

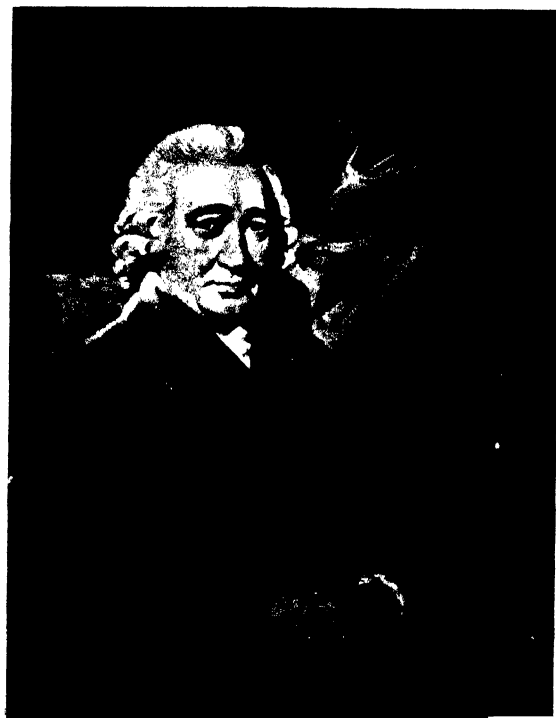


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BY THE SAME AUTHOR  
THE LAW'S LUMBER ROOM  
*Second Edition*

THE LAW'S LUMBER ROOM  
SECOND SERIES





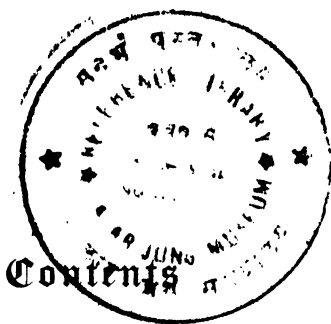
*The Original Weir of Hermiston  
'after the Picture by Raeburn,  
in the Parliament House, Edinburgh'*

**TERRORS OF THE LAW**  
**BEING THE PORTRAITS OF THREE**  
**LAWYERS "BLOODY JEFFREYS" "THE**  
**BLUIDY ADVOCATE MACKENZIE"**  
**THE ORIGINAL WEIR OF HERMISTON**

**BY FRANCIS WATT**

**JOHN LANE · THE BODLEY HEAD**  
**LONDON AND NEW YORK · MDCCCCII**

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## Portraits

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## **Prefatory Note**



## Prefatory

THESE are Critical and Biographical Studies or, as I should prefer to call them, "Portraits" of Three Eminent Lawyers; the point of view is not legal, it is human or literary, there is no discussion of the technicalities of cases or changes wrought in the administration of justice. I have tried to estimate the influence of these famous men on their times, but still more have I sought to picture forth each as a human being. No doubt it is impossible to detach them from their profession; just as easy might you deal with a Pope without remembering that he was an ecclesiastic. How can a man engage in an arduous calling for many years without being profoundly affected by it? His mind, like the dyer's hand, is "subdued to what it works in." Thus, though this

book is anything but a legal treatise, how vain to forget that the three men of whom it treats were lawyers and that they looked at life from a legal standpoint.

In one respect all three were alike; they were cordially detested in their own time by great masses of people, and more than a touch of ill-repute still attaches to their names. Two of them are still conspicuously known as "Bloody Jeffreys" and "Bloody Mackenzie," and if "Bloody Braxfield" is a less frequent conjunction, it is at least not unknown, and circumstances did not permit him to bulk as largely on the stage as the others; history is so crowded with names that many remarkable incidents must unite to affix a permanent stigma to the most hated of tyrants or oppressors. I have tried to show that, from certain points of view, there is much to be said for each of the three. Jeffreys and Braxfield have scarce found a defender, but Mackenzie has always had some to speak for him; if even in this case adverse voices have prevailed, this is owing to the success of a party in politics.

and religion. Covenanting Scotland won all along the line, and of late years it seems, in the very act of passing away, to have gained in literature a last victory against the Cavalier, though long before, Scott—Cavalier and Tory as he was—had found better metal in the side with which he had the less sympathy. How real living are Jeanie Deans and Bailie Nicol Jarvie compared with the pasteboard figures of Dundee and Montrose ! Perhaps Scott's material, not his genius, was at fault. Is there not a touch of pasteboard and tinsel about the Scottish Cavalier, spite all his braveries ? It is possible to take a firm hold of a character like Jeffreys or Braxfield ; the men reveal themselves in outspoken speeches, pithy characteristic sayings, unmistakable action. Also their intellectual activity was limited ; they were mere lawyers, and their other life counts for little. But Mackenzie's character is a harder problem ; you never seem to get at the man ; we have few details of his private walk, still fewer characteristic anecdotes about him. You do not catch him without



his wig and his ruffs ; scratch him as hard as you like, the result is mainly parchment and pasteboard, and yet he was certainly not a mere lawyer. The Lord Advocate of his day was necessarily a statesman, a figure greater and more powerful than any ordinary judge, and Mackenzie was essentially a statesman, one of those who governed Scotland during a critical and exciting period. Also he was a man of wide culture, he was an accomplished scholar ; Jeffreys and Braxfield were ignorant in comparison to him.

There are different opinions as to the value of his works ; they have been unduly lauded and probably as unduly abused, but they help us but little in understanding the man. Even the famous passage about "Christian Charity" only makes the problem more piquant and more perplexing. With every effort I feel how difficult it is to fix him other than the mere official. One explanation may be given of this : he was an advocate all his life, and you are not certain that he was always expressing his true sentiments. But this could only affect

detail. You are not helped much by his portrait. Sir Godfrey Kneller was a painter of considerable eminence, and the figure that looks down upon you to-day from the walls of the Parliament House in Edinburgh is attractive, brilliant, interesting, but, spite of all, a trifle wooden and altogether external. The man is lost in his office, the person in the dress. This is but a type of Cavalier.

The very pleasing portrait of Jeffreys by the same hand is another proof, if proof be needed, that Kneller was merely an utterer of smooth things in paint. He was no Raphael or Rembrandt or Vandyke or Velasquez; not his their gift of seeing into their subject's very soul, and so fixing it as to make their portrait of him a truer revelation than the very form it bodies forth. And surely of kindred genius, even if a much lesser force, is Raeburn; at least you will judge so if you move a few paces along the floor of that same Parliament House from Kneller's Mackenzie to Raeburn's Braxfield; you will see all the

difference there is between cleverness and genius. You have a dismal suspicion that you have not got your Mackenzie and you have not got your Jeffreys, but you have got your Braxy as really as if he trod again, alert and vigorous, this once familiar floor, there is no possible doubt about that.

Whilst doing my best to body forth these men, the question was often present to me, how would the trio have figured in the law in our own day? In the case of Mackenzie the question scarce admits of answer, for the pleader then and now is so utterly apart as to make comparison useless. It is otherwise with the judges. On the English or Scots Bench of our own time Jeffreys and Braxfield would have been notable figures, their virtues held in rare esteem, and their vices unknown even to themselves. Both contemporary reports and contemporary criticism give them a high place as able and vigorous judges in non-political trials. They were talented men. They possessed in no common degree the judicial instinct, they naturally took delight in its exercise, they

got at the truth, they viewed matters in an eminently practical light, and kept everybody—counsel, suitors, witnesses—in almost too servile a subjection. The Law Courts are of necessity concerned with the baser aspects of human nature, and no men ever knew the baser aspects of human nature better than these two judges. And nowadays political trials are practically non-existent. In one sense, true enough, they were not great lawyers. Neither gave his name to any legal classic, and the light which literature sometimes throws on law, “like stars upon some gloomy grove,” was not theirs to shed. But an enormous number of the very best judges have left literature, even legal literature, severely alone. Quite possible neither Jeffreys nor Braxfield could have done anything noteworthy in that way if they had tried. After all, the compilation of legal text-books is but a sorry business, best left to the dull, if accurate, drudge; not for such does British Themis reserve her richest, her most splendid rewards.

There have always been, always will be, and certainly there are to-day, judges whom the inner circle of their own calling unanimately condemns as bad, though no whisper is ever raised against their honour or integrity. In truth, a contemporary judge who went wrong deliberately, consciously preferring the worse side, would be something more than a knave; he would be a madman. To call a Justice "upright" is superfluous, an insult rather than a compliment. What motive can he have to act dishonestly? The paths of duty and interest are identical. But one can see many causes which may induce him to take a wrong view without deliberate intention. He may err from mere weakness; he may lack the necessary degree of intelligence. Foisted into his place from some political or other improper cause, he may do well enough for ordinary matters, but when the Touchstone case arrives he has not proper grasp of the facts, or he may suffer from ignorance or lack of skill in applying the law. Of course I refer to real blunders, something more than an

opinion given in a difficult case where opposite views may fairly be held by thoroughly competent men. Or, again, he may take whimsical views of the ordinary affairs of life, be without insight into character, be unable to tell whether a man is speaking the truth or not, a faculty which some have as a sort of intuition or second sight. Worst of all, as it is most akin to deliberate malpractice, he may go wrong through sheer laziness; he will make a guess at complicated or irksome matters, accept too readily the plausible statements of clever counsel, simply because he will not take the trouble to do better. Nor is the question of temper unimportant; he may not find it easy to decide in favour of the side which is unpleasant or unpopular, or for some reason or other has to him something repulsive about it. Most of such judges are mere non-entities; they do a certain amount of harm, but they excite no notice from the outside world, and once got rid of in some way or other are immediately forgotten.

And there is a much rarer but much more

harmful instance. It now and again happens that a man of great eminence and ability may find his way into the Judgment Seat, though his faults of temper or his lack of what I call the "legal instinct" makes him a costly failure.

It is evident that from most of those evils the two judges here treated of were exempt; they were not incompetent, they were shrewd men of the world, they had the legal instinct. I cannot deny that their temper was of the hottest and they were both domineering, but the man in the dock in those days somewhat accounts for, though he does not excuse this. At present that unfortunate individual is either one who has fallen from a better estate and is usually overwhelmed with shame and quite dumb, or a coarse ruffian who has no wit or education enough to frame a coherent sentence; but then, some of the best men of the time occupied the dock almost as with ordinary incident in their career; they were well educated, of extreme ability, and H. B. In keen belief in the rightness of

their cause, and as keen a belief in the malice and wickedness of their oppressors, among whom they included the judges as a matter of course. They defended themselves partly because they must and partly because they preferred, and they were always ready to give as good as they got in any wordy warfare. The smoothness and propriety, and even apparent absence of excitement, of a great trial of our own day is a modern development. It is only fair to suppose that Jeffreys and Braxfield would be richer in decorum in a more placid age.

The scope of these papers does not include a reference to authorities, but I think there is a sufficient indication whence the material facts are derived. I can honestly claim for "Braxfield" that it is the most complete account of him in print; indeed, there is no biography of him other than the notice in Kay's *Portraits*, and accounts more or less fragmentary in biographical dictionaries. It may be said he was not important enough to furnish material for a substantial biography, and perhaps at no time v



sufficient material for such a thing. Many of the stories about him must have perished : no doubt some were false, and others, true or not, would scarcely bear the light of print ; but even in Edinburgh and in the Parliament House itself no oral tradition seems to survive. As regards Mackenzie, a tolerably complete though quite external biography by Ruddiman, the Scots scholar, is prefixed to the two handsome folios which contain his works, but there is no separate and independent biographical account.

Of late years the perplexing, almost irritatingly perplexing figure has awakened such interest as the appearance of magazine or review articles may serve to indicate, but these have usually dealt with one side of his character, treating him as a politician, philosopher, or writer on law. I have tried to look upon him chiefly as a man, but I am only too conscious how baffling his personality still remains. Much has been written<sup>6</sup> regarding Jeffreys, the last publication<sup>7</sup> of importance being his *Life*, by Mr. H. B. Irving. It is an apology or plea for

mitigation on very much the same lines that I have taken. The article on that judge here reproduced was published in substantially its present form in the *New Review* for August 1896, and Mr. Irving's book in 1898. It consists of 368 pages, and is altogether very full and complete, yet I venture to think that the slighter sketch may still be acceptable to those who may not care to attack a comparatively bulky volume.

I should add that the article on Braxfield also appeared in the *New Review*, and, also under the editorship of Mr. W. E. Henley, the paper on Mackenzie appeared in the *Anglo-Saxon Review*, and my thanks are due to the editors of those periodicals for many kindnesses. Mrs. George Cornwallis-West has also very kindly allowed me to use the portrait of Mackenzie which accompanied the article, and which was specially taken from Sir Godfrey Kneller's picture already mentioned.



**“Bloody Jeffreys”**



## “Bloody Jeffreys”

MOST men find it irksome to distinguish the neutral tints in human character : they prefer to paint all white or all black, to assign a great name to the definite class of good or bad, to brand a man sheep or goat once for all. In literature this simple method has a remarkable effect ; Macaulay owes to it nearly all the point of his famous style. He unduly lauds certain characters, he extravagantly abuses certain others ; and so he gives his readers, ignorant for the most part, and for the most part hankering after an opinion, a set of clear and definite perceptions, thanks to which their minds are no more troubled by the task of explaining contradictions or weighing motives of conduct. His abiding and abounding popularity, the permanence of his portraits

—for even to-day his is the popular view of men like Warren Hastings and Addison —attest the success of the device in a competent hand. Yet the prime facts about human character are complexity and inconsistency. There are saints and there are sinners ; but your saint is so full of weakness that oftentimes you write him down Pharisee, whilst your sinner proves not such a rascal after all. The hard-and-fast line fits the Sunday School treatise, the romantic novel, the popular drama, the works of Lord Macaulay. The truth-seeker has a harder task and must content himself with less striking effects. His very success will be a kind of failure. He shows that the sinner had some good points, forthwith the world converts him into saint. There is Cromwell, for instance, “damn’d to everlasting fame,” in Pope’s line, execrated for the better part of two centuries, and exalted by Carlyle and others to the position of a hero. Thus, you say, “the whirligig of Time brings on his revenges.” True. But in some cases the attaint of history seems beyond any

writ of error ; and of such is the case of Lord Chancellor Jeffreys, the “bloody Jeffreys” of popular, and more than popular imagination. Here Macaulay is not alone in vituperation. The Lord Chancellor died execrated by a whole nation and abandoned by him he had served ; and scarce one voice had been raised in mitigation of blame, far less in defence of his life and work. A candid examination proves him anything but the monster of popular fancy. He had many good qualities ; he did much useful work ; his vices were those of his age ; he shared them with his fellows of the Bench and the Council Chamber. But his abilities, his good actions, are peculiar to himself, and in some cases they made him bitter enemies. I purpose to consider briefly the principal charges which have been brought against him, the authority on which they are based, and the extent to which they must be considered as proved. I shall then enumerate his good qualities and his good acts, as to which his libellers are silent.



(1) His indictment is in substance this : Whilst a student, he frequented the tavern rather than pleaders' chambers ; though, having an eye to business, he ingratiated himself with attorneys and their clerks, by whose aid he made a prosperous start at the Old Bailey and Hicks Hall (as the Clerkenwell Green Sessions House was then called). Moreover, all through his career he was malign of temper, and continually drunk, not merely in private, but on the Bench.

(2) With a single eye to his own interest, he left the popular side for that 'of the Court. He was a party to, nay, more, he prompted the worst acts of James II.

(3) As a prosecutor he was grossly unfair, and showed a bitter *animus* against the prisoner.

(4) As a judge his legal knowledge was small. He habitually twisted the law to get convictions, grossly insulted the accused and their witnesses, and was hopelessly corrupt. His conduct was specially notorious in the following trials : Of Algernon Sidney (1683), of Sir Thomas Armstrong (1684),

of Titus Oates and Richard Baxter (1685), and through the round of the Western Circuit of 1685 (since known as the "Bloody Assizes").

I must distinguish among authorities. Jeffreys is the centre of a mass of legend and tradition, the whole of it utterly untrustworthy. His death coincided with the fall of the Government he had served, and in which he was a conspicuous figure. His enemies held power for over a generation. Everything told to his discredit was implicitly believed, and long before passion cooled the impression of him as the "bloody Jeffreys" was stereotyped. Even on his own side he had little favour. Two chief authorities for his life are Roger North and Gilbert Burnet. Now his predecessor as Keeper of the Great Seal was Francis North, Baron Guildford, Roger's brother, with whom he was at variance, so that Roger, though of the Court Faction, detested him as his brother's rival, and, being a master portrait-painter, limned him in such dark lines as can never be forgotten. Burnet, again, had been proceeded

against in his absence for high treason ; William made him Bishop of Salisbury ; he was altogether for the new order, and Jeffreys was not like to, and did not, receive fair treatment at his hands. The State Trials, though they have undergone a process of editing, are our best witnesses, and we shall see how far they bear out the popular view. Also, the customs and manners of the Lord Chancellor's age—nay, its political morality—were not as ours. The conception of the duties of a judge, the method of trial—in special trial for high treason—were radically different from what they are now.

Jeffreys was fond of company : in that age this meant that he was fond of the bottle. Yet, as a student, he gave quite as much attention to the pedantries of old English law as they deserved. That he made himself reasonably agreeable to those on whom his future fortune depended should surely be no reproach. But, in truth, his talent from the first was so evident that attorneys competed for his services. As a cross-examiner he was unsurpassed ; and his

style of oratory, however wanting in elegance, was admirably suited to the taste of his day. As he went through a great deal of arduous work which no drunkard could have done, the slanders on his early career may be fairly imputed to the malice of disappointed rivals. Scarce ever was rise so rapid as his. He was Common Serjeant of the City of London at twenty-three, and he was Lord High Chancellor at thirty-seven—an age at which the successful lawyer of to-day begins but to think of taking silk. He died ere he was forty-one. That he was of a hasty temper must be admitted. But his was a coarse and violent, nay, brutal age, not given to sentimental reflection or to half-measures. In fine, he must be proved worse than his contemporaries, or his conduct calls for no special measure of blame.

Political subserviency is the second charge against him. True it is that he left the Popular for the Court Party, a change natural enough in a rising man. He felt he had more and more a stake in the country, and his dallyings with the mob

were mere youthful excesses. There was abundant opportunity on the Whig side for a rising lawyer, and Jeffreys' interest would have led him to curry favour with the City, never a Cavalier stronghold. Having chosen the Royal side, he consistently stuck to it, and thereby near shipwrecked his career. After serving as Common Serjeant for seven years, he was appointed Recorder of London in 1678. He was active on the side of the "Abhorrers," who favoured the King's delay in summoning Parliament. This increased his ill-favour with the Mayor and Aldermen, whose authority he had again and again defied. The City complained of him to the Commons, and the King was urged to deprive him of his offices. His Majesty took no steps; but Jeffreys was forced to submit on his knees to a reprimand at the Bar of the House and resign his Recordership. Personally he was not a favourite with either Charles or James, and his rapid rise in after years may fairly, I think, be ascribed to his merits and services. He was no "Trimmer": he hated the word, he hated



*Jeffreys as Recorder of London  
c.1710 after the Picture by Kneller  
in the National Portrait Gallery of London*



the thing : he was thoroughgoing by nature and habit. He held himself the King's servant ; he might first advise ; but a line of conduct once determined he conceived it his duty to assist. He pointed out to James the impolicy of various acts : for instance, the prosecution of the Seven Bishops ; though, in accordance with his principles, he officially took part in the trial. To turn Roman Catholic was the sure road to James' favour, and the fact that Jeffreys did not take it shows that he was not without principle. As a supporter of the Royal policy he became identified with it, and shared in the discredit resulting from its failure. In politics success is the test of merit, and thus it is difficult to judge James with fairness and intelligence. Yet the Stuart doctrine of kingship is at the worst a comprehensible theory ; and the King came near making it a success in practice.

Jeffreys' conduct as a prosecutor may be dismissed with a word. He was never Attorney- or Solicitor-General : although he



took an active, it was ever a subordinate part. It was his duty to be zealous for the Crown, and he was so without reproach from his leaders or the presiding justices. He is known before all else as a judge, especially in criminal cases; and it is here that he has been most assailed. Pedants then and since have raised the parrot cry that he knew no law, but in truth he was thoroughly conversant with the essentials, though he despised, and perhaps neglected, the meaningless technicalities of old English jurisprudence. He had the true judicial instinct. He grasped the main features of his case whilst counsel were labouring their openings. He was impatient of irrelevancy and waste of time, both rampant in the courts of his day. He gave only moderate attention to precedents: he was as fit, he argued, to establish them as any other judge, and heard without fear and trembling even the name of my Lord Coke himself. His considered judgment in the great case of monopolies, *The East India Company, Plaintiff, against Thomas Sandys*,

*Defendant*, conclusively proves him possessed of great and varied legal learning. The point was whether the Company's patent for trading to the East Indies exclusive of all others was good. He held the affirmative, and his decision was never questioned, even as his decrees as Chancellor were never overruled. Before all, he had a real touch with life, a profound knowledge of human nature, especially in its baser aspects.

He was one of those judges who take strong views and express them strongly. A Jacobean trial for high treason was in effect the reply of the Government to open war, secret plot, nay, the stroke of the assassin, or any like attack. The prisoner was deprived of counsel except to argue points of law; his witnesses were not examined on oath; he was not allowed a copy of the indictment; it was conceived to be the judge's duty not to let him escape if he believed him guilty. In political trials, too, the jury often consisted of men indifferent, or even ill-disposed, towards the Government. It was not to be expected

that, in the case of one notoriously an enemy to the rulers, a judge of the time would attach much weight to a technical objection which might set that enemy free to renew his attack against the State. Jeffreys simply acted on the theory of the judicial office current in his day. He did as his fellows did, and as he and they were expected to do. That he was fond of giving a "lick with the rough side of his tongue," as he phrased it, there is no doubt. He suffered, too, during the greater part of his judicial career from a painful disease. Moreover, neither accused nor witnesses were meek, silent, or long-suffering. Again and again the latter would raise the same old futile points with exasperating reiteration. They would fight the ground inch by inch. They would bitterly complain of all manner of wrongs, and ever and again they would roundly abuse the judge himself. This was excusable in people fighting for their lives; but it goes a great way towards explaining the asperity with which they were answered from the Bench. With it all

Jeffreys never prevented the accused from saying what they wished to say, and, though he had a much better idea of the rules of evidence than any of his contemporaries, he permitted them great latitude in examining witnesses. In cases where the law allowed them counsel, they were permitted to address the Court in supplement to what had already been urged in their behalf.

In no case, so far as I can find, did Jeffreys retort upon a prisoner without being moved thereto by some extravagance on that prisoner's part. At the Bar, even on the Bench, if he gave hard knocks, he took them. Two examples I give as thoroughly characteristic of the epoch and its men: Jeffreys' second wife was confined an unconscionably short time after their marriage; and Jeffreys, as counsel, was cross-examining a lady in court. "Madam, you are very quick in your answers," quoth he. "As quick as I am, Sir George, I am not so quick as your lady," was the delightfully irrelevant reply. At the trial of Collidge, the London joiner, Titus Oates appeared as witness for the

prisoner. "I do not desire Sir George Jeffreys," said Titus, "to be in evidence for me; I had credit in Parliaments, and Sir George had disgrace in one of them." Jeffreys parried this home-thrust with perfect good humour: "Your servant, Doctor; you are a witty man and a philosopher." Nor was it to the defence alone that he used hard words. When counsel for the Crown would misbehave, he reproved them very roundly. In 1684, Joseph Hayes being tried for high treason and acquitted, the Attorney-General, in great 'chagrin, asked Jeffreys to bind him to his good behaviour for the rest of his life. The motion was promptly and properly refused. As to the charge of corruption, it is certain that in no case was Jeffreys bribed to influence the result of a trial. This may seem small praise for an English judge; but that same century had witnessed the impeachment of Lord Bacon. It is urged that on the Western Circuit, after Monmouth's Rebellion, he made considerable sums of money through his agents by the commuta-

tion of capital sentences. The charge is by no means proved; but did he do so he merely followed the example set by the Court. Sentences were thus commuted with the full approval of the Government. The felon's life was forfeit to the King, and if the King, or others with his authority, chose to let the felon off on easier terms, that was (it was considered) rather a mercy than a hardship.

Turn we now to the famous trials. One, that of Richard Baxter, it would be vain to discuss. • There is no shorthand note of the proceedings, and Calamy's *Life* is our sole authority. Some of that author's statements look suspiciously like a burlesque of Jeffreys' style. Whether they be so or no, the context is not given, and we must leave the thing alone. In the case of Algernon Sidney there was a considerable body of evidence to show that the prisoner had been engaged in treasonable plots. A MS. treatise on Government, setting forth sentiments then held disloyal, was produced, and there was sufficient proof that it was written by Sidney.

It would not be admitted now, and, indeed, the condemnation was reversed after the Revolution, because of its admission. Thus, much may be said against Jeffreys, though the judges who sat with him concurred in his view of the law. But in no respect, and at no point, did he try to take advantage of Sidney. He advised him as to his position, heard him at great length, stopped him sometimes when he was irrelevant (which he mostly was), but urged him, "in God's name," to "stay till to-morrow in things that are pertinent." In summing-up he warned the jury that the question of fact was purely for them, and that they were to believe nothing against the prisoner except in so far as it was distinctly proved. When sentence was pronounced, Sidney, under cover of a prayer, accused Jeffreys of maliciously seeking the shedding of innocent blood; and "I pray God work into you a temper fit to go into the other world, for I see you are not fit for this," was the judge's famous retort. He has been roundly abused for it. Was it, under the circum-

stances—was it so very extreme? In the case of Sir Thomas Armstrong, the prisoner had been outlawed for high treason ; he had been apprehended : and according to the law, nothing remained but to pass sentence on him, for he had not appeared to plead, and he was not now entitled to a trial. So far everything was clear. But the prisoner urged that, by a statute of the sixth year of Edward VI. he was entitled to trial if he yielded himself within a year after outlawry. The judges held that the Act meant a voluntary surrender, thought the point too clear for argument, and therefore would assign no counsel. Jeffreys pointed out that it was for the King to waive the outlawry if he thought fit, but that such was no matter for them. Mrs. Matthews, Armstrong's daughter, was present, and accused Jeffreys of murdering her father, and Sir Thomas himself made some very insulting remarks, all of which explains the judge's one retort, when the prisoner demanded the benefit of the law : "That you shall have, by the grace of God. See that execution be done on Friday next.



According to law, you shall have the full benefit of the law." And again I ask it: under the circumstances, is the retort unnatural? I turn to the two trials of Titus Oates for perjury. Titus himself was a humorous, thorough-paced villain, whose unabashed and brazen insolence under all circumstances wins him (despite yourself) a certain sympathy. That Jeffreys and he should slog each other through many pages of the report was to be expected. My point is that Oates had nothing but perfectly fair play. Jeffreys, with stern reproof, kept the Attorney-General to a strict course of procedure. The prisoner's crime (it had cost lives of innocent men) was proved by the clearest evidence, and one must sympathise with the words of Wilkins, J., in pronouncing sentence, that, severe as it was, it scarce seemed severe enough.

There remains the famous Western Circuit in the autumn of 1685. The chief counsel for the Crown was Henry Pollexfen, the most famous Whig lawyer of his day, Chief Justice of the Common Pleas

after the Revolution, and the judges who were with Jeffreys concurred in all his measures. Yet the blame has been reserved for him alone. The Government had determined to act with unsparing rigour, and its policy had some success. When Dutch William renewed the attack some three years after, it was a long time before any one joined him, and this hesitation was universally held an effect of the severity then exercised. The chief trial was that of the so-called "Lady" Alice Lisle. The charge was that she harboured one Hicks, a rebel. That a woman should help a fugitive seems a natural thing; but under the same circumstances the offence would be treason to-day; and the point we have to consider is simply: "Was it proved?" I think it was. Two points had to be shown: (1) Was Hicks a rebel? He had not then been convicted; but the fact was made abundantly clear, and that method was fairer to the prisoner himself than merely producing a copy of the conviction. (2) Did "Lady" Lisle know it? It has been said by Lord Campbell, among others,

that there was not a particle of evidence to show the *scienter* (i.e., her knowledge that Hicks was a rebel). This is absurd. True, the chief evidence was wrung out of Dunne, a hostile witness, by Jeffreys in a brilliant and masterly (though certainly brutal) cross-examination, extending over many pages of the report; but, joined to the testimony of Barter and Colonel Penruddock, it amply justified the verdict of guilty. The sentence on Sir Thomas Armstrong was quashed on a writ of error; that on the "Lady" Lisle was reversed by Act of Parliament after the Revolution. The law of treason was held to be otherwise, even apart from statutory modifications. But, to be fair, we must consider the sentences from the point of view of James and James' Government.

Of the man's great ability I shall say no more. I will but quote the verdict of his bitter enemy, Roger North: "When he was in temper, and matters indifferent came before him, he became his seat of justice better than any other I ever saw in his place. He took a pleasure in mortifying fraudulent

attorneys, and would deal forth his severities with a sort of majesty." As Chancellor he introduced various much-needed reforms to his Court. To mention only one: A great number of counsel (sometimes as many as ten) were briefed and heard on one side. Jeffreys put this down. Mere repetition he refused to hear; and such was the dread of his merciless tongue that the abuse vanished into thin air with his refusal. Had his insolence been reserved for abuses it had been precious indeed! The Corporation of Bristol had a disgraceful trick of terrifying petty criminals into asking for transportation, and then selling them as slaves to the plantations. Jeffreys visited the city on his famous Western Circuit, got the Grand Jury to present the Mayor and his fellows for these acts, and forced them to descend from their seats and, clad in their splendour of office, to plead as criminals at the bar. "See how the kidnapping rogues look!" he thundered. In truth, he had a real regard for justice. Dangerfield, a lesser Oates, was sentenced (1685), among other punishments,

to a severe whipping. Francis, a barrister of Gray's Inn, insulted him after his punishment, and, being reviled in turn, thrust at Dangerfield with his cane, struck him in the eye, and killed him. Francis was tried and sentenced; but the Court were disposed to let him off. Jeffreys insisted that the law must take its course, and in the result it did. Nor was the judge's private life without honourable features. The story of his first marriage is a romance of gratitude. He remembered the kindness shown to him by Philip Henry—father of the more famous Matthew, and, like him, a dissenting divine—and Sir William Clayton, a London alderman; and he was able to save them both from unjust prosecution. He rewarded the courage of a clergyman of Taunton, who attacked his conduct in that town, by a canonry in Bristol Cathedral. He never allowed any of his companions who had judicial business before him to presume on their acquaintance. When the Mayor of Arundel rebuked him for his interference at an election in that town, he submitted to and

acknowledged the justice of the reproof. In fact, he was, like most of us, a mixed character. He had faults, but, let us recall it, these were balanced by some virtues, and much may be pleaded in mitigation of the judgment which history has passed upon him.



**“The Bluidy Advocate  
Mackenzie”**





## “The Bluidy Advocate Mackenzie”

THE crowded churchyard of Greyfriars, at Edinburgh, is rich with the dust of them that made Scots history whilst it was still worth the making. On the south side of the church is one specially imposing tomb, built after the style of a classic temple, with ornate Corinthian columns, a dome, and various mortuary embellishments. Here lie (how unfitting the conventional “rest”!) the ashes of Sir George Mackenzie of Rosehaugh. Whatever your creed or party, you picture him other than the sugared Latin of his epitaph suggests. And presently for that epitaph you fall to murmuring the old schoolboy rhyme :

Bluidy Mackenzie come out if ye dar  
Lift the snack and draw the bar.

Do you wonder what manner of man was he that bore this legacy of hate to weigh down his name after two centuries? Let us try to picture him, to touch the human being long since turned to dust, to conjure for a little the bloody Mackenzie from out his tomb, and, whether or no we dare sit in judgment with this shadow at the bar, let us realise and understand its story.

Here is our first difficulty. His life is mixed up with the history of the period; he held high place, and as official actor he wears the official mask. In an occasional phrase, individual act, some noted trait of character, the man peeps out. Such are for us treasure, but most often we find them in hostile records. A little space will suffice for his early years. Mackenzie was born at Dundee in 1636. His father, a landed gentleman in Ross-shire, was brother to the second Earl of Seaforth, and so his family was of the bluest blood in Scotland. From St. Andrews and Aberdeen, Mackenzie proceeded to Bourges, that "Athens of lawyers," with its memories of Alciat, Rebuffi, Cujas,



*The Lord Advocate Mackenzie  
after the Picture by Kneller  
in the Parliament House, Edinburgh*



and other great jurists, where he read civil law and much else for three years. He was admitted Scots Advocate in 1659 and readmitted after the Restoration. He was fortunate in his entry: a displacement like the Restoration leaves space for young ability; also the men of the previous ten years needs must have bowed the knee to the Kirk or to Cromwell—not seldom to both—and opposed with more or less heart their King in exile. Martyrdom or seclusion were possible alternatives, but the most had attempted a judicious trimming. Our newcomer found many of his competitors burdened with this awkward—nay, dangerous—past merely because they were his seniors. There is no doubt as to Mackenzie's red sentiments; aristocrat by temper and culture, proud of his family and position, attached to Episcopacy, for whose preservation in Scotland he strove to his undoing, yet—it is one of the many paradoxes of his career—he seemed at first altogether for the people. The explanation is professional. An advocate, however able, cannot hope for

important employment under Government at his first go off. But the man attacked by the State will ferret out fresh talent and energy for his defence. And the novice has every motive to do his best; he must convince the rulers that they will do well to attach to themselves so brilliant an opponent.

His first important case was the Marquis of Argyll's in 1661. The Marquis petitioned to have as counsel Sir John Nisbet of Dirleton (afterwards Lord Advocate and Lord of Session, still remembered by his *Dirleton's Doubts*). This was refused, but three advocates were assigned him, of whom Mackenzie was the second "junior." Argyll was charged with treason before the Estates for that he had supported Cromwell's rule; his answer was that he had passively acquiesced in the inevitable, and such was no crime. The whole affair was a mass of intrigue for and against. The prosecution was bitter and menacing, the Court mainly hostile. Yet this was how the young advocate spoke: "I must tell you (my Lords)

that some have been so unjust to you, as to fear, that tho' the Probation be not concluding, that yet ye will believe, to the great Disadvantage of my Noble Client, the unsure Deposition of that as foul, as wide-mouth'd Witness, *publick Bruit and common Fame*; which as it is more unstable than Water, so like Water it represents the straightest Objects as crooked to our Sense; and that others of you retain still some of the old Prejudices, which our civil and intestine Discords did raise in you against him during these late Troubles; But I hope, Generosity and Conscience will easily restrain such unwarrantable principles in Persons, who are by Birth, or Election, worthy to be Supreme Judges of the Kingdom of *Scotland*." He then urged; "What is now intended against him may be intended against you; and your Sentence will make that a Crime in all Compilers, which was before but an Error and a Frailty. . . . Who in this Kingdom can sleep securely this Night, if this Noble Person be condemned for a Compliance, since the Act of Indemnity is not yet past?



And albeit His Majesty's Clemency be unparallel'd, yet it is hard to have our Lives hung at a *May-be*, and whilst we have a Sentence-condemnator standing against us. Phalaris was burnt in his own Bull: And it is remarkable, that he who first brought in the Maiden, did himself suffer by it." He concluded by artfully urging the Estates to remit the whole process to the Court for the King's personal consideration. No doubt he judged delay the best for the prisoner. In the shifting quicksands of current politics all changes were possible. ..

And now the Parliament were turning to their deliberations when one of those dramatic incidents which crowd Scots history decided Argyll's fate. "One who came post from London knocked most rudely at the Parliament door," [Mackenzie himself tells the story] He carries a mass of papers, he is a Campbell, surely he has help for the Marquis? So his counsel inferred, else had they protested with might and main against this addition to the Crown case. The packet was opened, it contained letters in Argyll's

handwriting proving that he had actively supported, not passively acquiesced, in the Protectorate. They were addressed to Monk, who, himself in safety, had at the last moment thrown them into the scale, turning it decisively against Argyll. He was forthwith condemned, and on May 26, 1661, was executed. • The passing of such a figure, “without mentioning of whom,” says Clarendon emphatically, “there can hardly be any mention of Scotland,” excited intense interest. He was not a brave man. His enemies—and he had many—hopefully anticipated a scene on the scaffold. Mackenzie bluntly told him “that the people believed he was a coward and expected that he would die timorously”; he said to me, says Mackenzie, “He would not die as a Roman braving death but he would die as a Christian, without being affrighted.” They were good haters those old Scots! Cruel eyes watched his last moments; cruel voices urged that he buttoned his doublet twice or thrice after he was ready to throw it off, that he “shifted to lay down his head,” and that he protracted

time by "speaking at all the corners of the scaffold." On the other side, his physician told how my Lord's pulse was "clear and strong" and how—so a post-mortem examination proved—the partridge eaten at dinner a few hours before was perfectly digested. Whatever his natural feelings, Archibald Campbell remembered in that supreme hour what was due to his Kirk, his Clan, and his Ancient House. In after days men glorified him as the Protomartyr of the Covenant. Mackenzie's potent advocacy had the compliment of reproof; he wittily turned it off with "It's impossible to plead for a traitor without speaking treason."

He did other like work. He strove to save "famous Guthrie's head" from the scaffold, and was unsuccessful, mainly, he assures us, from the obstinacy of the accused, who, scorning to conceal his opinions, would scarce avail himself of professional assistance. Mackenzie notes "his great parts and courage," and regrets him as impracticable and impossible. The two most prominent names on the martyrs' monument in that

same Greyfriars churchyard—you may read them writ large thereon to-day—are the noble Marquis of Argyll and the Reverend James Guthrie, and for both Bloody Mackenzie was Advocate.\* Also he was counsel for many engaged in the Pentland Rising (1666). And we find him, after he had done everything which earned him his epithet, pleading for accused Covenanters in a brief space between two tenures of office. And why not? says Reason and Common sense. To do his best for his client is but ordinary and proper counsel's work. As Lord Advocate his aims were necessarily

\* I cannot resist putting in this place the following account from Woodrow, *Analecta* (i. 109), of the strange scene that followed on Guthrie's execution :

"After he was taken down, his head was severed from his body with an axe. It was observed there was a vast effusion of blood that flowed from his body, which was presently put into a coffin and carried into the Old Kirk Yle, where it was dressed by a number of ladys of good quality. Some of them took their napkins and dipt them in the blood, and when Sir Archibald Primrose, the Register, challenged one of them, viz., Mrs. Janet Erskine, maryed after to Sir Thomas Burnet, Doctor of Medicine, for the doing, saying 'it was a piece of the superstition and idolatry

different; he was with the hounds not with the hare, conviction not acquittal was his game. But the doctrine of the pleader's aloofness from his case well-nigh passes the wit of to-day's man in the street, and Old Scotland was not given to curious consideration of such refinements: to prosecute was to persecute; that the prosecutor had once been defender was counted to him for added wickedness. But I anticipate.

All his life Mackenzie was a busy man, full of various and distracting occupations. He entered Parliament in 1669, was opposed to Lauderdale, who called him a factious young man. Nay, more, he went counter of the Romish Church, to reserve the relics of the saints.' It was answered, 'they intended not to abuse it unto superstition or idolatry, but to hold up the bloody napkin to heaven in their addresses, that the Lord might remember the innocent blood that was spilt.' In the time that the body was a dressing, there came in a pleasant young gentleman, and poured out a bottle of rich oyntment on the body which filled the whole church with a noble perfume, one of the ladys says, 'God bless you, sir, for this labour of love, which you have shown to the slain body of a servant of Jesus Christ.' He without speaking to any, giving them a bow, removed, not loving to be discovered."

to the royal wishes. The Court was anxious to bring about a union of the kingdoms. Whilst Mackenzie professed himself favourable, he urged so many objections to the mode that he aided materially to founder the scheme. He did all this with the most honeyed expressions of loyalty, for he was aiming at State office. I do not forget his *Moral Essay; preferring Solitude to Public Employment*, which he published at Edinburgh in 1665, and which John Evelyn took too seriously in answering. Mackenzie was rather fond of those ingenious speculations; two years before he had given his *Religious Stoic* to the world. The virtues of toleration are lauded in many a brilliant phrase, but their practical application! He cultivated letters during these years, he wrote largely on professional topics, he perpetrated some atrocious verse, which I must do him the justice to say *he* did not publish save by sending it to eminent men of letters, who before the invention of newspaper wastebaskets received much stuff of the kind. Above all, he had his increasingly large

practice, civil as well as criminal, to look after. His great and hated rival at the Bar was Sir George Lockhart. Mackenzie complimented Lockhart in pompous Latin as *corpus alterum juris civilis*; in his *Memoirs* he says "his insolence and avarice were greater than his learning." Their fellows judged Lockhart the better lawyer, but as mere lawyer and nothing more he played Coke to the other's Bacon.

In 1674 arose a curious dispute, in which both were at first on the same side. The Earl of Callendar having lost a case before the Court of Session, appealed, mainly on Lockhart's advice, to Parliament. The judges were furious, the advocates determined. These made common cause, and a strike or rather lock-out of the Bar ensued. Some withdrew to Haddington and others to Linlithgow—poor markets for their legal wares! The Court took sides with the Session, nominally on the point of law, really because the judges were more under the King's thumb than the Estates. Mackenzie finally patched up the two years'

quarrel in a way which pleased the Court, and he was marked out for promotion. Another legal squabble distinguished the year 1677. The advocates said their place in the Parliament House was encroached on, and that they were hindered in their work. They tried to shut out the noblemen who were accustomed to hang about the courts. A mighty pothor arose, whereof Mackenzie took advantage to insult Lockhart. Bannerman, another advocate, forthwith sent a challenge, which was promptly accepted. However, the judges getting wind of it bound the pair over to keep the peace. Mackenzie had a violent temper, an insolent manner, a cutting tongue. He had not feared to beard Lauderdale in the Parliament House, he answered the judges sharply, he was presently to be where his words had greater weight. Nisbet, then Lord Advocate, had taken fees from both sides, and behaved improperly in various ways. The business was pressed by his enemies and he must resign. In August Mackenzie was made Lord Advocate, Lock-



hart being passed over. The appointment lay between the two. A turn in Court currents and history had pilloried the bloody Lockhart. Better for Mackenzie's fame had Bannerman pinked his man! Mackenzie was likewise knighted and sworn of the Privy Council. As one of the great officers of State, he was both Member of Parliament and of the Committee called Lords of the Articles, which drafted and practically made the Statutes. The Lord Advocate has always bulked large in Scotland; then he was greater than an ordinary judge;—and the number of important State trials in the next decade was to emphasise his prominence. The new Advocate was (another paradox!) keenly interested in legal reform. He made the procedure of the criminal courts more regular and favourable to the prisoner; he has claimed all the credit for this, though others worked with him. But how little forms avail was to be speedily shown.

And now for a word on the time. At the Restoration the Scots authorities be-

came extravagantly loyal, and everything made for absolute rule. In 1661, the famous *Act Rescissory* destroyed all legislation since 1633. If Presbyterianism was no religion for a gentleman it was still less one for a despot, even because of its rival pretensions. Episcopacy was re-established, and the trouble began. Here was greatest opposition to the Government, and thus theological questions entered the sphere of practical politics. In 1666 was the Pentland Rising, in 1669 the Highland Host ravaged the west, in 1679 Sharp was assassinated, and the Rebellion of Drumclog and Bothwell Brig flared out. In 1680 the extreme party in the Sanquhar Declaration threw off allegiance to the Government. The Apologetical Declaration, even more extreme, was met by the Abjuration Oath ; the net result was this : a man must swear his loyalty or be instantly shot. Now the Government, though they easily crushed open insurrection—Drumclog was the only covenanting victory—could not destroy the individual. On the one part was the

absolute policy of the Stuarts in Church and State, on the other the stubbornly hostile Scots nature; a struggle to the death between tyrant and fanatic was the inevitable result. Mackenzie was not the only lawyer on the Privy Council (which body in fact governed Scotland) but he was the legal mouthpiece, and it was his to translate their policy into the black and white of the Scots Statute-book. In questions of detail his legal ingenuity had play. By bonds of law-burrows he extended the old system of binding people to keep the peace by making suspected proprietors responsible for their tenants. As prosecutor before the Court of Justiciary and in the preliminary examinations before the Privy Council he was prominent, hence he became "famous infamous"—"By merit raised: To that bad eminence." He was a thorough absolutist. No King's Advocate, he boasted, had ever screwed the King's prerogative higher, he had never lost a case for the King. He ought to have a statue hard by Charles the Second's in the Parliament

Close. Nor did he serve royalty for naught, for London was far off, and increase of royal power meant increase of Scots official power. Hence official zeal; but the work was congenial. The dexterous twisting of legal forms, "the torture of laws" in Bacon's phrase, gave him a certain pleasure. He stooped to chicane, trickery, cruelty. An irritability of temper made him accentuate and underline the worst Stuart tendencies. In one respect an examination of the trials aids his reputation; a certain heaviness and coldness, an intellectual languor clouds his writing. Some stimulus, some fire was required to heat the mass; the excitement of a great criminal trial supplied this. His Crown speeches are, I think, his best remains. They are a curious compound of fiery eloquence, legal argument, and prejudicial matter; they are impressive to read, how much more impressive they must have been to hear!

And these trials? /There is Mitchell's case in 1677. Mitchell had fired at Sharp in 1668, missing his aim, but grievously

wounding Honeyman, Bishop of Orkney, who sat in my Lord St. Andrew's coach. The crowd, with the quaintly cynical remark, that "it was only a bishop," let the would-be assassin slip away. Six years afterwards Sharp, recognising Mitchell in the High Street, had him arrested. There was a difficulty about another witness. Possibly the Council made that an excuse for promising Mitchell his life if he would confess everything, for they suspected some far-reaching plot. Mitchell did confess, but avowed he had no accomplices; the Council were disappointed; they brought him to trial, meaning to have him punished, but not capitally. Mitchell now refused to plead guilty. He was sent to the Bass Rock and the matter dropped for the time. With all this Mackenzie had nothing to do; nay, Mitchell declared on the scaffold that he had been his counsel. However, in 1678 the new Lord Advocate was making a sort of gaol delivery of the prisons, and Mitchell was again brought up. Mackenzie prosecuted. He tells us he got the Council

to appoint Lockhart to defend. There are curious points hard to explain about the trial. There was enough evidence to condemn the accused apart from his own formal confession. Sharp remembered him perfectly, and the "goodman of the Tolbooth"—as with quaint euphemism they named the Keeper of that "delectable prison" (so one martyr phrased it)—narrated that Mitchell had confessed the deed to him, which the goodman's son corroborated. Why then produce the conditional confession? Lawyers have a way of piling certainty on certainty—from excess of caution as they say. Possibly! But another mystery is behind. Incredible to relate, John, Earl of Rothes, Lord High Chancellor of Scotland, Charles Maitland of Hatton, Lord Treasurer Depute, John Duke of Lauderdale, James Archbishop of St. Andrews, entering the witness-box one after the other, stoutly denied any promise of pardon. Lockhart had a card up his sleeve, to wit, a copy of the page in the Council Records promising the pardon.

Presently he produced it. A mere copy was no evidence, yet Mackenzie gave express permission to read it, and then argued thus: (1) The Council had no power to grant the alleged pardon; (2) the confession was prior in time; (3) the proper means had not been taken to bring the original books before the Court; (4) even if such a statement was in the Council books, how weigh it against the evidence of Lauderdale and his crew? The judges held these two last objections well founded; Mitchell was condemned and executed. Mackenzie, in his private *Memoirs*, criticises Lockhart's management of the case chiefly in not bringing the Council records properly before the Court. Possibly Lockhart relied on a startling dramatic effect, and thought the surprise would carry all before it. Even he may not have foreseen how far witnesses or judges would go, or was there a deeper motive common to both advocates? Was each eager to disgrace Prelate and Lord? Mackenzie probably thought himself entitled to make the best

of his material. Yet in his *Vindication of the Government of Charles II.* he positively denies the existence of the promise of safety.

I turn now to Baillie of Jerviswood's, the one trial (1684) of which I profess to give a complete account. He was from a younger branch of the ancient house of Baillie of Lamington, "who say they are the old Balliols." He was "a man of great natural parts and learned and well travelled." Though a loyal subject, he was in favour of the Exclusion Bill. He was attached to the Kirk, he was for reform, he was son-in-law of Johnson of Warriston who had been executed as a traitor (1663), he had been in trouble with the Government and heavily fined, he had been on more or less intimate terms with political reformers in London who were inclined to go farther than himself, and he had not betrayed their secrets. These things were enough to hang a man. And here as ever there loomed a plot before official eyes. Hopes were held out to Baillie if he would confess and name his accom-



plices, but he smiled a refusal. The Earl of Tarras, his relative, less constant, was induced to make incriminating statements. Mackenzie protested at the trial that he had given his evidence without hope of favour, but the Act of the Estates that afterwards restored Tarras explicitly notes the promises made to him. The fear of death or torture procured some other scraps. Carstairs—afterwards the eminent Churchman, “Cardinal Carstairs” they nicknamed him at William’s Court—after a prolonged course of the thumbikins, made a statement on condition that he was not to be called as a witness. It amounted to little, and that little was garbled. Baillie had been long in prison, he was stricken with mortal sickness, the Crown must haste, else death would rob it of its victim. He had but twenty-four hours’ notice of his trial. Lockhart was the regular counsel for the defence in such matters, but both Lockhart and Lauder (afterwards Lord Fountainhall) were specially retained by the Crown to assist Mackenzie in the prosecution. The assize had been carefully packed.

Among them was David Graham, Sheriff of Galloway, brother to Claverhouse, afterwards one of the actors in the affair of the Solway martyrs. There also was Bruce of Earl's Hall, as eminent a persecutor as Claverhouse himself, and there was my Lord Balcarres, at least as fervent a Jacobite, whose memoirs give that side's best account of the Revolution. About another name hangs a faint aroma of letters, for there was William Drummond of Hawthornden, son of that "Damon, whose songs did sometime grace the wandering Esk," the friend and host of Ben Jonson. Such was the Court before which the prisoner was carried from the Tolbooth to the Parliament House "in his nightgown." His cousin and sister-in-law, the Lady Graden, gave him cordial from time to time as his strength sank low. His counsel demanded a delay, and quoted my Lord Advocate's writings to prove the right thereto, but the request was promptly refused.

A strange practice prevailed in the courts at that time : the judges must pronounce an

interlocutor finding the libel relevant. Now, however well it might be drawn, it was a point of honour to allege all sorts of objections; to these allegations there were answers, and there followed replies, duplies, triplies, quadruplies, and so forth. And the matter of these?—long extracts from the civil law, citations from “eminent criminalists,” Carp-zovius, Julius Clarus, Matheus, Gothofredus, and other Dryasdusts, whose very names are long forgotten. There were references to the laws of France, Spain, and heaven knows where. There were copious illustrations from biblical as well as classical history, and quotations from Scots Acts, wherein alone was materiality. To the jury, to the spectators, to all save counsel and judges, it must have seemed hopeless jargon, but neither my Lord Advocate nor his opponents forgot their Continental education; they went round the mill with infinite gusto; remember these debates were *verbatim dictate* to the clerks of the Court by the various speakers, remember that everybody knew they must end in smoke, and the thing

strikes you as ghastly mockery. At last it was over, my lords "repelled the defences proponed for the panel," and the Court got seriously to work.

The witnesses gave reluctant evidence. With a touch of quiet humour Baillie said of one of them, "I pity poor Sandie Munroe. I saw he looked at me with a rueful countenance." Carstairs' depositions were produced, and though strenuously objected to, "were admitted as adminicles." The winter night was far advanced when my Lord Advocate summed up for the Crown. If the inquest found the prisoner innocent, of course there was no plot. "All the noise we have heard of it is but a cheat, the King's judges have been murderers, all the witnesses have been knaves, and such as died for it have been martyrs." He dwelt on the panel's connections. "Remember you that he is nephew and son-in-law to the late Warriston, bred up in his family, and under his tutory." The law of treason was explained and illustrated, not overstated, because *that* was impossible. The reluctance

of Carstairs was paraded to strengthen the adminicles, whoever refuses his belief "does let all the world see that he inclines that conspiracy should be encouraged and allowed." His concluding sentence explains his zeal, "and I have insisted so much on this probation rather to convince the world of the conspiracy, than you that this conspirator is guilty": the suggestion being that the Duke of York was the object of a wicked plot, to strengthen which an official account of the trial was published both in London and Edinburgh. The striking incident that follows we get from other sources. It was now midnight, when Jerviswood craved leave for a few words. For the jury he doubted not they would act as men of honour. The witnesses had said things not quite truthful, "but life might be precious to some . . . he most heartily forgave them as one in probability to appear in some hours before the tribunal of the Great Judge." He indignantly denied the charge of plotting the King or Duke of York's death, and then directly addressing Mackenzie, he reminded

him that he had privately assured him of his belief that those charges were unfounded. "How then, my Lord, come you to lay such a stain upon me with so much violence?" Remember how it was told of Baillie that "he had a sort of majesty in his face, and stateliness in his carriage," and you understand the impressive change of position, the accused had become the accuser, the doomed man triumphed over his proud and powerful adversary. Every eye was turned on my Lord Advocate, who appeared in no small confusion. "Jerviswood," he stammered out, "I own what you say, my thoughts there were as a private man," but he now acted as public prosecutor by direction of the Privy Council. "If your lordship," returned Jerviswood with quiet dignity, "have one conscience for yourself, and another for the Council, pray God forgive you, I do."

Before such a tribunal how to doubt the result? yet the assize debated till three o'clock the next morning. At nine the formal verdict of "clearly proven" was returned. The hideous formula of old Scots procedure

was gone through. The Dempster repeated the sentence, Baillie must die that same afternoon the death of a traitor, his head to be stuck on the Netherbow, his limbs scattered through Scotland, his possessions forfeit, his blood tainted, which "was pronounced for doom." One last insult remained: the Heralds in their gorgeous trappings advanced, "and after sound of trumpet" tore the Jerviswood coat-of-arms, threw it in his face, trampled it under foot, and declared his race ignoble; they then proceeded to the Mercat Cross, whereto they affixed the arms reversed, with the bitter inscription, "The arms of Mr. Robert Baillie, late of Jerviswood, traytor." But for Baillie the bitterness of death was already past. He bade farewell to his judges in a brief sentence: "My lords, the time is short, the sentence sharp, but I thank my God who has made me as fit to die as you to live." Back in prison he fell into "a wonderful rapture of joy," the haven for the battered vessel was so near. One last work he must do—even martyrdom has its conventions—

it was the solemn duty of them who suffered in the troubles to leave their "testimony." We have scores of such, but Baillie's is unique: it is brief, moderate in tone, charitable, touched with a light as from beyond the grave. He had a word or two about his family with a last protest against the charge of disloyalty which had stung him so deeply. Yet the men of that iron age had larger interests than their private affairs, however near, and most of what he said was for his Kirk and his Country. His time was come, the prisoners crowded round to take farewell, 'twas but a few steps down the High Street, but they must carry him out in a chair; "when at the scaffold he was not able to go up the ladder without support." He said some words, but the drums were beaten, presently all was over. That Scots place of death had another memory. The martyrology of the Covenant is crowded with names. Courage and devotion are therein almost commonplace, but the virtues of sanity and moderation are sadly lacking. This is a single record. To tell of these



things is to tell *come colui che piange e dice*, yet I must linger for a little round that scaffold to note three figures, without which the lesson is incomplete. The Lady Graden walked by his chair: to her he pointed out Warriston's window, and in a few words made solemn mention of the high talk he had engaged in that room with her father who had trodden the same *via dolorosa* some twenty years before. She "saw him all quartered, and took every piece and wrapped it up in some linen cloth, with more than masculine courage," says even the hostile Lauder. The second figure is a lad of twenty, Baillie's eldest son and namesake. "If ye have a strong heart," said his father, "ye may go and see me mangled (dismembered)." The boy's nature was changed; he was hereafter noted as "grave, silent, thoughtful." After the Revolution name and estate were restored, and he rose to great place and power. The names of the honourable George Baillie of Jarviswood, and of his wife, the Lady Grizel Baillie (their acquaintance first made when a child

of twelve, she was sent by her father to take a message to his in prison), sweetest of Scots singers, are still remembered. When the '15 ended in disaster, he "publicly declared himself for mercy," somewhat to the scandal of his official friends. He simply replied that he had been bred in the school of affliction. The third figure is James Stirling, a young divinity student, watching from among the crowd the sad procession from the Tolbooth to the scaffold. The incidents of that last scene remained fixed in his memory. Long years after he described it to Wodrow, the historian, whose works are still the great storehouse of all Covenanting lore, and especially of such incidents.

I pick out one or two illustrative extracts from other proceedings. There is the case of Mr. James Skene, brother to the Laird of Skene, in 1680. He did not extenuate before the Council. "They asked me why I poisoned my ball. I told them I wished none of them to recover whom I shot." Mackenzie (a far-off relative) made some effort

to save him, but the offers were scornfully rejected, and the Lord Advocate had a special portion in the "martyr's" last testimony. "My blood is upon Mr. George Mackenzie, who pleaded for my condemnation." Donald Cargill's case, in 1680, was notable, since in the September of that year, at the Torwood, near Stirling, before a vast congregation, he had solemnly excommunicated and delivered up to Satan Sir George Mackenzie, the King's Advocate, on numerous charges, as "for his constant pleading against and prosecuting to death the people of God." Also "for his ungodly, erroneous, fantastic and blasphemous tenets printed to the world in his pamphlets and pasquils." Mackenzie might have cynically answered that, though he had written in favour of toleration, he observed it as little as Cargill himself. The preacher was taken and ended. Mackenzie stormed a good deal at his trial, and was reported to have declared that permitting the common people to read the Scriptures did more evil than good. The next year Marian Harvey and Isobel

Alison, young women in the position of servants, were before the Council, and my Lord Advocate's discussions merited their reproof. "Why did ye not debate these things with men and not with lasses?" One remark of Mackenzie's is of interest, "It is not for religion we are pursuing you, but for treason." Neither forgot my lord in their last moments: "And I leave my blood on Sir George Mackenzie and the rest of that bloody court," declared Alison. "I leave my blood on the criminal lords as they call themselves, and especially that excommunicate tyrant George Mackenzie, the Advocate," echoed Harvey. The thing was often grotesque. "Sir, you must be a great liar." So, my lord to Hackston, one of those implicated in the killing of Sharp. "Sir, you must be a far greater liar," was the retort.

To blame Mackenzie for the use of torture were unfair; it was part of the machinery of Scots procedure; it was used after the Revolution. Yet there are individual *notabilia*. Mackenzie threatens to tear out one

prisoner's tongue with a pair of pincers if he will not answer readily. The torturer is about to apply the boot to an ailing lad ; the surgeon takes Mackenzie aside, urges the prisoner cannot endure it, and that it is unnecessary, as he has owned to sufficient for conviction. My Lord indifferently assents and orders him the thumbikins ! Also there were gifts of various forfeitures ; thus William Scott of Harden was fined a large sum because his wife was at a conventicle. Mackenzie got a gift of the fine, which he rigorously exacted with interest, and at one time Claverhouse (whose relations with Lady Mackenzie were favourite subject for the scandalmongers of the day) notes his discontent that in some division of spoil nothing had come to him. Thus the rage when any person of means escaped. " Has the villain played me this trick ? " he said, when the first Earl of Loudoun died.

In March 1684, Campbell of Cessnock had an escape little less than miraculous. The charge was treason. Lockhart was again ordered to assist Mackenzie, the wit-

nesses had been carefully precognosed, but when in the box they, from fear, conscience, or confusion, knew nothing. Mackenzie was beside himself with rage, there was frantic applause in court. "Never was such a Protestant rore," he declared, "except at the trial of Lord Shaftesbury." William Fletcher was junior advocate for the defence; he irritated Mackenzie, who burst out on him, "I hate you, William Fletcher, I hate you, I swear I hate you, ye speak nonsense." He pressed the witnesses so unfairly that the inquest objected, when he fell foul of them. The result was an acquittal, there was more applause. Mackenzie said the jury had joined in it, and had them up before the Privy Council. They retorted "that there were none who shouted more than My Lord Advocate himself." "It was his part to do so," was the somewhat lame reply.

One last case, not religious or political, and reported by Lauder of Fountainhall, who in many points admired Mackenzie.— In 1682 James Douglas was condemned for having killed his stepbrother. Before the

and he confessed to other crimes which involved complete forfeiture. Mackenzie tried a curious legal trick. Let there be a new trial and forfeiture that this estate might go as Mackenzie wished. A reprieve was obtained and Douglas again placed at the bar. He had found out what was intended and retracted his confession. For once technicalities were urged with effect in the panel's favour. The jury, knowing he must die on the old charge, would not convict him on this. Mackenzie was mortified and showed it; he threatened them with an assize of error, he protested that they were worse "than the seditious *ignoramus* juries at London." He suggested "Lithgow's sogers to cool their fanatiques," but, adds Lauder significantly, "these transports of passion were smiled at."

For completeness I must mention the trial of the Earl of Argyll, son of the Marquis for whom Mackenzie had appeared. Argyll had taken the test prescribed by the Act of 1681, with a qualification, "so far as consistent in itself with the Protestant

religion." This was twisted into leasing making, wherefor he was tried in December 1681. Mackenzie prosecuted, and of course the verdict was "Guilty." The Government deferred execution and the prisoner was (probably) allowed to escape. He led the Scots branch of the Monmouth rising in 1683. He was taken and beheaded on the old sentence. Mackenzie is said to have directed this from a feeling of tenderness to the Argylls. He judged the former verdict unsound, it might be upset and the forfeiture reversed. Argyll's last proceedings were treason too plain to make that possible.

Each of those trials was a drama or rather a tragedy of surpassing interest to the nation. The Justiciary Court was crammed with an eager audience. A still greater crowd gathered round the Cross or filled the Grassmarket to witness the last scene. True, it was dangerous to express sympathy; one man at least had done so to his undoing. True the martyrs were cut short in their testifying by the soldiers' drums, but what



they said had been committed to writing or dropped into friendly ears. The story was told by the fireside in many a country town, in many a lonely farmhouse it became a hallowed tradition handed down from generation to generation, and Mackenzie was not forgotten. At trial and examination he was much in evidence. Even where Claverhouse was the hand that struck, his seemed the brain that plotted. And now do you understand his title? He was little concerned; he and his fellows repaid hate with contemptuous scorn. These men were "fanatics." To Mackenzie that meant something too bad to live. The word was often in his mouth. John Erskine of Carnock, whose Presbyterian sympathies were known, once consulted him about some law business, when the Advocate took occasion to explain his rule of conduct. "He loved not to stand on pinpoints with God, and also he was for liberty and loved good company, tho' he was loyal and no phanatick in advancing so."

Old Edinburgh was so packed together,

that odd things touched; the noise of the crowd round the gallows must have invaded my Lord's study windows. Rosehaugh's Close (afterwards Strichen's), where he had his town house, was but a little way down the High Street on the south side. But Mackenzie called Edinburgh the most unwholesome and unpleasant town in Scotland. He was glad to escape to his country house at Shank, itself a place of distinguished memories, ten miles off—a charming spot by the head waters of the South Esk, surrounded by ancient trees and pleasant fields! But wherever “That noble wit of Scotland” (as Dryden called him) was he was fully occupied. During these passionate years he wrote and read with amazing zeal. The chief scholars on the Continent were his correspondents, English men of letters were his friends, in the Council his scholarship was valued. Once they must communicate with the Dutch Government, and Mackenzie had to put their words into Latin. His Latin served well enough, though in the next century it called forth a “solemn sneer”

from Dr. Johnson. One curious piece of work was his. The Bishop of St. Asaph and other English scholars attacked the line of mythical Scots kings. Mackenzie replied with a ponderous treatise which excited much interest. St. Asaph's presumption in murdering so many of his Majesty's ancestors almost amounted to a criminal offence. With it all Mackenzie found time to play the accomplished courtier; he was well known at St. James's, and there were occasional glimpses of royalty at Holyrood. James VII., as the Scots called him, when Duke of York, was twice in Edinburgh as Lord High Commissioner. With him were his wife and Lady Anne, afterwards Queen. There were high jinks at Holyrood: masked balls, play-acting, brilliant parties, tea, golf, tennis. No one was more welcome than Mackenzie. We picture him then as Kneller's portrait on the walls of the Parliament House shows him to us to-day, the wig of long black hair, the keen, clear shaven, legal face, the refined, aristocratic, a trifle haughty yet not unkindly expression, all this with the stately Cavalier

dress made, you believe, a highly impressive figure; a brilliant talker too, his tongue rather addicted to caustic sayings, as when one noble succeeds another as official head of the law. "The king every two years," said my Lord Advocate, "gives me the trouble of a new Justice-General to breed in the Criminal Court." No wonder Mackenzie got a little confused with so many avocations. Claverhouse, in a letter to 'Queensberry (March 1, 1682), touches him off with a certain amusing impatience. "My good friend the Advocate, who wrote to me very kindly, but very little, in return of anything I desired of him, but I know he ordinarily loses the papers and forgets the business before he has time to make any return."

The accession of James VII. in 1685 began the end. The new King was a devoted Roman Catholic, but to relax the laws against his faith he must cease the Presbyterian persecution. Mackenzie had a conscience, he was as much against "papists" as against "fanatics." James used every

effort to win his support. He failed, and in a passion dismissed his Advocate, although he was thought "the brightest man in the nation"; the younger Stair was put in his place, but the change worked ill, so Stair was made a judge and Mackenzie reinstated. His opponent Lockhart a little before had been made Justice-General, only to fall a victim, in the very midst of the Revolution, to the pistol of an aggrieved suitor. It is worth noting that, after Mackenzie was re-appointed Lord Advocate, he wrote to Sancroft, Archbishop of Canterbury, to congratulate him on his acquittal in the famous Seven Bishops case.

And then came the Revolution; the Estates were summoned at Edinburgh, and the months before their meeting were full of plot and intrigue. Mackenzie threw in his lot with the lost cause. The position was awkward; the Castle, under the Duke of Gordon, still held for James, but the town was crammed with wild Whigs from the West, "seditious Bothwell Brig faces," to maintain the new order. As Mackenzie

and Claverhouse trod those familiar streets they met scowling and threatening looks, and heard threats both loud and deep. A plot for their assassination was suspected. In vain they appealed to the Estates for protection. In the midst of these troubles Mackenzie, as Dean of the Faculty, formally inaugurated the Advocates' Library. He had worked at its foundation for years, and the reward of its success lights up his last public days. In a stately Latin oration he discussed law and letters, books and learning, and then turned himself to strike one last blow for the old order. Mackenzie was addressing the Convention, urging an adjournment to some place beyond reach of Castle guns and Rabble's shouts, when news was brought of Dundee's dramatic exit from Edinburgh, of which Scott's ballad so well preserves the spirit. At that very instant he was in conference with Gordon on the Castle Rock. All was commotion, the doors were locked, and Mackenzie and some others placed under temporary restraint; but Dundee moved northward, the Castle

batteries were silent, and the Whigs had it all their own way.

On April 4, 1689, the Estates declared that James had forfeited the Crown. Mackenzie was the chief of a minority of five. He came not again to the Convention. His public life was over. In the crash of his fortunes the future was dark and confused, he had some thought of resuming practice, but at last recognised that his only safety lay in flight. His exit was not less fitting than Dundee's. That wild spirit, led by the shade of Montrose, sought the Highland gleus, and was happy in a soldier's death at the close of a brilliant victory; so the warrior ended. The scholar turned as instinctively to Oxford, the stately haunt of letters and learning. The night before he left the Scots capital he was noted alone at midnight in the Greyfriars Churchyard. The very dust might seem hostile: there lay Buchanan, whom he had attempted to confute; there lay many of his victims; a brief time before, Lockhart, his professed rival, had been buried in the spot chosen by

Mackenzie for his own grave. The night wind among the tombs must have whispered strange things to the ruined statesman! He left Edinburgh, his head erect, his conscience clear. "I never did anything that deserved absconding. I punisht crimes but committed none, and yet I will not return till things be settled, for others may want justice though I want not innocence." Oxford was learned and loyal, it received the Cavalier scholar with open arms. What a contrast Mackenzie must have found between its quiet humdrum life and those passionate days in Edinburgh, so crowded with action and emotion! He brooded over the times not without result. Almost his last literary effort was a vindication of the Government of Scotland during the reign of King Charles II. I quote one incident from those days. Once he dined with his old opponent, the Bishop of St. Asaph. Another opponent, Evelyn, reports an extraordinary story told by Mackenzie of how an ingenious Jesuit had introduced Presbytery into Scotland in the time of Elizabeth, and had



invented extempore prayer apparently as a *reductio ad absurdum* of the Protestant faith. (The likeness of this to a famous passage in *Lothair* has been several times noted.) The last months of Mackenzie's life were spent at Westminster, where he died May 8, 1691. The body was taken to Scotland, it lay in state in Holyrood, it was interred in decent pomp in Greyfriars, the various learned societies following it to the grave. A brass plate on the coffin lauded him among much else as *patriæ decus religionis vindex justitiæ propugnator*, it described him *comitatis exemplar eruditorum, Mæcenæ eruditicimus*.

His works were collected and published in 1716 by the learned Ruddiman in two stately, nay, sumptuous folios. Polite letters in Scotland have been on the Cavalier side, and many Latin poems elegantly lamented his end and lauded his many gifts, and yet, save a phrase or two, all are dead. If you turn over Lord Dreghorn's Reports you will find he was extensively quoted in the Scots Criminal Courts through the next century, but those curious technical debates are now

antiquated. Only a fragment of his Memoirs preserved by a romantic chance remains. His heirs in all probability meant to suppress them. If a complete copy lurk anywhere, what a find !

The sinister legend of his tomb perished not. It was rumoured that he had died in fearful agony, "all the passages of his body running blood." The pious pilgrims, who for two centuries visited the graves of the martyrs, forgot not to gaze with horror on the stately mausoleum of their persecutor, within which his spirit could find no rest, as the famous couplet already quoted expressed. A hundred years ago a lad named Turner, condemned to the gallows for burglary, escaped from prison ; some confederate had procured a key of Rosehaugh's vault and therein he harboured as the one place in Edinburgh which no one would rashly approach. He had been a Heriot boy, and some lads from that Hospital, greatly daring, carried him supplies of food. Turner escaped unhurt to foreign parts. The final touch to the Mackenzie legend came from a

friendly hand. Scott's sympathies were more for the Cavalier than the Covenanter, yet Mackenzie appears twice in his pages a gifted yet sombre and guilty figure. He is the "bluidy advocate Mackenzie" of "Wandering Willie," and Davie Deans is not less emphatic. "Did he not die and gang to his place as the Bluidy Mackenzie? And winna he be kend by that name sae long as there's a Scots tongue to speak the word?" And so, though Mackenzie was learned and loyal, though he was faithful to a fallen cause, though he gave Scotland, his country, a great library, though he is blamed for much unjustly, it seems vain to argue or even try to remember all this. He is the Bluidy Mackenzie then and since and for all time.

**The Original Weir of  
Hermiston**



## The Original Weir of Hermiston

THE Edinburgh of the early years of George III. was very different from the prim, regular, spick-and-span town which the reputable citizen of to-day inhabits. It was still mainly hemmed within the Flodden Wall, hastily thrown up after the defeat as a defence against English invasion. Thus, it consisted of the High Street on the steep ridge leading up to the Castle Rock ; of the Cowgate in the hollow to the south ; of the narrow and tortuous wynds and closes running up to the High Street on one side and on the other down to the edge of the Nor' Loch ; of the Grassmarket ; and, beyond the ancient limit, of the Canongate, which continued the main thoroughfare down to Holyrood. Some sixty thousand indwellers

were squeezed into these narrow (one by one-quarter mile) limits. The town grew upward, not outward. The houses were huge "lands," from six to ten storeys, where poor folk huddled at the top, whilst the wealthier citizens dwelt below. "Each inhabitable space was crowded like the under-deck of a ship," says Scott; but even ships are not overcrowded nowadays, and "like herrings in a barrel" seems an apter simile. Scarce a room in the city but held its open or concealed bed. Sanitary arrangements were conspicuous, even for that era, by their primitive rudeness. Water was scarce, and was laboriously conveyed up those endless stairs on the backs of caddies, as the curious and distinctive class of water-bearers (though the title was not theirs alone) was called. Slops, house-refuse, filthy bits of all sorts, were hurled on the street! "Gardy-loo" (a corruption, the learned affirm, of *Gare à l'eau* !) yelled the housewife into the night as she stood at her open window, the odoriferous bucket poised in her hand. And when that voice from the clouds smote the

ear of the belated wayfarer, how it sped his lagging steps! "Haud yer han', guidwife, till I win by," was his piteous entreaty. Ah, too often the splash "with shame and with surprise: froze his swift speech"; and he needs must stagger onward an object to be smelt in the dark, an unsavoury admonition of the need for wary walking. The streets were horribly unclean. Pigs held continual revel therein, undisturbed save by frolicsome children, who, mounting their backs, drove them hither and thither spite their shrill grunting. The stranger scoffed, but the citizen was unmoved. "The clartier the cosier" was an apophthegm oft in his mouth. A sagacious burgher permanently enriched his lands by carting thereto a quantity of street scourings, so potent was the concentrated essence of filth. The upper storeys of the houses overlapped, and as the closes at the bottom were far from broad, the opposing mansions almost touched; thus the rooms were imperfectly lighted, and a continuous twilight mantled the universal display. The ways of life were simple. Two



o'clock was the favourite dinner-hour ; supper, the great social meal, was often taken out of doors. The tavern was the sole meeting-place. In the tavern business was done by day ; in the tavern clubs mustered o' nights, for such "high jinks" as Guy Mannering never knew. Allan Ramsay and Fergusson have preserved us pictures of these dens—Fortune's, the Star and Garter, Douglas's, John Dowie's, and the rest—from which light and air were carefully excluded. And nearly everybody drank too much, washed too little, swore horribly, and lived roughly. Some made long prayers, which changed their habits no whit.

Despite it all, Old Edinburgh was an amusing place. Life was anything but dull, everybody knew everybody else, there was much good fellowship, there was the best of claret, the best of talk, and the best of stories. The pathetic and heroic memories of the place, its superb position and surroundings, kindled the imagination. There was an old and famous aristocracy, whose very names were instinct with romance.

Moreover, there was high breeding, there was learning, there was genius, for in that strange city there lived during the second half of the eighteenth century men who have profoundly influenced the thought and literature of the world. Here as contemporaries were Adam Smith, the political economist; David Hume, the philosopher; Walter Scott, the future novelist. Could living London furnish such a trio? Burns and Smollett were "residents," though not citizens; and there were crowds of lesser and yet distinguished names: Allan Ramsay, Fergusson, Home, Blair, Henry Mackenzie, Henry Raeburn, Creech, Principal Robertson, the two Tytlers, Kames, Monboddo, Dugald Stuart, James Boswell, to name but these. And in this town and among these men there moved the portentous figure of Robert Macqueen, Lord Braxfield, Senator of the College of Justice, and as Lord Justice Clerk President of the Court of Justiciary, the Weir of Hermiston of Stevenson's unfinished romance. His day witnessed a social revolution. The city overran its ancient bounds

Brown Square (to-day replaced by Chambers Street) was built in 1763-64, George Square a year or so after; and in 1767 Edinburgh leapt across the ravine to the north, and the New Town arose in formal order. Before the end of the century the old mode of life was given up by the more prosperous classes. There was more space, more light, more cleanliness, an advance in every sort of refinement. Braxfield removed to George Square: that was his sole concession to the newer time. He was middle-aged when the change began; he was formed by Old Edinburgh, by its wit, its learning, its prejudice, its moral and physical grime, its caustic and racy speech, and it is as a representative of Old Edinburgh that he abides to-day.

His origin was provincial. His grandfather was gardener to the Earl of Selkirk, and his father was made a lawyer that he might be Baron-Bailie to his lordship. He prospered, became Sheriff of Lanarkshire, and acquired the estate of Braxfield, near Lanark. His eldest son was first educated

there, then served a full term of apprenticeship with a Writer to the Signet, during the latter part whereof he studied at the University for the Scots Bar, and at twenty-two was admitted Advocate, February 14, 1744. A lawyer and the son of a lawyer, instruments of sasine, feu charters, all the quaint terminology of Scots jurisprudence were familiar to him from his cradle. That jurisprudence derived from two sources : the old Feudal Law and the Civil or Roman Law, as these had been modified by the practice of the country during the centuries of its history. Now, of the field of Feudal Law Braxfield knew every inch, and he was well acquainted with the Civil Law in all its practical applications ; so that Lord Cockburn, who cordially detested him, styles him the best lawyer of his time. Commercial law became of importance late in his career, and his grasp of it was not so thorough ; yet even here, so Cockburn assures us, he was only second to Islay Campbell, President of the Court. His rise was not rapid. It is not for ten or fifteen<sup>0</sup> years after his admis-

sion that his name begins to occur in the Faculty Decisions, those excellent contemporary law reports. He was not one of that hereditary nobility of the Robe which had then possession of the Faculty of Advocates. His uncouth manner, his brusqueness and plain speaking, were against him. A story of his early career tells how, he queried some Lord Ordinary's authority for a ridiculous proposition, and was answered "Lord Stair." "Na, my lord, *that* can never be, for there's nae nonsense to be found in Stair." Only by degrees were agents made aware of his profound legal knowledge; the sense wherewith he put his points; the pertinacity wherewith he stuck to them; the direct, unadorned rhetoric wherewith he carried them to their logical conclusions. At that time written pleadings were much in vogue. The appeal from the Lord Ordinary to the Inner House was by a long petition, compounded of facts and arguments, and followed by answers of equal complexity. I have read several of Macqueen's (*temp.* 1767-71). They are

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direct, vigorous, pointed; but with such a method it takes an unknown man a long time to discover his qualities to the world. But his opportunity came. The '45 had a peculiar influence on Scots law. Many estates incurred forfeiture. Ingenious and often successful attempts were made by every species of legal device to save those forfeitures. Many conundrums in the law of Heritable Property must be unriddled by the Supreme Court (the failure of the City of Glasgow Bank produced a similar state of things in company law); Macqueen was Counsel for the Crown. •Thus he rose into public notice at the same time that he perfected his knowledge, and made it thoroughly available for current use. Yet his lore, though deep, was narrow. He knew Scots law profoundly, but he had no other learning. It was said that after his law-books he had probably read nothing but filth. He spent all his vacation time on his estate at Braxfield, where he farmed with diligence and success, and enjoyed the rude pleasures of the old Scots laird. He had no sympathy

with the cultured Edinburgh society of his time, the men whose work was to delight or inform future generations. Hume was Keeper of the Advocates Library, and must have handed him many a book. His keen contemptuous glance may have rested on Adam Smith's shambling figure and vacant look. The Scotts were his neighbours in George Square. But the future was to these men. His was the present, and his ignorance was no bar to professional advancement. Law is a jealous mistress; wide culture is but a clog to them that serve her; Coke, not Bacon, is the great name in English jurisprudence. But Macqueen had other than legal qualities. He was a boon companion of the choicest, a magnificent toper, though on that strong head, that iron frame, that seasoned stomach, no potation took effect. His talk was agreeably compounded of curses, "sculduddery," and personalities. Legal consultation, like other business, was done in the tavern. Here, over a long succession of drams, the client told his story, the agent made his sugges-

tions, the Advocate gave his opinion. One can imagine the delight with which the Bonnet-laird, whose "ganging plea," in one shape or other, had tried the temper of "a' the Fifteen" again and again, must have seen this jovial counsel seize, as by art magic, on the salient features of the case, and explain with admirable brevity and clearness, in an accent broader than his own, and with a delightful garnishment of oaths, exactly how things were, and exactly what things ought to be done; so that in the future all was plain sailing. Nor did Macqueen's services stop here. Having supplied his client with a choice store of indecent anecdote wherewith to delight the countryside for the next twelvemonth, he, like as not, closed the evening, or the morning, by drinking both client and agent under the table just in time to allow him to repair to the Parliament House to argue with his accustomed clearness and exactness before their Lordships until noon; when he and his fellow lawyers would repair in quaint procession across the Parliament Close for their meridian



in John's Coffee-house. No wonder that he rose to be the most popular advocate at the Bar and had fifteen or twenty cases in one day before the Lord Ordinary !

In 1776, Macqueen, after some opposition on his part, for the change meant a reduced income, was raised to the Bench as Lord Braxfield : in 1780 he was made a Lord of Justiciary, and in 1788 as Lord Justice Clerk he became practically President of the Justiciary Court. He died in 1799 after a long illness, so that ten years measures the time of his pre-eminence. On the Bench his characteristics were accentuated, and, of course, more noticeable. Passable in a young advocate, a fondness for cards, for wine, for "sculduddery," was scandalous in an elderly judge, and swearing was no longer considered "a great ornament to the conversation of a gentleman." Yet Braxfield out-Heroded Herod. He cursed "without provocation, like an ensign of the last age in his teens," is the strange simile of his contemporary, Ramsay of Ochertyre. The changes in living already noted were

accompanied by changes in thought and sentiment. The younger men hankered after southern turns of speech, though their efforts were not over successful, for it was true of them what Braxfield said of Lord Jeffrey: "He had tint his Scots, and gained nae English." Also, high-flown sentiments expressed in vague and enthusiastic language—the flatulent eloquence of the *Man of Feeling*—were much in fashion. And for all this Braxfield cherished an utter hatred, a supreme contempt. He abhorred verbiage, he was ever pertinent and material. He exaggerated his Scots of set purpose; only one of his time could use the words, so expressive for wit and satire, of that dead and gone, or now degraded language, to the same fell purpose. "He struck me as very like Robert Burns," says (again rather oddly) Ramsay of Ochertyre, who knew both men intimately. His seemed the voice of Old Scotland protesting against a degenerate and effeminate time. Raeburn, and Raeburn at his very best—(and how good that is!)—has limned him for us, and various

contemporaries have supplemented Raeburn with descriptions. A strong, tall, dark man, with a broad red face; protruding lips; keen-glancing, commanding eyes; shaggy eyebrows; a deep, growling voice; a certain rude, dramatic force in delivery; an effective colloquial way of arguing in the form of question and answer. In Raeburn's picture (admirably commented on in Stevenson's *Virginibus Puerisque*) there is a peculiar, humorous, quizzical, cynical expression, as of one that has fathomed the baser side of human nature, and is contemptuously amused thereby: the face of one not brutal nor cruel, nor even coarse; but ruthless, firm, determined; a man of strong intellect, strong character, strong will—my Lord in his higher mood. Drape the figure in the magnificent trappings of a Scots Judge and the result is imposing enough. His seeming defects, as the growl and the dialect, intensified the effect. No one laughed at Braxfield's talk and manner on the Bench: the grotesqueness was lost in terror. Such was he who in troubled times sat

on the criminal judgment-seat of the Scots capital.

There is only praise for his civil findings. He was ever painstaking and accurate; if he laboured under any misapprehension, Ramsay tells us, he was pleased to be corrected. "He has taken away more sound law with\* him than he has left on the Bench": thus on his death a colleague opposed to him in many ways. If his broad or caustic humour blazed out now and again it was no hindrance. A foolish member of the Fifteen had delivered a rambling and irrelevant judgment, concluding with "Such is my opinion." "*Your* opeenion!" growled Braxfield in one of his formidable asides. Of Lord Hailes, another of his fellow senators, he said that he "knew but the neuks of a case," an opinion that will commend itself to every one who has toiled through some pages of Hailes' *Annals*. It chanced that two well-known advocates, one of them Charles Hay, afterwards Lord Newton, a member of the Crochallan Fencibles, and so a boon companion of Burns, had been "late

at e'en drinkin' the wine." Next day, with every mark of their last night's debauch, they were pleading before Braxfield. He listened in contemptuous amusement, but at length burst forth: "Ye may just pack up your papers and gang hame; the tane o' ye's riftin' punch and the ither belchin' claret"—(how exquisitely subtle the distinction!)—"and there'll be nae guid got out o' ye the day!"

As a criminal judge Lord Cockburn paints him a "bloody Jeffreys." "It may be doubted if he was ever so much in his element as when tauntingly repelling the last despairing claim of a wretched culprit, and sending him to Botany Bay or the gallows with an insulting jest. Yet this was not from cruelty, for which he was too strong and too jovial, but from cherished coarseness." (This passage probably suggested the "Hanging of Duncan Jopp" episode in Stevenson.) Cockburn was present as a boy at one, at least, of the 1793-94 political trials, and he often saw Braxfield at his father's house. He was afterwards a Judge of the Court of Session,

and the weight of his authority is thus very great. But he detested Braxfield, and as far as I can find, this summary of his is far too strong. No saying of Braxfield's is authentically reported that warrants it. I believe the truth to be this. There were five ordinary Justiciary Judges besides the Lord Justice Clerk, and sometimes all were present in Court. These were Braxfield's boon companions, and to them he addressed many pithy asides, which, told and retold, lost nothing in the telling. The very worst legend was of a supposed address to an old friend, Matthew Hay, with whom he used to play chess. Matthew was finally tried for murder and convicted before him; and, "That's checkmate noo, Matthew!" This story was told in the first edition of Lockhart's *Life of Scott*, and Lockhart afterwards expressly apologised to the family for it. Braxfield, it seems, could not play chess at all, and the anecdote belongs to another judge, and was, I fancy, an aside to Braxfield, who was present at the trial.

In non-political cases, if the reports go for anything, he did excellently. Take two instances where he presided : the first is the trial of William Brodie and George Smith, on August 27 and 28, 1788, for breaking into and robbing the General Excise Office of Scotland on March 5 preceding. Brodie was the famous Deacon Brodie, the story of whose double life, as housebreaker and reputable citizen, had a peculiar fascination for Stevenson. William Creech, the famous Edinburgh bookseller (he published the Edinburgh editions of Burns ; and his shop, at the east end of the Luckenbooths, hard by St. Giles's, was the resort of all the wits of his day) was on the jury, and produced a full account of the trial. Beginning at nine in the morning, it lasted the whole day and night ; all the time Braxfield never left the Court-room (no doubt, as was the custom, he had biscuits and wine on the Bench). He followed the evidence throughout with the closest attention ; and everything for and against was noted in its due place in his summing-up, which began at half-past four

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on the morning of the second day! Creech omits the recapitulation of the evidence, but gives what seems the substance of the rest of the speech. It is clear and pertinent, and it is deadly against Brodie (Smith's guilt was practically admitted) simply by reason of the skill and acuteness with which the facts are marshalled. "Few men could have done the like," says Creech. The prisoners were found guilty, and were sentenced to death by Braxfield in a few such grave and dignified words as might well be-seem a humane judge of our own day. In fairness I must note that Creech was again of the jury in one of the Sedition Trials in 1794. He was objected to by the panel Gerrald as prejudiced; and Braxfield, in repelling the objection, went out of his way to approve of Creech's alleged statement, which Creech himself immediately after declared he had never made. The second of my two trials was that of Sir A. Gordon Kinloch for the murder of his brother. It began at ten o'clock on the morning of Monday, January 29, 1795, and ended a



few minutes before eight o'clock on the Tuesday morning. The facts were admitted ; the defence being the insanity of the panel, who was in the result acquitted. The brevity and point of Braxfield's summing-up are noteworthy. It fills a little over a column of the report, while the speeches for the Crown and the defence take up some thirty between them.

The Sedition Trials are a different matter. The chief were Thomas Muir's in 1793, and William Skirving's, Maurice Margarot's, and Joseph Gerrald's, in 1794. They excited enormous interest, and Braxfield's conduct of them was vehemently attacked and as vehemently defended in and out of Parliament. Cockburn (in two considerable volumes) subjects them to minute analysis and criticism. From to-day's judicial point of view, Braxfield's matter and manner are inexcusable ; but let us try to understand his position. The prisoners were charged with sedition, which he defined to be "violating the peace and order of society." The defence was, in substance, that they were

seeking parliamentary reform by constitutional methods. It was not unnaturally assumed that they meant a good deal more. The judges threw all their influence on the side of the prosecution. At this period the French Revolution was in full blast; the King and Queen had been executed; the worship of Reason inaugurated, and the supporters of the old *régime* despoiled and slaughtered wholesale; and we ourselves were entering on the great Punic War of our history, that struggle for very life which ended only at Waterloo. Our "respectable" classes were in a state of frantic terror, Braxfield was not panic-stricken, but he thought the country in grave peril. Fifty years earlier, at the commencement of his professional career, he had seen a lad with a few friends land in the Highlands, overrun Scotland, hold a mimic Court at Holyrood, and all but overthrow the Government. Were Jacobins likely to be less dangerous than Jacobites? He held the common legal doctrine of the eighteenth

century as to the perfection of the British Constitution, and in Muir's case he laid it down as an axiom.

In another matter the *Edinburgh Gazetteer* reports him thus: "The reformers talk of liberty and equality; this they hae in everything consistent wi' their happiness, and equality also. However low born a man be, yet his abilities may raise him to the highest honours of the State. He may rise to be lord chancellor, the head of the law; he may rise to be Archbishop of Canterbury, the head of the kirk; and tak' precedence of a' ranks but the blood-royal. What mair equality wad they hae'? If they hae ability, low birth is not against them." There is a touch of parody in this and what follows, for which Captain Johnson, the publisher, was had up before the court; but it practically represents Braxfield's view—a view quite natural in a man who had risen by his own merits to such great place. But if our Constitution was perfect, how impertinent and gratuitous—nay, how criminal—the lust to tinker it,

when, even if reform were desirable, the time for it was not "when this nation is engaged in a bloody war with a neighbouring nation, consisting of millions of the most profligate monsters that ever disgraced humanity!" The reformers (Grumbletonians he quaintly dubbed them) were under French influence, and so held suspect. "I never was an admirer of the French and now I can only consider them as monsters of human nature." So Braxfield argued, and then proceeded to put the case for the old order with brutal frankness: "A government in every country should be just like a corporation; and, in this country, it is made up of the landed interest, which alone has a right to be represented; as for the rabble, who have nothing but personal property, what hold has the nation of them? What security for the payment of their taxes? They may pack up all their property on their backs and leave the country in a twinkling of an eye, but landed property cannot be removed." In all these sedition cases there was no real controversy

over the facts, which were well known to everybody before the trial. Of necessity Braxfield came to the judgment-seat with his mind made up.

The precedents of the old Scots treason trials were not such as inculcated impartiality. The accused were, he conceived, enemies and traitors to their country, and it was his plain duty to obtain a conviction. He rejoiced in his task, and Edinburgh rang with his pithy sayings. "Let them bring me prisoners and I'll find them law," was his advice to the authorities. He scouted a suggested difficulty. "Hoot, just gie me Josie Norrie (Clerk of the Court and a master of precedents) and a guid jury, and I'll due for the fallow." The "guid jury" he took the best means of securing. At that epoch in Scotland the presiding judge chose the jurors by picking five at a time till the fifteen were made up; the prisoner had no peremptory challenge, and his objections to each batch were promptly repelled. In a town like Edinburgh, Braxfield knew many of the jurors personally, and

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he unscrupulously packed the assize with friends of the Government. At Muir's trial, John Horner, father of the more celebrated Francis, in entering the box passed by Braxfield, who growled in his most dulcet voice: "Come awa,' Maister Horner, come awa,' and help us to hang ane o' they damed scoundrels." He openly said of the reformers: "They wuld a' be muckle the better o' being hangit." (This seems to me the true and original version of his supposed address to a prisoner: "Ye're a vera clever chiel, man, but ye wad be nane the waur o' a hanging.") But his most famous aside was in Gerrald's case. The panel urged that the author of Christianity himself was a reformer. "Muckle he made o' that," chuckled Braxfield, "he was hangit." This is much more than a semi-blasphemous witticism: it is a powerful argument. "You attack at your peril what we are sent here to defend, the future must settle whether we or you are right; we can only clear you out of the way." I think the noble-minded Gerrald would have faced

this conclusion. He gave his life for the cause, and all he contended for has long since been granted. In the report Braxfield is more decorous and more unjust. He accuses Gerrald of attacking Christianity, and on this being promptly denied he growls to him to go on. Margarot, described as "a most impudent and provoking body," had Braxfield once very neatly (the story is not in the report, however): "Hae ye ony counsel, mon?" inquired the judge. "No," was the answer. "Dae ye want to hae ony appointet?" "No, I only wish an interpreter to make me understand what your Lordship says." Margarot did defend himself, and (as was natural) did so very badly. He took the absurd objection that the Lord Justice-General was not present, though he had been cited to appear before him and the others; but, as Lord Henderland pointed out, by Act of Parliament any three of the judges were a quorum. Another objection was more relevant. Having called two witnesses, the panel proceeded to question Braxfield: "Did you dine at Mr. Rothead's

at Inverleith in the course of last week?" The judge must have known what was coming; but he allowed him to go on, and assert that on the occasion referred to he had suggested as a suitable punishment a hundred lashes together with Botany Bay. A lady guest had queried: Would the mob allow this? "And, my Lord, did you not say that the mob would be the better for losing a little blood?" Braxfield listened in grim amusement to what was, in all probability, a true charge. His fellow judges decided that, he need not answer the question. At Gerrald's trial, much the same objection being taken in a more formal and proper manner, Braxfield had the decency to leave the chair whilst his brethren considered and repelled it.

In every case the panel was convicted, and sentenced to fourteen years transportation. Muir escaped to France, Gerrald died, Margarot long after visited Edinburgh. Judges, accusers, witnesses, all seemed gone; but at last he found one of his original jury, and him he entertained at



dinner. Even then they were not agreed, for the juryman had turned Radical and now Margarot was Tory ! Perhaps they found a common ground in discussing the dramatic incidents of the trial. A strange scene, indeed ! The panel sat in the midst on a long bench between two of the "town's rottens" (rats), as the people called the men of the old City Guard—each with coat of ancient pattern, his huge cocked hat, his drawn bayonet in his hand. Between prisoner and bench the advocates grouped round a paper-burdened table. The galleries were packed with the mob, all in favour of the accused. They had yelled round him at the door of the Court, and even there they would break, an' they dared, into loud applause. The unsnuffed tallow candles guttered in the foetid air as hour after hour the night went by. There, exalted in the midst of his fellow senators, sat Braxfield, with his angry, commanding look, his scornful smile, his short, sharp speech, dominating his brethren on the bench, timid jurymen, and hostile mob.

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And so, under his masterful touch, the drama moved on to its fated conclusion, whilst for chorus on the deep silence of critical moments of the trial, there broke in the sound of the "Janwar wind," as it wailed and raved among the tall lands and long closes that stood round. And when all was over, and the Court-room had emptied itself into the night, Braxfield curtly declining any offer of escort, walked down one of those same closes, and across the Cowgate, and up the other side to his house in George Square, alone, unafraid, and untouched by that wild Edinburgh rabble which had hanged Captain Porteous of old time, and now cursed, and foamed, and shuddered at the very sound of his name. "We were all mad," said one of the jurymen to Cockburn long afterwards. Perhaps even Braxfield did not go through that fiery ordeal untouched; and the long illness that preceded his death five years after finds here a plausible explanation. In truth, the old man must have felt the new times and the new ways too much for him.

Knox's thought, if not Knox's words, must have been often in his mind: the world was weary of him as he was of it. Yet he, too, had his softer hour. He was a warm and attached friend, and he spared no trouble in the service of his friends. One or two of his letters, written in his clear, almost feminine hand, are preserved among the Loch-naw papers. The tone is kindly, even delicate and chivalrous.

*Weir of Hermiston* is professedly a resuscitation of Braxfield. Stevenson was too true an artist to repeat old anecdotes. The sayings he puts in Hermiston's mouth are such as Braxfield might have uttered; but not one of them is his. Yet the remark on page 12, as to the Christian cook—"I want Christian broth! Get me a lass that can plain-boil a potato, if she was a whire off the streets," is more in the true Braxfield manner than any story attributed to him. I note one or two points wherein Hermiston differs from Braxfield. The strangest (as pointed out in Mr. Sidney Colvin's interesting editorial note) is the later date. Weir

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is active in 1813, whereas Braxfield twenty years before seemed the survival of an earlier age. One conjectures that some important event in the story compelled this incongruity. I think Mr. Colvin fanciful in supposing the name Weir suggested by the historical Major Weir, the Edinburgh warlock. The name is not rare in Scotland: here, as lawyers say, "nothing turns on it." Braxfield was Advocate Depute but never Lord Advocate, as Hermiston was. One point has been missed, it would seem. Stevenson proposed to make the trial of young Weir take place before the Lord Justice-General (the official head of the Court of Justiciary). But this could not be, says Mr. Graham Murray, the Scots Solicitor-General: "this title being at the date in question only a nominal one held by a layman (which is no longer the case)" (p. 272). Now, it is true enough that the Lord Justice-General's office was for long a nominal one held by a Scots nobleman. Lord Mansfield (not *the* Lord Mansfield) filled it at the date of the Sedition Trials. A comparatively

recent Act (1 Will. IV. c. 69, secs. 18 and 19) provided for its union in future with that of the President of the Court of Session; but in one remarkable case—to wit, the trial of James Stuart, at Inverary, in 1752, the very trial on which Stevenson's *Catriona* turns—the Duke of Argyll, though a layman (with some legal training, it is true), and though heritable jurisdictions had been abolished in 1747, did actually preside as Lord Justice-General and head of the Justiciary Court. Nay, more: he sentenced the prisoner to death in a remarkable speech, part of which is quoted in *Catriona*. His presence and his conduct were bitterly commented on at the time; but Stevenson might, without impropriety, have followed an historical precedent.

Stevenson (with proper delicacy) deserted history altogether in his account of the Weir family other than their chief. Mrs. Weir is an admirable Scotch type exquisitely drawn, and one of the Braxfield stories would fit her very well. "His Lordship had a lady as his partner in some game of cards.

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She played very badly, whereat "he lows'd his tinkler jaw" in an oration mainly composed of "bitch" and "damn" to the dame's great indignation. He had thought (he explained) for the moment that he was addressing his spouse. There are two other wife stories about Braxfield. The first tells of his proposal to his lady-elect: "I am lookin' out for a wife, and I thought you just the person that wad suit me. Let me hae your answer off or on the morn, and nae mair about it." The second is a jewel of the first water. His butler gave him notice, alleging that Mrs. Macqueen's temper was too much for him. "Man," returned his Lordship, "ye've little to complain o'; ye may be thankfu' ye're no married upon her." Both these stories (true or false) refer to Braxfield's second wife, a daughter of the Lord Chief Baron of the Exchequer in Scotland. His first, Mary, an Agnew of Lochnaw, in Wigtownshire, belonged to a very old family, which held the hereditary sheriffship of Galloway for centuries. In the days of the Persecu-

tion it had (unlike the Rutherfords) inclined to the Covenanting interest. It is useless to trace the history of Braxfield's descendants, who, through the female line, still hold the estate. Francis Weir's story is entirely his own.

Much of Braxfield's table talk owes its piquancy to the high place of the talker. Sir James Colquhoun being asked to take a hand at cards as his partner, refused unless my Lord promised "no to misca' him." "I'll no misca' ye, Jamie," said Braxfield. The game went on; Sir James played badly, and was vigorously cursed as "fule" and "idiot." He taxed his Lordship with broken faith. But Braxfield returned that he was not misca'd but truly described. The two in *Dean Ramsay's Reminiscences* are a trifle better. At a party at the old Castle of Douglas there was no claret on the table, because, said Lord Douglas, it was not good. "Let's pree't," said Braxfield with unsurpassable brevity. The claret proved excellent; and the story goes off into a joke on Church law, about there being a *fama*

*clamosa* against the wine, and that it could only be absolved after three several appearances. The other reminiscence is of a failure in a criminal trial where the indictment had charged a theft of shirts and the goods were proved shifts. "Sark," said Braxfield, "would have cleared the difficulty, for it meant both." This was plainly a humorous "cracking up" of broad Scots. Braxfield, one feels, condensed and exaggerated of set purpose. "What a glorious thing it is to speak nonsense!" he was wont to exclaim. An admirable translation, no doubt, of the Horatian *dulce est desipere in loco*; but the pity is that it ignores the last two words. The pity is, too, that there was no competent hand to collect and winnow Braxfield's sayings, so that much of Braxfield's best is gone beyond recall, and no Villon Society will ever procure a private issue of it at Benares, or at Glasgow, to delight the strong and yet spare the queasy stomach. That was not to be; and we get our best glimpse of the real man in the magic light of Stevenson's romance. Yet



a greater than Stevenson was there. The potent Wizard of the North himself knew "Old Braxie" (as he called him) intimately, and dedicated to him the admission thesis as Advocate on the title in the Pandects on the disposal of the dead bodies of criminals, and he must have heard him almost daily in the Parliament House. Perhaps his finer taste rejected a subject at once so intimate and so near; and one can but wish that the creator of Peter Peebles had touched his Braxie to immortal issues. In any case, there is one scene at least of his making in which this type of an earlier age had appeared (despite the anachronism) with superb fitness. In that terrible page of Wandering Willie's tale, where the spirits of the Persecutors hold ghastly revel in their "appointed place"; there, with "the fierce Middleton, and the dissolute Rothies, and the crafty Lauderdale"; with Dalyell, and Earlshall, and "Wild Bonshaw," and "Dunbarton Douglas, the twice-turned traitor baith to country and king," and "the Bluidy Advocate Mackenzie, who, for his

worldly wit and wisdom, had been to the rest as a god," and Claverhouse, with his "melancholy haughty countenance," there among his peers, was the place for Braxfield with his wit, his blasphemy and "sculdud-dery," his lore, his ire, his inflexible purpose, his truculent and masterful personality.



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