

## A SHORT ACCOUNT OF THE OFFICERS OF STATE, AND OTHER GREAT OFFICERS IN SCOTLAND.

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IN all the nations whose governments were framed upon the model of the feudal institutions, or by whom the feudal laws were adopted, as the spirit of these laws contributed much to the aggrandizing the prince, and impressing an awe and veneration of the government ; so no other means were thought to be more effectual for this purpose than the conferring of splendour and dignity upon the prime officers employed by the prince in the execution of his government, which reflected back again with double lustre upon the throne, as the fountain from which these honours and dignities originally flowed. And most of these nations had a very great conformity and resemblance with one another in the names and institutions of these great officers, or Officers of the Crown, as they were called, which were generally seven in number, and ranked in the following order. 1. The High Constable. 2. The High Admiral. 3. The High or Great Chancellor. 4. The Great Justiciar. 5. The Great Chamberlain. 6. The Great Protonotary. 7. The Great Seneschal or Steward.

These several offices appeared first in the greatest splendour in France, after the suppression of the office of *Maire de palais*, into which the execution of almost the whole business of the administration was engrossed. They were afterwards adopted into the government of the Two Sicilies ; and the great offices of Scotland, in our ancient constitution, bore a very great resemblance to those of these nations, both as to their names and powers.

In the time of King Malcolm II. it is presumable there were no more of these great offices extant, but those of the Chancellor, the Justice-General, the Chamberlain, the Steward, the Constable and the Marischal ; for, in his laws, the fees of these are particularly

appointed, and they are ranked in the above order ; and no more are mentioned.

At that time, and long after, these were called Officers of the Crown, as some think, to distinguish them from the other great officers which were called OF THE STATE. However that be, the distinction came at length to be lost, and they were all known indiscriminately as Officers of the State or Officers of the Crown ; and certain privileges came to be annexed to them, particularly, that in all acts or meetings concerning the State they sat as members, by virtue of their office, as in Parliaments, Conventions, &c., and got the title of Lords prefixed to the name of their office. And, in the Act xxxi. Parl. II. James VI., the following are enumerated as Officers of the Crown, viz., the Treasurer, Secretary, Collector, Justice-General, Justice-Clerk, Advocate, Master of Requests, Clerk of Register, Director of the Chancery, and Directory of the Rolls.

Afterwards, in the year 1617, King James, in privy council, declared that in that, and all other parliaments, eight only should sit as Officers of State, and these he ranked as follows : Treasurer, Privy Seal, Secretary, Clerk-Register, King's Advocate, Justice-Clerk, Treasurer-Depute, Master of Requests.

The other great officers, which were omitted among the Officers of State, might still very properly be called Officers of the Crown, as the Chancellor, Constable, Admiral, Chamberlain and Great Justiciar, as these offices still remained, and with pretty extensive powers.

To give a short account of the nature of these several offices, and the others mentioned in the following history, is the design of this introduction ; and we shall begin in the order mentioned in King Malcolm's laws.

#### I.—OF THE CHANCELLOR.

The first office there mentioned is that of Chancellor, which was the second in dignity in France, and was much the same as the *Quæstor* among the Romans. He was chief in matters of justice, as the Constable was in those of war ; *legum Conditor, regalis consilii Particeps, justitiæ Arbiter*.

In England, the Chancellor is principal judge in the high-court of equity, and presides in the House of Peers ; his office is conferred upon him by delivery of the great seal, of which he is keeper *ratione officii*.

In the laws of King Malcolm II. the Chancellor is placed before all the other officers ; and from these it appears that he had the principal direction of the Chancery, or Chancellary as it was called, which was his proper office. His constant province was the custody of the king's seal, and he was the king's most intimate counsellor, as appears from an old law cited by Sir James Balfour in his Practicks, p. 15. "The Chancellar sall at all tymes assist the king, in giving him counsall mair secretly nor the rest of the nobilitie, to quhais ordinances all officiaris, als well of the realme as of the kingis hous, sould answer and obey. The Chancellar sall be ludgit neir unto the kingis grace, for keiping of his bodie, and the seill ; and that he may be readie baith day and nicht at the kingis command." By having the custody of the great seal, he had an opportunity of examining the king's grants and other deeds, which were to pass under it, and to cancel them if they appeared to be against law, and obtained by subreption or false suggestions ; and from this seems to be derived the name *Cancellarius*. There are some instances wherein it appears the Chancellor had not the keeping of the great seal ; but these are very rare.

King James VI. ordained the Chancellor to have the first place and rank in the nation, *ratione officii* ; by virtue whereof he presided in the parliament and in all courts of judicature. After the restoration of King Charles II. by a particular declaratory law, Parl. I., the Lord Chancellor was declared, by virtue and right of his office, president in all the meetings of parliament, or other public judicatures of the kingdom. Though this act was made with an intention to declare the Chancellor president of the Exchequer, as well as other courts, yet, in 1663, the king declared the Treasurer to be president of that court, and not the Chancellor.

## II.—OF THE DIRECTOR OF CHANCERY.

The Chancery, from the above-mentioned laws of King Malcolm II., appears to have been no other than the proper office of the Chancellor, the writs there mentioned being such as to this day have a relation to that office : but it appears to have been early taken from under his inspection and put under the inspection of another officer, by the name of the Director of the Chancery. Originally all summonses were issued from this office but now the business there is confined to issuing the precepts, brieves, such as of mortancestry,

furiosity, &c., and the writing out of those writs in a peculiar fixed form, to which the king's great seal is to be appended. The Director of Chancery also adjusts the responde-book, by which the sheriffs account to the Exchequer, for the non-entry, and other duties exigible by them from the heirs of vassals, at their entry to their estates. The keeping of the quarter-seal, or testimony of the great seal, as it is called, is also committed to him ; by this seal, precepts of sasine upon charters under the great seal were sealed, and certain other writs.

### III.—OF THE GREAT JUSTICIAR, OR JUSTICE-GENERAL.

This office, in foreign states, was originally next to the High Chancellor, who was called the Magistrate of Magistrates, and Head of all the Officers of Justice ; but in process of time, particular justices being appointed for the several provinces, subordinate to the Great Justiciar, and their proceedings subject to his review, he came to be considered as next to the Constable in rank and dignity, and all causes, civil as well as criminal, became competent to him, high treason not excepted.

In Scotland the Great Justiciar, or Justice-General, was placed next the Chancellor, *L. Reg. Malc.*, and his court was originally the only sovereign court of the nation, and had a great part of that jurisdiction which the Session hath now : and, even after the erection of the Court of Session, several civil causes came before it, *Reg. Maj. l. 1, c. 5*, and *l. 2, c. 74*. But at length his jurisdiction came to be restricted to criminal causes only, by several statutes, by which he had power to name his own deputes.

In the year 1671 the Court of Justiciary was constituted, as it now stands, by a commission under the great seal, afterwards ratified by the regulations 1672, whereby it is made to consist of the Justice-General, who is constant president, the Justice-Clerk, and five of the ordinary Lords of Session, and they declared to be the supreme ordinary judges in criminals.

After King Malcolm's times, Scotland was divided into two justiciaries, one upon the south side of Forth, who was called *Justitiarius Lothianie*, and in old charters *Judex Laudoniae*, and the other on the north side of Forth.

This office was anciently possessed heritably by several families, and last of all by the family of Argyle, who surrendered it *in anno* 1628 by contract, which was ratified in parliament *in anno* 1633. It

was afterwards constituted by a gift under the great seal, either *ad vitam*, or by a temporary commission. By King Malcolm's laws the salary was of old five pounds for every day of the Justice-ayr.

#### IV.—OF THE JUSTICE-CLERK.

By the forementioned laws of King Malcolm II. it appears that the Justice-Clerk was then no other than clerk to the Justiciar: but, by the foresaid act of King James VI., by which he is declared one of the officers of the crown, it seems he was then esteemed an officer of importance. Sir George Mackenzie is of opinion he was at that time one of the ordinary judges of the court. Others allege that he was not a judge before the year 1663, when he was declared to be so by an act of the Privy Council. However, by the regulations 1672, above-mentioned, he is now a constituent member of that bench, and always presides in absence of the Justice-General; and to this day he names the Clerk of Justiciary and his Depute.

#### V.—OF THE GREAT CHAMBERLAIN.

This was the fifth great officer in the feudal governments, and the same with the High Treasurer, or superintendent of the finances, in later ages; it is reckoned the same with the *Præpositus Sacri Cubiculi*, mentioned by Justinian, and equalled by him to the *Præfectus Prætorio*, and placed *inter illustres Palatinos*. In France he was called *Grand Chambrier*, and it was constantly possessed by the family of Bourbon.

He is ranked by King Malcolm as the third great officer, and called *Camerarius Domini Regis*; and had a salary of £200 allotted him. He anciently collected the revenues of the crown, at least before we had a Treasurer, of which office there is not any vestige till the restoration of King James I., and he disbursed the money necessary for the maintenance of the king's household.

He had a jurisdiction for judging of all crimes committed within burgh, and of the crime of forestalling; and was in effect Justice-General over the burrows, and was to hold Chamberlain-ayrs every year for that effect, the form whereof is set down in a tract called *Iter Camerarii*, the Chamberlain-ayr, among our old laws in *Reg. Majest.* He was a supreme judge, nor could his decrees be questioned by any inferior judicatory. His sentences were to be put in execution by the bailies of burghs. He also settled the prices of

provisions within burgh, and the fees of the workmen in the mint-house.

Home, in his history of the Douglasses, says, that the Chamberlain-ayr became very odious to the burrows, being rather a legal robbery than a court of justice. And the lords who seized King James VI. at Ruthven, 24th August, 1582, commonly called The Raid of Ruthven, issued a proclamation in the King's name, discharging the Chamberlain-ayrs to be kept; but this was chiefly *in odium* of the Duke of Lennox, then heritable Chamberlain, who was of the opposite faction, and was then banished.

The privileges of this office had fallen much into desuetude, not having been exercised for many years by the family of Lennox; and at last, in 1703, the duke resigned it in Queen Anne's hands, *ad perpetuam remanentiam*, since which time no Chamberlain has been appointed.

#### VI.—OF THE HIGH STEWARD.

The next great office was the High Steward. In the foreign states he is ranked the last of the great officers. He was judge of the King's household, and the whole family of the royal palace was under his care.

In Scotland his province was of the same nature: for in King Malcolm's laws, in which he is ranked in the fourth place, the other officers of the King's household, as the butler, baker, &c., are subjoined to him, and have their fees specified; and those of all the other inferior officers are left to the Steward's discretion.

It was reckoned an office of very great dignity, and was held heritably for many years by one family, who at last got the name of the officer settled as a surname upon their posterity by Walter, the son of Alan, who was at the same time Justiciar to King Alexander II. *anno* 1230. They were frequently nearly allied to the crown, and at last succeeded to it in the person of Robert, eldest son to Walter Steward, in the year 1371. This Robert was ninth heritable Lord High Steward of Scotland, and his son John, afterwards King Robert III., was created, by his father, Prince and Steward of Scotland, since which time the eldest son of the king is *natus Senescallus Scotiae*.

#### VII.—OF THE HIGH CONSTABLE.

The High Constable, in France and other foreign nations, held the first place among the great officers. He was called *Comes stabuli, et*

*regalium præpositus equorum.* His two chief prerogatives were, first, the keeping of the king's sword, which the king at his promotion, when he swears fealty, delivers to him, in imitation of Trajan, who delivered his naked sword to Suro Licinius, his *Præfectus prætorio*, with these words, *Accipe hunc ense, ut si quidem recte reip. imperavero, pro me; sin autem secus, in me utaris*: from which these words, with a little variation, *pro me, si mereor in me*, were, with a naked sword put by Buchanan on the money coined during the minority of King James VI. Hence the badge of the Constable is a naked sword, as it was likewise of the *Præfectus prætorio* in the Roman empire. His other prerogative was the absolute and unlimited command of the king's armies while in the field; but that did not extend to castles and garrisons.

The High Constable with us was, by the laws of King Malcolm II., c. 6, judge to all crimes committed within two leagues of the king's house, or four Scots miles. Skeen, in his treatise of crimes, says, "All transgressions committed within the wand of the king's Marschal, *i.e.*, within twa leagues to the king's person (which is called the chalmer of peace) pertains to the constable, *leg.* Malcolm II., c. 6, in which place this jurisdiction is attributed to the Marischal, and constable; and in some old books it is noted to pertain to the marischal in time of warfare, and to the constable in time of peace."

The jurisdiction of this office came at last to be exercised only as to crimes during the time of parliament, which some extended likewise to all general conventions.

It has stood heritably in the family of Errol, since the time of King Robert Bruce, *vid.* Sir G. Mackenzie's criminals, *part 2., tit. 4.*

#### VIII.—OF THE MARISCHAL.

The Marischal is reckoned to be originally a German word and office, *a maker of camps*, and the ax, which he bears as the badge of his office, was that instrument with which he broke the ground; though this part of his office came to be delegated to the *Marischal du camp*. The Marischal commanded the cavalry, whereas the Constable commanded the whole army; yet, as Tillet observes, the Marischal was not under the Constable, else he could not be an officer of the crown; for it is essential to all officers of the crown and of the state to depend upon none but the king. Of old the orders in military cases were directed *To our Constable and Marischal*, and in

King Malcolm's laws his jurisdiction is conjoined with that of the Constable.

The office of Marischal has never been out of the family of Keith, and they have had no other title than that of Earls Marishal.

#### IX.—OF THE HIGH ADMIRAL.

This officer bore the second rank next after the Constable in the Italian states, first, because in the feudal governments the warlike officers were of greater use, and more esteemed than those of peace; and then, as a great part of their wars were carried on against the Saracens by sea, the office of Admiral, or chief commander by sea, came to be considered as of nearly equal importance with that of the Constable, or General by land. His command was very extensive, comprehending not only the king's ships and sailors, but he had also the inspection of the ports, harbours, and sea-coasts, and he had a particular tribunal, where the judges appointed by him decided all causes relating to sea affairs, and that according to a particular body of naval law.

In Scotland the ancient powers of the High Admiral are pretty much the same. He is properly the king's lieutenant and justice-general upon the seas, and his jurisdiction as a judge extended to the trial of all crimes committed at sea, and to all controversies, actions and quarrels concerning crimes, faults and trespasses committed upon sea, or in the ports and creeks thereof, or in fresh waters and navigable rivers, so far as the sea flows and ebbs; this he exercises by a depute, commissioned by him, called the Depute-judge-admiral, who likewise judges in matters purely commercial as arising from the sea.

Hepburn, Earl of Bothwell, was made heritable Admiral in Scotland, and upon his forfeiture, Stewart, Earl of Bothwell, had the office conferred upon him, and he also being forfeited, in 1603, King James gave it to the Duke of Lennox. But his male line having failed, King Charles II., on whom the succession devolved as heir of line, conferred it on his natural son, whom he created Duke of Lennox and Richmond, who, in the year 1703, resigned that office as well as that of heritable Chamberlain of Scotland in the hands of Queen Anne, *ad perpetuam remanentiam*.

#### X.—OF THE SECRETARY.

This office in Scotland was nearly the same with that of the great Protonotary, which agreed with the *Primicerius notariorum* among



the Romans ; these were of the prince's council, and acted therein as his secretaries. He was constantly to attend the king's person, receive the petitions and memorials that were presented to him, and write the king's answers upon them. All letters patent passed through his hands, and were drawn up by him. And with us all the king's letters and dispatches, warrants, orders, &c., were wrote out by him, and generally subscribed by him ; and where the writings were long a short docquet was also subscribed by him for the king's perusal, to show what the writings were, and the king afterwards superscribed them ; and all the writings signed by the king came through his hands, he was answerable for them if they contained any thing derogatory to the laws or the dignity of the crown. He was called *Clericus Regis*, though some apply that to the Clerk-Register.

#### XI.—OF THE MASTER OF REQUESTS.

We have no Master of Requests now, that charge being swallowed up by the secretary's office. Their business with us was, as at Rome, to represent to the king the complaints of the people ; *Referendarii*, says Cassiodore, *lib. 6. dolores alienos asserunt, conquerentium vota satiant, and per eos iudices corriguntur.*

#### XII.—OF THE TREASURER.

This office was first known in Scotland upon King James I., his return from England, when he made a High Treasurer as well as a Chamberlain, who was now confined solely to the government of the burrows ; and the management of the king's revenue was committed to the care of the Treasurer as a distinct officer of state. His business was to examine and pass the accompts of the sheriffs, and others concerned in levying the revenues of the crown : he also received resignations of lands, and other subjects in use to be resigned in the king's hands, and to revise, compound, and pass signatures, gifts of tutory, &c. All which is now committed to the Court of exchequer in Scotland.

In 1617 the Treasurer is ranked by King James VI. as first officer of state ; and in 1623, when he determined the precedence of his counsellors, he is ranked next to the Chancellor, and in 1663 was declared president of the Exchequer.

The office of Comptroller, which was sometimes joined with that of Treasurer, and designed *computorum rotulator*, and that of collector

of the new augmentations, which were both distinct offices from that of the Treasurer, were all conjoined into one by King James, and exercised by the Treasurer till 1685, when the treasury was put in commission.

The Treasurer-depute was considered in the Treasurer's absence as Treasurer himself, and claimed precedency accordingly.

### XIII.—OF THE KING'S SEAL, PARTICULARLY THE PRIVY SEAL.

Of old, in the attesting of writs, seals were commonly adhibited in place of the subscription, and this took place even in documents of debt as well as in writs of the more solemn kind, as charters, which appears from the books of *The Majesty*, L. 3, C. 8. But from the same place it appears that inconveniences began very early to arise from that practice, and writing becoming more frequent, it is now gone much into desuetude, at least, is only used as one of the many solemnities introduced by the law for certiorating deeds.

In writs granted by the king the affixing of his seal alone gave them sufficient authority without signing. This seal was generally kept by the Chancellor: and from the old law cited above, p. 15, it may be inferred that all the king's despatches were verified by it.

In later times, when business increased, and particularly after King James I. returned from his captivity in England, and set about the modelling his court after the forms he had seen followed in the court of England, he appointed several new officers, and assigned them distinct provinces: particularly, at this time, he instituted the Privy Seal, which, besides its being appended to many of the writs that were ordained to pass under the seal formerly in use, which now, by way of distinction, came to be known by the name of the Great Seal, and to which the Privy Seal became, as it were, a preparatory step, it was appointed to give sufficient sanction

itself to several writs, which were not to pass any other seal. And it came at length to be an established rule, which is held to this day, that the rights of such things as might be conveyed among private persons by assignations, as rents, casualties, or other personal estate, were to pass by grants from the king under his Privy Seal alone; but those of lands and heritages, which among subjects are transmitted by dispositions, were to pass by grants from the king under the Great Seal. Accordingly the writs in use to pass under the Privy Seal alone, were gifts of offices, pensions, presentations to

benefices, gifts of escheat, ward, marriage and relief, bastardy, *ultimus hæres*, and such like.

But as most of the writs which were to pass under the Great Seal were first to pass the Privy Seal, that afforded greater opportunity to examine the king's writs, and to prevent his majesty or his subjects from being hurt by obreption and fraud.

#### XIV.—OF THE LORD CLERK-REGISTER.

The Clerk-Register was of old the principal clerk in the kingdom, from whom all other clerks, who were his deputed, derived their immediate authority, and he himself acted as clerk to the parliament and council. He was called *Clericus rotulorum*, because of old the proceedings of parliament, and minutes and interlocutors of other courts, were not wrote in books, but in rolls of paper; hence they were termed *rotuli parliamenti*, the rolls of court; but thereafter they were appointed to be put in register-books, and the respective clerks ordained to transmit these books to the Clerk-Register to be preserved in the public archives or register. Whence his name of *Custos rotulorum*, which often occurs. By the treaty of union the preservation of the registers, in the same manner, is particularly provided for; and the return of the election of the sixteen Scots Peers to the British Parliament is ordered to be made by the Clerk-Register, or by two clerks of session, commissioned by him for that purpose.

#### XV.—OF THE KING'S ADVOCATE.

This is the same office with the *Advocatus fisci* among the Romans, and the Attorney-General in England; and his business is to pursue and defend in all causes wherein the king has an interest. His office was very honourable among the Romans, and he was dignified with the titles of *Clarissimus* and *Spectabilis*, which were bestowed only on the chief nobility; from whence probably it comes, that among the French he is designed *Messire*, which title is only bestowed on the Chancellor and Advocate, and that among us he is called *my Lord*; which, as a learned antiquarian observes, he found first given him in 1598.

His privileges are very extensive among us: for he is, as in France, *Consiliarius natus*, that is, a privy counsellor in a more particular way than the rest. He is allowed to sit within the bar of the court

of session covered, where only the nobility are allowed to sit. And Sir George Mackenzie observes, he was allowed to be present at the Lords advising of causes wherein he himself was interested, which was introduced in Sir Thomas Hope's time. He issues warrants for apprehending and imprisoning, which are as valid as if granted by a judge. And as it was decided in the parliament of Paris in 1685, that the King's Advocate might at the same time be a judge, so with us Sir William Oliphant and Sir John Nisbet were both Advocates and Lords of Session at the same time.