs of this, and that he was well known in Scotland, and elsewhere, as sixth Earl of Stirling; and, by various accounts, he appears to have collected a very large mass of documents.*

At his death, the widow thus left with four young children, (the eldest not eight years old) and an extremely limited income, resolved to leave Ireland and reside among her own relations. Her brother, the Rev. John Higgs, being

* The following incident is extremely interesting and worthy of notice. A few months after Lord Stirling's return from France, in attempting to reach Ireland, to make searches for his family papers, during the winter of 1815, he was driven upon the Isle of Man, and there met a Miss Graham (cousin of the Grahams of *Gartmore*, now in possession). Happening, at a party, accidentally to mention that his grandfather was the Rev. John Alexander, of Dublin, Miss Graham sprung from her seat, seized him by the hand, and congratulating him, said, "Why, he was sixth Earl of Stirling—you and I are cousins—we have long lost sight of your family; I will assist you in recovering your rights, &c. &c." In her enthusiasm she promised to employ her relations in the cause, and made parties expressly to introduce Lord and Lady Stirling to all her friends in the Island. She was, however, forbidden by her relatives to interfere, and blamed for her imprudence. This shows how well the right was known to the family connections—it has been fully authenticated.

a minister at Birmingham, she chose to remove thither. Bringing with her the family papers, she no longer thought of further proceedings, but exerted herself, and made every possible pecuniary sacrifice, to give her children the advantages of education.

Of these children, the Rev. John Alexander, of Birmingham, was born at Dublin, January 26th, 1736. His early education was assiduously attended to by his mother and uncle, and, at a proper age, he was sent to finish his studies under Dr. Benson. He, like his father, had a strong predilection for the ministry, and, short as his life was, he greatly distinguished himself for his learning. In Dr. Kippis's *Biographia Britannica*, among other works, he is mentioned, vol. ii. p. 206. "Dr. Benson had sometimes young students under his care, who, after having finished their university or academical education, resided with him for the purpose of obtaining a more critical acquaintance with the sacred writings. Of these we shall take particular notice of one, &c. The person we mean was the Rev. John Alexander, whose father was, formerly, a dissenting clergyman at Stratford-upon-Avon, in Warwickshire, where he kept an academy for bringing up young gentlemen for the ministry, and was distinguished for his skill in Oriental literature. From Stratford he removed to Ireland, &c." John Alexander resided for some time at Norwich, and afterwards became the minister of a Presbyterian congregation at Birmingham. Being now settled, he began to resume enquiries respecting the rights of his family, but he died suddenly, aged 30, on the night of Saturday, December 28th, 1765, having just finished a very affecting sermon on death, which was afterwards published.

INSCRIPTION ON THE TOMBSTONE AT BIRMINGHAM.

Sacred to the Memory of
 The Rev. Mr. Jno. Alexander,
 Who was eminently distinguished
 For a Christian Scholar and Divine,
 Though cut off in his thirtieth year.

He was born Jany. 26. 1736.

Died Decr. 29. 1765.

Learn, Reader, that
 Honourable age is not
 That which standeth in length
 Of Time, nor that is measured
 By number of years :
 But wisdom is the grey hair,
 And an unspotted life
 Is old age.

Also in memory of
 Hannah Alexander, who died
 Oct. 8. 1768, aged 53 years.

Dr. Benjamin Alexander, his only surviving brother, was born at Dublin, 11th of March, 1736-7. He completed his education in London, and was rising into eminence as a physician. Had he lived a few years longer, he intended to have taken up the honours which had descended to him; but from over exertion in study, he was taken ill and died the 18th of April, 1768, two years and four months after his elder brother. He was buried on the 21st at Bunhill Fields. The only notice of him is from the register of burials, "Dr. Benjamin Alexander, from Basinghall Street, in a grave." The following letter, dated London, 19th April, 1768, to

Mrs. Teverall, a friend and schoolfellow of his sister, is interesting, and in evidence.

“ Dear Sister,

T'is probable yt before you receive ys you will have heard yt Dr. Alexander died yesterday morning about one o'clock. It was a very great surprise to us all. He had called once at my uncle's since his other illness, and seemed purely recovered. We heard no more of him till yesterday, wñ my uncle's barber coming to shave him, said he heard yt Dr. Alexander was dead. My uncle went immediately to his house and found it true. He had been extremely ill of a fever four or five days. It was a wonder they had not sent my uncle word of his illness. I was out all day and did not hear of it till evening. I had intended calling to let him know that I was returned from Ware. This event has greatly affected us all, and none more yn myself. I am indeed very much concerned for Mrs. Alexander and our young friends. Miss Hannah's ill health will render her less able to bear such a shock. I am afraid it should be too much for her. I wish it was in my power to administer consolation; you, I know, will endeavour it. The comforts of religion are theirs, and I trust and hope will be sufficient for their support under this trying affliction. They have shown a noble fortitude, a distinguishing submission and resignation, and done great honour to ymselves and Christianity. May ye same God be their support now. He will, for he has said, ' I will never leave thee or forsake thee.' You may assure ym of my love and sympathy; I feel for their distress. Pray send me word how they do when you write. The Dr. has left two Mr. Cooks his executors. I tremble for the rest of her little ones. Our stay here being so very uncer-

tain, let us, my dear sister, be daily endeavouring after a preparedness for a future and a better state, where ye vicissitudes of ys will be known no more. I am obliged to conclude in haste; give duty to mamma, and accept my love. I am my dear sister's most affectionate

(Signed) M. N. PICKARD.

The joint respects of our friends attend you.

There is a very considerable correspondence remaining of these brothers. While residing far from their family, few days were allowed to pass without an exchange of letters. The preparation of his well known work for the press, "Morgagni on Diseases," seems to have laid the foundation for the illness which carried him off. He says, at the end of a short but amusing letter to his sister, "I was up all night with a patient, so that I almost catch myself napping as I write, and it is no wonder. I have been endeavouring to do my task at translation, which I have just finished, though with much weariness of my flesh; and I now am going to reap the fruits of my labour, that is, eat my dinner, being the first time of eating to day, though it is now five o'clock, for I never eat till I earn, and painfully earn too—oh! I often envy your ease, happiness, and tranquillity, excuse me then dear sister," &c. On his brother's death, he says, "after the first transports of passion were over I know not which I was most sorry for, my brother or you I feared how it might affect my dear mamma and sisters, and I prayed to God that it might be well with you. What we have to lament on this occasion I think is chiefly for ourselves, he is a loss to us and the world, and it is certainly a melancholy thought, which returns full upon my bosom, that here we can see

“ him no more. He that used so lately to be our delight
 “ and our comfort, is snatched from our eyes for ever !
 “ Yet not for ever! this is my comfort and hope, that I trust
 “ we shall meet again where sorrow, sighing, decease, or fear
 “ of separation, shall be no more. I hope my dear mamma
 “ will go on to support her spirits, and be supported by
 “ heaven, and that God whom she sincerely worships,” &c.

Mrs. Hannah Alexander died a few months after her son Benjamin, being October the 5th, 1768.

It was during the youth of John and Benjamin Alexander, that an attempt was made by a person from America, to usurp the titles and estates of the House of Stirling. He was assisted in his design by the two gentlemen who had married the sisters of the last Earl, Henry, and who being unable to obtain the American and Scotch properties, agreed with this William Alexander, of New Jersey, to assist him with all their influence, on condition of a division of the property, one half to Mr. Alexander with the title, the other equally to themselves. The original correspondence still exists which took place between the parties ; and it appears that, in 1759, a large quantity of documents or “ neglected writings” were forwarded by one of them to Mr. Alexander, which he says *he received from a “ near relation.”* This gentleman had the idea of fixing himself upon the present Lord Stirling’s branch ; and admitted in his pedigree, used before the House of Lords, the existence of John Alexander of Antrim, but being unable to get rid of the grandsons, John and Benjamin, he soon changed his claim of descent to John, an uncle of the first Lord Stirling. The claim came before the House of Lords in 1762, and was decided against Mr. Alexander, whose connection with this family at all has never been clearly ascertained.

After his defeat he retired to America, and became one of the generals of the United States' army on the declaration of independence. The papers which were sent to him, as from a "*near relation*," are particularly described, and there can be no doubt whatever that they were stolen from the house of Mrs. Hannah Alexander at Birmingham. The original charter or "regrant,"* as before mentioned, was among the documents brought from Ireland by Mrs. Alexander, and that it got into General Alexander's possession there is scarcely a doubt. The following very interesting extract is from Walpole's *Anecdotes of Painting*, under the head of Norgate. (vol. ii. p. 19.)

"The warrant for restoring the use of the old English March, which I have set forth in the catalogue of noble authors, was illuminated by this person (Norgate), but the best evidence of his abilities, is a curious patent, *lately discovered*. The present Earl of Stirling (that is, General Alexander) received from a relation an old box *of neglected writings*, among which he found the original commission of Charles the First, appointing his Lordship's predecessor, Alexander, Earl of Stirling, Commander-in-Chief in Nova Scotia, with a confirmation of a grant of that province by James the First. In the initial letter are the portraits of the King sitting on the throne, delivering the *patent* to the Earl, and round the border, representations in miniature of the customs, huntings, fishings, and

* We have adopted this word "regrant," because the late Mrs. Humphrys (the present Lord Stirling's mother) always spoke of it as such. Two persons, on whose respectability we can rely, in speaking of this document, call it a "patent," because it extended the limitations of the *title* to "heirs female," but remarked, at the same time, the singularity of its also reciting the dignities and territories granted to the first Earl. (See also Walpole's account.)

“ productions of the country, all in the highest preservation, and so admirably executed, that it was believed by the pencil of Vandyke; but as I know no instance of that master having painted in this manner, I cannot doubt but it is the work of Norgate, allowed the best illuminator of that age, and generally employed, says Fuller, to make the initial letters of patents of peers, and commissions of ambassadors.”

This account, given by Walpole, that it was found in an old box of *neglected writings*, received from a relation, corresponds with the letter sent to General Alexander, enumerating and describing them. General Alexander died at Albany in America, without male issue, 1783. At the period that this gentleman was prosecuting his claim, it was suggested to Mrs. Alexander to put “ her boys forward; ” but their youth, the smallness of her income, and the sudden disappearance of the family papers, were sufficient for deterring her from such an undertaking. It was the intention of her sons, had they lived and acquired independence enough, to have proceeded to the establishment of their rights. Their early death, however, delayed the hopes of the family.

It very often occurred, if friends were staying at Mr. Alexander's house, that the great pedigree and other curious papers were shown to them, and it was on one of these occasions, when Mr. William Humphrys (Lord Stirling's father) was present, that the loss of the documents was discovered. The conversation happening to turn upon family descent, the girls ran up stairs to fetch the pedigree. The old deed box was, however, nowhere to be found, and a drawer in a chest, in which several papers were kept, was unlocked and empty! Suspicion fell upon a servant who had given great dissatisfaction, and who was probably

employed for the purpose. Very few papers now remained to the family; all or nearly all those collected by the Rev. John Alexander, were carried away.

Mary Alexander, eldest surviving sister, was born the 1st of October, 1733, at Dublin, and died unmarried at Birmingham, April 1794.

Hannah Alexander was born at Dublin, the 8th of January 1740. She married by license at the parish church of St. Martin's, in Birmingham, on the 26th of September, 1769, William Humphrys Esq. of the Larches, in the county of Warwick, by whom she had eight children; of these only two daughters, Hannah and Eliza, and one son Alexander, the youngest of all, and present Earl of Stirling, survived.

Mr. William Humphrys was a descendant of — Humphrys or Humfrey, lineal representative of Humph Rys, the first grantee of the Crown in Queen's county, Ireland, (temp. Richard Strongbow,) who deduced his descent from Rys Griffin, Prince of South Wales, and held considerable estates. He married Lady Arabella Clinton, sister to Henry, Earl of Lincoln. She died on her passage to America, while accompanying her husband among the first settlers. He had two sons, between whom the Irish estates seem to have been divided. Of these, the second had two sons, William and John. William was obliged to settle in England about 1689, during the persecution of the protestants, and was attainted by King James the Second's parliament. His brother became possessor of the estates. He resumed the ancient spelling of the name from Humph or Ap Rys, which was so written, to Humphrys, from the first settler in Ireland. He had one son, John, who died 1758, whose son, John, was an eminent Levant and general foreign merchant. He died in 1772, and by his wife Sarah Russell,

a descendant by a collateral branch of the noble house of that name, he had William, his son and heir, husband of Hannah Alexander.

Mr. Humphrys resided chiefly at the Larches, near Birmingham. Having lost considerable property in France, which had been seized by the revolutionary government in 1795, he went over, at the peace of Amiens, with the hope of recovering some part of it, but was made prisoner with many others, by order of Bonaparte, and sent to Verdun. Here he died on the 1st of May, 1807.

He was distinguished for his goodness of heart and benevolence of disposition, and, while residing at Verdun, he still maintained the same hospitable house that he had done in his own country under more affluent circumstances. His house was always open to the many distressed English who were collected in that town; and such was the respect in which his kindness and uprightness of character was held, that fifty-two gentlemen followed his remains to their last resting place.

Until a short time before his death, he had never known a day's illness, having always enjoyed the best health. The losses he had sustained hitherto, scarcely affected the serenity of his mind, but the distress occasioned by his detention from his family, and the anxiety on their account, increased by the confusion in his affairs, which his absence occasioned, contributed to increase his indisposition and hasten his end. He was illegally detained, but could not get away, although beyond the age prescribed by the decree of Napoleon.

He used often to call his wife, who was "a person of great humility and perfectly unostentatious," his Countess; and among the circle of his friends, the facts of her descent

were well known, many of them having seen the documents previously to their being stolen from Mrs. Alexander's house. She often described "the emblazoned pedigree of the Earls of Stirling, setting forth their marriage issue and descent," which had been lost; and mentioned, of her brothers John and Benjamin Alexander, that "it had been their full intention to have assumed their peerage honours, had not early death cut them off;" and that on the death of her sister Mary, "she was the last of the family of Alexander who was entitled to the Earldom of Stirling." While talking of these things to her friends, she would frequently remark, "it was her proudest boast, that in her family there had not been, for several generations, a single instance of deviation from religious duty, or the observance of that truly just and honourable conduct which secures the friendship of the good, and the respect of all men."

She died at Worcester, a few weeks before the return of her son (the present Lord Stirling) from his captivity, and was buried in the burial ground of the Presbyterian chapel of that place.

Alexander, youngest child and only surviving son of William and Hannah Humphrys, was born on the 21st of June 1783, at the Larches, near Birmingham. At the age of eighteen, his mother first communicated to him the particulars of his descent, and the history of his family. Being herself a woman of mild and gentle disposition, and knowing all the opposition her family had experienced since the death of her father in 1743, she rather dissuaded him from the prosecution of his rights, foreseeing that it would be likely to bring down upon him the persecution of those who had possessed themselves of the family property, and entail

upon him all the horrors, anxiety, and expense, of an unequal litigation. Strong as were these representations, Lord Stirling resolved to meet them, and at the first opportunity collect the evidence of his descent, and resume the honours which had descended to him. With this object in view, he began to take notes and obtain information, in order, if possible, to trace the papers of his grandfather, and search in Ireland for the evidence of his descent. For a time the object was frustrated. Having accompanied his father to France in 1803, he was made prisoner with him and sent to Verdun. Here he resided three years, but, on his father's death, he removed, having obtained permission to reside in Paris. He returned to England in January 1815, a few months after the restoration of peace, having married his present Countess, Fortunata, on the 4th of January 1812.

From that period his efforts were unceasing in making searches and enquiries in Great Britain, Ireland, and America; and, through difficulties and opposition almost unparalleled, he so far succeeded as to be advised to resume publicly his titles on his Majesty's proclamation, dated 20th April 1825, for summoning the Peers of Scotland to assemble and meet at Holyrood House, on the 2nd of June following; on which occasion he voted without protest. He has also voted at several general elections.

His Lordship also went through four services of heirship, in order to complete his titles. Having thus been proved to be heir to the property, he obtained a precept from his Majesty as overlord, for giving him seizin, as heir aforesaid, directed to the Sheriff of Edinburgh; who, on his Majesty's behalf, gave hereditary state and seizin of Nova Scotia, with its dependencies, to the Earl, on the 8th of July 1831,

at the castle of Edinburgh, in the manner prescribed by the foundation charters of the Province. The ceremony of seizin was also performed, the same day, of the Lordship of Canada. Thus, in following the forms required by the law and usage of Scotland, Lord Stirling became, and is at this moment, in actual legal possession of the territories granted to his ancestor.

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APPENDIX.

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A P P E N D I X .

No. I.

LETTRE de MONSIEUR VILLENAVE, un des Presidents de l'Institut Historique de France, à Monsieur le Comte de Stirling, à Edimbourg.

MONSIEUR LE COMTE .

Si la lettre que vous m'avez fait l'honneur de m'écrire, le 27 Février, est jusqu'à ce jour restée sans reponse, c'est que je suis encore péniblement convalescent d'une longue et cruelle maladie qui a mis mes jours en danger.

Ce n'est pas sans en être profondément étonné que j'ai appris le triste dénouement qu'on voudrait donner à votre procès. On vous accuse d'avoir fabriqué, ou fait fabriquer, toutes les écritures qui couvrent le *verso* d'une carte du Canada. Permettez moi, Monsieur le Comte, de dire que, si l'on attaque ainsi votre honneur, on donne à votre intelligence une immense et gigantesque étendue : car, pour quiconque examinera attentivement toute la vaste composition du prétendu faux, les diverses contectures des caractères, la conformité parfaite des écritures de Fénelon, de Fléchier, de Louis XV, avec d'autres pièces autographes de ces trois personnages ; si l'on examine encore la partie historique, l'ensemble et tous les details, il restera prouvé que l'art du faussaire ne peut aller aussi loin. Toute la science de "*l'Antiquaire*" de Walter Scott, n'eut pu suffire à ce merveilleux travail ; et je doute que les Savans de la Société d' Edimbourg, renommés dans

le monde littéraire à si juste titre, voulussent, s'ils étaient consultés, affirmer qu'ils seraient capables d'imaginer et d'arranger une pareille composition : car il est plus facile de mesurer les cieux, ou de pénétrer dans les profondeurs des Sciences Philosophiques, que de donner, à un très-grand ensemble de mensonges et de faits supposés, un air de vérité.

Il m'a été demandé de certifier l'authenticité de l'écriture de Fléchier, et celle des trois ou quatre lignes de Louis XV. J'ai comparé, et je n'ai pu hésiter à donner mon attestation. L'illustre M. Daunon, Membre de l'Institut, Garde des Archives du Royaume, a pareillement certifié l'authenticité de l'écriture de Fénelon. Or, il résulterait de la vérification des Experts d'Ecosse, que le Garde des Archives et moi nous serions trompés, et que les écritures certifiées par nous authentiques, auraient été *fabriquées* par vous, Monsieur le Comte, aidé par une demoiselle et par un jeune homme illétre que vous auriez mis à l'œuvre.

On peut dire que cette décision est téméraire et même burlesque. Ce qu'il y a ici de très-remarquable, c'est que l'on a *fac-simile* à Edimbourg, pour l'instruction du Procès, tout ce qui est écrit sur la carte du Canada. Or, quelque habiles que soient, ou puissent être, les Calligraphes Ecossois qui se sont livrés à ce travail, il suffit d'un coup d'œil pour reconnaître que les *fac-simile* offrent de nombreuses dissemblances, non seulement avec les autographes de Fénelon, de Fléchier, et de Louis XV ; mais aussi avec les prétendus faux en écritures qu'on vous accuse d'avoir fabriqués. Ainsi l'exactitude manque même dans les *fac-simile* des prétendues pièces fausses de la carte.

Or, maintenant que peuvent prouver les dépositions d'une Servante, d'un Portier, pour établir que c'est vous, Monsieur le Comte, qui avez fabriqué, en collaboration d'une femme et d'un jeune homme illétre, une œuvre dont la conception et l'exécution eussent embarrassé toute une Académie ?

Et à quoi peuvent servir d'autres témoins subalternes, sans valeur et sans autorité, sur le fond même de la question ? Qu'importe, par exemple, d'où est venue la carte ainsi documentée ? Depuis

quand est-on tenu, sous peine d'être un faussaire, de prouver l'origine d'une pièce, d'un document que l'on produit, et dont la fausseté d'ailleurs ne peut être prouvée ?

Mais, dit-on, la preuve du faux résulte de ce que cette carte du Canada, portant la date de 1703, donne à Guillaume de L'Isle le titre de *premier Géographe du Roi*, titre qu'il n'obtint officiellement, c'est-à-dire par brevet, que le 24 Août 1718. Or, Mallet, de Lyons, écrivait sur le dos de cette carte et 1706, et il mourut en 1707 ; Fléchier était mort en 1710 ; Fénelon en 1715, par conséquent, avant que G. de L'Isle eut reçu son brevet. Donc, la carte, en donnant, en 1707, à ce Géographe un titre qu'il n'obtint qu'en 1718, contient un faux matériel, et ce *faux* donne droit de supposer *faux* aussi tout ce qui est écrit sur le dos de la carte.

Cet argument paraît fort et même concluant ; mais il tombe sans valeur devant les faits : or, quels sont ces faits ? C'est qu'il existe en France, en Angleterre, et vraisemblablement même dans les Bibliothèques d'Edimbourg, des cartes de Guillaume de L'Isle, d'une date antérieure à 1718, et sur lesquelles G. de L'Isle prend ce double titre : *de l'Académie des Sciences, et premier Géographe du Roy*. J'ai, dans mon Cabinet, un assez grand nombre de ces cartes : *Le Canada*, 1703 ; *Le Paraguay et le Chily*, 1703 ; *Le Pérou, le Brésil et le pays des Amazones*, 1703 ; *Les Indes et la Chine*, 1705 ; *La Tartarie*, 1706 ; *La Barbarie, La Nigritie et la Guinée*, 1707 ; *Le Congo et le pays des Caffres*, 1708 ; *Les Antilles Françaises*, 1717, &c. Eh ! bien, sur toutes ces cartes antérieures à 1718, sont ces mots gravés : *Par Guillaume DE L'ISLE, de l'Académie des Sciences, premier Géographe du Roy*. J'ai aussi les mêmes cartes, notamment celle du *Canada*, où la dénomination de *premier Géographe* manque, et qui offre un cartouche et des ornemens gravés, différens du cartouche et des ornemens de la carte qui contient le titre de *premier Géographe du Roi*.—Et les deux cartes ont cependant la même date. 1703 !

D'où viennent ces variations singulières, et qui ont donné lieu à des suppositions qu'il paraissait difficile de ruiner, et que voilà pourtant ruinées ?

Faut-il admettre que le titre de *premier Géographe du Roi* n'existant pas encore lorsqu'il fut créé pour Guillaume de L'Isle en 1718, G. de L'Isle a cru pouvoir, sans nuire à personne, le prendre d'avance, et s'y trouver d'autant plus autorisé, qu'à l'exemple de son père, Claude de L'Isle, mort en 1720, et qui avait eu pour élèves, dans les sciences historiques et mythologiques, tous les Princes de la Cour de Louis XIV, G. de L'Isle était, *de fait*, depuis 1701, toujours consulté par le vieux Roi, et toujours employé comme Géographe à la Cour? (comme on le voit par un mémoire historique de Fréret, copié de la main de Philippe Buache, Gendre et Successeur de Guillaume de L'Isle.)

Ou bien, faut-il admettre que Guillaume de L'Isle, devenu *premier Géographe du Roi*, en 1718, fit ajouter cette dénomination sur toutes les cartes antérieures à cette époque; quoiqu'on puisse remarquer que cette dénomination ne ressemble pas à une addition, et qu'en général elle paraît un même corps avec la gravure primitive?

Ou bien, faut-il admettre enfin qu'un ancien possesseur de la carte qui sert de grande pièce au procès, ayant, après 1718, vu des cartes du Canada, avec la date de 1703, portant la dénomination de *premier Géographe du Roi*, voulut présenter à Guillaume de L'Isle, comme un document singulièrement curieux, la fameuse carte, et le pria d'y faire ajouter le même titre qu'il avait fait graver sur tant d'autres cartes, notamment sur celle du Canada, et dont la publication était antérieure à 1718?

Cette supposition n'est pas impossible: elle paraîtra même assez naturelle si l'on se rapporte à l'époque, et si l'on considère qu'il devait paraître important au possesseur de la carte, qu'elle reçut un degré d'autorité de plus, du titre même que G. de L'Isle avait fait ajouter, après 1718, aux exemplaires invendus de sa carte du Canada.

Au surplus, que l'on fasse toutes les suppositions; la plus invraisemblable, la plus impossible, serait toujours, en définitive, celle qui présenterait, comme fausses, les écritures portées sur la carte du procès. Ce ne serait que par des conjectures, plus ou

moins incertaines, qu'on pourrait argumenter encore. Mais, dans un procès criminel, rien peut-il être livré à l'arbitraire et à la subtilité du raisonnement? Et peut-on combattre le difficile par l'impossible?

On prétend que les prétendus faussaires de la carte se sont trahis par trop de précautions. Je ne puis voir cela : je verrais même le contraire, si j'admettais la falsification, car n'eut ce pas été une grande maladresse de faire écrire, par le comte Alexander, à la Marquise de Lambert : " J'ai si peu d'idée à present que les titres " et les biens des Stirling puissent échoir à mes enfans, que j'ai " encouragé le goût de mon fils pour le Ministère de notre Eglise " d'Ecosse, et il s'y prépare en Hollande, à l'Université de Leyde." Certes, ce passage seul suffirait à confondre l'accusation.

Votre procès, Monsieur le Comte, aura, dans l'histoire, sa place et son retentissement.

Je ne croirais pas à votre loyauté, à votre honneur, qu'il me serait encore impossible de croire au vaste génie que supposerait en vous, si elle était fondée, la falsification de la carte du Canada.

L'accusation doit nécessairement tomber, si elle est saisie de haut, et dans son ensemble : tous les petits détails doivent se noyer dans la grandeur de cette cause !

Veuillez agréer, Monsieur le Comte, avec l'expression de mes vœux, celle de ma considération la plus distinguée.

(Signée)

VILLENAVE,

Ex-Professeur d'histoire littéraire de
France à l'Athénée Royal, un des
Presidents de l'Institut historique,
&c. &c.

Paris, 19 Avril, 1839.

No. 2.

LETTER of MONSIEUR VILLENAVE, one of the Presidents of the Historical Institute of France, to the Earl of Stirling, at Edinburgh.

(TRANSLATION.)

MY LORD,

If the letter you did me the honor of writing to me, on the 27th of February, has hitherto remained unanswered, it is because I am even now hardly recovered after a long and cruel malady, which placed my life in danger.

It was not without the deepest astonishment that I learnt the sad catastrophe, by which it was desired to bring your law-suit to a conclusion.

You are accused of having fabricated, or caused to be fabricated, all the writings which cover the back of a map of Canada. Permit me, my Lord, to say, that if they thus attack your honor, they ascribe to your intelligence an immense and gigantic extent; for, whoever will attentively examine all the vast composition of the pretended forgery, the divers contextures of the characters, the perfect conformity of the writing of Fénelon, Fléchier, and Louis XV, with other autograph documents of those three personages; if they will also examine the historical part, the ensemble, and all the details, they must be convinced that the art of the forger cannot extend so far. All the science of the "*Antiquary*" of Walter Scott, would not have sufficed for so wonderful a work; and I doubt whether the "Savans" of the Edinburgh Society, so justly renowned in the literary world, would, if they were consulted, affirm that they would be capable of imagining and arranging such a composition: for it is more easy to scale the heavens, or to penetrate into the depths of the philosophical sciences, than to give to a great ensemble of falsehoods, and of supposed facts, an air of truth.

I was asked to certify the authenticity of the writing of Fléchier, and of the three or four lines of Louis XV; I compared them, and could not hesitate to give my attestation. The illustrious Monsieur

Daunon, Member of the Institute, Keeper of the Archives of the Kingdom, has likewise certified the authenticity of the writing of Fénelon. Now, it would result from the verification of the artists of Scotland, that the Keeper of the Archives and I must have been deceived, and that the writings certified by us as authentic, must have been forged by you, my Lord, assisted by a lady, and by an illiterate young man, whom you must have set to the work.

It may be said that this decision is audacious, and even ourlesque.

What is in this matter very remarkable, is, that they have made a *fac-simile* at Edinburgh, for conducting the law-suit, of all that is written upon the back of the map of Canada. Now, however skilful may be the Scotch caligraphical writers who were employed at this work, a single glance suffices to recognize that the *fac-simile* offers dissimilitude in numerous instances, not only from the autographs of Fénelon, Fléchier, and Louis XV; but also from the pretended forged writings, which they accuse you of having fabricated. Thus exactness is wanting even in the *fac-simile* of the pretended false documents of the map.

Well now, what can be proved by the depositions of a servant girl, and a porter, to make out that it was you, my Lord, who fabricated, with your fellow-labourers, a woman and an unlettered young man, a work, the very conception and execution of which would have embarrassed a whole academy?

And of what use can be other subaltern witnesses without value and without authority, on the foundation even of the question? For example: what imports it whence came the map thus covered with documents? Since what period has it been held necessary, under penalty of being a forger, to prove the origin of a writing or document that is produced, the forgery of which cannot be proved?

But, it is said, the proof of forgery results from the fact that this map of Canada, bearing the date of 1703, gives to Guillaume de L'Isle the title of *First Geographer to the King*, a title which he did not officially obtain, that is to say by patent, until the 24th of August 1718. But, Mallet of Lyons wrote upon the back of this map in 1706, and he died in 1707; Fléchier was dead in 1710;

Fénelon in 1715, consequently before de L'Isle had received his patent. Therefore, the map, in giving, in 1707, to this geographer a title which he did not obtain till 1718, contains a material falsification; and this falsification gives a right to suppose also that everything which is written upon the back of the map is forged.

This argument appears strong and even conclusive; but it falls without value before the facts. Now, what are these facts? There are extant in France, in England, and most probably also in the libraries of Edinburgh, maps of Guillaume de L'Isle of a date anterior to 1718, and upon which Guillaume de L'Isle takes this double title; "*De l'Académie des Sciences, et premier Géographe du Roy*"—(of the Academy of Sciences, and first Geographer to the King.) I have in my cabinet a very considerable number of these maps: those of *Canada*, 1703; of *Paraguay and Chili*, 1703; of *Peru, Brazil, and the country of the Amazons*, 1703; *India and China*, 1705; *Tartary*, 1706; *Barbary, Nigritia, and Guinea*, 1707; *Congo and the country of the Caffres*, 1708; *the French Antilles*, 1717; &c. Well, upon all these maps anterior to 1718, are these words engraved: "*Par Guillaume DE L'ISLE, de l'Académie des Sciences, premier Géographe du Roy*"—(By Guillaume de L'Isle, of the Academy of Sciences, first Geographer to the King.) I have also the same maps, especially that of *Canada*, in which the denomination of *first Geographer* is wanting, and which has a "cartouche," (scroll or tablet) and engraved ornaments, different from the "cartouche" and ornaments of the map which contains the title of *first Geographer to the King*. And the two maps have, nevertheless, the same date, 1703!

Whence came these singular variations, and which have given rise to suppositions which it appeared difficult to destroy, and yet, behold them, nevertheless, destroyed?

Must it be admitted that the title of *first Geographer to the King*, not yet existing when it was created for Guillaume de l'Isle in 1718, G. de L'Isle thought he might, without injury to any person, take it by anticipation; and considered himself so much the more authorized, that, following the example of his father, Claude

de L'Isle, who died in 1720, and who had had for pupils in the Historical Sciences and Mythology, all the Princes of the Court of Louis XIV. Guillaume de L'Isle was, *in fact*, from 1701, always consulted by the old King, and always employed as Geographer at the Court? (as may be seen by an historical memoir of Fréret, copied by the hand of Philip Buache, son-in-law and successor of Guillaume de L'Isle.)

Or, must it be admitted that Guillaume de L'Isle, become *first Geographer to the King* in 1718, caused this denomination to be added upon all the maps anterior to that period; though it may be remembered that this denomination does not resemble an addition, and that, in general, it appears to form the same body with the primitive engraving?

Or must it, in short, be admitted that a former possessor of the map which serves as the principal document in the law-suit, having, after *one thousand seven hundred and eighteen*, seen the maps of Canada, with the date of 1703, bearing the denomination of *first Geographer to the King*, was desirous of presenting to Guillaume de L'Isle, as a singularly curious document, the famous map, and begged of him to have added to it the same title which he had caused to be engraved upon so many other maps, especially that of Canada, the publication of which was anterior to 1718?

This supposition is not impossible; it will even appear natural enough, if we refer back to the period, and if we consider that it must have appeared important to the possessor of the map, that it should receive a greater degree of authority by that very title which G. de L'Isle had caused to be added, after 1718, to the unsold copies of his map of Canada.

Besides, letting all suppositions be indulged in, still the most unlikely, the most impossible, would always be that final one which represents as *forgeries* the writings upon the map now in process. It could only be by conjectures, more or less uncertain, that further arguments could be brought forward. But, can anything in a criminal suit be submitted to arbitrary decision, and to

the subtlety of reasoning? And can what is difficult be combatted by what is impossible?

It is pretended that the pretended forgers of the map have betrayed themselves by too much precaution. I cannot see that; I should, indeed, see the contrary if I admitted the falsification; for, would it not have been great unskillfulness to make Mr. Alexander write to the Marchioness de Lambert; "I have so little idea, at present, that the titles and estates of the Stirling family can devolve upon my children, that I have encouraged the taste of my son for the ministry of our church of Scotland, and he is preparing himself in Holland, at the university of Leyden." Assuredly, this passage alone would suffice to confound the accusation.

Your law-suit, my Lord, will have its place, and be re-echoed in the pages of history.

Even if I did not believe in your loyalty and honor, it would be impossible for me to believe in the vast genius, which would attribute to you, if it were well founded, the fabrication of the map of Canada.

The accusation must necessarily fall, if it be examined from the origin, and as a whole. All the minor details ought to be overlooked in the grandeur of this cause.

Be pleased to accept, my Lord, with the expression of my wishes, that of my most distinguished consideration.

(Signed) VILLENAVE,

Ex-Professor of the literary History of France at the Royal Athæneum, one of the Presidents of the Historical Institute, &c. &c.

Paris, 19th April, 1839.

No. 3.

COPY of the DECLARATION of JOHN SKIRVING, Punch-cutter, Nicolson Square, Edinburgh, at his private examination by Lord Stirling's agent before the Trial.

Produces a plate, and three copies of a modern map of Turkey and Asia, in the titles of two of which he has inserted the last line from the foresaid plate, as will be seen by a comparison of these two maps, in which the insertion is made with the remaining one. In like manner he is of opinion that it was quite possible for Guillaume De L'Isle to have made the insertion of "*Premier Géographe du Roi*" in any of his maps, *after* the impression had been thrown off, without throwing off an entire impression of the map; and if he had had a number of his maps of 1703, or any other date, *already thrown off*, it would have been a saving of expense to him to have put on the addition of his title on them in this manner, or he might have put it on any single map, if HE HAD BEEN REQUESTED, or had occasion so to do. The insertion could also have been made in another, and a very simple, form, (and which he thinks no French artist or engraver could be ignorant of, especially an extensive publisher of maps such as Guillaume De L'Isle), and that is by means of an operation with tissue paper, which he can explain if necessary.

 No. 4.

COPY of the AFFIDAVIT of LORD STIRLING's Landlord, who came from Paris to attend his Lordship's trial, and give evidence as a Witness; but was not called.

I, William Benner, British Graduate, and general instructor of youth since 1818, and at present residing over ten years in Paris, being duly sworn on the Holy Evangelists, do affirm and declare,

That the Earl of Stirling did reside in my house situated in the *centre* of Paris, from the 21st December 1836, to the 13th August 1837, breakfasting at ten o'clock, dining at five o'clock, except on the 24th December, that he dined out, and taking tea at 8, P.M. with the exception of tea-time being put back to nine o'clock about one evening, at most, in the week, towards the latter part of the time stated.

That Lord Stirling, during the above period, seldom went out early in the day, usually taking his letters to the Post Office, at the Exchange, about four P.M. ; and did not by his actions, conduct, and general demeanour, excite any suspicion.

That Lord Stirling seemed to wish for privacy rather than concealment ; and left, in general, his papers, books, and two maps of Paris, loose and exposed to view ; and that his Lordship's habits and movements were, at all times, exposed to two women of my family, as well as to a vigilant porter and his wife, the door of whose lodge was diametrically opposite to that of the apartment, at a distance of only eight feet ; and, consequently, that the street-gate having to be opened by the porters at night, his Lordship could not possibly go out or come in unknown to them, and to the persons residing in the same apartment, all of whom have never had even the slightest suspicion of, nor have they made the least remark on, his Lordship's conduct or manner of acting.

That Lord Stirling having very rarely gone out or returned in a coach or cabriolet, only using such in bad weather, could not from his age, manner of walking, and weakness of sight, have gone in less than an hour from his lodgings to the Rue de Tournon, being the street in front of the Luxembourg Palace or Chamber of Peers, in which street it was suspected that the forgery was effected, being a distance of nearly three miles through zig-zag streets, and rendered still longer by the shutting of the gates of the Tuileries gardens at night fall ; and, consequently, that he could never have passed at the house in the Rue de Tournon, more than half an hour to an hour at most, at any time, as he invariably returned

about nine o'clock to take his tea, which, on these occasions occurred so seldom, as not to excite any remarks.

Sworn before Robert Grieve, J. P. for the City of Edinbro', this
8th day of May 1839.

(Signed) WM. BENNER. B.A.

No. 5.

COPY of the OPINION of WILLIAM BOLLAND, Esq., Barrister, (afterwards one of the Barons of the Exchequer) upon a Case submitted to him by Lord Stirling's Solicitors, previously to the Election of a Representative Peer, appointed to take place on the 2d of June 1825.

The learned Counsel was asked whether, taking into consideration the whole circumstances, he would advise the Earl of Stirling to follow the recommendation of his agent in going to Edinburgh, or to remain at home and institute proceedings for the Scotch estates?

OPINION.

It appears to me, that the most regular course for the Earl of Stirling to take, is to appear at the ensuing election, and tender his vote; but, as his not doing so will be of no prejudice to his claim to the honors, it is as much a matter for himself, as for me, to decide upon. If I were satisfied that the title to the estates could be as well made out as that to the honors, I should at once recommend the Earl not to omit the opportunity of taking so public and decided a step, as that of attending at Holyrood House, and voting for a Peer of Scotland.

(Signed) WILLIAM BOLLAND,

May 5, 1825.

Inner Temple.

No. 6.

COPY of the FIRST OPINION of JAMES WILSON, Esq., Advocate, upon the following question, with a brief statement of the facts out of which it arose, being submitted to him, *viz.*

Taking into view and perfect consideration the preceding statement,

Your opinion is requested,

Whether the Earl of Stirling has not acted with propriety in taking upon him that title; and whether, having been received in that rank, and exercised his right of voting among his co-Peers, he has not sufficiently invested himself in his honours according to the law and usage of Scotland, without any occasion of applying to the House of Lords for allowance of his dignity, until called there by competitorship, or by protest, and then put under the necessity of maintaining his right of succession to his title, &c.

OPINION.

If the documents and evidence by which the Earl of Stirling made out his claim, be clear and explicit, I am of opinion, that, having on that evidence published his character and *Status* by the general service, and assumed the honours and dignities of the House of Stirling, and having exercised the privileges attendant on those honors, he need not apply to the House of Lords for allowance of his dignity. No doubt, if the title had been an English title, it is probable that, on account of the time it lay dormant, the Lord Chancellor would not have issued a writ of summons without a previous examination of the Earl's right; but as matters stand, it may be as well to rest in the open enjoyment of the honours and dignity until they are challenged.

The opinion of

(Signed) JAMES WILSON.

15th December 1823.

COPY of the SECOND OPINION of JAMES WILSON, Esq., Scotch Advocate, on a Case, &c. submitted to him as to the Titles of the Earl of Stirling.

Lincoln's-Inn, 15, Serle Street,
12th November 1829.

I am of opinion, that by the service and retour in the preceding page, the claimant has established his character as nearest lawful heir, &c., and acquired, and vested in his person, the dignities possessed by his ancestors. Having so clothed himself, in the form required by law, with that character, the peerage, rank, and dignity of his ancestors drop on him by descent. He does not require any further or ulterior proceedings for the purpose of completing the investiture of these honors. I see no authority in the law of Scotland, for requiring that a claimant to a Scotch Peerage must, in order to complete or perfect his right, apply to the House of Lords for allowance of dignity. No person disputes or challenges the right and title of the claimant; on the contrary, he is known and recognized as the Earl of Stirling; has publicly exercised the privilege of a Peer, by voting in the election of a Representative Peer of Scotland; and his vote has been received without dissent by the assembled Peers. In my humble opinion, were he to go to the House of Lords by petition, for allowance of dignity, he would be confessing a doubt of his own character, surrendering the rights of the Scotch Nobility, and recognizing a jurisdiction in this particular not made imperative by the treaty of Union. Still, a party claiming the dignity of a Scotch peerage may, if he choose, try the experiment, whether the House of Lords will entertain his claim and decide upon it; and there are instances in which the party has so applied, and the House so acted. But as far as Scotch authorities enable me, on principle, so to judge, I consider such applications, except in cases utterly distinct and different from the present, to have been merely optional in the party, and probably resorted to from motives of convenience.

If the present Earl of Stirling, has formally, legally, and on sufficient evidence, proved his character, as ex facie appears from the service and retour, &c., he, until successfully challenged by a competitor nearer in blood, is, and must remain, the Earl of Stirling, whether he seeks for, and obtains from the House of Lords the allowance of dignity or not.

The opinion of

(Signed) JAMES WILSON.

No. 8.

COPY of the LETTER written by Order of the Lords of the Committee of Privy Council, in answer to Lord Stirling's Petition to the King in Council, dated 29th of August 1831; in which he had tendered his homage at the Coronation ceremony, as Hereditary-Lieutenant and Lord-Proprietor of the Province of Nova Scotia, &c.

Council Office, Whitehall,
30th of August 1831.

My Lord,

I am directed by the Lords of the Committee of Council, appointed to consider of their Majesties' Coronation, to acquaint you that His Majesty has approved of a ceremonial on the occasion of the approaching coronation, in which your Lordship is assigned no part. I am also to acquaint your Lordship that you are at liberty to bring forward any claim of which you may deem yourself legally possessed upon any future occasion.

I have the honor to be,

Your Lordship's obedient Servant,

(Signed) C. C. GREVILLE.

The Earl of Stirling.

No. 9.

COPY of LORD CHANCELLOR LYNDHURST'S LETTER, or Note, to the Earl of Stirling, after taking ten days to consider, and summoning his Lordship's Counsel to attend and give explanations, before he would affix the Great Seal to the Writ, certifying that he had qualified to vote at an Election of Peers, then ensuing.

The Lord Chancellor presents his compliments to Lord Stirling, and has directed the Great Seal to be affixed to the Writ certifying his Lordship's having taken the usual oaths. The Lord Chancellor will regret very much, if the delay has put Lord Stirling to any inconvenience.

George Street, 20th August 1830.

 No. 10.

COPY EXTRACT from the PROCEEDINGS of the COURT OF SESSION,
25th January 1831.

COURT OF SESSION :

January 25th 1831.

SUMMONS OF REDUCTION, &c. &c.

ALEXANDER, EARL OF STIRLING - - Pursuer,
W. C. C. GRAHAM, and Others - - Defenders.

“ Under this style and title, he (the pursuer) cannot be permitted to insist in the present action ”

Defences by His Majesty's Advocate, for His Majesty's interest, dated December 1st, 1830.

(Signed) “ JOHN HOPE.”

Lord Justice Clerk.—The pursuer has brought a new action, and called the officers of state ; and he comes to Mr. Cunningham

Graham, and claims a particular barony of his estate, which had been usurped by him or his predecessors; and he has secured attention to that, by putting a patrimonial interest at stake. He has again taken his title of Earl of Stirling. The service to the first Earl has been carried through since the summons was executed; and it is stated positively, that, at an election in 1825, the pursuer voted without protest; and, in the next place, that he proceeded, in 1830, before the Lord High-Chancellor in England, to take the oaths, and was received and qualified as a peer, and certainly has got the usual certificates; and at the last general election,* his vote was received without protest. The observations that any noble Lords choose to state in their deliberations, and the notices taken of them by the clerks, your Lordships will never admit to have the same validity with a protest. If your Lordships were satisfied that that step was allowed to be taken contrary to the resolution of the House of Lords, then the point would be brought back to the state in which I conceived it to stand when the former summons was before us. But a statement being merely made in a minute, and no protest entered, we have pretty real evidence that my Lord Roseberry, who moved the resolution, was convinced and well knew it did not apply to a case in this situation; I have not a doubt that his Lordship was quite satisfied that it did not apply to dormant peerages, and that they were not the claims which should have been excluded. I will act upon this resolution still, which prevents a Peer from going down to Holyrood House to give his vote, if I am satisfied that he has no right to that dignity which he has assumed. But it is admitted, that its application is in existing peerages, and not in dormant ones; and, therefore, this case is brought back to the former practice in regard to those titles of noblemen standing upon the Union Roll, according to which, I apprehend, we would have no ground whatsoever for refusing to the claimants the entertaining of actions describing themselves by the names of any individual Peers, and

* In June, 1831.

who took the oaths, and voted, and were actually enrolled by the clerks acting as the representatives of the Lord Clerk Register.

“*Edinburgh, February 9th, 1831.*—The Lords having heard
“ counsel on the first preliminary defence against this action, sus-
“ tain instance in the name of ALEXANDER, EARL OF STIRLING;
“ and appoint the case to be again put to the summer roll, that
“ parties may be heard *quoad ultra*.

(Signed) D. BOYLE, I.P.D.”

No. 11.

EXTRACT from the return of the LORDS OF SESSION to the order
of the House of Lords, dated 12th June, 1739.

“*Secondly.* They presume humbly to inform your Lordships,
“ that, through various accidents, the state of their records, parti-
“ cularly of their most antient, is imperfect; for not to mention
“ other misfortunes, it appears, by an examination to be found
“ amongst the records of parliament, 8th January, 1661, that of
“ the registers which, having been carried to London during the
“ usurpation of Cromwell, were bringing back from London, after
“ the restoration, by sea, 85 hogsheads were, in a storm, shifted
“ out of the frigate the *Eagle*, into another vessel, which sunk with
“ these records at sea; and ten hogsheads more of the records,
“ brought down from London at that time, lie still unopened in
“ the General Register-house, through some neglect of the officers
“ to whose charge they were committed, that cannot well be
“ accounted for; so that, upon this separate account, your Lord-
“ ships will perceive a search into the antient records cannot give
“ reasonable satisfaction.

“*Thirdly.* After the practice of creating peerages by patent,
“ the records, till of late, have been so carelessly kept, that they
“ cannot be absolutely depended upon. Patents of honour have
“ passed the Great Seal, and yet copies of the patents so passed are

“ not to be met with in the register of that seal ; and of this, the
 “ patents of the Lord Forrester, in 1651, and of the Earl of Breadal-
 “ bane, 1682, are instances ; the first of these was duly sealed in
 “ the year 1651, but not entered in the register till the year 1684,
 “ and the last was duly sealed in the year 1682, but, to this hour,
 “ is not entered in the register ; besides that, of volume 57 of the
 “ register of the Great Seal, in the keeping of the Lord Keeper,
 “ twelve leaves are lost by some accident now unknown ; and it
 “ appears from the Minute book, that the patent of Bargeny, and
 “ several others, were passed at such time that they probably may
 “ have been entered in some of those leaves that are lost.

“ Fourthly. They presume humbly to inform your Lordships,
 “ that it was a practice very prevalent in Scotland, for peers to
 “ make a resignation or surrender of their honours, whether origin-
 “ ally created by patent, or by the more antient methods, into the
 “ hands of the sovereign, for new grants of those honours to such
 “ a series of heirs as they intended for their successors ; and the
 “ new grants passed sometimes in the form of patents of honour
 “ only, and sometimes in the form of charters of the estates, con-
 “ taining a new grant and limitation of the honours ; now, where
 “ this last was the case, it must be attended with very great labour
 “ and expense of time, to search for the titles of honour among all
 “ the charters of lands.”

No. 12.

COPY of the PRECOGNITION (private examination) of a scientific
 artist, taken before the trial by Lord Stirling's agents. This
 respectable man had, during the whole period of the documents
 being detained in Court, the best opportunities of examining
 them, and of observing the extraordinary changes which, from time
 to time, took place. He attended as a witness, *but was not called.*

Leith, Lithographer, Hanover Street, has been about ten or
 twelve years in business.

Map—Mallet's Note.—His opinion is this note is genuine, but thinks that some person has gone over the letters in it, with a brush and colouring matter of a pink or brownish tint. This is evident from the colouring matter being spotted all over the surface of the map, apart from the writing. His opinion is that this has been done to give it the appearance of a forged document. This could not be done by a forger, as he would not leave so many indications of the material he had been using, scattered about. If it had been done by him accidentally, he would have tried some means to have got these effaced. Moreover, some of the lines are not gone over in this manner, with the colouring matter; which corroborates his opinion, that some one must have gone over the writing with a colouring matter, and left them intentionally, to give it the appearance of an ill-executed forgery. He stated this to the Crown counsel, and was asked by them who he thought could have done this; and he said he was certain, from the manner in which it had been done, that it must have been by the enemies of Lord Stirling.

Letter—John Alexander.—The same remarks apply to this letter, but not in such a strong degree.

Note—Carron St. Etienne.—The same remarks apply to this, but only in a slight degree.

Note—Bishop of Nismes.—There has been also tampering with this note, by the letters having been gone over here and there with a darker ink, and that this has been done some time after the original writing. If a person had been wishing to forge this document, there was no occasion for him to have gone over it in this way, which was the very means to make it appear a forgery.

Note—Louis.—Nothing here to lead him to suppose anything had been done to the writing, which he thinks genuine.

Title of Maps.—His opinion is, that the map was thrown off in 1703. He says it would be perfect folly, and does not believe that the publisher of the map would have thrown it off in 1718, with the addition of 1703 on it. Every publisher is anxious to have the most recent date possible on his works, and would not throw off

impressions with a date fifteen years preceding on them. This remark applies more especially to the maps, and to the map in question, being of a country where geographical discoveries, in all probability, would have been made in the space of fifteen years. The title Geographer, &c., is evidently put in at an after date from 1703, but when it was struck in he cannot say. The addition could be made from a plate separately, if wished, so as to leave no trace of its being so put in this manner.

Generally, the writings on the map are free and unconstrained, and there is nothing in the writings, as they appear to have been *originally* executed, to induce an opinion that they are forgeries. Acting upon this opinion, he caused the lithographic copies of them to be made *fac similies* of the writing *in its natural state*, without the tampering and vitiation above referred to.

Mrs. Innes Smith's packet—Letter A. E. Baillie.—The writing is very tremulous, but cannot say one thing or another about it. The only way to show it a forgery, would be a comparison with other specimens of the same handwriting; it is not like Lord Stirling's.

Mrs. Innes Smith's Note.—This is evidently a lady's handwriting, and he sees nothing about it that has the appearance of a forgery, or like Lord Stirling's writing.

Letter—Benjamin Alexander.—This has every appearance of a genuine document, testing it strictly, by the severest comparison of words, and their formation with other words in the document, and with Lord Stirling's writing.

Parchment packet.—Is confident the words "some of my wife's family papers," are in the handwriting of the late *Mr. Humphrys*, after comparing it with the rental book and letters of that gentleman.

THE END.

