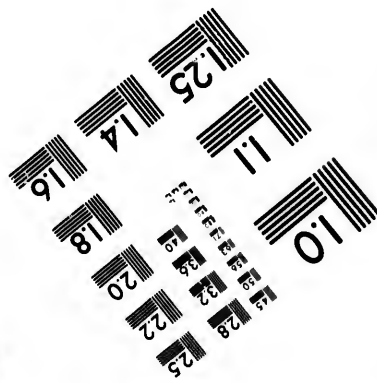
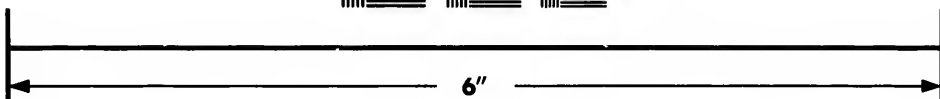
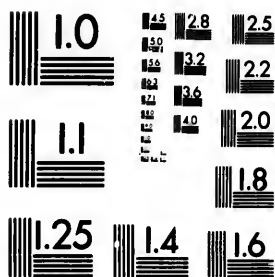


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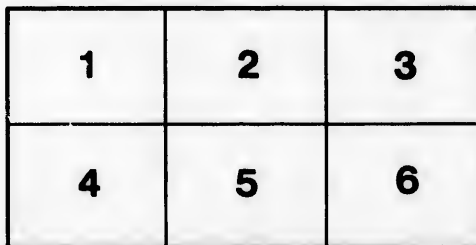
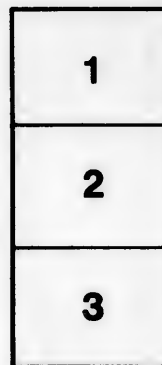
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HEREDITARY LIEUTENANT GENERAL
AND
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BY JOHN L. HAYES,
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A country larger than Great Britain and France united was given, in the early part of the 17th century, with powers almost regal, to Sir William Alexander, of Menstrie, a descendant of Somerled, king of the Isles.

But Sir William Alexander was less distinguished for birth than for ability and accomplishments. An ornament of the court of James the 6th, of Scotland, who called him his philosophical poet, he followed that Prince to London, and published a volume of poems which placed him in the highest rank among Scotch poets. He was created a knight, a gentleman of the chamber, and a privy councillor. From that moment he renounced literary glory to occupy himself with politics and government.

James 1st had granted letters patent to a company for the establishment of an English colony in North America; but this company, terrified at the difficulty of the enterprise, wished to give it up, when Sir William Alexander, more courageous, obtained a grant of Nova Scotia, with the title of Hereditary Lieutenant, by charter dated Windsor, 10th September, 1621.

In a few years Sir William Alexander was made a Scotch peer, as Lord Alexander of Tullibodie, Viscount of Canada, Viscount and Earl of Stirling and Earl of Dovan, and invested with immense territories in the new world and large estates in Scotland.

The following royal charters under the great seal were granted to the Earl of Stirling, and were recognised and confirmed by act of Parliament in the presence of King Charles the 1st. These are all on record at Edinburgh:

10th September, 1621. Original charter of Nova Scotia.

12th July, 1625. Charter of Novo Damus of the lands, lordship and barony of Nova Scotia.

3d May, 1627. Charter of the country and dominion of New Scotland.

2d February, 1628. Original charter of Canada, including fifty leagues of bounds on both sides of the River St. Lawrence and the Great Lakes.

There were other patents and charters, among them letters patent of April 22d, 1635, "for a tract of Maine and the Island of Stirling, (Long Island,) and islands adjacent;" and the charter of Novo Damus, dated 7th December, 1639, which was a re-grant of all the lands and honors which the Earl had at any time received from James 1st and Charles 1st. This charter is the only one attempted to be disputed. But its existence is wholly unnecessary to support the present Earl's title to the lands and honors.

These charters gave the Earl of Stirling vast political and administrative powers. He was made his Majesty's hereditary lieutenant general over the whole countries of Nova Scotia and Canada. He was also made justice general, high admiral, lord of regality, and hereditary steward. The power was conferred upon him of making officers of state and justice, of conferring titles of honor, of coining money, and the privilege of making laws concerning the public state, good and government of the country. He had the power of appointing one hundred and fifty baronets, called Baronets of Nova Scotia, who were to take precedence of all other baronets. Under this power the first Earl actually made over one hundred baronets; nearly fifty of the present baronets in Great Britain hold their titles from patents granted by the first Earl of Stirling.

It is proper to remark that the expenses of the first colonization had already been incurred by Sir William Alexander before the first charter of 10th September, 1621, was granted by James 1st, and that is the reason alleged in the charter for the grant: "For these causes, as well as on account of the faithful

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and acceptable service of our beloved councillor, Sir William Alexander, knight, to us rendered and to be rendered, who, first of our subjects, at his own expense, endeavored to plant this foreign colony, and sought out for colonization the divers lands circumscribed, &c., we do grant, &c."

This immense grant was therefore not a mere favor; it was a reward for efforts made and expenses incurred in colonizing these great wastes of the new world.

Soon after obtaining the charter of 10th September, 1621, the Earl devoted the whole of his large fortune to the enterprise of colonization, where every thing was to be created; and the grant is less extraordinary since the King had no money in his treasury, nor a navy, which was only created in the time of Cromwell. The country was inhabited by savages and threatened by France, which claimed it by reason of the discovery of Canada by Jaques Cartier in 1534. The paramount claim of the English crown was founded on the discovery of the continent of North America by Sebastian Cabot in 1497, who took possession in the name of Henry 7th. The vast expenses of colonizing and fortifying, all carried on under the superintendance of the Earl's eldest son, who inhabited during twelve years Port Royal, in Nova Scotia, as governor of the new colony, was worthy of recompense; and when, through the inability of the King to aid the Earl, the country at length fell into the hands of the French, £10,000 sterling was granted to compensate him for his losses. This grant expressly stated, "it is no wise for quitting the title, rights, or possession of New Scotland, or any part thereof, but only for the satisfaction of the losses aforesaid." This sum has never been paid, and is still due, with interest thereon, to the heirs of the first Earl.

Through the surrender just mentioned Nova Scotia became Acadia, and only finally returned to England at the peace of 1763.

During the French occupation Lord Stirling and his sons vainly attempted resistance. The rights of the family were

necessarily suspended. Nevertheless, in the various negotiations and treaties between England and France, they have been repeatedly brought forward by England in support of her claim of sovereignty; the royal charters and legislative acts in favor of the Earl of Stirling and his heirs being her strongest ground of argument. The British Government produced these charters before the late King of the Netherlands, when he sat as arbitrator on the question of the northeastern boundary.

The troubles which desolated the three kingdoms during the 17th century, overturned rights and titles of property, ruined some ancient families, and impoverished others. The rich domains of the Stirlings in Scotland, partly on account of debts incurred by the family to carry out the schemes of colonization, and partly on account of the civil and religious agitations of that period, passed into other hands.

Before proceeding to detail the circumstances which have occasioned the delay in the assertion of the claims of the Stirling family, we will very briefly allude to the fact that during the last century pretensions were vainly set forth to the lands and titles of this family. Canada was still under the French rule when, in 1758, William Alexander, afterwards a general in the American army during the revolution, appeared in Great Britain, and, assuming the title, presented himself as heir to the lands and honors. Gen. Alexander was probably descended from some one of the many Alexanders of the clan brought to Nova Scotia by the first Earl of Stirling, all of whom were driven to the south by the French. The tradition of relationship to the Earl doubtless induced him to set up his claim. It is sufficient here to say, that he took up the title and bore it without having gone through the proper legal steps or formalities to support it, and that he did not claim to descend from the first Earl, but from a supposed uncle, which descent could have given him no title to the lands or honors. He presented his claim to the House of Lords, which no Scotch peer was required to do; but the fact of the existence of lineal de-

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scendants of the first Earl, who were then mere youths in college, being notorious, the House of Lords rejected his claim. He re-embarked for America, where he died without issue male, in 1783.

The last male descendants of William, first Earl of Stirling, were in consequence of the civil wars, religious troubles, proscriptions, confiscations, and revolutions which agitated England during more than a century, a Presbyterian minister at Birmingham, who died in 1765, a man greatly honored for his piety; and Benjamin Alexander, 8th Earl of Stirling *de jure*, a learned physician who died in London in 1768. The rights of Benjamin passed to his eldest sister, for, by the Scottish law of descent, as well by the limitations of the charters, *the eldest heir female of the last heir male takes the inheritance*. This sister dying unmarried in 1764, the rights finally passed to another sister, Hannah Alexander, *de jure* 2nd Countess of Stirling. The last heiress of the titles and rights of the house of Stirling, married in 1769 William Humphrys of the Larches, in Warwickshire. Of this marriage, out of eight children, three only survived, Alexander 9th and present Earl, and two daughters.

Thus the rights of the family were, during fifty years, in female heirs, or, in other words, during that period the circumstances of the family were such that no steps could be taken to pursue rights which, without being disregarded or contested, required to be established. But before the transmission of these rights to females, John and Benjamin Alexander were too exclusively occupied with their education and establishment in their professions even to take up their rank. The earlier assumption of the honors of the family was prevented by other obvious reasons.

1st. Because the old Scotch estates had, during the civil wars, been seized by others, who, thus powerful, were ready to defend them at all hazards.

2d. Because Canada and Nova Scotia were only fully restored to England at the peace of 1763, a short time previous

to the deaths of both John and Benjamin, last heirs male of the first Earl.

3d. Because the papers of the family had been scattered, lost, or stolen.

4th. Because during the wars between England and France under the republic, the present Earl and his father were detained in France as prisoners of war with thousands of English, and it was only after a detention of twelve years, and after making many efforts to recover considerable sums of money which had been confiscated there, that he returned in 1815 to his own country.

5th. Finally, because it was necessary, before commencing so important an affair, to have ample means, which though abundant at first might become insufficient in the case of a long resistance.

As soon as the necessary arrangements were completed, the present Earl of Stirling proceeded to take the proper measures for the re-establishment and acknowledgment of his rights.

He was fortified with evidence to prove the descent of the titles and lands, as follows :

William, the first Earl, died in February, 1640, and was succeeded by his infant grandson, the only son of his deceased eldest son, William, 2d Earl. He survived his grandfather six months, and died under eight years of age. He was succeeded by his uncle Henry, third Earl, who was the eldest surviving son of the first Earl; Henry, third Earl, died in 1644, and was succeeded by his only son, Henry, fourth Earl. Henry, fourth Earl, died in 1690, leaving four sons, Henry, eldest and fifth Earl, William, Robert, and Peter, who died before their eldest brother. At the death of Henry, fifth Earl, without issue in 1739, the succession went to Rev. John Alexander, grandson and heir male of John, fourth son of the first Earl, who died in Ireland, in 1666. The Rev. John Alexander, sixth Earl *de jure*, died at Dublin, 1st November, 1743; four years after the death of Henry, fifth Earl. The

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Rev. John Alexander, sixth Earl *de jure*, left four children, John, 7th Earl of Stirling *de jure*, who died unmarried, 29th December, 1765. Benjamin, eighth Earl *de jure*, who died unmarried, 18th April, 1768. Mary, countess of Stirling *de jure*, who succeeded upon the extinguishment of all the heirs male, and died unmarried, April 28th, 1794; Hannah, second countess of Stirling, wife of William Humphrys, who died 12th September, 1814. Upon the death of his mother, Alexander, the ninth and present Earl both *de facto* and *de jure*, succeeded to the titles and estates of the family.

We do not propose here to furnish the evidences of descent, or to detail historically and in the order of time, the steps which were taken by the present Earl of Stirling to establish his rights. We propose to show that—

I. It has been judicially established, by courts of competent jurisdiction that the present Earl of Stirling is lineally descended from the first Earl of Stirling, and the real heir to his title and estates.

II. The title and position of the present Earl of Stirling have been officially recognised on the most solemn occasions in England and Scotland.

I. Judicial recognition.

By the Scottish law certain judicial proceedings are particularly and especially provided for the trial of the fact of heirship. He who is truly heir of a deceased person, before he can have an active title to the estate which was in his ancestor, must be served and *retoured* heir by an inquest. These services proceed upon a brief, called a brief of inquest, and are of two kinds, general and special. The general service proceeds on a brief, issuing from the Scotch chancery, directed to a judge there, and must be proclaimed at the head borough of the jurisdiction within which the heir is to be served. After the expiration of fifteen days, the service is tried before the Judge. The jury to try the heirship consists of fifteen persons, who are sworn in by the judge to act impar-

tially. The apparent heir produces to the jury his claim as heir, and they may proceed, not only on the evidence offered by the claimant, but on the proper knowledge of any two of themselves, for they are considered both in the light of judges and witnesses. The point of inquiry is, whether the claimant be the next and lawful heir of the deceased. If it appear to the jury that the claim is proved, they *serve* the claimant, *i. e.*, they declare him heir to the deceased by a sentence, or service, signed by the chancellor of the jury, and attested by the judge. The clerk to the service then prepares a return of the claim of service, with the verdict of the jury to the chancellor; which after being thus recorded and rendered in the chancery books, is called the *retour*. The general service is completed as soon as it is retoured, and carries to the heir the complete right of all the heritable subjects on which the ancestor had not taken seisin. These services are not traversible, or cannot be denied, but must be taken as true, until by regular process of reduction, at the suit of a *better claimant*, they are falsified.

Lord Stirling has been returned by this due form of law:

1st. On the 7th of February, 1826, heir to his deceased mother, Hannah, Countess of Stirling, as heiress to her brother, Benjamin, eighth Earl of Stirling, *de jure*, who was last heir male of the body of William, first Earl of Stirling.

2dly. On the 11th of October, 1830, nearest and lawful heir in general of his great-great-great-grandfather, William, first Earl of Stirling.

3dly. On the 30th May, 1831, nearest and lawful heir of tailsie and provision to his ancestor, William, first Earl of Stirling.

When the heir desires to perfect his title to special subjects, in which the ancestor died vested and seized, he obtains what is called a special service. The special service proceeds upon a brief issued from the chancery, directed, in cases like the present, to the sheriff depute of Edinburgh, or his substitute. The service proceeds in the usual form; the jury of fifteen

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being appointed, the claim made, and the evidence offered. The evidence and proof required are more ample in this than in the general service. The principal points to be proved are, that the ancestor is dead, and the precise time of his death, and that he died seized of the land specified in the claim, in whose hands the fee is at the time of service, &c. These heads being proved, the jury serve the heir. An extract of the proceedings returned into chancery, is said to be the retour of the heir's service.

4thly. By a special service, such as has been described, *the present* Lord Stirling was, on the 2d of July, 1831, served as nearest and lawful heir in special of William, first Earl of Stirling, to take up the fee of the lands comprised in the aforesaid charters.

The following extracts from this important act of court are taken from the records, register house, Edinburgh:

"The 10th of June, 1831, a brief was issued forth of his Majesty's chancery, directed to the sheriff depute of the sheriffdom of Edinburgh, specially constituted as aforesaid, at the instance of the said Alexander, Earl of Stirling, &c., for precognoscing him nearest and lawful heir of the said deceased William, Earl of Stirling, his great-great-great-grandfather, in all and sundry lands, and others in which the said William, Earl of Stirling, died last vest and seized as of fee," &c.

"William Swanston, officer of the said sheriff, with witnesses, passed to the market cross of the burgh of Edinburgh, &c., upon the 15th day of June last passed, being a market day, and in open market time duly and openly proclaimed and executed the brieves in due form of law."

"On the 2d July, 1831, 'within the parliament or new session house,' at Edinburgh, 'in the court-room of the first division of the court of session, in presence of George Tait, esquire, sheriff substitute of the sheriffdom of Edinburgh, as sheriff of the sheriffdom of Edinburgh,' &c. Thomas Christopher Banks, esquire, as procurator and mandatory of the

Earl of Stirling, having demanded that he should be served and cognosced nearest and lawful heir of the said deceased William, Earl of Stirling, his great-great-great-grandfather, in all and sundry the lands, continents, and islands situate and lying in America, and others therein particularly described, &c." "Produced the writs after mentioned, viz., book the 51st of the register of the great seal, containing the record of a charter of *novo damus*, under the said seal, of date the 12th day of July, in the year 1625, made, given, and granted by his Majesty, Charles the First, in favor of the said William, Earl of Stirling, (then and therein named Sir William Alexander,) of the lands, barony, and lordship of Nova Scotia, in America," &c.; "secundo, extract registered instrument of seisin, following upon the precept in the said charter, in favor of the said William, Earl of Stirling, of date 29th of September, in the said year 1625, recorded in the general register of seisins, &c.; and lastly, general retour of the service expedite before the bailies of the burgh of Canongate, of the said Alexander, Earl of Stirling, as heir of the said deceased William, Earl of Stirling, his great-great-great-grandfather, which retour is dated the 11th day of October, 1830, and duly retoured to chancery," &c. Thus, "the sheriff substitute of the sheriffdom of Edinburgh, as judge aforesaid, caused the said Lindsay Rae, officer of the court, to call premissorily and openly in judgment, all parties having, or pretending to have, interest, which being accordingly done, and none compearing to object against the service of the said brieve, and lawful time of day being wasted, the said procurator and mandatory protested *contra omnes comparentes*, that they should be silent forever after; and also desired that the said claim, and writs produced for verifying said claim, might be referred and admitted to the knowledge of the inquest before named, and the said sheriff substitute of the sheriffdom of Edinburgh, as judge aforesaid, finding the said desire to be just and reasonable, he admitted thereof, and remitted the said matter to the know-

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ledge of the inquest; and who being all solemnly sworn by the said judge, they made faith *de fidei administratione*, and then elected the said Patrick Robertson, Esq., advocate, to be their chancellor; and thereupon the said claim was openly and publicly read, and compared with the aforesaid writings produced for vouching and verifying thereof; and thereafter the said sheriff substitute of the sheriffdom of Edinburgh, as judge aforesaid, caused the said Lindsay Rae, officer of court, call again thrice peremptorily in judgment at the most patent door of the said new session house, all parties having, or pretending to have interest; which being accordingly done, and none compearing to object, the said procurator and mandatory again protested *contra omnes non comparentes* that they should be ever thereafter silent; and then they, the said worthy persons of inquest, ALL IN ONE VOICE AND WITHOUT VARIANCE, by the mouth of their said chancellor, found the aforesaid claim sufficiently instructed and proven, and therefore *served and cognosced the said Alexander, Earl of Stirling, &c., nearest and lawful heir in special of the said deceased William, Earl of Stirling, his great-great-great-grandfather, in all and sundry the lands and others contained in the said claim, &c., &c.*

On the 8th of July, 1831, in virtue of this special service, Lord Stirling was, by precept from his Majesty, (William IV,) directed forth of his said chancery in Scotland, to the sheriff of Edinburgh, infest in the whole county of Nova Scotia, including New Brunswick and Canada, and is therefore placed in the legal occupation and possession of all the lands, rights, and privileges conveyed by these charters, not granted by his ancestors or alienated by the Government. Seisin must ordinarily be taken on the ground of the lands contained in the precept. But, by the charters, the American property is made part of the county of Edinburgh for the purposes of seisin, which is directed to be taken, and was taken at the castle of Edinburgh as the most conspicuous place. This remarkable

exception to the rule as to taking seisin on the ground, is thus alluded to in Erskine's Institutes, B. II, Tit. III, § 36. "This rule may, in cases of necessity, be dispensed with by proper authority, as it was in the seisin of Nova Scotia and Canada in favor of VISCOUNT STIRLING, which, by the King's special appointment, was taken at the gate of the castle of Edinburgh, and afterwards ratified by Parliament, 1633."

Thus all the formalities required by the Scottish law have been fulfilled by the present Earl of Stirling. He has performed every act prescribed by ancient Scottish customs, not only to establish the fact of his heirship, but to vest in himself the actual possession of the estates of his ancestor. By all legal forms he has recovered his ancient patrimony. He is at this moment in actual possession by law of his estate and title.

Although the verdicts of these four juries are legally conclusive as to the question of heirship, we may observe, that the sworn conclusions of these sixty men, who have been called to pass upon this question, possess the highest moral weight in view of their individual fitness for such an investigation. To show the character of the men who have passed their judgment upon Lord Stirling's rights, we subjoin a list of the jury on the 4th or special service.

4th or special service 2nd July, 1831, before George Tait, Esq., sheriff, substitute of the sheriffdom of Edinburgh, as sheriff specially constituted, in the court-room of the first division of the court of session.

1. Patrick Robertson, Esq., advocate, (now Lord of session,) chancellor of the jury.

2. James Welsh, Esq., advocate of Edinburgh.

3. David Johnston, Esq., M. D. do.

4. John Renton, Esq., writer to the Signet of Edinburgh.

5. James Balfour, Esq., do. do. do.

6. James McDonell, Esq., do. do. do.

7. John Dickie, Esq., do. do. do.

8. Henry Ingliss, Esq., do. do. do.

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9. James Souber, Esq., writer to the Signet of Edinburgh.
 10. John Stirling, Esq., accountant do.
 11. John Adams, solicitor of the Supreme courts do.
 12. John Philips, do. do. do. do.
 13. Thomas Ranken, do. do. do. do.
 14. William Wallace Sibbald, Esq., solicitor of the Supreme courts of Edinburgh.
 15. Joseph Low, writer, (attorney,) of Edinburgh.

It is impossible to believe that these fifteen gentlemen, two of whom were eminent advocates, ten others lawyers, well known and respected, a distinguished physician of Edinburgh, a member of an ancient baronial family, and a respectable accountant, would "*unanimously, and without variance,*" have sustained claims which had not the strongest foundation in law and justice.

The verdicts of these juries have not been finally reversed, reduced or set aside, although most arbitrary and illegal proceedings, of which we shall speak hereafter, have been commenced for this purpose at the instance of the Government. Now, it is well settled, that when a court having competent jurisdiction has pronounced upon the *status*, the state or condition of a person, the decree is to be deemed of universal authority and obligation. In suits at law in the provinces or in this country, where Lord Stirling's rights are brought in question, it will only be necessary for him to produce authenticated copies of the records of these services, and to show that he is the person who obtained the verdicts, and the question of heirship must be taken as established.

II. Official recognition.

Having shown the judicial recognition of Lord Stirling's rights, we have proved all that is necessary for the assertion of these rights in Great Britain, the British North American Colonies, or this country. But as it may be interesting to compare the former official acts of the authorities in England and Scotland with the more recent acts of the officers of the

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Crown, we will proceed to show that the position and title of the present Earl of Stirling have been officially recognised in Scotland and England on the most solemn occasions.

Lord Stirling, it must be remembered, is a peer of Scotland, and his case must be distinguished from a claim to an English peerage. The party who claims to be an English peer must in all cases apply by petition to the sovereign for his writ of summons to Parliament, the English peers being summoned singly by the Sovereign's writs; whereupon his application is referred to the House of Lords, or it may be to some of the judges or law officers. But neither lineal or collateral heirs of Scottish peerages are bound to prove their right before the House of Lords. Wallace, one of the most eminent legal authorities upon questions of peerage succession in Scotland, says, in reference to Scotch dignities:

“Honors are not enjoyed by any person to whom they devolve under the will or right of inheritance of his ancestor, but are derived, by every possessor of them, solely from the favor of the King, as if each successive individual possible to come into being, and inherit them, had been distinctly foreseen, particularly named, and originally called in the royal charter which granted them. In consequence, a peer requires not a service, a conveyance, or the using of any form to acquire a dignity that is cast upon him by descent, but on the death of his ancestor is fully vested in it merely by existence, and may assume it at pleasure.”

(A disquisition on the right of jurisdiction in peerage successions, particularly in the peerage of Scotland.)

The authority and grounds upon which the Peer has taken on himself the honors are open to be questioned by any one who can allege, and, after alleging, clearly prove, that he or she has a *nearer interest* and better title than the party, &c., assuming them.

Since the Union of 1707, the right in all peers of Scotland of exercising peerage privileges has consisted in obeying the

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Royal proclamation to attend at Holyrood House for the election of sixteen peers to represent the whole body in the Parliament of Great Britain, either on a General Election, or on a vacancy occurring. The Royal proclamation on this occasion may be compared with the writ of summons of an English peer to Parliament. If the Scotch peer takes his seat by virtue of it, and be not protested against, but has his place and precedence allowed him, the oaths administered, and his vote received unanimously by the Lords present, he is to all intents and purposes invested in the enjoyment of his peerage honors, as much and as perfectly as an English peer, who shall have taken his seat in the House of Lords under a writ of summons without counter claim of any other peer objecting thereto, or pretending better right.

In pursuance of the Scottish law, usage, and precedent, Lord Stirling, having taken advice of learned counsel as to the course to be pursued, publicly resumed his title on the second of June, 1825. The peers of Scotland were commanded by Royal proclamation to assemble at the Palace at Holyrood House on the second of June following, to elect one of the sixteen representative peers. The Earl of Stirling set off for Edinburgh, and appeared at the day of election. It was well known^{to} the peers assembled that the Rev. John Alexander, of Dublin, sixth Earl, grandfather of the present Earl, was entitled to his rank, so that as soon as Lord Stirling announced himself as his grandson, he was congratulated on the resumption of his title. He was received at Holyrood House *as a peer*, and was immediately ushered into the private room to wait there, with the other peers, the time of proceeding to the gallery. When the Lord Provost and magistrates entered to announce that all was ready for forming the procession to the gallery, the Earl of Glasgow stepped forward, and gave the strongest proof of his own feelings, as well as those of the other peers present, by requesting that he would take precedence as the *premier*, by the date of the creation of his Earldom, among those assem-

bled. Lord Stirling took his place at the table, and on being called, took the oaths, and voted without protest or objection of any kind, which proves that his rights were already acknowledged by public opinion. He gave his vote for Viscount Strathallan, who was elected.

Since that period the Earl of Stirling has voted at several general elections, exercising all the privileges of the peerage, and triumphing without difficulty over the ill will of a very small number of hostile peers, whom the recognition of his rights alarmed, on account of the Scottish estates of his family which had long before passed into other hands. On the list of sixty-four peers, who voted at the general election of the second of September, 1830, the *Earl of Stirling* is inscribed between the Earl of Dumfries and the Earl of Elgin, and this list, transcribed from the register of Edinburgh, was printed in London by order of the House of Lords.

We again find the *Earl of Stirling* set down after the Earl of Lauderdale upon the list of the sixty-one peers of Scotland who voted at the general election of 3d June, 1831; a list which was also printed, and which like the preceding is extracted "from the records of the general register house of his Majesty at Edinburgh."

Finally, in the great roll of the peers of Scotland, extracted from the same register, and containing 159 peers, (viz., the Prince of Wales, *eleven* Dukes, *three* Marquises, *seventy-five* *Earls*, *seventeen* Viscounts, and *fifty-two* Lords,) the *Earl of Stirling* may again be seen placed between the Earls of Dumfries and Elgin. This general register was drawn up by virtue of an "order of the right honorable the Lords spiritual and temporal in Parliament assembled, of the 23d of August, 1831, requiring that there be laid before the House a copy of the union roll of the peerage of Scotland, and a list of all those peers who voted at all general elections since the year 1800." The printing of this roll was ordered by the same House the 3d of September, 1831.

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We therefore see on the register of the King's general register house at Edinburgh, the Earl of Stirling three times entered upon the list of the peers who voted at one single election and at two general elections in 1825, 1830, and 1831; lists which have been returned to the upper House, and printed by its order, which are kept on its records and published in its minutes!

We see the Earl of Stirling's name inserted upon the great roll of the peers of Scotland, in 1831, a roll inscribed in the archives of the King at Edinburgh, drawn up by order of the House of Lords, entered upon its register, and transcribed upon its minutes! Since that period the Earl of Stirling has voted again at the general elections of 1835 and 1837. His name is also entered on the list of those peers who competed at those elections; lists recorded in the Royal archives of the upper House. From these lists results the proof that from 1825 to 1837, the present Earl of Stirling, always recognised in his rights, voted during a period of twelve years as a peer of Scotland without effective protest.

Thus recognised by his peers, and by the magistrates and courts of Edinburgh, Lord Stirling needed but one recognition, that of the Sovereign.

He had already received the recognition of Lord Chancellor Lyndhurst, before whom he had qualified (in the forms required by law, where a peer of Scotland is unable to attend *personally* an election of peers) to vote by signed list. Some delay having been occasioned by the Chancellor's wish to be fully satisfied of the Earl's right to execute his peerage privileges, and his Lordship having summoned council to attend him, before he would sign the necessary certificate, when satisfied, he wrote the following note to Lord Stirling:

“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.

Copy of the direction on the envelope of the note—

"The Earl of Stirling,
17 Baker street,
Portman square."

"Lyndhurst."

And sealed with his Lordship's arms.

In 1831, the highest law authority in Scotland, all the thirteen Judges, concurred with the Chancellor of England in recognising Lord Stirling's rank and title. An action was brought by the Earl in 1829 to recover a Scotch estate. The first objection, urged by the defendants to the plaintiff's right, was that he was not entitled to sue as a Scotch peer. The case having been argued before the thirteen judges, the Lord Chief Justice Clerk (the presiding Judge,) delivered the following reasons and judgment, of the former we give an abstract.

"It is stated positively that at the election of 1825 he voted *without protest*; and in the next place in 1830, went before the Lord High Chancellor of 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.* * * * * *

"We have pretty real evidence that my Lord Rosebery, who moved the resolutions, (resolutions upon which the opposition of the defendants was grounded,) 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." &c. Then follows the judgment.

"Edinburgh, February 9th, 1831. The Lords having heard counsel on the first preliminary defence against the action, sus-

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(Signed)

D. BOYLE, J. P. D."

Other judicial recognitions of Lord Stirling's title were about the same time made in England. In November, 1831, in an action before C. J. Tindal, of the court of Common Pleas, where an attempt was made to deprive Lord Stirling of his peerage privilege of filing common bail, and special bail had been insisted on by the plaintiff, Sir Henry Digby, the Chief Justice, Judges Gaselee, Bosanquet and Alderson, concurring, discharged the defendant from arrest without costs. The Chief Justice, after stating the provisions for the peerage of Scotland as to precedence at the election of representative peers, observed that Lord Stirling had three times voted on such occasions; first in 1825, then in 1830, and last in 1831; that no objection had been made till the last occasion, when a protest was made against his vote; "still, however, notwithstanding that protest he voted, and his vote was allowed to remain on record. It seems to me that the circumstance of the protest does not at all add to the invalidity of the title; but the voting in defiance of the protest rather has a tendency the other way." The same question was also decided in the same way on a similar occasion by Lord Tenterden, Chief Justice, of the King's bench.

On the 30th of August, 1831, Lord Stirling received an official and deliberate recognition of his title from the highest officers of the realm. On the 29th of August, a few weeks after receiving seisin and investiture of Nova Scotia and Canada, with all the vice regal powers and privileges granted by the charters, he petitioned the King in council to be allowed to do homage at the ceremony of the coronation of the King, William the 4th, as Hereditary Lieutenant and Lord Proprietor of Nova Scotia and Canada, or that his Majesty would be graciously pleased to dispense with the said homage under a *salvo jure* for any future occasion. This petition was presented with

the knowledge that the arrangement of the ceremonies had already been made. The next day the following letter was received:

“COUNCIL OFFICE, WHITEHALL, 30 Aug., 1831.

“MY LORD: I am directed by the Lords of the Committee of Council, appointed to consider of his Majesty’s 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.”

Thus *the King in council* recognised Lord Stirling in the most formal official communication that could have been made on the great occasion of his approaching coronation, as a peer of Scotland; and the following extract from the “*Times newspaper*,” of 31st August, 1831, shows what members of the privy council were present when Mr. Greville was directed to write the preceding answer:

“The Lords of his Majesty’s most honorable Privy Council held a meeting yesterday afternoon at the council office to make arrangements for the coronation of their Majesties.

“There were present the Archbishop of Canterbury, the Bishop of London, the Lord Chancellor, the Marquis of Lansdowne, Earl Grey, the Earl of Carlisle, Viscount Althorp, Viscount Melbourne, the Marquis of Cholmondeley, Lord Plunket, the Lord Chief Justice of the Common Pleas, the Vice Chancellor, the Comptroller of the Household, and the Duke of Richmond.

“Sir George Nayler, Garter King of Arms, the Master of the Lord Chamberlain’s Office, and the Surveyor General of the Board of Works, were in attendance to receive instructions from their Lordships. Mr. Greville attended as clerk of the council.”

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It must be admitted that no recognition of a peer could be more complete and decisive than this *official act done after deliberation, upon a solemn public occasion, in the name of the King, by his council*. It cannot be recalled, it cannot be denied, it cannot be explained away. The proofs are in possession and recorded.

Lord Stirling having written to the late Earl Grey, as the King's prime minister, on the subject of his claims, in virtue of the special service and seisin which he had obtained, received the following reply:

“DOWNING STREET, 6th September, 1831.

“MY LORD: I am desired by Lord Grey to acknowledge the receipt of your Lordship's letter, and to inform your Lordship that he has transmitted it to Viscount Goderich, the secretary of state for the colonies, as it relates to matters under that department.

“Lord Grey desires me to express his thanks to your Lordship for the terms of confidence and good will towards his Majesty's Government which your Lordship's letter contained.

“I have the honor to be, my Lord, your Lordship's obedient servant.

(Signed) CHARLES WOOD.”

“The Earl of Stirling, &c.

This letter was directed by Lord Gray himself thus—

“The Earl of Stirling,

“20 Baker street,

“Portman square.”

“Grey.”

And sealed with his Lordship's small seal.

Thus the Lord Chancellor Lyndhurst, Earl Grey, the Prime Minister, the Lords of the committee of council, in the King's name corresponded officially with the Earl of Stirling, and addressed him by his title. Thus was he acknowledged in London as in Edinburgh, in Downing street and Whitehall as at Holyrood.

The attention of the Government was not yet roused to the formidable extent of his claim, and consequently no official forms were omitted in the courteous expressions of the ministerial communications.

It is evident that if at this period the Royal charters had conferred nothing more than titles of nobility and peerage, and if the Earl of Stirling had limited his views to obtaining the Government recognition of his genealogy and descent, as well as his title of Earl and peer of Scotland, he would have met with no obstacles, and his rights, already acknowledged by the courts, the nobility, and by public opinion, would never have been disputed.

But all was going to change, and did change, as soon as the Earl, on the 21st of November, 1832, in a petition to the King preferred his claim for the payment of a sum of ten thousand pounds with interest, which had been running on for two centuries, and raised the amount to the sum of £110,000 and upwards, due upon the security of a royal bond and letters patent of Charles 1st to the first Earl. This petition was delivered to Viscount Melbourne by Mr. Burn, the solicitor and agent of Lord Stirling. The minister at first declined to present the petition to his Majesty, alleging that Alexander Alexander, esq., claiming to be Earl of Stirling, was not acknowledged by the House of Lords.

But after a correspondence in which the condition of the petitioner as a peer was maintained with success by his professional advisers, the minister yielded the point; and in a letter addressed to Mr. Burn by Lord Melbourne's directions, we read: "I am directed by Viscount Melbourne to acknowledge the receipt of your letter of the 24th ultimo, in which you state that your client has already petitioned the King in council, viz., the 29th August, 1831, on the occasion of the coronation, and on the next day had a reply from the council office under signature of C. Greville, by *direction of the Lords of the committee of the council, and addressed to his Lordship as Earl of Stir-*

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ling. The accuracy of this statement having been ascertained, Lord Melbourne has laid the petition of your client, which accompanied your letter of the 23d of November last, praying the payment of certain moneys, which he states to be due him as the heir of his great-great-great-grandfather, the Viscount Stirling, under letters patent of his late Majesty, King Charles the First, before the King, and the petition is now referred to the consideration of the Lords of the Treasury, to whom all farther application on this subject must be addressed.

“I am, sir, your obedient servant,

J. M. PHILLIPS.”

“J. I. BURN, esq.”

A correspondence was without delay established between the Earl of Stirling and the Lords Commissioners of the Treasury; we give a verbatim copy of the first answer which was addressed to the claimant.

“MY LORD: I am commanded by the Lords Commissioners of his Majesty’s treasury to acquaint your Lordship, in answer to your letter of 15th ultimo, that Government cannot entertain any claim of the nature preferred by you, after a period of two hundred years.

“I am, my Lord,

“Your Lordship’s most obedient servant,

(Signed) J. STEWARD:”

“*Treasury chambers, 26th March, 1833.*”

“THE EARL OF STIRLING.”

The Lords of the Treasury, it will be seen, saw but one objection to make to the demand of Lord Stirling, that of prescription. Letters upon the same subject, addressed to Lord Stirling by his title, were received from Mr. Secretary Stanly, now Lord Derby. Indeed, Lord Stirling has in his possession letters from all the Prime Ministers of England since 1831, recognising his title and treating him as the Earl of Stirling. With Lord John Russell the correspondence runs down to the recent date of 1848, and the Earl is always addressed by the

Premier as Earl of Stirling. Now it is impossible that titles not really belonging to the Earl of Stirling could have been given to him with such general unanimity, but through the power of a fact recognised by public opinion as an incontestible truth.

Since the period of 1833, at which time no judicial or official sanction seemed wanting to sustain him in his rank, or to empower him to assert effectively his rights, Lord Stirling has been constantly accumulating new evidence in support of his rights of inheritance. Since the judgments in his favor already mentioned, no legal motive, no plausible pretext, no sudden doubts, have arisen to impugn them. Why, then, is he not at this moment in the full and undisturbed enjoyment of the honors and estates of his family? The answer is obvious. The denial of rights, vice-regal as they are, extending over a territory broader than Great Britain and France united, affecting the political relations of more than two millions of subjects, and covering the most valuable fisheries in the world, became a matter of *political necessity* to the British Government. This is a necessity which with that Government has in all times overridden all law and trampled on all individual rights. The majesty of justice bows before it. The press is silent at its bidding, servile officials are ready to execute its orders, and timid courts to pronounce its judgments.

We can only wonder that Lord Stirling, having these truly formidable rights, was not crushed at his first appearance to assert them. The Government had not yet reflected upon the consequences of their recognitions. We have seen that the petition addressed by Lord Stirling to the King for the payment of £10,000, due to him as the heir of his ancestor, the first Earl, had roused the ministers of state. Other proceedings of Lord Stirling excited still more alarm. In 1832, in consequence of certain proceedings in Parliament for the formation of land companies in the British American provinces, Lord Stirling presented a petition to Parliament to stop such proceedings, as interfering with his rights. This petition was ordered

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to be printed. A short time previously to this he had filed a bill in chancery against the lessees of the company called the Nova Scotia Mining Company, who had become possessed, under modern grants by Parliament to the Duke of York, of portions of the Nova Scotia estates. The bill stated fully the several rights and powers of Lord Stirling to call upon the parties to account to him for the proceeds of their mining and colliery operations, and to show by what title they held possession of the property. Lord Stirling thus publicly asserted his rights to the Nova Scotia estates, and distinctly put his own rights in issue. The Crown was made a party to this suit. There was a stronger reason than usual in this case for the accustomed delays in chancery, and the suit is still pending. These acts of Lord Stirling fully called the attention of the ministers to the extent of the charters of donation. The case created the greatest anxiety in the cabinet, and several honorable members of the Government were disposed to meet the case with fairness, and compromise with Lord Stirling for the surrender of his rights.

At this time, in 1833, great discontent prevailed in the Canadas. Addresses to the Canadians and Nova Scotians, imprudently prepared by Lord Stirling's agents, were extensively circulated in the colonies. The Government, on the one hand, were fearful of increasing the discontent in the colonies by compromising with Lord Stirling, as important political rights and privileges were secured to the colonists by the charters. On the other hand, they were unwilling that those rights and privileges should accrue to the colonists through the acknowledgment of Lord Stirling's rights by the Government. It was therefore resolved to hang up the case by fictitious suits, and give the impression that Lord Stirling's rights had not been judicially established.

The Government was incited to this course by other influences. Soon after Lord Stirling appeared in Scotland, all the wealthy members of the collateral branches of the family, and

others in possession of the English and Scotch estates, which were endangered by his appearance, met together to consider the expediency of uniting with him for the purpose of compromise. On calculating the chances of his success with a limited fortune, against powerful opposition, sustained by ample means, it was decided to oppose him. All the influence of these parties was brought to bear upon the Government, and immense sums were afterwards pledged by them to the law agents of the Crown on condition that they should defeat Lord Stirling's titles to his lands and honors.

In May, 1833, an action at the suit of the officers of state for Scotland was brought in the Scottish courts for the purpose of challenging and reducing Lord Stirling's services as heir of the first Earl. And here we may observe, that it never has been denied by the Government that the real heir to the first Earl of Stirling is entitled to the vast possessions in America granted by the charters. The existence of the charters could not be denied. The claim of prescription has been found untenable. They could only justify themselves by denying the heirship. This appears from all the documents and correspondence in Lord Stirling's possession, and is confirmed by a letter of the recent date of 1846, addressed to the present Earl by his accomplished law agent, Mr. Lockhart. He says:

"It has never been seriously made a question whether your Lordship has a right to the *dominium utile* of Canada, all excepting such portions of it as were the subject of grants by the first Earl."

We assert, without fear of contradiction, that the suit of the officers of state to reduce Lord Stirling's services was brought in palpable violation of law. *The officers of state, representing the Crown, had no right to sue.* It is a principle of the law of Scotland, that "the Crown refuses no vassal." The attempt of the Crown to reduce the services is a violation of that principle. It is established by the Scotch law that a party who has no title to oppose a service during its progress, is not

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entitled to pursue a reduction of it after it has been retoured. It is, further, a well established rule, that no party can challenge a service unless he has a competing brieve claiming to be served in the *same character to the same ancestor*. No one who does not claim to be entitled to be served as heir, can challenge a service, or bring an action for its reduction. It is clear that the Crown, not being a competing heir in blood, wanted the legal title to compete. Finally, the Crown had renounced all right to interfere with Lord Stirling by clauses of the royal charters, such as follow:

“Which lands and privileges, jurisdiction, &c., specially and generally abovementioned, together with all right, title, &c., which we, or our predecessors or successors have had, or any way can have, claim, or pretend thereto, &c. We, with advice foresaid, &c., of new, give, grant, and dispoñe to the foresaid Sir William Alexander, and his heirs and assignees, heritably for ever; RENOUNCING AND EXONERATING THE SAME SIMPLICITER WITH ALL ACTION AND INSTANCE HERETOFORE COMPETENT TO AND IN FAVOUR OF THE SAID SIR WILLIAM ALEXANDER AND HIS HEIRS AND ASSIGNEES, as well for non-payment of the duties contained in their original infeftments, as for non-performance of due homage, conform thereto, or for non-fulfilment of any point of the said original infeftment, or for commission of any fault or deed of omission or commission prejudicial thereto; and whereby the said original infeftment may in any way be lawfully impugned or called in question, FOR EVER ACQUITTING AND REMITTING THE SAME SIMPLICITER WITH ALL TITLE, ACTION, INSTANCE, AND INTEREST, HERETOFORE COMPETENT, OR THAT MAY BE COMPETENT TO US, AND OUR HEIRS AND SUCCESSORS, RENOUNCING THE SAME SIMPLICITER, JURE LITE ET CAUSA CUM FACTO DE NON PETENDO, and with supplement of all defects, as well not named as named, which we will to be held, as expressed in this our present charter. To be holden in free

blench farm, as said is, and dispensing with non-entry, whensoever it shall happen in manner foresaid."

Notwithstanding the morally impregnable position upon these points of law and fact, and the proofs of his descent, the court of session decided to reduce the services. Lord Stirling immediately appealed to the House of Lords. The case came on for hearing in the House of Lords on the first of March, 1845. After it had been argued by Lord Stirling's leading counsel, who maintained—1st, that the Crown had no right to bring the action of reduction; 2ndly, that the pedigree was established; 3rdly, that the case was taken up without hearing during Lord Stirling's absence on the continent; 4thly, that extraordinary proceedings had been adopted to prevent a fair trial of the whole case; Lord Brougham, in the presence of three ex-chancellors, none of whom dissented, distinctly stated, that the court of session "*had no right to find that Lord Stirling was not the lawful and nearest heir in general and special of the first Earl,*" that "*the Crown had no right to bring the action,*" and that "*Lord Stirling had a good defence on that head,*" and that the acts of the court were arbitrary and oppressive. On proceeding with the case, it was found that one of the interlocutors or judgments had been omitted in the appeal, and the hearing of the cause was postponed for the purpose of having the omission corrected. One great object of Lord Stirling's enemies, viz., "*to make a run upon his resources,*" (quoting their own words,) had by this time been effected. The enormous expenses of prosecuting the case before the House of Lords prevented Lord Stirling from proceeding with his appeal. The Government were willing enough to have the decision delayed, and the case is still pending under the title which is in itself a sufficient recognition of Lord Stirling's present rank,

*"Alexander Alexander, EARL OF STIRLING, appellant, }
and*

The Officers of State for Scotland, respondents. }

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with every prospect of a favorable termination, when the means for prosecuting the case are provided. The facts in relation to these proceedings have been obtained from the printed records of the case, and the original notes and letters of the highly respectable Scotch and English counsel, which have been carefully examined for this purpose.

We do not propose in this rapid sketch to detail all the arbitrary acts of the officers of State, and the Scotch courts, under the pressure of the *political necessity* to which we have alluded; the violation of the law, usage, and practice of centuries; the rejection of evidence; the denial of the means of legal authentication; the arbitrary and illegal removal of an undecided case from a civil to a criminal court, the more effectually to prevent proof being brought; and, finally, the arbitrary decision of a case against Lord Stirling *without giving him a hearing*, acts which Lord Brougham denounced as unprecedented in a British court of justice. Of all these we have the proofs, and are prepared to produce them when the occasion demands. We shall not either speak at length of the infamous trial of Lord Stirling on the charge of forging documents, none of which had been used in the services, of which charge he was triumphantly acquitted by the jury without leaving their seats upon hearing the Crown case alone, amidst the applauding shouts of the people; who afterwards, in their exultation, took the horses from the Earl's carriage, and insisted on drawing him to his house in triumph.

These proceedings will not surprise those who are familiar with English history. Notwithstanding the acknowledged purity of the administration of justice in Great Britain between individuals, yet, in cases of great political emergency, where the Government has felt that vital interests either of jurisdiction or territory were involved, the whole weight of official power has been brought to bear upon the determination of courts and juries. Thus we have seen at the instance of Government the well settled principles of the common law disregarded in the cases of Hampden, Russell, and Sydney; juries packed and

perjured, and informers employed in the cases of Orr and Fennetrey, and even the counterfeiting of the Government paper money of France sustained and sanctioned by the high authorities of the realm as a legitimate means of overthrowing the finances of a rival power. Involving, then, as did the case of Lord Stirling, rights political and territorial of transcendent value, he might well have anticipated that the whole power of the Government by means equally unjust would be wielded, as they were, for his destruction. Here, however, the press, uninfluenced by Governmental power, will proclaim the truth, and insure to him the sympathy and support of generous and enlightened men in England and America.

It is sufficient for us on reviewing these proceedings to say, that Lord Stirling's legal position is not yet affected. He is still Earl of Stirling, and invested with all the rights and estates of his ancestor in America. He is in present possession, and until the final decision of the House of Lords shall rightfully and legally reduce his services, which cannot be done as the law stands, all grants and conveyances of estates, and what may be more important, of rights and privileges, must remain valid.

We will now proceed to give a statement of the property, rights of action, and privileges in the British Provinces, the United States, and Great Britain, which may be made available in whole or in part to Lord Stirling or his assignees by legal proceedings sustained by sufficient means, or by compromise. They are as follows:

I. All the public or unoccupied lands in Nova Scotia, New Brunswick, and Prince Edward's Island, all which provinces, as will be seen by the charter of *Novo damus* of 1625, are included within the limits of Nova Scotia, "together with all mines, as well royal, of gold and silver, as other mines of iron, lead, copper, tin, brass, and other minerals whatsoever."

Title.—Original charter of Nova Scotia of 10th September, 1621. The same Reg. Mag. Sig., B. 50, No. 36.

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Charter of *Nova damus* of 12th July, 1625, Reg. Mag. Sig., B. 51, No. 23.

Also seisin of Nova Scotia, dated 8th July, 1831; recorded Gen'l Reg'r of Seisins, vol. 1646, fol. 102.

II. All the public and unoccupied lands of the whole Province of Canada amounts to at least ten millions of acres of good improvable lands, together with all the mines and minerals as in the Nova Scotia grant, embracing the valuable copper mines on the Canadian side of Lake Superior.

Title.—Charter of Canada, February 2d, 1628; Reg. Mag. Sig., B. 52, No. 110. Confirmed by act of Parliament. Seisin, 8th July, 1831, Gen'l Reg'r of Seisins, vol. 1646, fol. 111.

III. The public lands in the northern parts of Wisconsin and Michigan, including all the copper mines of Lake Superior. These lands are covered by the Canada charter, as follows: "We give and grant to the foresaid Sir William and his foresaids fifty leagues of bounds on both sides of the foresaid river of Canada, (now called St. Lawrence,) from said mouth and entrance to the said head fountain and source thereof, also on both sides of said other rivers flowing into the same; as also on both sides of the said lakes, arms of the sea, or waters, through which any of the said rivers have their source, or in which they terminate."

The claim to these lands will be the subject of compromise with the United States and the various mining companies, none of which have had possession for twenty years.

Title, charter of Canada.

IV. The public lands owned, or claimed to be owned by the States of Maine and Massachusetts, within the territory of the State of Maine, including the most valuable timber lands of the State. The State of Massachusetts was offered within a year over \$600,000 for her interest in these lands. These lands are covered by the charter of Canada. They are also

included in a patent from the Plymouth company, dated April 22d, 1835.

A portion of territory south of the River St. Croix was included in the original patent to the Plymouth company of 1621. This conflicted with the grant of the Lordship of Canada to Lord Stirling. The company was commanded to make over that tract to the Earl of Stirling, which conveyance would accrete to and be corroborated by his Majesty's previous grant of the Lordship of Canada. Accordingly the Plymouth company, corporation or council of New England, by and with the consent, direction, appointment, &c., of King Charles, issued letters patent to William Earl of Stirling, his heirs and assigns, dated 22d April, 1635, "for a tract of the Maine land of New England, beginning at St. Croix, and from thence extending along the sea coast to Pemaquid and the River Kennebeck," to which was added the island of Long Island with all the islands thereto adjacent. Large tracts of land on Long Island are held under this title, and the deeds from the first Earl of Stirling's agent are found on the ancient records of the island.

V. Claim to a strip of country three hundred miles broad, extending from the head waters of Lake Superior to California, and to the territory of California. The words of the charter of Canada are: "And in like manner we have given and granted, and by our present charter, give and grant, to the foresaid Sir William Alexander, and his foresaids, all and whole the bounds and passages, as well in waters as on land, from the foresaid head, fountain and source of the river Canada, wheresoever it is, or from whatsoever lake it flows down to the aforesaid Gulf of California, whatsoever the distance shall be found to be, with fifty leagues altogether, on both sides of the said passage, before the said head of the river Canada, and Gulf of California; and likewise all and sundry islands lying within the said Gulf of California; as also and whole, the lands and bounds adjacent to the said Gulf on the west and south, whether they be found a part of the Continent or main land, or an island as it is thought they are, which is

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commonly called and distinguished by the name of California."

It may be doubted whether the English ever had a title to this country by discovery. But it has been claimed by them from the discovery of Sir Francis Drake, from whom San Francisco was named. As the United States does not sell any of the public lands in California, many persons would without doubt be glad to avail themselves of a title, such as it is, from Lord Stirling.

IV. Claim for £10,000 against the British Government with interest thereon, granted to the first Earl of Stirling by letters patent from Charles I, in 1632, as a compensation for relinquishing Port Royal at the King's command. The patent is not denied by the British Government, nor is payment averred. They plead prescription in defiance of the legal maxim, *nullum tempus occurrit regi*.

VII. Proceeds of the mines of the Nova Scotia mining company, now in chancery in England, the same having been enjoined by the Earl of Stirling. This suit is still pending. The amount in court cannot now be precisely stated, but it exceeds £300,000. The sums included in the two last claims amounting to over two millions dollars, would be most readily available for payment to Lord Stirling in case of a compromise with the British Government.

VIII. Right to the fisheries on all the coasts of Canada, Nova Scotia, New Brunswick, and Prince Edward's Island.

This extraordinary right, so important at this juncture to the United States in a political point of view, and to the people of the north as a means by which they may recover their ancient and well earned privileges, lost to them by diplomatic blundering in 1818, demands a somewhat extended notice.

It is well known that by the treaty of peace between the United States and Great Britain in 1783, the people of the United States secured from the British Government, so far as they had the power to dispose of it, the right to catch fish on

the Grand Bank, the Bank of Newfoundland, in the Gulf of St. Lawrence, *and in all other places in the sea where the inhabitants of both countries used at any time to fish.*

By the convention of 1818 the United States, after obtaining from Great Britain the concession of the right of fishing on certain coasts of Newfoundland, on the shores of the Magdalen islands, and the southern coast of Labrador, renounced forever the liberty *of fishing within three miles of any other part of the British coasts in America, or of curing or drying fish on them.* The construction recently given to this treaty by the law officers of the Crown is, that these three miles are to be measured from headland to headland. By this treaty and its late construction our vessels are excluded from the best fishing grounds, particularly in the Gulf of St. Lawrence, where the greater number of our vessels resort. Our fishermen are shut out from the early spring and fall fisheries, precisely those of the greatest value and most easily prosecuted. To the mackerel fishermen especially this restriction is ruinous, as they are not allowed to follow the fish within three miles of the shore, within which limits the largest schools are generally found. The loss to the fall fisheries of Massachusetts alone, in consequence of the enforcement of these restrictions by the British fleet, last year, was estimated by official returns at over one million of dollars.

Amidst all the discussions of this question in the Senate and by the press, no ingenuity or political sagacity have suggested any mode of reclaiming these rights so foolishly and ignorantly surrendered, except by a hostile resumption, without any title or pretext to justify us to the world, or by negotiations which could hardly be effected without humiliating concessions to Great Britain. But by the treaty of 1818 we renounced only the rights of fishing which we then claimed. As between ourselves only and Great Britain, we acknowledged that her title was best. We did not bind ourselves to defend that title against others, or not to purchase the rights in question of any party who might be found to have a better legal title.

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Independently of the title founded on ancient charters and treaties, the *natural right* to the fisheries on all the northern coasts and islands belongs exclusively to the people of the United States, and more particularly the people of New England. It is not only theirs by prescription, but these fishing grounds were won from the French, not by the soldiers of the British Crown, or the people of the Provinces, which were then hardly inhabited, but by New England blood and treasure. Our great American historian informs us that the old French wars on our northern continent were prosecuted mainly to secure for the benefit of the French Crown the American fisheries, which were deemed indispensable for the supply of treasure and the maintenance of the navy of France. For this purpose, for nearly a hundred years, New England homes were desolated by Indian wars. The final blow which prostrated French power upon our seas, the capture of Louisburgh, commanding as it did the waters of the Gulf of St. Lawrence, and the coasts of Nova Scotia and Newfoundland, was struck by the son of a New Hampshire fisherman, at the head of New England fishermen and yeomen. These traditions are still cherished by the firesides of the North, and it is most mortifying and irritating to the people to see their ancient fishing grounds, won by their fathers' blood, guarded by a British fleet, and to read the recent laws of a petty province, providing that if any American vessel "shall have been found fishing, or preparing to fish, within three miles of the coasts and harbors, such vessel or boat, and the cargo, shall be forfeited." It cannot therefore be doubted that the public sentiment of the whole American people will sustain the Government of the United States, or its citizens, in defending any legal title which will enforce or give additional effect to their natural rights.

Now it is most extraordinary that the charters of Nova Scotia and Canada give to Lord Stirling, his heirs and assigns, the complete right of fishing within six leagues of the shore

on precisely the coasts which we have relinquished; an extent of coast of over three thousand miles in length. The charter of Nova Scotia, after giving the boundaries of the country granted, including New Brunswick, with remarkable accuracy, proceeds in these words: "Including and comprehending within the said coasts and their circumference, from sea to sea, all the continents, with rivers, brooks, bays, shores, islands, or seas lying near or within six leagues of any part of the same, on the west, north, or east side of the coasts; and from the south-east, where lies Cape Breton, and the south part of the same, where is Cape Sable, all the seas and islands southward within forty leagues of the said coasts thereof," &c. And the charter proceeds to grant to Sir William Alexander, his heirs or assigns, among other things, all "*marshes, lakes, waters, FISHERIES, AS WELL IN SALT WATER AS IN FRESH, of royal fishes, as of others,*" &c., ("*marressiis lacubus aquis piscationibus tam in aqua salsa quam recenti tam regalium piscium quam aliorum.*") The charter also refers to undertakings which the grantee may make with "*divers of our subjects and OTHERS who probably shall enter into contracts with him and his heirs, assignees, or deputies for lands, FISHERIES,*" &c.

If Lord Stirling is heir of Sir William Alexander, as he is judicially established to be, the title to the fisheries is in him, and not in the British Government, or in the people of the British Provinces. He has the undoubted power of assigning and transferring this right to American citizens, or of granting licenses to American fishermen. And American citizens or fishermen, if disturbed in the right thus acquired, may demand the protection of the Government of the United States, which will be bound to see if the title is good, and, if so, to defend it.

Lord Stirling is now in this country, fortified with all the muniments of his honors and estates. He comes here, not only with all the documents necessary to prove the statements in the

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preceding pages, but with testimonials from the highest sources in England and France, as to his personal character, which give the strongest moral confirmation of the righteous fulness of his cause. Amidst all the opposition he has encountered, the utmost malevolence of his enemies has never been able to throw a doubt upon his personal honor and integrity. Even the ministers, who were interested to defeat him, acknowledged that they "knew Lord Stirling was an honorable man." His friends in his adversity rallied round him with such letters as the following from Lieut. Gen. D'Aguiar, lately commander in chief of the British forces in China, and now governor of Portsmouth, addressed to Lord Stanly, now Lord Derby:

* * "I should do violence to the best feelings of my heart if I did not say that a more conscientious, moderate minded, honorable man than the Earl of Stirling does not exist, in my estimation. I have known him from his earliest years, and had the happiness of passing some of the happiest days of my youth in the society of his family, than which none could be more respectable or more respected. I believe Lord Stirling to be incapable of desiring any thing but the barest justice, and know myself incapable of asking more." * * *

Thus sustained, Lord Stirling comes among a people of large ideas, who will not be astounded at the extent of his rights, or discouraged at the opposition by a Government which they have been educated to believe does not scruple at the means by which it defends the possessions within its grasp. While he is determined to oppose none of the vested prescriptive rights of individuals, and is ready to make the most favorable arrangement with the States whose titles to land in this country may conflict with his own, he is prepared to give most liberal grants to those who will aid him in recovering *all* the ancient estates of his family in the British Provinces. And to give the most striking proof of his good will to the people of the United States, and at the same time to put at issue before the world the question of his rights, he is ready at once to grant to American citizens

licenses to fish on all the coasts of Canada, Nova Scotia, New Brunswick, and Prince Edward's Island.

The writer of the preceding pages has prepared this statement after a most attentive examination of original and authentic documents. Nothing has been stated that these documents will not prove. He has deemed it unnecessary to weary the reader by presenting cumulative evidence in support of the positions above maintained, that Lord Stirling's rights have been judicially established and officially recognised, and that the want of his present enjoyment of them is due, not to any doubt as to his heirship and identity, or the validity and effect of the charters, but to the political consequences involved in reinstating him in the ancient possessions of his family. Numerous letters, confirmatory of the views above presented, from noblemen of rank in Great Britain, and opinions of eminent counsel in London and Edinburgh, and of learned historians and advocates in France which might have been referred to, have not been cited. It is believed that the American public will be satisfied with a reference to a single authority, whose weight is every where acknowledged in this country. In the course of the examination of this case the writer was requested by Lord Stirling to call upon the Hon. Robert J. Walker, late Secretary of the Treasury, and learn from him directly the views which he had expressed on this subject. The matter having been accordingly mentioned by the writer to Mr. Walker, he stated that, prior to his departure for Europe he had, at the request of Lord Stirling, examined the case, and although his multiplied engagements prevented his having been professionally employed as counsel as Lord Stirling desired, he (Mr. Walker) entertained an undoubted conviction, which was confirmed by conversation relative to the case with several distinguished persons during Mr. Walker's late visit to England and Scotland, of the *heirship, identity, and legal rights* of Lord Stirling.

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APPENDIX.

*Opinion of A. H. Lawrence, Esq., of Washington, D. C.,
Counsellor at Law.*

BETHLEHEM, PA., June 23, 1853.

JOHN L. HAYES, ESQ.
Washington, D. C.

DEAR SIR: I have received yours of the 21st inst. in respect to the case of Lord Stirling. I had previously given to the legal questions a pretty thorough examination, and am convinced that the claims of the present Earl are legally of the strongest character. But as the papers are so voluminous, and the authorities so numerous, it would require both time and space to write out an opinion which would do justice either to one's self or the case, I have thought best merely to hint (for the present) at the points which present themselves on a more careful view.

As to the authenticity of the grants to the original Earl of Stirling, I suppose there can be no rational doubt. They are matters of undoubted history.

The questions, then, as I conceive, are these: 1st. Is the present claimant of the title and estate the real heir, lineally descended from the original grantee? 2d. If so, have his rights been lost by negligence or want of possession? There are some subordinate questions embraced in these to which I shall presently allude; but I think it may be safely assumed that if the grants were genuine, and the present claimant is the heir of the original grantee, and that he has not lost his rights by laches, that then he has a subsisting legal title to all the lands included in the grants which have not been disposed of by the grantee or his heirs.

1st. Is the present claimant the right heir of the original grantee? It appears from the papers that the present claimant obtained two verdicts of juries upon the question of his heirship to that original grantee, Lord Stirling. These verdicts were given by juries summoned according to the Scottish law. In a proceeding called (I think) the "service of an heir," a jurisdiction particularly and especially provided for the trial of the fact of heirship, where any question is made as to the

heirship of any one claiming to be heir of another. In Erskine's Institutes, and in Bell's Scotch Law Dictionary, this proceeding is particularly described; and from these books it will be seen that it is a *special jurisdiction*, for the trial of that particular issue. Now the law, I think, is well settled, that when a court, having jurisdiction, had pronounced upon the *status* of an individual, it is conclusive as to such *status* everywhere and always. It is like a judgment *in rem* in admiralty; or a judgment as to the validity of a marriage, or the legitimacy of a child, in the ecclesiastical courts, (where they have jurisdiction.) Indeed, it don't differ from the effect of any other judgment, for *all* judgments of competent courts are conclusive as to the PARTICULAR SUBJECT MATTER in controversy; and in these cases the *subject matter* is the *status*, the validity of the marriage or the legitimacy of the child. I think this doctrine is laid down in the Duchess of Kingston's case, in the State trials, 20th volume, I believe. [See Sto. Conf. Laws, Foreign Judgments.] Of course it will be necessary for the present claimant to show in this country that he is the person who obtained those verdicts; and upon that the question of his heirship must be taken as established.

2d. As to Lord Stirling having lost his rights by laches. In the first place, the grants themselves, so far as the British Crown is concerned, have, by every possible variety of phraseology, attempted to exclude every conclusion of fact or of law against the grantee *from not taking possession*; so that the *British Government* at least would be stopped from setting up this objection. The country was looked upon in the grants, as it was in reality, as a wilderness, of which no use could be made and no actual possession taken. Then as to the lands in Maine. We take for granted that the State will relinquish to Lord Stirling any of his lands which she holds, without insisting upon her immunity from being sued, if she is satisfied that, in point of law, the lands belong to Lord Stirling. As to these lands, the statute of limitations of the State would be no bar; because, if Lord Stirling could sue the State, he was beyond seas, and excepted from the statute. If he could not sue the State, then he was not *within* the statute, because he had no *right* of ACTION accrued, which is the point from which statutes of limitation run.

But, again, suppose that a title to these lands could have been acquired by adverse possession, still the fisheries would not go as parcel of that possession. The fisheries were granted not as appurtenant to the lands, but as a special personal privilege; and if they *had* been granted as appurtenant to the lands, it was a *special* appurtenance to the lands made

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so by grant and not by force of law, and I think could not be *acquired* by mere adverse possession of the lands.

Upon the whole, I am of opinion that the title of the present claimant is sound in law, and that he ought to recover the lands. I have written these hints hastily and informally, though I have bestowed a good deal of labor in the examination.

Very respectfully,
Your ob't servant,

Signed,

A. H. LAWRENCE.

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[TRANSLATION.]

INSTRUMENT OF SEISIN

IN FAVOR OF

ALEXANDER, EARL OF STIRLING AND DOVAN,

OF THE LORDSHIP AND BARONY OF NOVA SCOTIA IN AMERICA,
COMPREHENDING THE LANDS, ISLANDS, AND OTHERS, AFTER
MENTIONED.

IN THE NAME OF GOD, Amen. Be it known to all men by this present public instrument, THAT on the 8th day of July, in the year of our Lord 1831, and of the reign of our sovereign lord, William the Fourth, by the grace of God of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, the second year, in presence of me, notary public, clerk of the sheriffdom of Edinburgh, and the witnesses subscribing, appeared personally Ephraim Lockhart, writer to his Majesty's signet, attorney for and in name of the Right Honorable Alexander Earl of Stirling and Dovan, great-great-great grandson of the deceased Sir William Alexander of Menstrie, Knight, the first Earl of Stirling, whose power of attorney was sufficiently known to me, the undersigned notary-public; and passed with us and with Adam Duff, Esquire, advocate, Sheriff-depute of the sheriffdom of Edinburgh, specially constituted by the precept of seisin under inserted, to the Castle of Edinburgh, where by the said precept seisin is to be taken for all and whole the country and others under mentioned, HAVING and HOLDING in his hands the precept of seisin under inserted, directed forth of our sovereign lord the King's chancery in favor of the said Alexander Earl of Stirling and Dovan, as nearest and lawful heir served and returned to the said William Earl of Stirling, his great-great-great grandfather, for giving seisin to him of ALL and SUNDRY the lands and others after mentioned, contained in the said precept of seisin under inserted; WHICH precept of seisin the foresaid attorney, in the name of the aforesaid Alexander Earl of Stirling and Dovan, exhibited and presented to the said Adam Duff, Sheriff aforesaid, and desired him to proceed to the execution of the said precept of seisin, agreeably to the tenor thereof; WHICH DESIRE the said sheriff finding to be just and reasonable, he received the said precept of seisin into his hands, and delivered it to me, the undersigned notary-public, to be read, published and explained, in the common speech, to the witnesses present; WHICH I did, and of which precept of seisin the tenor follows in these words:

“WILLIAM THE FOURTH, by the grace of God of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, to the Sheriff of Edinburgh and his Bailies, Greeting. FORASMUCH as it is found, by an inquest made by our command, by George Tait, Esquire, Sheriff-substitute of the sheriffdom of Edinburgh, as sheriff for that effect, specially constituted, in virtue of a commission under the testimonial of the seal, therein specified, and returned to our chancery, THAT the deceased Sir William Alexander of Menstrie, Knight, the first Earl of Stirling, great-great-great grandfather of the Right Honorable Alexander Earl of Stirling and Dovan, Viscount of Stirling and Canada, Lord Alexander of Tullibodie, &c., bearer hereof, died at the faith and peace of the King, last vest and seised as of fee in all and sundry the lands, continents and islands situate and lying in America, within the head or cape commonly called Cap de Sable, lying near the latitude of forty-three degrees north from the equinoctial line, or thereabouts, from which cape towards the sea-coast verging to the west, to the naval station of St. Mary, commonly called St. Mary's Bay, and thereafter northwards by a straight line passing

' the inlet or mouth of that great naval station which runs out into the eastern tract of land between the countries of the Suriquois and Stechemines, to the river commonly called of St. Croix, and to the furthest source or fountain head thereof on the western part, which first unitea itself with the foresaid river, whence, by an imaginary straight line, conceived to proceed overland, or run northwards, to the nearest naval station, river or source discharging itself into the great river of Canada, and from it proceeding eastwards by the coasts of the said river of Canada to the river, naval station, port or shore commonly known and called by the name of Gathepé or Gaspé, and thereafter towards the southeast to the islands called Bacalaos, or Cape Breton, leaving the said islands on the right, and the gulf of the said great river of Canada, or great naval station, and the lands of Newfoundland, with the lands and continents, on the left, and thereafter to the head or cape of Cape Breton foresaid, lying near the latitude of forty-five degrees or thereabouts, and from the said cape of Cape Breton towards the south-west, to the foresaid Cap de Sable, where the perambulation began, including and comprehending within the said coasts, and their circumference from sea to sea, all the lands and continents, with the rivers, brooks, bays, shores, islands or seas, lying near or within six leagues of any part of the same, on the western, northern, or eastern sides of the coasts, and precincts thereof, and on the south-east, (where lies Cape Breton,) and on the southern part of the same, (where is Cap de Sable,) all the seas and islands southwards within forty leagues of the said coasts thereof, including the great island commonly called Isle de Sable or Sablon, lying towards the south-south-east, in the sea, about thirty leagues from Cape Breton foresaid, and being in the latitude of forty-four degrees or thereabouts; which lands foresaid should in all time to come enjoy the name of Nova Scotia in America; Which also were vested in William, the said Earl of Stirling, according to a charter of novodamus under the great seal of the kingdom of Scotland, dated the 12th day of July anno Domini 1625, made, given and granted by Charles, King of Great Britain, France and Ireland, in favour of the said William Earl of Stirling, (then and throughout named Sir William Alexander,) his heirs and assigns whatsoever, heritably: And by which charter it is declared, that the foresaid William Earl of Stirling should divide the foresaid lands into parts and portions as should seem to him fit, and bestow names on them at pleasure; Together with all mines, as well royal of gold and silver, as other mines of iron, lead, copper, tin, brass, and other minerals whatsoever, with the power of digging and causing dig from the land, purifying and refining the same, and converting and using them to his own proper use, or other uses whatsoever, as should seem fit to the said William Earl of Stirling, his heirs or assigns, or to those who, in their place, should happen to settle in the said lands: Reserving only to his said Majesty and his successors the tenth part of the metal, commonly called ore of gold and silver, that shall afterwards be dug or gained out of the earth; Leaving to the said William Earl of Stirling, and his foresaids, whatsoever his said Majesty, and his successors, might in any way demand of other metals, copper, steel, iron, tin, lead, or other minerals, that they may so much the more easily bear the great charges of extracting the foresaid metals, together with pearls and other precious stones whatsoever, quarries, woods, copses, mosses, marshes, lakes, waters, FISHERIES, as well in salt water as in fresh, of royal fishes as of others, hunting, hawking, commodities and hereditaments whatsoever: Together with full power, privilege and jurisdiction of free regality and chancery for ever; and with the gift and right of patronage of churches, chapels and benefices, with tenants, tenandries and services of free tenants thereof, together with offices of Justiciary and Admiralty respectively, within the bounds above mentioned respectively: Together also with the power of erecting corporations, free boroughs, free ports, towns and boroughs of barony, and of appointing markets and fairs within the bounds of the said lands, and of holding courts of justiciary and admiralty within the boundaries of the said lands, rivers, ports and seas; together also with the power of imposing, levying and receiving all tolls, customs, anchorages, and other dues of the said boroughs, markets, fairs and free ports, and of possessing and enjoying the same as freely in all re-

spects as any greater or lesser baron in the kingdom of Scotland has enjoyed, or shall be able to enjoy them, at any time past or to come; with all other prerogatives, privileges, immunities, dignities, casualties, profits and duties belonging and pertaining to the said lands, seas, and bounds of the same; and which his said Majesty shall have power to give and grant, as freely and in as ample form as he himself or any of his noble progenitors has granted any charters, letters patent, infeftments, gifts, or patents, to any subject of whatsoever degree or quality, to any society or community, planting such colonies in whatsoever foreign parts, or exploring foreign lands, in equally free and ample form as if the same were inserted in the said charter: Making, constituting and appointing the said William Earl of Stirling, his heirs or assigns, or their deputies, his said Majesty's Hereditary Lieutenants-general, to represent his royal person, as well by sea as by land, in the countries, sea-coasts and boundaries foresaid, in repairing to the said lands, so long as he shall continue there, and in returning from the same; to govern, rule, punish and pardon all subjects of his said Majesty who shall have happened to go to the said lands, or to be inhabiting the same, or who shall have engaged in trade with them, or shall remain in the same places, and to be favourable to them; and to establish such laws, statutes, constitutions, regulations, instructions, forms of government, and ceremonies of magistracies within the said bounds, as to him, William Earl of Stirling, or his foresaids, for the government of the said country and its inhabitants, in all causes, criminal as well as civil, shall seem fit; and to alter and change the said laws, regulations, forms and ceremonies, as often as he, or his foresaids, for the good and advantage of the said country, shall be pleased, so that the said laws were consistent, as much as they could be made, with the laws of the said kingdom of Scotland; And giving and granting free and plenary power to the foresaid William Earl of Stirling, and his foresaids, of conferring favours, privileges, employments and honours upon deserving persons, with full power to those, or any of them, who shall have happened to make covenants or contracts for the said lands with him, William Earl of Stirling, and his foresaids, under the subscription of himself or of his foresaids, and the seal mentioned in the said charter, of disposing and overgiving any portion or portions of the said lands, ports, naval stations, rivers, or any part of the premises; of erecting also inventions of all sorts, arts, faculties, or sciences, or of practising the same in whole or in part as to him, for their good, shall seem fit; also of giving granting and bestowing such offices, titles, rights and powers as to him shall appear necessary, according to the qualities, conditions and merits of the persons; **WITH POWER** to the said William Earl of Stirling, and his heirs and assigns, of erecting, founding and constructing common schools, colleges and universities, sufficiently provided with able and sufficient masters, rectors, regents, professors of all sciences, learning, languages and instruction, and of providing for sufficient maintenance, salaries, and living for them to that effect; As also of instituting prelates, archbishops, bishops, rectors and vicars of parishes, and parish churches, and of distributing and dividing all the foresaid bounds of the said country into divers and distinct shires, provinces and parishes, for the better provision of the churches and ministry, division of the shires, and all other civil police; And likewise of founding, erecting and instituting a senate of justice, places and colleges of justice, council and session, senators thereof, members for the administration of justice within the said country, and other places of justice and judicature: Further, of erecting and appointing also secret and privy councils and sessions for the public good and advantage of the said country, and giving and granting titles, honours and dignities to the members thereof, and creating their clerks and members; And appointing seals and registers with their keepers; and also of erecting and instituting officers of state, a chancellor, treasurer, comptroller, collector, secretary, advocate or attorney-general, a clerk or clerks of register, and keepers of rolls, justice clerk, director or directors of chancery, conservator or conservators of the privileges of the said country, advocates, procurators and solicitors thereof, and other members necessary: **AND FURTHER**, of giving, granting and disposing any parts or portions of the said lands and lordship of Nova Scotia,

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heritably belonging to them, to and in favour of whatsoever persons, their heirs and assigns, heritably, with the teinds and teind-sheaves thereof included, (provided they are his Majesty's subjects,) to be holden of the said William Earl of Stirling, or of his said Majesty and his successors, either in blench-farm, feu-farm, or in ward and relief, at their pleasure, and to intitle and denominate the said parts and portions by whatsoever styles, titles and designations should seem to them fit, or be in the will and option of the said William Earl of Stirling and his foresaids; which infeftments and dispositions shall be approved and confirmed by his said Majesty and his successors, freely, without any composition to be paid therefor: **MOREOVER**, his said Majesty and his successors shall receive whatsoever resignations shall have been made by the said William Earl of Stirling, and his heirs and assigns, of all and whole the foresaid lands and lordship of Nova Scotia, or of any part thereof, in the hands of his said Majesty, and of his successors and commissioners, with the teinds and teind-sheaves thereof included, and others generally and particularly above mentioned, to and in favour of whatsoever person or persons, (provided they are his Majesty's subjects, and live under his obedience,) and they shall pass infeftments thereon, to be holden in free blench-farm of his said Majesty, his heirs and successors, in manner above mentioned, freely, without any composition: **MOREOVER**, giving, granting and committing power to the said William Earl of Stirling, and his heirs and assigns, of having and lawfully establishing and causing coin money in the said country and lordship of Nova Scotia, and for the readier convenience of commerce and agreements amongst the inhabitants thereof, of such metal, form and fashion as they shall appoint or fix: **FURTHER**, giving, granting, ratifying and confirming to the said William Earl of Stirling, and his heirs and assigns, all places, privileges, prerogatives and precedencies whatsoever, given, granted and reserved, or to be given, granted and reserved to the said William Earl of Stirling, and his heirs and assigns, and his successors, Lieutenants of the said country and lordship of Nova Scotia, over the knights-baronets and remanent portioners and associates of the said plantation, so as the said William Earl of Stirling, and his heirs-male descending of his body, as Lieutenants foresaid, might and could take place, prerogative, pre-eminence and precedence, as well before all squires, lairds and gentlemen of the said kingdom of Scotland, as before all the foresaid knights-baronets of the said kingdom, and all others before whom the said knights-baronets, by privilege of the dignity granted to them, can have place and precedence: **ALL** and whole which province and lands of Nova Scotia, with all the boundaries and seas of the same, were united, annexed and incorporated into one entire and free lordship and barony, to be called by the foresaid name of Nova Scotia in all time to come; and by which charter it is ordained, that one seisin, to be taken by the said William Earl of Stirling, and his foresaids, at the Castle of Edinburgh, without any other special or particular seisin by himself and his foresaids, at any other part, shall stand and be sufficient, in all time coming, for all and whole the country above mentioned, with all the parts, pendicles, privileges, casualties, liberties, and immunities thereof; as in the said charter, comprehending divers other conditions, provisions, limitations and restrictions, with many and great privileges, immunities, dignities and honours, is more fully contained: **AND** in which lands aforesaid, the foresaid William Earl of Stirling was duly infeft, in virtue of the precept of seisin inserted in the end of the said charter, according to instrument of seisin following thereon, dated the 29th day of September, and recorded in the General Register of Seisins, &c. kept at Edinburgh, the 1st day of October anno Domini 1625: **AND THAT** the said Alexander Earl of Stirling and Dovan is nearest and lawful heir of the said deceased William Earl of Stirling, his great-great-great grandfather, in all and sundry the lands and others foresaid; **AND THAT** he is of lawful age; **AND THAT** the said lands and others, with the pertinents, are holden immediately of us in chief. **WHEREFORE** we require and command you, that ye give seisin thereof to the foresaid Alexander Earl of Stirling and Dovan, or his certain attorney, bearer hereof, without delay, saving the right of every person whatsoever, and taking security of two pennies Scots money, by duplication of the blench farm-duty of the foresaid lands and others as above mentioned, lying as above, due to us;

'and this no wise ye leave undone, these presents after the next term being to
'no purpose. Witness myself at Edinburgh, the 7th day of July, and in the
'second year of our reign, 1831.

'To the Sheriff of Edinburgh and his Bailies, for Alexander Earl of Stirling
'and Dovan, to his great-great-grandfather.

(Signed) 'WILLIAM CAMPBELL Jr. Sub.'

AFTER READING and INTERPRETING which precept of seisin, in the common
speech, to the witnesses present, the foresaid Sheriff, in virtue of the said pre-
cept of seisin, and of the dispensation therein contained, and the office of baili-
ary therein committed to him, GAVE and DELIVERED heritable state and seisin,
actual, real and corporal possession of the said lands and others above specified,
with the pertinents, to the before-named Alexander Earl of Stirling and Dovan,
heir aforesaid, and that by delivery of earth and stone of the ground of the said
Castel into the hands of the said attorney, for and in name of the said Alexan-
der Earl of Stirling and Dovan, after the tenor of the said precept of seisin
above inserted, and dispensation contained in the same, in all points. WHERE-
UPON, and upon all and sundry the premises, the foresaid attorney asked instru-
ments from me, the undersigned notary-public. THESE THINGS WERE SO DONE
at the said Castle of Edinburgh, within the outer gate there, in virtue of the
dispensation foresaid, between the hours of eleven forenoon and twelve noon,
on the day of the month, in the year of our Lord, and of the reign of our sov-
ereign lord the King, above written, IN PRESENCE OF David Byars, clerk in the
office of the clerk of the sheriffdom of Edinburgh, and William Wilson, second
son of me, notary-public, residing in Lyndoch Place, at Edinburgh, witnesses
to the premises specially called and required, and this public instrument with
me subscribing.

AND I truly, James Wilson, clerk of the diocese of Edinburgh, and clerk of the
sheriffdom of Edinburgh, and notary public, by royal authority, and by the
Lords of Council and Session, according to the tenor of the act of Parliament
admitted, because at all and sundry the premises, whilst they were, as is be-
fore stated, so said, done and performed, I was, together with the before-
named witnesses, personally present, and all and sundry these premises I saw,
knew, and heard so performed and said, and took a note of them; therefore
I, being called and required, prepared therefrom this present public instru-
ment, by another hand, upon this and the six foregoing pages of parchment,
duly stamped, with the marginal addition on page third, faithfully written,
and have rendered it in this form of a public instrument; and in faith, corro-
boration and testimony of the truth of all and sundry the premises, have sign-
ed and subscribed the same with my sign, name and surname, used and wont.

† Veritas.

JA. WILSON, N. P.

Dav. Byars, witness.

Wm. Wilson, witness.

At Edinburgh, the twelfth day of August one thousand eight hundred and
thirty-one years, this sasine was presented by Ephraim Lockhart, writer to the
signet, and is recorded in the one thousand six hundred and forty-sixth book of
the new General Register of Sasines, Reversions, &c. and on the 102, 103, 104,
105, 106, 107, 108, 109, 110, and 111th leaves thereof, conform to the act of
Parliament made there anent in June 1617, by me, depute-keeper of said Regis-
ter.

Aa. WISHART.

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INSTRUMENT OF SEISIN

IN FAVOUR OF

ALEXANDER, EARL OF STIRLING AND DOVAN,

OF THE LANDS, COUNTRY AND LORDSHIP OF CANADA AND OTHERS.

IN THE NAME OF GOD, Amen. Be it known to all men by this present public instrument, THAT on the 8th day of July, in the year of our Lord 1831, and of the reign of our sovereign lord, William the Fourth, by the grace of God of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, the second year, In presence of me, notary-public, and the witnesses subscribing, appeared personally Ephraim Lockhart, writer to his Majesty's signet, as procurator and attorney, specially constituted, for and in the name of the Right Honourable Alexander Earl of Stirling and Dovan, Viscount of Stirling and Canada, Lord Alexander of Tullibodie, &c. great-great-great-grandson and heir of the deceased Sir William Alexander, Knight, the first Earl of Stirling, whose power of procuratory was sufficiently known to me, the undersigned notary-public; and there also appeared Thomas Christopher Banks, Esquire, residing in No 19. Duke Street, Edinburgh, baillie in that part specially constituted, in virtue of the charter under mentioned, and precept of seisin therein contained, to the Castle of Edinburgh, the place for giving seisin of the lands and others under written, in virtue of the union and dispensation contained in the said charter and precept of seisin under written; the said attorney HAVING and HOLDING in his hands a certain extract registrate charter, made, given and granted by Charles, King of Great Britain, France and Ireland, under his Great Seal, containing therein the precept of seisin for giving to the foresaid Sir William Alexander, his Majesty's Hereditary Lieutenant of the country and lordship of Nova Scotia in America, and his heirs and assigns, heritably for ever, seisin of ALL and SUNDRY islands lying within the gulf of Canada, between Nova Scotia and Newfoundland, at the mouth and entrance of the great river Canada, where it falls and enters into the said gulf, (including therein the great island Anticosti): Also of ALL and SUNDRY islands lying within the said river Canada, from the said mouth and entrance up to the head, first rise and source thereof, wheresoever it is, or the lake whence it flows, (which was thought to be towards the great bay of California, called by some the Vermillion Sea,) or within any other rivers falling into the said river Canada, or in whatsoever lakes, waters or straits, by which either the said great river Canada or any of the said other rivers pass, or in which they run out: And further, of fifty leagues of bounds on both sides of the aforesaid river Canada, from the said mouth and entrance to the said head, spring and source thereof; also on both sides of the said other rivers falling thereinto; as also on both sides of the said lakes, straits or waters by which any of the said rivers pass, or in which they terminate: And likewise, of ALL and WHOLE the bounds and passages, as well on the waters as on the land, from the foresaid head, spring and source of the river Canada, wheresoever it is, or whatsoever lake it has its course from, to the foresaid bay of California, whatsoever shall be found to be the distance; with fifty leagues altogether on both sides of the said passage over against the said head of the river Canada and bay of California; and likewise of ALL and SUNDRY islands lying within the said bay of California; as also of ALL and WHOLE the lands and bounds adjacent to the said bay on the west and south, whether they be found a part of the continent or main land, or an island, (as it was thought to be,) which was commonly called and distinguished by the name of California: Moreover, of ALL and SUNDRY other lands, bounds, lakes, rivers, straits, woods, forests and others that shall have been explored, conquered or discovered at any time to come by him the foresaid Sir William Alexander, or his successors, their confederates, associates, or others in their name, or having power from

them, upon both sides of the whole bounds and passage aforesaid, from the mouth and entrance of the said river Canada, where it discharges itself into the said gulf of Canada, to the said bay of California, or islands in the seas thereto adjacent, which were not heretofore really and actually possessed by others, either the subjects of his said Majesty, or the subjects of any other Christian prince or constituted orders in alliance and friendship with his Majesty: With FULL and ABSOLUTE power to him the said Sir Wm. Alexander, and his foresaids, (and to no others,) their stewards, servants, and others in their name, of planting colonies and engaging in trade in the before-named places or bounds, or any part of them particularly marked out, and of expelling or debarring all others from the same; also of allocating proportions of the lands thereof to whatsoever person or persons shall seem to him fit, and upon the same terms, conditions, restrictions, and regulations within all the forenamed bounds, as he could do in Nova Scotia, by whatsoever charters or patents granted to him by his said Majesty's father, or his Majesty himself, also with such and as great privileges, liberties, and immunities in all the foresaid places or bounds, islands, and others above written, as well as in the sea and fresh water as on land, as the said Sir William Alexander had in Nova Scotia by his prior charters or patents of Nova Scotia; which privileges contained in the said prior charters, and every one of them, his said Majesty ordained to be equally sufficient and valid, and willed to be altogether of the same strength, force, and effect, as if they had severally been particularly and one by one granted and set forth word for word in the said charter, as to the not particular insertion of which in the said charter his said Majesty for ever dispensed: By which charter also it is ordained and declared, that it should in nowise be prejudicial or derogatory to whatsoever rights, charters or patents granted to the foresaid Sir William Alexander, or his aforesaid, of or concerning Nova Scotia, at whatsoever time preceding the date of the said charter, or to any head, clause, article or condition therein set forth; as also, that it should be without prejudice to any prior charter granted by his said Majesty, or to be granted at any time to come, to whatsoever Baronets within Scotland of the country of Nova Scotia: And his said Majesty specially prohibited and debarr'd all and sundry his subjects, of every degree or condition, in any of his kingdoms or dominions, from making any plantation, or engaging in any trade in the said places or bounds, bays, rivers, lakes, islands and straits above written, or in any part thereof, without the special advice, permission and consent of the foresaid Sir William Alexander, or his foresaids; and with special power to the said Sir William Alexander, and his foresaids, of seizing, taking and apprehending all and sundry persons who shall be found to be in business and engaged in trade in any part of the said places or bounds contrary to the said prohibition, and of confiscating their ships and goods, and disposing thereof at pleasure to their own proper uses, without rendering any count or reckoning in any manner for the same, or any part thereof; and of doing all other things within all and whole the forenamed bounds or spaces, as freely and fully to all intents, purposes and ends as the foresaid Sir William Alexander, and his foresaids, could have done within the said country of Nova Scotia, or the said kingdom of Scotland, in virtue of any of the said letters patent, prior charters or patents: ALL and whole which lands, spaces or bounds, islands and others above set forth, were erected and united into one whole and free lordship, to be called of Canada, belonging and pertaining to the before-mentioned Sir William Alexander and his foresaids, heritably for ever; ordaining seisin at the said Castle of Edinburgh, or upon the soil and ground of the foresaid lands, bounds and islands, or any part thereof, to be taken by the said Sir William Alexander, or his foresaids, to be in all time to come sufficient for all and whole the forenamed lands, bounds, islands, and others above specified, or any part or portion thereof, as to which his said Majesty for ever dispensed; as in the said charter and precept of seisin inserted in the end thereof, comprehending divers other clauses, is more fully contained: As ALSO the foresaid attorney HAVING and HOLDING in his hands a certain general retour of the service of the before-named Alexander Earl of Stirling, &c. as nearest and lawful heir of the foresaid Sir William Alexander, the first Earl of Stirling, his great-great-grandfather, expedie before the bailies of the borough of Canongate, near

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s, restrictions,
n Nova Scotia,
 Majesty's father,
s, liberties, and
rs above writ-
id Sir William
f Nova Scotia;
y one of them,
nd will be to
severally be-
ord in the said
arter his said
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or his aforesaid,
date of the said
h; as also, that
is said Majesty,
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prohibited and
on, in any of his
ing in any trade
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ever; ordaining
nd of the fore-
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ve specified, or
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ur of the service
and lawful heir
his great-great-
Canongate, near

Edinburgh, the 11th day of October, anno Domini 1830, and duly retoured to his Majesty's chancery; and HAVING a certain special retour of the service of the said Alexander Earl of Stirling, &c. as nearest and lawful heir aforesaid, expedite before the Sheriff-substitute of the sheriffdom of Edinburgh, the 2d day of July in the year first above written, and likewise retoured to the said chancery; which service includes a general service of the same kind and character; by either of which services the said Alexander Earl of Stirling, &c. acquired right to the foresaid charter, and to the precept of seisin still unexecuted, and all the other clauses therein contained; as in the retours of the said services respectively is also contained; WHICH extract charter, with the said retours, the foresaid attorney exhibited and presented to the said bailie in that part lawfully constituted as is before stated, and desired him duly to execute the command and office committed to him by the said precept of seisin; WHICH DESIRE the said bailie finding to be just and reasonable, he received the said extract charter and retours into his hands, and delivered them to me, notary-public, to be read, published and explained in the common speech to the witnesses present; WHICH I did, and of which precept of seisin, contained in the said extract charter, the tenor follows in these words: 'AND further, we have made and constituted, and by the tenor of our present charter we make and constitute
'and any one of them, jointly and severally, our bailies in that part, giving and granting to them, and any one of them, our full power and special warrant for giving, granting and delivering to the foresaid Sir William Alexander, and his aforesaid, or to their certain attorneys, having or producing this our present charter, heritable state and seisin, and also actual, real and corporal possession of all and sundry the forenamed lands, bounds, rivers, lakes islands, straits or passages, and others whatsoever, generally and particularly above set forth, of the said country and lordship of Canada, at our said Castle of Edinburgh, or upon the soil and ground of any part of the foresaid lands and bounds or places, or in both manners, at the pleasure of the said Sir William Alexander and his foresaids, commanding them, and any one of them, that on sight hereof they, or any one of them, forthwith give and deliver heritable state and seisin, and also actual, real and corporal possession of all and sundry the forenamed lands, places or bounds, islands, rivers, lakes and others foresaid, generally and particularly above set forth, to the foresaid Sir William Alexander and his foresaids, or to their certain attorneys, having or producing this our present charter, upon any part of the ground of the said lands, or at our Castle of Edinburgh, or in both manners, as shall appear best to him and his foresaids, by delivery of earth and stone to the foresaid Sir William and his aforesaid, or to their attorneys, having or producing this our present charter at the said Castle, or upon the soil and ground of the said lands and others above written, or in both manners, at the pleasure of the said Sir William and his foresaids; which seisin so to be given by our said bailies in that part to the foresaid Sir William and his aforesaid, or to their attorneys having or producing this our present charter, we, for us and our successors, decree and ordain to be good, lawful, valid and sufficient in all time coming, dispensing, like as we, by the tenor of our present charter, dispense, as to all that can be objected against the same, whether in form or in effect: Finally, we, for us and our successors, with advice and consent foresaid, will, decree, declare and ordain, that this our present charter, with all and sundry privileges, liberties, clauses, articles and conditions above mentioned, be ratified, approved and confirmed in our next Parliament of our kingdom of Scotland, or, at the will and pleasure of the said Sir William Alexander and his foresaids, in any other Parliament of the said kingdom hereafter to be holden, to have the strength, force and effect of a decree of that supreme court; for doing which, we, for us and our successors, will and declare our said charter, and the clauses therein contained, to be a sufficient mandate or warrant, promising, on the word of a King, the same shall be so done and performed. In witness whereof we have ordered our Great Seal to be appended to this our present charter, before witnesses, as in others, our cousins and counsellors, James Marquess of Hamiltoun, Earl of Arran and Cambridge, Lord Aven and In-

'nerdail, William Earl Marischal, Lord Keyth, &c., marischal of our kingdom, George Viscount Duplin, Lord Hay of Kinfauns, our chancellor, Thomas Earl of Hadingtoun, Lord Bynning and Byres, &c., keeper of our Privy Seal, our beloved familiars and counsellors Sir William Alexander of Menastria, our principal secretary, Sir James Hamiltoun of Magdalenis, clerk of our rolls, register and council, Sir George Elphingstoun of Blythiswod, our justice-clerk, and Sir John Scot of Scottistartvett, director of our chancery, Knights; at our palace of Whythall, the 2d day of February, in the year of our Lord 1628, and of our reign the third.' AFTER READING, PUBLISHING and EXPLAINING which extract charter, and precept of seisin and retours, in the common speech, to the witnesses present, the foresaid Thomas Christopher Banks, bailie in that part aforesaid, again received the said extract charter and retours into his hands, and in virtue and by the strength of the same and of the office of bailiary committed to him, GAVE and DELIVERED to the before-mentioned Alexander Earl of Stirling, &c., heir aforesaid, for himself, his heirs and assigns, heritable state and seisin, and also actual, real and corporal possession of ALL and SUNDRY the forenamed lands, bounds, rivers, lakes, islands, straits or passages, and others whatsoever, generally and particularly above expressed, of the said country and lordship of Canada, after the tenor of the aforesaid charter, the union and dispensation contained in the same, and the said precept of seisin above inserted, in all points by delivery of earth and stone of the ground of the said Castle into the hands of the said Ephraim Lockhart, attorney foresaid, for and in name of the before-mentioned Alexander Earl of Stirling, &c. WHEREUPON, and upon all and sundry the premises, the foresaid attorney asked instruments from me, notary-public. THESE THINGS WERE SO DONE at the said Castle of Edinburgh, within the outer gate there, in virtue of the union and dispensation aforesaid, between the hours of eleven forenoon and twelve noon, on the day of the month, in the year of our Lord, and of the reign of our sovereign lord the King, above written, IN PRESENCE of David Byars, clerk in the office of the sheriff-clerk of Edinburgh, and William Wilson, writer there, witnesses to the premises specially called and required, and this public instrument with me subscribing.

AND I truly, John M'Gregor, clerk of the diocese of Edinburgh, and notary-public, by royal authority, and by the Lords of Council and Session, according to the tenor of the act of Parliament admitted, because at all and sundry the premises, whilst they were, as is before stated, so said, done and performed, I was, together with the before-named witnesses, personally present, and all and sundry the premises I saw, knew and heard so performed and said, and took a note of them; therefore I, being called and required, prepared therefrom this present public instrument, by another hand, upon this and the two foregoing pages of parchment, duly stamped, faithfully written, and have rendered it in this form of a public instrument; and in faith, corroboration and testimony of the truth of all and sundry the premises, have signed and subscribed the same with my sign, name and surname, used and wont.

Verum crede.
JN. M'GREGOR, N. P.

David Byars, witness.
William Wilson, witness.

At Edinburgh, the twelfth day of August, one thousand eight hundred and thirty-one years, this sasine was presented by Ephraim Lockhart, writer to the signet, and is recorded in the one thousand six hundred and forty-sixth book of the new General Register of Sasines, Reversions, &c. and on the 111, 112, 113, 114, 115, 116, 117, 118, and 119th leaves thereof, conform to the act of Parliament made thereanent in June 1617, by me, depute-keeper of said Register.

AR. WISHART.

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&c., keeper of our
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M'GREGOR, N. P.

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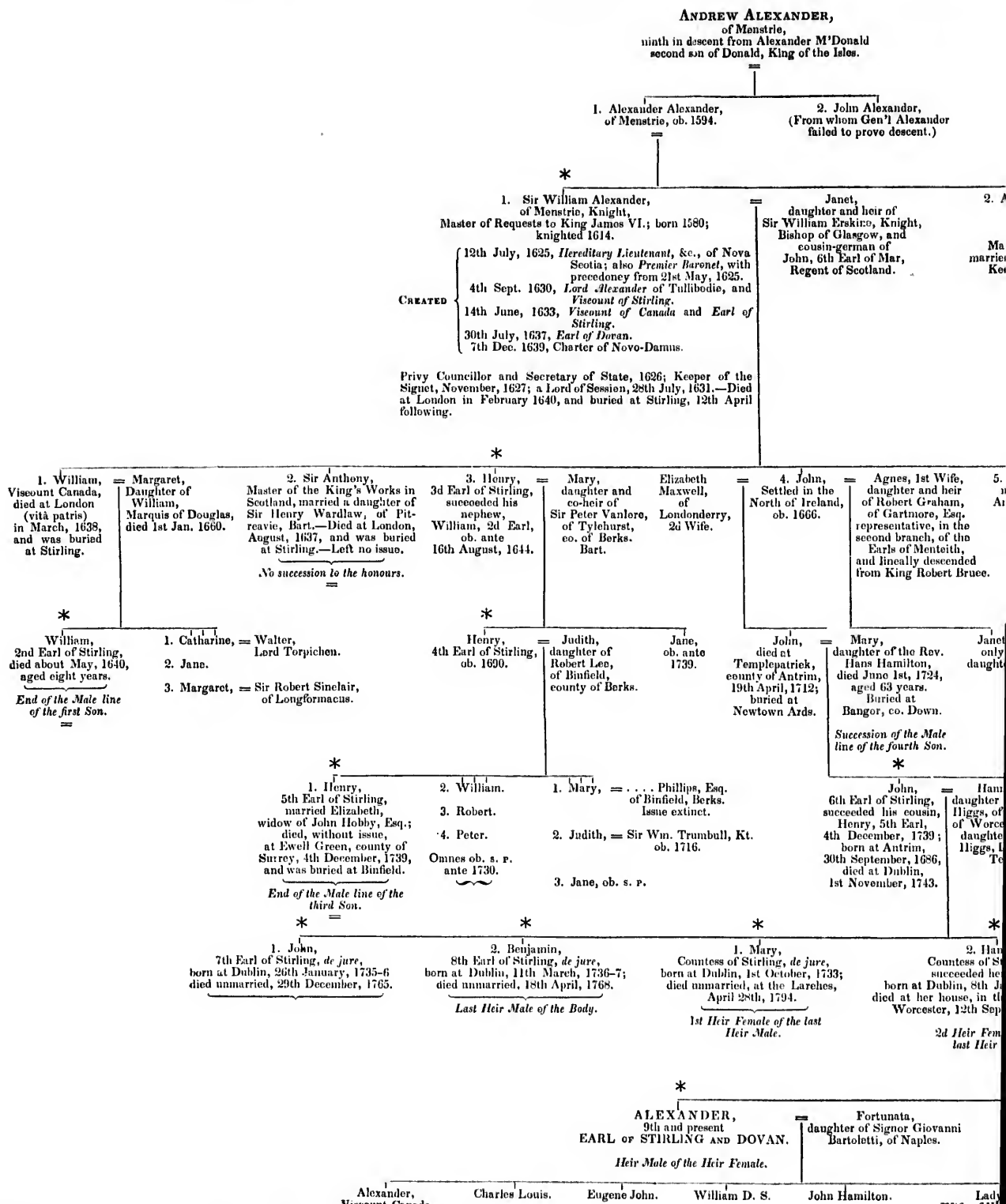
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PEDIGREE—showing the Descent of the EARLDOMS OF STIRLING AND DOVAN, from the Creation of t



*Maria in 18th A. Diana
eldest daughter of Wm. Gordon Duff
of 877790 A.C.C. Scotland's heir & next kin
issue a son*

ALEXANDER,

Genetie,
Alexander M'Donald
King of the Isles.

2. John Alexander,
(From whom Gen'l Alexander
failed to prove descent.)

Janet,
daughter and heir of
Sir William Erskine, Knight,
Bishop of Glasgow, and
cousin-german of
John, 6th Earl of Mar,
Regent of Scotland.

2. Andrew Alexander.

Margaret Alexander,
married Mr. James Gordon,
Keeper of the Signet.

4. John,
Settled in the
North of Ireland,
ob. 1666.

Agnes, 1st Wife,
daughter and heir
of Robert Graham,
of Gartmore, Esq.,
representative, in the
second branch, of the
Earls of Menteith,
and lineally descended
from King Robert Bruce.

5. Charles,
unmarried,
Ann Drury.

6. Ludovick,
died in infancy.

7. James,
married
Grisel Hay.

1. Jane, = { 1st. Hugh, Viscount Montgomery,
of the Ardes.
2nd. Major-General Munroe.
2. Mary, = Sir William Murray, Baronet.
3. Elizabeth,
died unmarried.

John,
died at
Templepatrick,
county of Antrim,
14th April, 1712;
buried at
Newtown Ards.

Mary,
daughter of the Rev.
Hans Hamilton,
died June 1st, 1724,
aged 63 years.
Buried at
Bangor, co. Down.

Janet,
only
daughter.

Charles,
died
without issue.

Margaret,
ob. s. p.

Succession of the Male
line of the fourth Son.

*

John,
6th Earl of Stirling,
succeeded his cousin,
Henry, 5th Earl,
4th December, 1739;
born at Antrim,
30th September, 1686,
died at Dublin,
1st November, 1743.

Hannah,
daughter of the Rev. John
Higgs, of Chadwich, county
of Worcester, great-grand-
daughter of Dr. Griffith
Higgs, Dean of Lichfield,
Temp. Car. 1.
ob. 1768.

1. Mary,
died unmarried.

2. Elizabeth, = John Mee Skinner, Esq.

Mary,
Stirling, *de jure*,
1st October, 1733;
died at the Larches,
Paris, 28th, 1794.

Female of the last
Heir Male.

2. Hannah,
Countess of Stirling, *de jure*,
succeeded her sister, 1794;
born at Dublin, 8th January, 1740-1;
died at her house, in the Collegio Green,
Worcester, 12th September, 1814.

2d Heir Female of the
last Heir Male.

William Humphrys,
of the Larches, county
of Warwick, Esq.,
died at Verdun, in France,
1st May, 1807.

DOVAN.

male.

Fortunata,
daughter of Signor Giovanni
Bartoletti, of Naples.

D. S.

John Hamilton.

Lady Angela E.,
Wife of W. W. Pearson, Esq.

