



THE UNIVERSITY *of* EDINBURGH

Edinburgh Research Explorer

## Another Fifteenth-century Case

**Citation for published version:**

MacQueen, H & Borthwick, A 2015, Another Fifteenth-century Case. in H MacQueen (ed.), *Miscellany VII*. vol. 62, 3, Stair Society, Edinburgh, pp. 133-162.

**Link:**

[Link to publication record in Edinburgh Research Explorer](#)

**Document Version:**

Peer reviewed version

**Published In:**

Miscellany VII

**General rights**

Copyright for the publications made accessible via the Edinburgh Research Explorer is retained by the author(s) and / or other copyright owners and it is a condition of accessing these publications that users recognise and abide by the legal requirements associated with these rights.

**Take down policy**

The University of Edinburgh has made every reasonable effort to ensure that Edinburgh Research Explorer content complies with UK legislation. If you believe that the public display of this file breaches copyright please contact [openaccess@ed.ac.uk](mailto:openaccess@ed.ac.uk) providing details, and we will remove access to the work immediately and investigate your claim.



## ANOTHER FIFTEENTH-CENTURY CASE

ALAN BORTHWICK and HECTOR MacQUEEN\*

### INTRODUCTION: THE DOCUMENTS IN THE CASE

Sometime between 8 May and 1 June 1465, Simon Dalgleish, the precentor and official general of the diocese of Glasgow, acting at the instance of Master Robert Hamilton, chancellor of Glasgow and procurator of James Hamilton of Cambuskeith, affixed to the doors of his cathedral church a citation by way of a public edict summoning all parties having interest to hear and see the transumption of a set of documents relating to a dispute over lands in Lanarkshire. The transumpt would have the authority of the official's court interponed.<sup>1</sup> On 1 June, Master Hamilton produced the three documents in question before the court.

The first was a notarial instrument dated 5 February 1461, which narrated that Sir Robert Hamilton of Preston, as attorney of James Hamilton of Cambuskeith, had produced and had read letters of attorney, dated 18 October 1460, of King James III, naming eight men as Hamilton of Cambuskeith's attorneys. Five of these were Hamiltons, including not only Sir Robert but also James lord Hamilton, head of the whole Hamilton kindred. Sir Robert had further produced and read another instrument recording that Master Robert Hamilton, then rector of Monyabrok, acting as Cambuskeith's attorney, had petitioned Sir John Maxwell of Calderwood to give effect to a brieve from the king's chancery directed to him. This must have commanded Maxwell to give sasine to Cambuskeith. Maxwell, however, refused to comply; and the instrument quotes his response, which will be discussed further below.<sup>2</sup> The attorney then produced another royal brieve, dated 12 January 1461, commanding John Carmichael of that ilk, as sheriff of Lanark in that part, to give sasine to Cambuskeith of the lands of "Blarmade" in the barony of Crawfordjohn and sheriffdom of Lanark, which had not been done by Maxwell despite the king's previous brieve. Carmichael gave the sasine as commanded.

The second document was an indenture, dated 9 February 1465, whereby the disputing parties, James Hamilton of Cambuskeith and Sir John Maxwell of Calderwood with the latter's grandson Gawane Maxwell, agreed to underlie an award of arbiters in their dispute. The third document was the consequent decree by the arbiters, in the form of a notarial instrument dated 8 May 1465, in which the ground right of the disputed lands was awarded to Hamilton of Cambuskeith.

These documents produced, Master Robert Hamilton next demanded that those who had not compeared (presumably the Maxwells) should be held contumacious, and that the three documents should be transumed, especially because of their age and the peril of accident and loss and other causes, when by reason of the treachery of evil men and other perils from fire, water and journeys the originals could not well be carried about. The official then decerned that the persons not compearing should be reputed contumacious, and that the documents should be transumed in a public form to have the same faith as the originals in time coming. The transumption was finally carried out by John Reston, priest and notary, who also appended his notarial certification that he was acting for the official of Glasgow, together with the latter's seal of office.<sup>3</sup>

---

\* The references in this article follow the *List of Abbreviated Titles of the Printed Sources of Scottish History* printed as a supplement to the *Scottish Historical Review* October 1963. ODNB = Oxford Dictionary of National Biography (2004); RPS = Records of the Parliaments of Scotland, accessible at <http://www.rps.ac.uk/>.

<sup>1</sup> See Appendix; also, more generally, Simon D Ollivant, *The Court of the Official in Scotland* (Stair Society vol 34, 1982), especially at 87–88; note further, on Dalgleish as official of Glasgow 1452–1470, D E R Watt and A L Murray (eds), *Fasti Ecclesiae Scoticae Medii Aevi Ad Annum 1638* (Scottish Record Society [SRS], 1983), 245.

<sup>2</sup> See 000 below.

<sup>3</sup> Reston may have become commissary of Glasgow in the 1480s: *Fasti*, 248. But note the John Reston younger, priest, who witnesses the letters of transumpt and is perhaps a likelier candidate to have become the later commissary, since the Reston who transumed in 1465 had been active since the 1440s.

Probably around 450 years later, the transumpt was lent to John MacGregor, Writer to the Signet (WS), so that he could transcribe it. Born in Edinburgh on 9 January 1864, he was the son of Malcolm MacGregor, WS in Edinburgh. Originally apprenticed to John W Young and John Blair, he later joined the family firm of M MacGregor and Company, and was admitted as a WS on 16 January 1888. His interests were genealogy and history, and he served as procurator fiscal for the Court of the Lord Lyon from 1918, as well as being clerk to the Admission of Notaries. He was also very active in the administration of the Clan Gregor Society. He married Marion Galloway in 1898, and they had a son, Malcolm; he too became a WS in Edinburgh. John died on 9 September 1937 and bequeathed his large collection of historical and genealogical papers to the Scottish Record Office (now the National Records of Scotland [NRS]), where they form the collection referenced GD50. MacGregor produced a typescript summary rather than a transcript of the whole transumpt, although he did also succeed in transcribing the second and third of the documents transumed in 1465. The summary and the partial transcripts are the only version of the transumpt now known to exist.<sup>4</sup>

MacGregor annotated the summary in his collection of papers with the statement that the original had been “lent [to him] by A. B. Campbell W.S. He got it from his Brother in law.” Archibald Brown Campbell (1865–1940) was an almost exact contemporary of John MacGregor. Campbell’s law firm was Mylne and Campbell, Edinburgh, to which firm MacGregor’s son Malcolm was apprenticed.<sup>5</sup> A B Campbell married a daughter of James Campbell, writer, Saltcoats (Ayrshire).<sup>6</sup> His brother-in-law must therefore have been the same James Campbell’s son, also James Campbell WS (1910–2004).<sup>7</sup> A connection can be made between these Saltcoats Campbells and the Hamiltons of Cambuskeith to explain how the former might have come by the transumpt. In 1919, James Campbell the father bought the Kerelaw estate near Stevenston, including its late eighteenth-century mansion house, and his family were the last to live there before the house was bought by Glasgow Corporation in 1969 and opened as the (now closed but still sadly notorious) Kerelaw Residential School.<sup>8</sup> Some 300 years earlier, in 1665, John Hamilton, formerly of Cambuskeith and later of Grange, had purchased Kerelaw Castle, the ruins of which still stand above the Stevenston Burn and which was the *caput* of the ancient barony of Stevenston.<sup>9</sup> Hamilton changed the name of the castle and grounds to that of the (by then) principal Hamilton family estate, near Kilmarnock, i.e. Grange, which an ancestor had acquired in the sixteenth century. Cambuskeith, which marched with Grange, had been gradually dropped as the family’s territorial designation in the course of the seventeenth century, and was eventually renamed The Mount.<sup>10</sup> Both the former Cambuskeith and

<sup>4</sup> National Records of Scotland (NRS), GD50/187/8, item from unnumbered bundle, reproduced in the appendix to this article.

<sup>5</sup> See Ronald K Will (ed), *Register of the Society of Writers to Her Majesty’s Signet* (1983), 195.

<sup>6</sup> *Register of the Society of Writers to Her Majesty’s Signet*, 49.

<sup>7</sup> *Ibid.*, 51. The elder James Campbell died on 17 December 1957 (see *Glasgow Herald* obituary, 18 December 1957).

<sup>8</sup> See [http://en.wikipedia.org/wiki/Kerelaw\\_House](http://en.wikipedia.org/wiki/Kerelaw_House), accessed 15 March 2015. Kerelaw (pronounced Kerr-law) House is Royal Commission on Ancient and Historical Monuments of Scotland (RCAHMS) Canmore ID 206522. For the cause of the School’s notoriety, see Report of the Independent Inquiry (led by Eddie Frizzell) into Abuse at Kerelaw Residential School and Secure Unit (2009), accessible at <http://www.gov.scot/Resource/Doc/271997/0081066.pdf> (last checked 16 March 2015).

<sup>9</sup> See [http://en.wikipedia.org/wiki/Kerelaw\\_Castle](http://en.wikipedia.org/wiki/Kerelaw_Castle), accessed 15 March 2015. See also RCAHMS Canmore ID 41097.

<sup>10</sup> See, for this background, an article on Kerelaw House in the *Kilmarnock Standard* for 5 April 1924 (accessible at <http://www.ayrshireroots.co.uk/Towns/Stevenston/Kerelaw.htm>). Note especially that “The name Cambuskeith still survives as that of the mill on the River Irvine, not far from the gates of The Mount”. The ruins of the mill now form part of Cambuskeith Cottage, while the surrounding ground where the Kilmarnock abattoir stood more recently is known as Cambuskeith Park. The riverside location gave rise to the name’s *cambus* element (meaning “bend in the river” or (in a coastal context) “bay”). The name’s second element most probably derives from Old Welsh *coet*, *coed*, “wood” (W J Watson, *The Celtic Placenames of Scotland* (1926), 381–382). Mount House today can be found at Ordnance Survey [OS] NS 409373, while the Grange district of Kilmarnock is north-east of NS 415372. Cambuskeith is also the name somewhat misleadingly given to a 1960s housing estate enclosing the ruins of Kerelaw Castle, presumably in commemoration of the place’s old connections. The article in the *Kilmarnock Standard* further notes that Alexander Hamilton (1755 or 1757–1805), leader of the federalist movement in the early USA, was an illegitimate son of a younger son (James) of the John Hamilton of Grange who first acquired Kerelaw. James had emigrated to the West

Grange estates were sold in the course of the eighteenth century, and doubtless the proceeds helped to fund Alexander Hamilton's building of Kerelaw House in 1787, when the nearby old castle was abandoned. The Hamilton family papers were very probably transferred to Kerelaw House in the course of these moves; and it may reasonably be assumed that, in acquiring the estate in 1919, James Campbell senior also came into possession of the papers, including the 1465 document which is the focus of this article.<sup>11</sup>

The document reproduced in the appendix comprises two pieces from a collection of MacGregor's transcripts of writs and records from various sources held in NRS, GD50/187/8. The first piece is the typescript summary of the transumpt. The seal appended to the transumpt was still in good condition when seen by MacGregor, as he mentions at the end of his typescript summary. The second piece is a verbatim transcript of the second and third documents transumed on 1 June 1465, along with the final certification of the notary. This is in MacGregor's hand, and we have included its full text in the appendix. MacGregor was apparently unable to compile a transcript of the first document seen by the official of Glasgow, the notarial instrument of 5 February 1461. The particular interest for this article is however the text of the documents of 9 February and 8 May 1465, although the 1461 document contained important clues as to the issues between the parties four years later. This is explored further below.

### HAMILTON OF CAMBUSKEITH v MAXWELLS OF CALDERWOOD

The proceedings on 1 June 1465 were the immediate outcome of a legal action brought in 1465 by James Hamilton of Cambuskeith (which was, as have seen, in Ayrshire) against Sir John Maxwell of Calderwood (Lanarkshire) and his grandson Gawane,<sup>12</sup> claiming ownership of lands called "Blarmade". This land formed part of the lordship of Snar, itself part of the barony of Crawfordjohn in the sheriffdom of Lanark; and this last explains why the case had to be brought within the jurisdiction constituted by the sheriffdom. Hamilton's action commenced on 9 February 1465 in the court of the king's justiciar, held in the burgh of Lanark. Presiding as "justice for that time" was Gilbert lord Kennedy,<sup>13</sup> a doubly significant figure as also guardian of the minor king, being the latter's nearest male agnate over 25 years of age (Kennedy was around 60 at the time).<sup>14</sup> The case had been brought with a brieve of mortancestry, a form of action brought by a written royal command in the court of the justiciar rather than the sheriff. The brieve stated the pursuer's claim to be the lawful and nearest heir of a parent, uncle, aunt, sibling or grandparent who had died vest and in sasine as of fee (i.e. heritably) of certain lands which, however, were now being held by the defender. If the claim was upheld by an assize of the good and faithful older men of the neighbourhood, then the defender was ejected and the pursuer put in sasine in his place. An implication of the choice of brieve was that, despite the heritable entitlement, the pursuer had never held the lands in accordance with that entitlement. Had he done so, then the defender's presence

---

Indies, where the federalist was born. Alexander Hamilton later named his New York country residence The Grange. See further Ron Chernow, *Alexander Hamilton* (2004), 12–17 (James Hamilton), 27–28 (possibility that Alexander's father was Thomas Stevens), 641 (Grange).

<sup>11</sup> MacGregor's NRS file containing the 1465 transcript includes two other documents also about the Hamiltons of Cambuskeith and annotated as being from the brother-in-law of A B Campbell WS, which would seem to accord with this theory. An effort to trace the Hamilton of Cambuskeith estate papers via the current firm of James Campbell & Co WS, Saltcoats, has however been unsuccessful.

<sup>12</sup> We have preferred the "Gawane" of the source to the modern rendering "Gavin"; the Arthurian echo in the naming was very probably deliberate.

<sup>13</sup> For Gilbert as justiciar in October 1464, see Hector MacQueen, "Tame Magnates? The Justiciars of Later Medieval Scotland", in Steve Boardman and Julian Goodare (eds), *Kings, Lords and Men in Scotland and Britain, 1300–1625* (2014), 93–120, at 109.

<sup>14</sup> Hector L MacQueen, "Survival and Success: the Kennedys of Dunure", in Steve Boardman and Alasdair Ross (eds), *The Exercise of Power in Medieval Scotland c.1200–1500* (2003), 67–94, at 86, 90, 92.

would have been the result of an unlawful ejection of the pursuer, for which the remedy was the *briefe of novel dissasine*.<sup>15</sup>

The Maxwells appear to have been representing themselves in court; certainly Sir John had the legal expertise to do so, judging from his regular appearances as an auditor of causes and complaints in parliament.<sup>16</sup> But Hamilton of Cambuskeith had two procurators acting on his behalf. One of these was the still rising star Master David Guthrie of Kincaldrum, a graduate in Arts of the university of Cologne who had also incepted at Paris in the late 1440s, probably for many years already a regular pleader in courts around the country and, since 1461, the king's treasurer. Many other glittering prizes of royal government still lay ahead of him in 1465.<sup>17</sup> The other Hamilton procurator was a churchman, Master Robert Hamilton, chancellor of the diocese of Glasgow and previously rector of "Monyabrock" (Monieburgh in Kilsyth). As we have already seen, he played an ongoing role in the case as events unfolded from 1461 at latest. Master Robert was a nephew of James lord Hamilton and a son of Gavin Hamilton, from 1443 to 1468 provost of the collegiate church at Bothwell (founded by Archibald the Grim, third earl of Douglas, in 1398, and also his burial place upon his death in 1400).<sup>18</sup> Robert was thus a cousin of the pursuer. Legal knowledge and skills must have resulted from his being a bachelor of decreets at Paris before 1451;<sup>19</sup> possibly there too he had encountered David Guthrie. Robert also accompanied his uncle and William eighth earl of Douglas on the latter's pilgrimage to Rome for the papal jubilee in 1450–1, and became one of the first students at the newly founded university of Glasgow from 1451/2.<sup>20</sup>

In attendance at the court, presumably, would have been the sheriff of Lanark and his subordinate staff, together with the usual suitors of the sheriff court, who would have been expected to attend a session of the justice ayre in their sheriffdom. From their number and perhaps others would be drawn the "good and faithful older men of the neighbourhood" of the lands in issue who would form the assize by which the case would be determined. Also present, however, must have been the four men who witnessed the indenture soon to be struck between the Maxwells and Hamilton transferring the case from the justiciar's court to a group of men described as "Jugis" and "*dominorum arbitrorum*" (lords arbiters) to sit later in Edinburgh. The witnesses were Sir George Campbell of Loudon sheriff of Ayr, Duncan of Dundas, David Campbell and Thomas Thomson. Robert lord Boyd ("eme" or uncle of Gawane Maxwell by virtue of his marriage to Marion, the sister of Gawane's father, John Maxwell<sup>21</sup>) may have been there, because his seal was attached to the indenture for Gawane, who "had na sele of his awyn". As we will see in more detail below, however, as lord of Kilmarnock Boyd was also Cambuskeith's feudal superior and near neighbour.<sup>22</sup> It is further worth noting the Ayrshire links of Sir George and (perhaps) David

<sup>15</sup> Hector L MacQueen, *Common Law and Feudal Society in Medieval Scotland* (1993, henceforth MacQueen, *CLFS*), 136–187; A A M Duncan (ed), *Scottish Formularies*, (Stair Society vol 58, 2011), A20, B106, B96, TCa 36, La27, 38.

<sup>16</sup> RPS 1450/1/39, 1450/5/4, 1456/9; A1463/10/1, 1464/1/1, 1464/1/2, 1469/4; ADA, 8 (1469); *Wigtown Charter Chest*, no 779.

<sup>17</sup> See further Alan Borthwick and Hector MacQueen, "'Rare creatures for their age': Alexander and David Guthrie, Graduate Lairds and Royal Servants", in Barbara E Crawford (ed), *Church, Chronicle and Learning in Medieval and Early Renaissance Scotland* (1999), 227–239, especially at 229–231.

<sup>18</sup> *Scots Peerage*, iv, 348–9; John Anderson, *Historical and Genealogical Memoirs of the House of Hamilton, with Genealogical Memoirs of the several branches of the family* (1825), 597, 636–7; *Fasti*, 210, 448–9. "Monyabrock" was in the deanery of Lennox near Kilsyth (Ian B Cowan, *The Parishes of Medieval Scotland* (SRS, 1967), 150; to references there given add *Glasgow Reg* i, lxxvii, lxxv, no 103; RMS ii nos 606, 3404). Monieburgh, now a small former council estate on the Stirling Road into Kilsyth, was superseded as the parish name in 1665 when Viscount Kilsyth (a descendant of a cadet line of the Livingstones of Callendar who took his title from the nearby Kilsyth Hills) founded a new town and named it for himself (Francis J Groome, *Ordnance Gazetteer of Scotland* (1901), sv "Kilsyth"). On Archibald the Grim and Bothwell, see Michael Brown, *The Black Douglases* (1997) 192.

<sup>19</sup> For Robert's Paris studies, see CSSR v nos 384 and 398; CPL xi 318–19.

<sup>20</sup> See CSSR v no 396 for the possible trip to Rome; and references given in Anderson, *House of Hamilton*, 637, for the studies in Glasgow.

<sup>21</sup> Gawane's father John was married to a sister of Robert lord Boyd, so the family ties were criss-crossing and close.

<sup>22</sup> See further below, 000.

Campbell.<sup>23</sup> Gawane Maxwell's first marriage was to Agnes, daughter of Duncan of Dundas;<sup>24</sup> but the Dundas family of which Duncan was probably a member also had links to the Hamiltons, and in particular James lord Hamilton.<sup>25</sup> Thomson is perhaps to be identified with the man of the same name who ten years earlier had acted as a forespeaker in another mortancestry case about lands in the sheriffdom of Dumfries.<sup>26</sup> Care is required before any conclusions are drawn from prosopographical study of the witnesses' associations with the other participants, but it may not be going too far to suggest that they were seen as men at least balanced between the parties in their friendships and allegiances, if not actually neutral.

The presence of the witnesses, the drawing up and execution of the indenture, and the fact that there could also be named within it the seven arbiters to whose judgment the dispute would be submitted on a definite future date in Edinburgh, with the parties having to meet the costs and expenses of the arbiters (who did not all come from Edinburgh), strongly suggests that the proceedings at Lanark were a formality by which the court interposed its authority to an agreement already achieved, discharging the mortancestry process which had been going to take place. All the arrangements must have been put in place over the preceding weeks and months. The indenture was executed in counterparts: that is to say, each party executed a copy of the agreement by sealing it (and in Hamilton's case by having each of his procurators also sign it); they then exchanged their executed copies so that each had the version executed by the other side. Very possibly, the two versions of the agreement were written at either end of a single piece of parchment which was then cut up in a zig-zag fashion. This would then allow as a later test of their mutual authenticity the fitting together of the two counterparts. Such execution of documents was standard in Scotland at the time, and indeed down to the 1707 Union; but, for some reason, it subsequently disappeared so completely from legal practice that modern lawyers could argue that it was not a valid form of execution in Scots law. The strength of the argument was such that it had to be overcome by statute passed in 2015, since counterpart execution remained in use elsewhere in the Anglophone world and had gained new importance especially in business contexts.<sup>27</sup>

Returning to the case in 1465, the substance of the Hamilton mortancestry claim is not stated anywhere in the transumpt, so that we do not know directly upon which deceased relative's title it was based. Sir John Maxwell's claim, however, was that he held the land "in franctenement" while his grandson Gawane held it in fee. This can probably be read as meaning that Sir John had previously held a full heritable title which he had however granted to Gawane while reserving to himself the *liberum tenementum* – that is, the freehold, franktenement or lifetime possession of the lands. The practice of making a grant to another while still alive but reserving what was known as the *liberum tenementum* ("franktenement" in Scots) for the remainder of the grantor's life had developed during the later fourteenth century. This was possibly not so much to avoid the casualties to be paid by an incoming heir to the feudal superior or lord of whom the lands were held as a device to provide land for his grandson which might otherwise have gone to another – most obviously, the son who was Gawane's father (the second John Maxwell). The grantor was thus able to continue much as before, while the grantee had the comfort of knowing there would be no relief payable on his grantor's death.<sup>28</sup>

<sup>23</sup> David Campbell did witness a resignation of lands in the barony of Dalmeny, West Lothian, by Archibald Dundas of that ilk followed by a re-grant to Philip Moubray of Barnbogle (also West Lothian) in December 1452: NLS Adv Ch B67–68. This transaction was, however, witnessed by Sir John Maxwell of Calderwood as well: see below, note 91.

<sup>24</sup> Fraser *Pollok* i 467. Gawane's second wife was Elizabeth Lowes (ibid i 200–201). Her forespeaker on the latter occasion was Thomas Lowes of Manor, probably her brother (see below, note 99).

<sup>25</sup> Walter Macleod, *Dundas of Dundas: Royal Letters and Family Papers* (1897), xii–xvi; and, for earlier family links with James lord Hamilton, see e.g. CDS iv nos 1254 (22 May 1453), 1310 (26 August 1460), 1314 (23 April 1461).

<sup>26</sup> See further Alan Borthwick and Hector MacQueen, "Law, Lordship and Tenure: A Fifteenth-Century Case Study", in Stephen Boardman and David Ditchburn (eds), *Studies in Honour of Alexander Grant*, forthcoming.

<sup>27</sup> See the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015; and, for the background, see Scottish Law Commission Report No 231 Review of Contract Law: Report on Formation of Contract: Execution in Counterpart (2013).

<sup>28</sup> W C Dickinson, "Freehold in Scots Law", (1945) 57 *Juridical Review* 135–151.

We can reasonably infer from all this that the Maxwell possession of “Blarmade” went back some time, and that it is very unlikely to have been the result of some opportunistic seizure of lands which happened not to have been taken up by the truly entitled person at some point in the past. The Maxwells’ position would have been long entrenched and probably well documented. It is significant that Hamilton’s claim was initially one to hold “Blarmade” of Sir John Maxwell, suggesting the former’s recognition of at least some superiority entitlement of the latter, at least at that stage. Factors of this kind may have persuaded Lord Kennedy as justiciar that the case was indeed unsuitable for determination by a mortancestry assize, if indeed the parties themselves had not already agreed to it. Certainly, the indenture by which the mortancestry process was supplanted by a submission to arbitration made clear that the judge-arbiters were not to be confined to the question raised under the brieve:

[T]hai sall decide finaly end and deliver the groundrycht of the said mater and that dependis tharuppoun but fraud or gile eftyr thare knowlage and cunning as law Richt faith and gude conscience will fra thai have herde sene and understanding the rychtis of baith the said partis.

That the parties sought a comprehensive investigation of the merits of their respective claims without any limitation of scope is also clear from the indenture’s provision that the arbiters’ “decrete sentence and deliverance [was] to have the force and effect of a brieve of rycht for evermore”. Whereas the brieve of mortancestry determined only the questions it contained, a brieve of right enabled a finding of who had “full right” to the lands without limit as to the scope of the inquiry.<sup>29</sup> It was a fully proprietary remedy by which entitlements might be traced back to their roots. In contrast, a mortancestry process could only determine that the pursuer was entitled to possession as heir of a particular type of person who had died vest and saised of fee; it could not determine whether that deceased relative had been entitled to hold the fee in question. The whole arbitration process agreed by the parties thus appears akin to what was known as a “great assize of right”, apart perhaps from seeming to involve only two competing claims to the land in question and being arbitral rather than judicial in nature.<sup>30</sup>

The first of the three documents transumed in Glasgow in June 1465 recorded Maxwell’s refusal early in 1461 to give sasine to Hamilton (represented by his appointed attorneys) despite royal brieves commanding this to be done. Hamilton’s attorney then took sasine from a sheriff of Lanark appointed *in hac parte*, suggesting that the brieve addressed to Maxwell was one of *furche*, under which if the addressee did not act in accordance with the king’s command then the sheriff would.<sup>31</sup> But this begs the question of why further proceedings by Hamilton became necessary later. It cannot have been that Maxwell simply refused to recognise what had happened and dispossessed him, because then the action would have been one of novel dissasine. The likelihood is that Maxwell succeeded in overturning the acts of 1461, perhaps by some process of reducing Hamilton’s sasine before the king’s council or one of its sessions, and so compelled the latter into further litigation.<sup>32</sup> There may have been legal force in Maxwell’s reported response to Hamilton’s attorney Robert, then rector of Monieburgh: “You are a churchman and priest and you are not able to arrange this matter of heritage with me.”<sup>33</sup> Lay fees were a matter for the secular arm only,<sup>34</sup> and

<sup>29</sup> MacQueen, *CLFS*, 188–214.

<sup>30</sup> On the great assize of right, see *ibid.*, 236 (“an action appropriate where ... there were several competing claims to a piece of land”) and other examples cited in note 110 thereto. On late medieval arbitration in Scotland, see A M Godfrey, *Civil Justice in Renaissance Scotland: The Origins of a Central Court* (2009), 361–393. We are grateful to Professor Godfrey for a helpful discussion of the arbitral characteristics of the 1465 process.

<sup>31</sup> For the brieve *furche* and near equivalents, see Duncan, *Scottish Formularies*, A29, A38, E24, B56, B58–9. Other examples of the use of these brieves are given in MacQueen, *CLFS*, 56–57.

<sup>32</sup> Thanks to the difficult political conditions resulting from the king’s minority and Anglo-Scottish tensions only resolved by treaty concluded in June 1464 (see further Norman Macdougall, *James III* (2nd edn 2009), 40–57), there may have been no sessions or judicial sittings of the royal council until just before or after that date: see RPS 1464/1/11.

<sup>33</sup> See below, 000.

<sup>34</sup> See further Hector MacQueen, “The King’s Council and Church Courts in Later Medieval Scotland”, in Harry Dondorp, Jan Hallebeek, Tammo Wallinga and Laurens Winkel (eds), *Ius Romanum – Ius Commune – Ius Hodiernum: Studies in Honour of Eltjo J H Schrage on the Occasion of his 65th Birthday* (2010), 277–287, 278, 282.

Robert's involvement may have meant that the purported infeftment of James was indeed invalid.<sup>35</sup> He was still acting for Hamilton in 1465, but by then he was alongside the lay Master David Guthrie, so any objection had now been headed off.

### THE BARONY OF CRAWFORDJOHN

The indenture tells us that "Blarmade" is part of the lordship of Snar, which in turn is part of the barony of Crawfordjohn in the sheriffdom of Lanark. That suggests at least three levels of feudal holding or tenure beneath the king of whom the barony was ultimately held. Half of Crawfordjohn had come to Archibald Douglas the Grim with the inheritance of his wife Joanna Murray in the 1360s, the halving of the barony indicating its having been previously co-inherited at some point by two sisters. Whether Joanna was one of these sisters, or a daughter of one, or otherwise entitled through her previous husband and his inheritance, is unclear, and not important for present purposes.<sup>36</sup> But, when Archibald gained the Douglas earldom in 1389 as the result of a 1342 tailzie of what had subsequently become the earldom lands, the half-barony became part of those earldom lands, albeit unentailed. The succession to Crawfordjohn of Archibald's son and grandson (both also named Archibald) as fourth and fifth earls in 1400 and 1424 respectively was accordingly untroubled.<sup>37</sup> William the sixth earl was, however, still a minor when his father died in 1439, and he and his lands would therefore have fallen into the wardship of, most probably, his great-uncle, James Douglas of Balvenie earl of Avondale, brother of the fourth earl. William never made it beyond his minority, however, being executed along with his younger brother David and their friend Malcolm Fleming after the infamous episode of the "Black Dinner" in 1440. After this, his great-uncle James (who, as justiciar, had probably presided over whatever semblance of a trial preceded the executions<sup>38</sup>) became the seventh earl.

#### INSERT DOUGLAS EARLS FAMILY TREE NEAR HERE.

Also around 1440, Margaret, Duchess of Touraine and Countess of Galloway (and also elder sister of King James I), confirmed a charter relating to the lands of Gilkerscleuch in Crawfordjohn.<sup>39</sup> As the widow of the fourth earl, she may have enjoyed some lifetime rights of terce in the half-barony, akin to but not quite the same as those which she certainly held in Galloway by royal grant made after her husband's death in 1424.<sup>40</sup> Since terce conferred full managerial powers, Countess Margaret's position no doubt complicated the exercise of lordship in Crawfordjohn. Margaret resigned Galloway to the king for re-grant to the eighth earl not long before her death in 1450/1, when any terce rights in Crawfordjohn would also have ended.<sup>41</sup> The fee as distinct from the terce of the half-barony of Crawfordjohn would, however, have remained with the earls throughout until, with the death of the seventh earl in 1443 and still unentailed in favour of heirs male, they fell to Margaret daughter of the fifth earl, younger sister of the sixth, and, through marriage in 1444, wife to her cousin, William the eighth earl.

This last cannot have been straightforward, however, since Crawfordjohn was among the group of lands re-granted to the eighth earl when, after a rupture in his relations with King James II in late 1450, the two men were reconciled in Parliament in July 1451.<sup>42</sup> As is well known, this reconciliation did not last; the king killed the earl in a fit of wine-fuelled anger in February 1452. We have explained elsewhere how the ninth earl's subsequent renunciation of his obligations of

<sup>35</sup> Note that the sasine of "Blarmade" was taken not by Master Robert but by the lay Sir Robert Hamilton of Preston as James Hamilton's procurator.

<sup>36</sup> See further Thomas Reid, *History of the Parish of Crawfordjohn, Upper Ward of Lanarkshire, 1153–1928* (1928), 32.

<sup>37</sup> See further Borthwick and MacQueen, "Law, Lordship and Tenure", 000.

<sup>38</sup> Brown, *Black Douglasses*, 259–262. See MacQueen, "Tame Magnates?", 107.

<sup>39</sup> RMS ii no 255. Gilkerscleuch Mains is today a farm located at Ordnance Survey [OS] NS 897236.

<sup>40</sup> RMS ii no 47.

<sup>41</sup> RMS ii no 309; Brown, *Black Douglasses*, 288.

<sup>42</sup> See RPS 1451/6/8; RMS ii no 464; ER ix 662.

homage and fealty to the king probably led to deprivation of his inheritance, although a further reconciliation in early 1453 may have reversed this.<sup>43</sup> But, with the final forfeiture of the ninth earl in 1455, the superiority of the Douglas earls passed definitively to the king, ending what must have been a long period of uncertainty, even turmoil, within the half-baronry of Crawfordjohn. The king's superiority explains why in February 1459 he could grant lands within the barony to Walter Scott of Kirkurd as a reward for his contribution to the ultimate defeat of Earl James and his forces at the battle of Arkinholme.<sup>44</sup>

Crawfordjohn's caput and principal castle was located where the modern village now stands, although nothing remains of that castle today.<sup>45</sup> Douglasdale to the north can be reached by way of a drove road. The Water of Snar runs into the barony from its heads in the Lowther massif north and west of Leadhills and Wanlockhead.<sup>46</sup> It then passes through a narrow valley beneath Snar Law and Sim's Hill. The Snar finally empties into the Duneaton Water, which in turn flows east-north-east under the village of Crawfordjohn and on from there to enter the Clyde almost midway between Abington and Roberton. A castle or fortified residence of some kind stood at the modern (but now largely disused) farm steading named Snar. The castle remains are all but lost, and dating seems impossible; but this must have been the caput of the lordship of Snar.<sup>47</sup> At least one house, belonging to an Andrew Telfer, stood on the lands of "Blarmade" in 1461. Here the abortive sasine of 1461 was constituted by symbolical delivery of earth and stone to the procurator of James Hamilton of Cambuskeith and the closing of the house door behind him after he had made his entry. The witnesses to this ceremony apart from the sheriff *in hac parte* – Patrick Cleland, Patrick Bell, James Somerville, Thomas Bannatyne, Alan Govan and David Dalziel – may have been other inhabitants of "Blarmade" and Snar. Patrick Bell was also appointed as bailie, i.e. administrator of the lands. Although there is a Blairhill today north of the village of Crawfordjohn, we have found no trace of a "Blarmade" on modern maps.<sup>48</sup> We think it most likely to have been the relatively flat ground on either side of the Snar Water to the immediate north of Snar farm.

## THE HAMILTONS OF CAMBUSKEITH

Our first documentary sighting of "Blarmade" comes on 29 January 1412 when Archibald fourth earl of Douglas, presumably acting as the direct superior of the lands, confirmed a grant of them to David Hamilton by his paternal uncle Alan of Larbert.<sup>49</sup> James Hamilton, son of David, was served

<sup>43</sup> Borthwick and MacQueen "Law, Lordship and Tenure", 000.

<sup>44</sup> RMS ii no 674. The lands were "Awintoune" (Abington: OS, NS 932232), "Phareholme" (see Nicholas Carlisle, *A Topographical Dictionary of Scotland, and of the Islands in the British Seas* (1813), i, sv Crawfordjohn, for Fairholm, near Netherton Hill where there was an encampment; perhaps around modern Netherhill, OS, NS 849217) and "Glendonanerig" (Glendowran Hill, OS, NS 874205).

<sup>45</sup> RCAHMS Canmore ID 46443; Reid, *Crawfordjohn*, 43.

<sup>46</sup> The stream-name Snar is probably to be derived from a hypothetical Old English *snar*, "swift", postulated for Great and Little Snoring in Norfolk (OS, TF 9434, 9533); *Cambridge Dictionary of English Place-Names* (2004), svv. Snoring may be derived from *Snaringas*, "people who live by the river Snar". The difficulty is that there is now no river Snar in Norfolk! But an alternative derivation from Old Norse *snarr*, "brisk", seems unlikely in both Norfolk and upper Clydesdale, while an Old English cognate is much more readily acceptable. We have been helped with the place-name by Professor Jack MacQueen.

<sup>47</sup> See OS, NS 869221; RCAHMS Canmore ID 46452; Reid, *Crawfordjohn*, 43.

<sup>48</sup> Professor Jack MacQueen suggests to us that the first element in this name is Gaelic *blàr*, "field, battle, peat-moss". The second, almost certainly, is *madaidh*, genitive of Gaelic *madadh*, "dog", "mastiff", "any wild animal of the dog species", i.e. possibly "fox", thus the whole possibly meaning "fox-field".

<sup>49</sup> George Hamilton, *A History of the House of Hamilton* (1933), 213. See also *ibid*, 42–3, 254. The confirmation is not listed among the acts of the fourth earl of Douglas in Alexander Grant, "Acts of Lordship: The Records of Archibald, Fourth Earl of Douglas" in Terry Brotherstone and David Ditchburn (eds), *Freedom and Authority: Historical and Historiographical Essays presented to Grant G Simpson* (2000), 235–274. It comes between nos 39 and 40 in Dr Grant's list (*ibid*, 261). The original charter and its confirmation have not been traced and are therefore known only from the reference in the printed family histories. Alan Hamilton of Larbert was still alive in August 1419, when he granted a charter: see National Library of Scotland (NLS), Ch 8814.

as his heir in 1436, and can probably be identified with the pursuer in our case.<sup>50</sup> But this service was most likely only to the family's principal lands in Ayrshire, i.e. Cambuskeith.

The Hamiltons of Cambuskeith descended through junior lines stemming from Walter Fitzgilbert, also the progenitor in the senior line of the house of Hamilton represented by the time of the "Blarmade" case by James lord Hamilton.<sup>51</sup> The Hamiltons' descent from Walter Fitzgilbert provides an excellent illustration of Sandy Grant's observation that "the late medieval Scottish higher nobility was extremely successful at producing sons".<sup>52</sup> David Hamilton of Cambuskeith was a great-grandson of Walter.<sup>53</sup> An impressive kin solidarity is apparent in the support given to his son James from 1461 to 1465 by not only the then head of kindred, James lord Hamilton, but also his cousins Sir Robert of Preston, Master Robert of Glasgow and others of the name.

### INSERT HAMILTON FAMILY TREE NEAR HERE.

There may, however, have been something of a Hamilton family tradition of changing to the winning side at critical moments. Walter, who in early 1314 held Bothwell Castle in Lanarkshire for the English Crown, switched his loyalties after the battle of Bannockburn in late June and thereafter received from King Robert I the lands of Machan and the barony of Cadzow (later Hamilton) in Lanarkshire.<sup>54</sup> In July 1455, James lord Hamilton, whose 1441 marriage to Euphemia Graham, widow of the fifth earl of Douglas, had "tied him firmly to the Douglases" (which also probably helped to make him one of the first "lords of parliament" in 1445), nonetheless surrendered the Douglas castle of Abercorn to King James II after a siege and, following a brief period of imprisonment, received former Douglas lands and offices from the king.<sup>55</sup> Hamilton also kept in with the new head of the Douglas kindred, however, entering a bond of manrent with George Douglas fourth earl of Angus in May 1457.<sup>56</sup> In October 1464, just a few months before the "Blarmade" case began in Lanark, King James III added to Hamilton's expanding portfolio the half of the lands and barony of Crawfordjohn which had previously pertained to the earls.<sup>57</sup> This grant, made in the king's minority at a time when government was controlled by Gilbert lord Kennedy as the king's tutor, is clearly significant in understanding the way in which the "Blarmade" case developed.

We learn from a royal confirmation granted to John Hamilton of Cambuskeith on 10 October 1530 that his lands and the tower thereof were held of the lords Boyd up to their forfeiture (i.e. in 1469).<sup>58</sup> This document further shows not only the location of the estate in general but also that it formed part of the Boyd lordship of Kilmarnock in the bailiary of Cunningham (Ayrshire). Robert lord Boyd was thus closely connected to both sides in the 1465 dispute: to the Maxwells by marriage, as will be explored in more detail below, and to James Hamilton as his feudal superior and near neighbour (the chief place of the Boyds in Kilmarnock was Dean Castle, a couple of miles north-east of Cambuskeith).<sup>59</sup> After the Boyd forfeiture, Cambuskeith was probably held of the king as steward of Scotland, explaining why the 1530 confirmation was given with consent of the king's

<sup>50</sup> Hamilton, *House of Hamilton*, 213.

<sup>51</sup> Alan R Borthwick, "Hamilton family (*per.* 1295–1479)", ODNB [<http://www.oxforddnb.com/view/article/54222>, accessed 29 July 2014].

<sup>52</sup> "Extinction of Direct Male Lines among Scottish Noble Families in the Fourteenth and Fifteenth Centuries", in Keith J Stringer (ed), *Essays on the Nobility of Medieval Scotland* (1985), 210–231, 218.

<sup>53</sup> A David Hamilton appears as a witness to a Fleming charter dated 3 November 1421: *Wigtown Charter Chest*, no 406. But this could well be a reference to David Hamilton of Dalsarf: see Hamilton, *House of Hamilton*, 293.

<sup>54</sup> See RRS v nos 51 (Machan) and 494 (with references there given for Cadzow).

<sup>55</sup> Borthwick, "Hamilton family". On the origins of lords of parliament, see Alexander Grant, "The Development of the Scottish Peerage", (1978) 57 *Scottish Historical Review* 1–27.

<sup>56</sup> Jenny Wormald, *Lords and Men in Scotland: Bonds of Manrent 1442–1603* (1985), 174; Alan R Borthwick, "Douglas, George, fourth earl of Angus (c.1417–1463)", ODNB [<http://www.oxforddnb.com/view/article/7884>, accessed 21 December 2014].

<sup>57</sup> RMS ii no 819 (24 Oct 1464).

<sup>58</sup> RMS iii no 970.

<sup>59</sup> OS, NS 437398; RCAHMS Canmore ID 265333.

mother (Margaret Tudor), who had received the lordship in liferent at the time of her marriage to James IV in 1503.<sup>60</sup>

### THE MAXWELLS OF CALDERWOOD

We may turn now to the Maxwells of Calderwood.<sup>61</sup> They were a junior branch of the Maxwells of Pollok, another family further illustrating Sandy Grant's point about successful male reproduction in the Scottish higher nobility, with several other cadet lines mushrooming through the fourteenth century.

**INSERT MAXWELL FAMILY TREE NEAR HERE.**

The first Maxwell of Calderwood, Sir Robert, was a second son whose father, the lord of Pollok, settled extensive lands (mostly in Lanarkshire) upon him in 1400–1.<sup>62</sup> The property from which Robert and his descendants took their territorial designation was Calderwood, like most of his other lands in or near modern East Kilbride.<sup>63</sup> These were not, in other words, very proximate to the Douglas heartlands in upper Clydesdale, albeit closer at hand to the later acquisitions of Archibald the Grim lower down the Clyde at Bothwell and Drumsargad. Robert's marriage to Elizabeth Danielston brought him the lands of Finlayston (Renfrewshire) and Stanley (Perthshire). His talents seem to have fitted him for diplomacy in England, negotiating there for the release from captivity not only of King James I but also of Murdoch Stewart, son of the Governor of Scotland in the king's absence, Robert duke of Albany. Robert Maxwell also undertook military service in France in support of the French king against the English, although he was under the leadership of John Stewart earl of Buchan (the Governor's younger son) rather than the earl of Douglas, who led other Scottish forces in France at the time.<sup>64</sup> Robert died in France, having made his will at Chinon on 7 September 1420 and probably breathing his last sometime shortly afterwards. The will directed that he be buried in the church of the Friars Minor at Angers.<sup>65</sup>

Robert's will is a fascinating document. For present purposes, however, its most interesting (and most tantalising) bequests are three in favour of Alan of Hamilton: first, twenty golden nobles, Robert's black horse and a fother of lard (*unam foderatum de saygnes*), together with a supplication to his heir not to allow either Alan or his wife to fall into need for the whole of their lives; next, an assignation to Alan of Robert's reversionary right in ten merks of land granted, presumably in security for some debt, to Fergus Kennedy;<sup>66</sup> and lastly, in relation to another ten merks' worth of land possessed by Robert which were formerly of the said Alan, a pure and free cession of his right to the said Alan and his heirs, acquitting the lands from all pactions or contracts made by Robert about the said lands for him and his heirs so long as Alan and his heirs remained the men of his son and his heirs.

This seems to suggest some previous dispute between the two men about land which, perhaps, Alan should hold of Robert. If Robert's beneficiary can be identified with the Alan Hamilton of Larbert who had granted "Blarmade" to his nephew David eight years earlier, then just conceivably

<sup>60</sup> James Cameron, *James V: The Personal Rule, 1528–1542* (1998), 18, 31, 44.

<sup>61</sup> See generally Fraser *Pollok* i 462–467.

<sup>62</sup> Fraser *Pollok* i 139; see *ibid*, nos 19–23. Note earlier grants of Jackton in the 1390s: *ibid*, nos 16 and 17.

<sup>63</sup> The others in Lanarkshire were Dripps, Jackton, Allerton, Newlands, Greenhills and the over lordship of a quarter of Thornton. The two Aikenheads (Meikle and Little) were in what is now the King's Park district in Cathcart parish on the south side of Glasgow. In Tweedsmuir, Robert received Hawkshaw, Finglen and Carterhope.

<sup>64</sup> See Brian G H Ditcham, "The Employment of Foreign Mercenary Troops in the French Royal Armies, 1415–1470" (Edinburgh University PhD, 1978), especially at 182–183; Brown, *Black Douglasses*, 210–226; Borthwick and MacQueen, "Law, Lordship and Tenure", 000.

<sup>65</sup> Fraser *Pollok* i no 28.

<sup>66</sup> Whether this Fergus is to be identified with the Fergus Kennedy who was keeper of Loch Doon castle in 1434 must remain conjectural: Hector L MacQueen, "The Kin of Kennedy, Kenkynnol and the Common Law", in Alexander Grant and Keith Stringer (eds), *Medieval Scotland: Crown, Lordship and Community: Essays Presented to G W S Barrow* (1993), 274–296, at 291.

that grant was the trigger for the dispute between Robert and Alan. Perhaps already in 1412 Maxwell of Calderwood had some sort of claim to superiority over “Blarmade” which had been ignored or bypassed in Alan’s grant to David and its confirmation by the fourth earl. But it is more likely, given the final decision of the dispute against the Maxwells in 1465, that the earl intruded Robert as a mid-superior after Alan’s grant to David, causing an angry reaction and claim of warrandice from Alan’s now demoted grantee.<sup>67</sup> Whatever, it is clear that Alan was on Robert’s conscience as he confronted his own mortality and the destiny of his soul.

It is entirely possible, of course, that the Alan Hamilton who troubled Robert’s mind in 1420 was quite different from the one who granted “Blarmade” in 1412, and that it is pure coincidence to find that name in conjunction with a Maxwell of Calderwood forty years before the legal clash with the Hamiltons of Cambuskeith which is the main object of our discussion. Nor were any of the grants his father made to Robert in Lanarkshire in the vicinity of Crawfordjohn. Robert would have to have made an independent form of acquisition from the earl of Douglas before or (more probably) not very long after 1412. There was however at least one earlier, if tenuous, link between the Maxwells and the earls: Robert’s stepmother had held the lands of Whitcheater in the barony of Hawick of Archibald the third earl in and before 1399.<sup>68</sup> But the only evidence of any direct interaction between the fourth earl and Robert is an outright alienation by the former to the latter in 1416, under which Robert received from the earl the lands of Nether Calderwood in the barony of Kilbride, presumably thereby completing his holding of the Calderwood estate. This, it was said, was for the service and counsel with which Robert had provided the earl.<sup>69</sup> It may therefore have reflected some existing relationship rather than being simply a bit of tidying-up of landholdings on each side.

Nearly a quarter of a century later, Robert’s eldest son and successor, Sir John Maxwell of Calderwood, the first defender of 1465, was more evidently linked with the earls of Douglas. A striking feature is that these links survived the rapid turnover in the earldom resulting from the sudden but natural death of the fifth earl in June 1439, the execution of the still minor sixth earl after the Black Dinner in November 1440, and the succession to the earldom of the sixth earl’s great-uncle, James Douglas of Balvenie earl of Avondale. So, in July 1438, John Maxwell was, with others including Thomas Boyd of Kilmarnock and George Campbell of Loudon (later one of the witnesses to the 1465 indenture), a commissioner of the fifth earl to relax a recognition of disputed lands in the earl’s regality of Lauder.<sup>70</sup> In February 1440, the second-named witness to a charter by the sixth earl of lands in Roxburghshire was John Maxwell of Calderwood.<sup>71</sup> The witness-list position suggests some closeness to the young earl at that point which may have stemmed from the prior link with the latter’s father, the fifth earl. However that may have been, and perhaps despite it, Maxwell further witnessed an undated charter of James Douglas as earl of Douglas and Avondale which must have been granted between November 1440 and March 1441, i.e. within months, if not weeks, of the Black Dinner.<sup>72</sup> Maxwell was also present in March 1441 when Robert Fleming, son

<sup>67</sup> For such conduct by a superior as a wrong to the vassal in rendering the conditions of the latter’s tenure more onerous, see Thomas Craig, *Jus Feudale* (first published 1655), 2.11.35. Craig’s comment occurs in the context of a discussion of the reciprocity of the obligations of superior and vassal, which principle is also highlighted in earlier texts such as *Regiam Majestatem* II, 62 (APS i 621; Stair Society vol 11, II, 67); *Liber de Judicibus*, c 135, cited in James Balfour, *Practicks*, I (Stair Society vol 21), 126 (c V). Note too in England, Bracton, *De Legibus et Consuetudinibus Angliae* (ed S E Thorne, 1968–1977), ii, 233–237, especially at 237.

<sup>68</sup> Fraser *Pollok* i no 18. The second marriage of Sir John Maxwell of Pollok to Elizabeth of Whitcheater was the probable occasion of this transaction (*ibid*, i, 14).

<sup>69</sup> Fraser *Pollok* i no 27. On the basis of this single instance, Grant makes Robert a member of the fourth earl’s affinity to whom he granted lands or offices or annuities, but in its “outer” rather than its “inner circle”, i.e. the group made up of persons to whom individually the earl made relatively few such grants: “Acts of Lordship”, 248–249.

<sup>70</sup> *Laing Chrs* no 117.

<sup>71</sup> Fraser *Douglas* iii no 303 (p 374) (18 Feb 1440 at Edinburgh) (original at Floors Castle, Roxburgh MSS, bundle 702 [41/4]).

<sup>72</sup> HMC Hamilton, additional charters, no 131. The charter ante-dates the remarriage of the fifth earl’s widow, Euphemia Graham, to Sir James Hamilton of Cadzow, i.e. the later James lord Hamilton. The charter is also notable for the consent given by the seventh earl’s beloved first-born son and heir Sir William (eighth earl from March 1443).

and heir of the executed Malcolm, attempted to obtain briefs of inquest with which to be served heir to his unforfeited father's lands.<sup>73</sup> There is, however, no evidence to suggest that Maxwell continued his links to the Douglas earls after the death of the seventh earl in 1443.

Maxwell's place in the circle of the Douglas earls may have been connected with the position he had earlier gained in the counsels of King James I. Although John was still a minor when he succeeded his father Robert in 1421, by 1423 he was following in the paternal footsteps as one of the commissioners appointed to treat for the release of King James I from his English captivity. On the king's release in 1424, Maxwell was a hostage in England for the payment of the royal ransom, but was quite quickly released.<sup>74</sup> Although there are few other references to him in the 1420s and early 1430s,<sup>75</sup> by March 1436 he had apparently been knighted, when he in the company of many other leading Scots sailed to France with the king's daughter Margaret for her marriage to the Dauphin.<sup>76</sup> After the king's assassination at Perth on 21 February 1437, a royal supporter probably had little difficulty in adhering to Archibald fifth earl of Douglas, lieutenant-general of the kingdom as the nearest male agnate of the minor King James II (only six years old at the time of his father's death).<sup>77</sup> Another important link formed by John Maxwell during the reign of James I was the one already noted with the Boyds of Kilmarnock. Possibly as early as March 1435 (though the date is uncertain), John's eldest son John was of an age to agree to marry the daughter of Thomas Boyd of Kilmarnock, reflecting what was evidently already a significant link between the two families, since Thomas had been godfather to Maxwell junior at his baptism.<sup>78</sup> In addition, Sir John's daughter Marion married Robert first Lord Boyd, eldest son of Thomas Boyd.

After the death of James seventh earl of Douglas in March 1443, John Maxwell's Douglas links seem to have come to an end, and there is also little evidence of his activities during the remainder of the royal minority.<sup>79</sup> But he came back to prominence when James II assumed active control of royal government in 1449, with the legal and judicial skills to which we have already referred seeming to be the primary cause. He was one of the baronage representatives as an auditor of causes at the January 1450 parliament, and again at the general council in May 1450.<sup>80</sup> He was very evidently present at the General Council in March 1453 when complicated legal business was being dealt with, and was chosen to be one of the baronage auditors in October 1456,<sup>81</sup> and again in July 1460.<sup>82</sup> This was followed by an already mentioned host of appearances among the lords auditors in the 1460s.<sup>83</sup> He was also chosen in June 1454 as one of the ambassadors extraordinary to negotiate a peace with England.<sup>84</sup> Maxwell's services were not only valued in royal government. In April 1449, he witnessed a charter of the bishop of St Andrews, and in February 1450 he witnessed a resignation made before the bishop.<sup>85</sup> In October 1449, he received a three-year safe conduct to go on pilgrimage to Rome;<sup>86</sup> but, given his other appearances around this time in Scotland, maybe he never went. In December 1452, he witnessed a resignation made in presence of George Crichton,

<sup>73</sup> NLS, Ch 15,554.

<sup>74</sup> Fraser *Pollok* i 463–465.

<sup>75</sup> He issued or witnessed some charters (see e.g. RMS ii nos 9, 10, 65, 66, 186; *Laing Chrs*, no 105).

<sup>76</sup> See *Chron Bower* viii 249; the event is dated June 1435 in Fraser *Pollok* i 465.

<sup>77</sup> Christine McGladdery, *James II* (1990), 12.

<sup>78</sup> See GD8/1012 (bond by Thomas Boyd of Kilmarnock, to John Maxwell lord of Calderwood, of 550 marks because of marriage of the said John Maxwell's son to the said Thomas's daughter) (printed in Fraser *Pollok* i 466). The document is damaged, and the date cannot therefore be ascertained. The marriage needed a papal dispensation dated 9 July 1440, the possible impediment being Thomas's godfatherhood of the younger John Maxwell: see CPL, ix, 110. John junior was able to be a witness to a document dated 27 June 1446: see Glasgow City Archives, T-PM 2/3. Thomas Boyd was killed by Alexander Stewart "buktuth" and others on 7 July 1439 (see McGladdery, *James II*, 160).

<sup>79</sup> At the June 1441 General Council, he was the pursuer in a legal case: RPS 1441/6/1.

<sup>80</sup> RPS 1450/1/39; 1450/5/4.

<sup>81</sup> RPS 1456/9.

<sup>82</sup> Angus Archives, M/W1/10/1 (not in RPS).

<sup>83</sup> See above, 000.

<sup>84</sup> *Foedera* xi 349.

<sup>85</sup> NRS, GD97/2/13; GD18/422.

<sup>86</sup> CDS iv no 1217.

earl of Caithness;<sup>87</sup> and in March 1454 he witnessed a Caithness charter.<sup>88</sup> While there is no sign of particular royal favour under James II, a licence was granted in January 1452 to construct a tower on his lands in the barony of Finlayston in Renfrewshire, acquired by his father on his marriage to Elizabeth Danielston.<sup>89</sup>

Sir John himself was married at least thrice.<sup>90</sup> This led to a number of transactions in which he was clearly looking to balance the interests of the eldest sons of each of the first two marriages. In October 1452, John, the eldest son of his first marriage, issued a bond obliging himself never to gainsay his father's resignation to the king of Finlayston and Stanley (Perthshire, also acquired via Robert Maxwell's marriage with Elizabeth Danielston) in favour of the children to be borne between his father and Margaret Borthwick, the son's "gude-mother", i.e. stepmother, and therefore Sir John's second wife.<sup>91</sup> Margaret was the daughter (most probably) of William first lord Borthwick.<sup>92</sup> Crown confirmation of John's resignation was dated 3 April 1454. Clearly this move had later consequences: in December 1472, the son, now also Sir John (having been knighted in his own right), and his son and heir Gawane renounced any rights they might have in the said lands to Sir John junior's brother George. He must have been a half-brother of Sir John junior, due to inherit Finlayston as the son of Margaret Borthwick. The bond is very neatly signed by both Sir John junior and Gawane – a sign of good education, surely, and perhaps not untypical of a family background with an interest in legal business. A crown charter dated 7 January 1477 of the lands of the barony of Finlayston to George, designed son and heir of Sir John Maxwell of Calderwood knight, followed on his parents' resignation; and there was a follow-up confirmation on 22 January 1478 (Sir John the father having died between the dates of the two charters). On 12 March 1478, the new Sir John of Calderwood and Gawane issued another bond obliging them never to trouble George in his peaceful possession of Finlayston, under a £1,000 penalty – suggesting that perhaps the death of the long-lived patriarch left the junior line represented by George feeling its position to be less secure than before; or that the senior line of the late Sir John's descendants had not been fully at ease with what they may have seen as an exclusion from their inheritance. The first Sir John's relict Margaret Rutherford was still claiming terce in 1492:<sup>93</sup> she must have been his third and final wife.

This material also makes clear that, through his second wife Margaret Borthwick, Sir John senior was related to her father William first lord Borthwick. In January 1465, he was with William lord Abernethy in Rothiemay conducting the general justice ayre south of Forth;<sup>94</sup> and his Maxwell connection may explain why Gilbert lord Kennedy had to step in, as head of the minority government, and be "justice for that time" at Lanark in February when the "Blarmade" case came on for decision. It may also be one of the factors which led Hamilton of Cambuskeith and the Maxwells of Calderwood to decide that their dispute should be submitted to arbitration by persons who were "unsuspect", that is, clearly impartial as between them both, rather than to any assize before the justiciars south of Forth.

---

<sup>87</sup> NLS, Adv Ch B67.

<sup>88</sup> Fraser *Caerlaverock* ii 433–434; original in Hull History Centre, DD EV/80/23.

<sup>89</sup> NRS, GD162/6/1/3.

<sup>90</sup> Fraser *Pollok* i 465 misses the first and reverses the order of Maxwell's last two marriages.

<sup>91</sup> NRS, GD162/6/1 (James II charter). The document is witnessed by the son's three brothers, Alexander, Patrick and James: not mentioned in Fraser *Pollok* i 465. Note also RMS ii no 1346 (James III confirmation dated 19 January 1478 of charter by Sir John Maxwell of Calderwood dated 1 February 1464 for the daughter Elizabeth born between him and spouse Margaret Borthwick; the witnesses to the latter include Margaret's father, William lord Borthwick, and Archibald Dundas of that ilk). In July 1454, Maxwell's eldest son received land from his father in the barony of Mauldslicie (Fraser *Pollok* i no 45).

<sup>92</sup> See Alan R Borthwick, "Borthwick family (*per. c.* 1400–*c.* 1515)", ODNB [<http://www.oxforddnb.com/view/article/54135>], accessed 20 March 2015.

<sup>93</sup> ADC i 238–239.

<sup>94</sup> MacQueen, "Tame Magnates?", 110.

## WHAT LAY BEHIND THE LITIGATION IN THE 1460s?

A tentative reconstruction of what happened to bring about the 1465 case may start with the 1436 service of James Hamilton as heir to his father David. This cannot have included “Blarmade”. As we have seen, a mortancestry action such as James raised in the 1460s was based on a claim that, although an ancestor had died vest and saised as of fee in the disputed lands, the raiser of the action had never gained entry to them because someone else intruded. James must therefore have been unable to enter “Blarmade” from at latest 1436, and quite possibly earlier, depending on exactly when his father died. The crucial point is that James’s claim can only have been based on his father being in heritable possession on his death; he could not have gone back to his great-uncle Alan of Larbert, who had given the lands away while still alive, and whose relationship with James was not within the scope of a brieve of mortancestry. If James’s claim was to hold “Blarmade” of the Maxwells of Calderwood, the latter must therefore have held the superiority by 1436, having been granted it at some point by one of the earls of Douglas. We cannot, however, say for certain that this superiority stemmed from being the lords of Snar, since this designation is not given to the Maxwells in our documents. We must also note the figure of George Weir of Snar, who in 1455 was a member of an assize on another brieve of mortancestry in the regality court at Drumlanrig in the sheriffdom of Dumfries.<sup>95</sup> Was George merely an inhabitant of the lordship, or its lord?

If we carry as far as we dare speculation about the references to a dispute with Alan Hamilton in Robert Maxwell’s will of 1420, perhaps the latter was granted a claim to the immediate superiority over “Blarmade”, despite Alan and his grantee seeing themselves as successive tenants of the earl. The resultant tensions between the families may have never been fully resolved after 1420 despite Robert’s testamentary hopes to the contrary. It may not have helped that his heir John (one of the two defenders in 1465) succeeded as a minor, with his lands being managed by his uncle William of Aikenhead as tutor until he reached majority, possibly around 1423.<sup>96</sup> A continuing stand-off may have led to James’s refusal to seek entry with the Maxwells when his father died in the mid-1430s while, perhaps, he was unable to gain entry from the string of Douglas earls between 1439 and 1455.

When the earldom lands were forfeited in 1455, the king became the superior of the Douglas half of Crawfordjohn, and the tenurial grade of all other holders of land in the half-barony rose by one. King James II clearly exercised his superiority directly for some years. Perhaps it was only after the king’s accidental death at Roxburgh in 1460 that Hamilton of Cambuskeith gave up the argument that he now held “Blarmade” directly of the king. There may have been pressure in that direction from the head of his kindred, James lord Hamilton, who “briefly became a regular at court”<sup>97</sup> in the government of the minor King James III, and who stood to gain the Douglas half-barony of Crawfordjohn. Certainly, Cambuskeith’s push for infeftment in the lands gathered momentum during the first phase of the king’s minority: first the attempt to get Maxwell to admit him in 1461; then the mortancestry action in February 1465 (presumably a step in contemplation and preparation throughout 1464 at latest); and finally the submission to the arbitration from which Cambuskeith emerged at last triumphant on 8 May.

We learn little substantive from the transumpt record of the actual arbitration proceedings in the Edinburgh tolbooth. The arbiters were John lord Lindsay of the Byres, Gilbert lord Kennedy, William Murray of Polmaise, Alexander Stewart of Galston, John Shaw younger, Thomas Lowes of Manor in Peebles-shire, and George Greenlaw burgess of Edinburgh. Of these, Lindsay of the Byres had become a lord of parliament in May 1452 and justiciar north of Forth in 1457, as well as being an ambassador abroad and sitting judicially on the king’s council. He would be the northern

<sup>95</sup> NLS Acc 4053 Adamton 16/2; Borthwick and MacQueen, “Law, Lordship and Tenure”, 000.

<sup>96</sup> Fraser *Pollok* i 464. In July 1424, King James I confirmed John’s charters in favour of his uncle, suggesting that by then John was of full age (RMS ii nos 9, 10). William may have received Aikenhead from his brother Robert (see above, note 63).

<sup>97</sup> Borthwick, “Hamilton family”, ODNB.

justiciar again in 1466.<sup>98</sup> He may have taken the lead among the arbiters; it is notable that his name precedes that of the king's guardian Kennedy in their listing. The others named, while by no means insignificant figures in their time, were certainly much less prominent in the politics of the period.<sup>99</sup> But, like Lindsay and Kennedy, they must have been free of any suspicion of possible partiality on either side of the dispute. There seems no reason to doubt their collective claim to have decided the case unanimously, “the meritis and the grund of the matir and caus be ws ribly avisit and undirstandyn eftyr law rycht faith gude conscience our knowlage and cunning We hawande God be for Ee”.<sup>100</sup> Cambuskeith was again represented by Master David Guthrie and Master Robert Hamilton; but Sir John Maxwell of Calderwood compeared alone, his grandson Gawane “nocht comperande bot contumacily absentand hym”. The younger man may well have seen this as his grandfather's fight. Nevertheless the struggle was, if we believe the record, a keen one, with the arbiters noting that the parties (and, presumably, Cambuskeith's procurators) were “be ws oft and mony tymis remowit and agane incallit”. If the proceedings began as planned at 9am on 25 April and did not finish until 8 May, they were also lengthy. An audience may have watched the contest unfold, namely those who witnessed the arbiters' sealed document formally articulating their decision. These were led by two lords of parliament, at least one of whom (James lord Hamilton) had a direct interest in the outcome. The other was Maxwell's father-in-law, William lord Borthwick, who was accompanied by his son and heir (also William, and a knight in his own right). Further names among the witnesses were Robert Colville of that ilk, Archibald Dundas of that ilk, Alexander Lindsay of Dunrod, Patrick Colquhoun, Duncan of Dundas (also a witness to the indenture at Lanark by which the “Blarmade” case had been submitted to arbitration, and the younger brother of Archibald of that ilk<sup>101</sup>), Alexander Hamilton (another relative of the pursuer?), John Mowbray of Hoppringle,<sup>102</sup> Herbert Murray and “mony othirez”. It was perhaps the best show in town on 8 May 1465.

## CONCLUSIONS

The Edinburgh victory was consolidated by Master Robert Hamilton in the proceedings in the Glasgow official's court on 1 June 1465 with which we began. In some ways, this entirely ecclesiastical process seems to show the religious arm being invoked to give force to the secular decision – rather the reverse of the usual picture in these matters.<sup>103</sup> But it all seems a very heavyweight set of processes for a claim to what must have been a relatively insignificant piece of land of small if any economic or other value. Setting aside Cambuskeith's initial attempt to gain

<sup>98</sup> MacQueen, “Tame Magnates?”, 108–109.

<sup>99</sup> William Murray of Polmaise (also of Touchadam) was sheriff of Stirling by 16 January 1461 (Alan R Borthwick, “The King, Council and Councillors in Scotland, c.1430–1460”, University of Edinburgh PhD, 1989, 502) and was also at the same time for a couple of years constable or keeper of Stirling Castle (ER vii 7, 59, 65, 187). Alexander Stewart of Galston (Ayrshire) was brother of John lord Darnley (*Scots Peerage* v 348). John Shaw younger was probably of the Shaw of Sauchie line from Clackmannanshire. Thomas Lowes of Manor was probably brother of Gawane Maxwell's second wife Elizabeth Lowes; but this marriage must have been after 1465, as otherwise Thomas would have been suspect as partial to the Maxwell side and so unacceptable to the Hamiltons. See above note 24 and J W Buchan, *A History of Peebles-shire* (1927) iii 554–555. George Greenlaw features among the lords of the articles in parliament and in other financial roles in the 1460s, as well as sitting once on a “session” administering justice: RPS 1464/10/1, 1467/10/5, 1468/9, 1468/10, 1473/7/19.

<sup>100</sup> See *Dictionary of the Older Scots Tongue* sv Ee 2(b)b (accessible at [http://www.dsl.ac.uk/entry/dost/ee\\_n](http://www.dsl.ac.uk/entry/dost/ee_n)) for the usage meaning “having God before our eye(s)”.

<sup>101</sup> See Fraser *Pollok* i no 62; NRS GD75/4; above, text accompanying notes 24 and 25. The Dundases of Dundas in West Lothian had earlier been closely linked with the Douglas earls but moved into royal circles after 1452: see Grant, “Acts of Lordship”, 246, 252–253; Brown, *Black Douglasses*, 115, 121 note 44, 176, 286; Annie I Dunlop, *The Life and Times of James Kennedy Bishop of St Andrews* (1950), 221–222, 235 note 3. Archibald Dundas of that ilk, for whom see also note 91 above, was sheriff of Linlithgow by mid-1454 (Borthwick, “King, Council and Councillors”, 500–501) and remained in that office on 22 April 1465 (NRS, RH6/382).

<sup>102</sup> So MacGregor's transcript (below, 000); but this must have been an error for “Barnbogle” by either MacGregor or (less likely) by the notary of 1465, since the Mowbrays owned that estate, not Hoppringle.

<sup>103</sup> But cf. Ollivant, *Official*, 87.

sasine with seeming support from the government of the royal minority in 1461, the process in 1465 began before the king's guardian (Gilbert lord Kennedy) and along the way involved a number of the other leading figures in the kingdom at the time: Robert lord Boyd, John lord Lindsay of the Byres and David Guthrie, for example. There must have been some symbolic or political explanation for all of this.

The end result probably suited not only Hamilton of Cambuskeith but also his kinsman James lord Hamilton. It cleared his new property of half of Crawfordjohn, at least in part, of a man in Sir John Maxwell who may have had too much of a past association with the forfeited earls of Douglas for his taste.<sup>104</sup> But, from a political perspective, while Lord Hamilton's "star seems to have waned" later in the royal minority,<sup>105</sup> and the Maxwells of Calderwood were clearly close to the Boyds of Kilmarnock, neither Robert lord Boyd's July 1466 coup against Gilbert lord Kennedy to take over the guardianship of the young king, nor Boyd's own eventual fall and exile in 1469, seems to have affected the 1465 outcome.<sup>106</sup> Lord Hamilton, continuing to display the family ability to adapt to changing circumstances, was sufficiently in favour with the adult James III in 1474 to marry the king's sister Mary (widow of Thomas Boyd earl of Arran, executed brother of the exiled Robert). On his own death in 1479, Hamilton's holding in Crawfordjohn was inherited by his minor heir, eventually to form part of a barony of Hamilton erected in 1513 for that son (who had become earl of Arran in 1503).<sup>107</sup> At the next level down in the tenurial chain, that of the Hamiltons of Cambuskeith, the son and heir of the 1465 pursuer married Marion, daughter of the 1465 defender Sir John Maxwell, so that the tensions between the fathers did not carry over into the next generation.<sup>108</sup> There seems no reason to doubt that the decision on the title to "Blarmade" held good until the end of the fifteenth century at least.<sup>109</sup>

We would suggest that the reason for the 1465 process shifting from one of mortancestry to one considering the "ground right" of the lands was because it became clear in the run-up to the proceedings at Lanark in February that Hamilton of Cambuskeith was raising not so much his own entitlement to inherit as the question whether his holding was to be of the Maxwells of Calderwood or of the king (and thus from late 1464 of James lord Hamilton, his head of kin). The process was therefore one of invalidating any formal title held by the Maxwells, which must have come originally from the earls of Douglas. This was a strong step indeed, justifying elaborate process. The doubt over the validity of the Maxwell titles is most likely to have been about the legitimacy of interposing a mid-superior so that a tenant lost his direct tenurial connection to the earl. Whatever the legal rule on that matter, the assize had been directed to decide not only according to law but also in accordance with "Richt faith and gude conscience"; and clearly altogether they favoured the Hamiltons. It may even be their acceptance of the invalidity of the Maxwell title deeds which explains the complete absence of any such documentation today.

In another study of which the piece published here initially formed part, we argue for the significance of law and legal analysis in probing more deeply into the nature of late medieval landed society and government.<sup>110</sup> The "Blarmade" dispute and its resolution is another illustration of the utility of such analysis in maximising what we can take from otherwise scattered documentary sources. It also shows the interaction that was possible between forms of action at

<sup>104</sup> The Maxwells of Calderwood still had at least one other estate in the barony of Crawfordjohn in June 1492, namely "Mekle Blackburn": ADC i 239. Blackburn lies north of the village of Crawfordjohn, but it is not possible to say in which half of the barony it stood.

<sup>105</sup> Borthwick, "Hamilton family", ODNB.

<sup>106</sup> Contrast the mortancestry case between Gilbert lord Kennedy and Robert lord Fleming decided in favour of the former in April 1466, where the result seems to have been reversed very rapidly after the Boyd coup: see MacQueen, "Kin of Kennedy", especially at 277.

<sup>107</sup> RMS ii nos 2311, 3803.

<sup>108</sup> Hamilton, *House of Hamilton*, 213. For marriage as a weak means of settling feud, see Wormald, *Lords and Men*, 79. We are inclined to see it as a stronger tool in the pursuit of peace between kin groups.

<sup>109</sup> See Reid, *Crawfordjohn*, 33–42, 89–90, for the story of Hamilton reunification and possession of the barony of Crawfordjohn down to c. 1793.

<sup>110</sup> Borthwick and MacQueen, "Law, Lordship and Tenure". See also Alan Borthwick and Hector MacQueen, "Three Fifteenth-Century Cases", (1986) 31 *Juridical Review* 123–151.

common law, purely secular arbitration and ecclesiastical processes. We can see in action laymen of the landed classes who were literate and able to represent themselves or others in litigation and arbitration, and also a churchman acting on behalf of a layman in his legal business. Notaries clearly played a vital role in producing documents which could thereafter be taken as authentic records, whether of an event that had occurred, such as Hamilton of Cambuskeith's request for sasine of "Blarmade" from Sir John Maxwell of Calderwood, or of another document the survival of which could not be guaranteed against the inevitable hazards to which it might be exposed. In the case of the transumpt made on 1 June 1465, there was the additional guarantee that anyone acting contrary to what it recorded would be exposed to ecclesiastical censure, whatever other consequences there might be in the secular arena. In none of this, however, is there any evidence of interpersonal violence or feud over "Blarmade", despite the long-running nature of the dispute.<sup>111</sup>

Our other study highlights the continuing importance of feudal or tenurial relationships in the holding of land. In particular, it shows the failings of the earls of Douglas as superiors in relation to those who held land for them, and suggests that this played its part in their ultimate downfall in 1455. Those who were their vassals did not necessarily remain loyal supporters when king and earl turned against each other in 1452 and again, finally, in 1455. The "Blarmade" case is another indication of the importance of tenure and its mishandling by the earls. It can be seen too in the aftermath of the fall of the Douglas empire, as those who had survived the collapse contested what had been left behind.

We cannot say, however, that this particular story is of only legal significance, however unimportant the land in question between the parties. In fact, it shows how incomplete is our understanding of post-Douglas earldom politics – and indeed of politics before 1455. None of our main protagonists features largely or indeed at all in the standard political histories of the period. Yet each of them was vitally affected by, and played a role in, what was going on. They related not only to the earls of Douglas but also to the increasingly significant Boyds of Kilmarnock and other families close to the heart of royal government. But, despite the dangers inherent in such relationships, the Hamiltons and the Maxwells of Calderwood waxed and prospered throughout the fourteenth and fifteenth centuries, surviving the fall not only of the earls but also of the Boyds when they overreached themselves in the later 1460s.

The setback for the Maxwells of Calderwood in the 1465 case thus appears as no more than that, viewed in the overall context of the family's fortunes in the fifteenth century, and may well have been seen by them in just that light. Such a phlegmatic response to events helps to explain the means and manner of their survival and success in the complex conditions of their Scotland. Alongside that in their and other similarly placed families must go things like the survival instinct and kin solidarity displayed by such as the Hamiltons, and, in a different way, by the Maxwells as well in their care across several generations to provide not only for the heir but also for younger sons and daughters and the subsequent generations which these in turn produced. Well-judged and timely marriages, often more than one on each side of the gender divide, are also part of this kin-focused picture. But surely at least as critical was awareness, understanding and, where needed, exploitation of the law and legal process (including arbitration) by shrewd, literate and capable people not invariably disposed to violence or merely political gain. All these elements must be brought into account if we are fully to comprehend the workings of landed society in the later medieval kingdom of the Scots.

---

<sup>111</sup> For further discussion, see A Mark Godfrey, "Rethinking the Justice of the Feud in Sixteenth-Century Scotland", in Boardman and Goodare (eds), *Kings, Lords and Men*, 136–154.

## APPENDIX

**NRS, GD50/187/8, item from unnumbered bundle****Summary**<sup>112</sup>

LETTERS of TRANSUMPT by Simon de Dalgles, precentor & official general of Glasgow, narrating that at the instance of Mr Robert de Hamyltone, chancellor of Glasgow, procurator of James Hamyltone of Comysketh, he had cited by public edict affixed on the doors of the Cathedral Church of Glasgow all having interest to compear at a certain time to hear & see the three documents after-mentioned reduced to a public form of transumpt and the authority of the court interponed thereto: on which term the said procurator compeared & accused those cited and not compearing of contumacy, demanded that they should be reputed contumacious and exhibited the said documents which he demanded should be transumed, especially on account of age (vetustatem) and peril of accident & loss & other causes, when by reason of the treachery of evil men & other perils from fire water & journeys the originals cannot well be carried about: the said official & judge decerned that the persons so cited and not compearing should be reputed contumacious & that the said documents should be transumed and reduced by John Restone, priest & notary, to a public form of transumpt which should have the same faith as the originals in time coming. The documents transumed are as follows:-

I. Instrument (dated 5 February 1460<sup>113</sup>) under the hand of Alexander Leich, bachelor in decreets, presbyter of the diocese of Glasgow, notary public, narrating that Sir Robert Hammylton of Prestone, knight, as attorney for James le Hamylton of Comisketh, produced in order to be read (a) Letters of attorney of King James III (dated at Edinburgh 18 October a.r.1 – 1460) narrating that he had received James Lord Hammylton, Robert Hamylton of Prestone, knight, Alan de Hamylton, Adam de Hamilton, William de Hamilton, James de Morton of Walkynschaw, Robert Scot & Mr Robert Hammylton, rector of Monyabrock, as attornies for the said James Hamylton of Comisketh in all his affairs, & (b) Instrument under the hand of Sir John Hasty, presbyter, of the diocese of Glasgow, notary public, upon a petition of Mr Robert Hammylton, rector of Monyabrock, attorney as above, addressed to Sir John Maxwell lord of Calderwode, concerning a brieve issued furth of the royal chancery & Sir John's answer thereto as follows:- "Mr Robert de Hammylton you are a churchman & priest & you are not able to arrange this matter of heritage with me": and after the said Mr Robert's reply, he again answered, "Mr Robert I answer you as you formerly heard, so be content with my answer because I will not answer otherwise"; the said procurator then presented to John de Carmichel of that ilk a brieve from the royal chapel of King James III (dated at Edinburgh 12 January 1460<sup>114</sup>) addressed to him as sheriff of Lanark in that part, commanding him to give sasine to the said James Hamyltone of the lands of Blarmade lying in the barony of Craufurdejohn & sherifffdom foresaid, which the said Sir John Maxwell had not done though commanded by royal letters to do so; whereupon the said procurator charged Carmichael to execute the brieve, who thereupon gave sasine to Sir Robert, as procurator for James Hamyltone, at the dwelling house of Andrew Talzefer built upon the said lands by delivery of earth & stone, and as a mark of said sasine closed the door of the house upon him after he had entered therein, & thereafter constituted Patrick Bell bailie of said lands;

II. Indenture (dated at Lanark 9 February 1464<sup>115</sup>) between Sir John of Maxwell of Caddorwode, knight, & Gawane of Maxwell, his son's son, on the one part, and Jamys of Hammilton of

---

<sup>112</sup> Annotated in hand by John MacGregor at the top left of the first page: "Original lent me by A. B. Campbell W.S. He got it from his Brother in law."

<sup>113</sup>. i.e. 1461.

<sup>114</sup>. i.e. 1461.

<sup>115</sup>. i.e. 1465.

Comiskeith & Mr David Guthery of Kincaldrum thesaurer to the king, & Mr Robert of Hammilton, chancellor of Glasgu, his procurators, on the other part, whereby, on the narrative that the second party & his procurators claimed the lands of Blarmade lying in the lordship of Snar, barony of Craufurdjohn & sheriffdom of Lanark in virtue of a process of a brieve of “morteantecessory” purchased by them out of the king’s chapel & served in the justice aire of Lanark on the said 9th day of February, and defended by the first parties, they agreed to underly & fulfil the sentence & decret of John, Lord Lindesay of the Byris, Gilbert, Lord Kennedy, Wilzam of Murray of Polmays, Alexander Stewart of the Gaulston, John Schaw younger, Thomas Lowis of Mennare & George of Greenlaw, burgess of Edinburgh, who were to meet in the tollbooth of Edinburgh on Thursday 11 days after Pasche next & decide within 15 days thereafter to which of the parties the ground right of the said lands pertained:<sup>116</sup> and

III. Decreet in the form of an instrument under the hand of Richard Robertstone, presbyter, of the diocese of St Andrews, notary public, (dated at Edinburgh 8 May 1465) by the said arbiters decerning the ground right of the said lands to pertain to Hammilton.<sup>117</sup>

The transumpt was made in the consistorial place of the Cathedral Church of Glasgow on 1st June 1465 by Johne Restone above designed.

Witnesses to the Instrument transumed (No. I supra), the said John de Carmychell, Patrick de Clelande, the said Patrick Bell, bailie, James Somervil, Thomas de banachtyn, Alan de Guvan & David de Dalzel.

Witnesses to the Indenture (No. II supra), Sir George Cambell of Loudon, knight, sheriff of Are, Duncane of Dundas, David Cambell & Thomas Thomson.

Witnesses to the Decreet (No. III supra), James, Lord Hammylton, Wilzame, Lord Borthwic, Robert Colwile of that Ilk, Archbald Dundas of that Ilk, Williame of Borthwic, knight, son & apparent heir of Lord Borthwic, Alexander Lindesay of Dunrod, Patrik of Culquhone, Duncane of Dundas, Alexander Hammylton, John Moubray of Hoppringil<sup>118</sup> & Herbert of Murray.

Witnesses to the letters of transumpt, George Grahame, provost of the collegiate church of Hammylton, John Muafalde, perpetual vicar of the parish church of Kilmawris, John Restone yr. presbyter, James Waus & Robert Bronnyswalde clerk of the diocese of Glasgow.

The seal of the official of Glasgow (in good preservation) is attached. See Laing Vol. I. No. 1034

## Transcripts<sup>119</sup>

This endenture made at Lanark the nynt day of the moneth of Februare the yer of our lorde a thousande four hundredth sexti and four yheris<sup>120</sup> betwix nobil and honorabil men Schir Johnn of

116. This is the first of the two documents fully transcribed below.

117. This the second of the two documents fully transcribed below.

118. See note 131 below.

119. This is a twentieth-century transcript of the original document, which cannot now be traced (see above, 000).

While the transcript does seem to be a good attempt at mimicking the spelling of the original (including capitalisation, which however we suspect may be problematic), we cannot be sure, and our text is our best effort at representing what we have seen. Commas appear in the transcript and are reproduced here. Spaces in square brackets indicate lacunae in the transcript which may also have been in the original. In one or two places (all noted accordingly), we have replaced what appears to be the transcript wording with what is most likely to have been the original text. In other places, we have left the transcript as it stands because it may reflect the original: these we indicate with “[sic]”. Publication is by permission of the Keeper of the Records of Scotland.

Maxwell of Cadderwode knyght and Gawane of Maxwell his sone son on the ta part And Jamys of Hammyltoun of Comiskeith Master David Guthery of Kincaldrum thesaurer til our soverane lorde the King and Master Robert of Hammiltoun chancellor of Glasgu procuratoris to the said Jamys unrevocabill on the tother parte proportis contenis and beris witnes that it is appoynttyt and accordyt betwix the said partis in manner and forme as eftyr folowis that is to say as tuiching the landis of Blarmade wyth thar pertintis [*sic*] liand in the lordeschip of Snar the barony of Craufurd Johnn and wythin the S[*chi*]refdome<sup>121</sup> of Lanark clamyt be the said Jamys and his procuratoris forsaid be the processes of a brefe of morteantecessory purchest be the saide James out of our soverane lordis chapell to hawe ben folowit and servit be the said James and his procuratouris in the Justice ayr of Lanark the said ix day and defendyt be the said Sir Johnn and Gawane in forme [lacuna] as followis that is to say at bath the said partis ar oblist and be thir present lettris and the faithis in thar bodis lelely and trewly obliss thaim, the said Sir Johnn for his franktenement of the said landis of Blarmad and the said Gawane for hym and his ayris for the fee of the said landis And the said Jamys and his ayris and the said Master David and Master Robert as procuratoris for hym tuiching the grounde rycht and the propirte of the said landis of Blarmade wyth thar pertinentis at al the forsaid parteis sal undirly abide observe hald and fulfill and kepe unrevocabill but fraude or gile for thaim and thar ayris for evermor the decrete sentence ordinance and deliverance of thir lordis and personis underwrittyn that is to say Johnn Lorde Lindesay of the Byris Gilbert Lord Kennedy Wilyam of Murray of Polmays Alexander Stewart of the Gaulstoun Johnn Schaw youngar Thomas Lewis of Mennare and George of Grenlaw burges of Edinburgh and chosin evinly be the said partis be a concorde commonly, for thaim all in the said burgh of Lanark the sad day, the quhilkis lordis and personis sal god willing met in the toune of Edinburgh in the tolbutth of that ilk on the thurisday ellevyn days eftyr pasc next to cum<sup>122</sup> with continuatioun of days at nyne houris forow none And than the said lordis and personis sal tak the said mater in to thaim and be oblist and sworne that thaim sall decide finaly end and deliver the grounderycht of the said mater and that dependis tharuppoun but fraud or gile eftyr thare knowlage and cunningg as law Richt faith and gude concience will fra thaim hawe herde sene and undirstandyng the rychtis of baith the said partis And al the said partis sal bryng wyth thaim to the said day and place al chartoris evidentis munimentis and rychtis sic as thaim hawe or evir wil use in the said actione And gif it happynnis as God forbeid it do ony of the said lordis or personis to be absent in the tyme outhir be dede seknes or uthir lauchfull impediment, four of the said lordis and personis that beis thar for the tyme sal hawe full pouar for to nem and chese to thaim thre twa or ane of the said nowmer or alls mony as wantis of the nowmer of thre quhilk apoun law nor resoun sal nocht be suspect to nother of the said partis And thaim personys to be sworne in lik maner as thaim ar to deliver and ende the said mater, the quhilk mater sentence decrete and deliverance the said Jugis sal begin the said thurisday and finaly conclude decide deliver and end the said rycht wythin the date of xv days next efter folowande the said thurisday<sup>123</sup> Ande giff all the forsaid lordis and personis beis present the day of thar deliverance and sentence gevin furth in the said mater thaim sal al deliver togidder And gif it failyeis vi v or foure of the said nowmer sal hawe powar for al the said sewyn personys for to deliver and gif furth thar decrete and sentence, thaim hafande the concurrence<sup>124</sup> consent and assent of al the said sewyn persones the tyme of thar being togidder And al the said partis sal lelely and treuly but fraude or gile do al thar gud deligence and power at al the said lordis and personis be at the said day and place and tak the said mater to thaim and thair decrete sentence and deliverance to hawe the force and effect of a brefe of rycht for evermor Alsua the said partis sal mak the costis and expenssis of the said lordis and personis at thair will And gif ony of the said partis comperis nocht the said day and place nouthir be thaimself nor

---

120. i.e. 9 February 1465.

121. Correction of MacGregor's transcript.

122. Easter Day was 14 April in 1465, so the date here set down was 25 April.

123. This would have been Friday 10 May.

124. The transcript probably reads "conciencie" followed by a blank, but the context suggests that the original must have read "concurrence".

be thair procuraturis the forsaid Jugis sal procede in the said mater as<sup>125</sup> bath the partis wer present in contumace of the party absent In witness of the quhilk thingis to the part of this endenture remaning with the said James Master David and Master Robert the said Sir Johnn as set to his sele for his franctenement and be causs the said Gawane had na sele of his awyn present he has procurit with instance the sele of a nobil lorde and his derest Eme Robert Lorde Boyde to thir presentis to be put befor thir wytnes Sir George Cambell of Loudoun knycht sherrif of Are Duncane of Dundas David Cambell and Thomas Thomsoun Ande to the part of this endenture remanyng with the said Sir Johnn and Gawane the said James has set to his propir sele and for thi [lacuna] that the said Master David and Master Robert had na seillis of thair awin present thai have subscrivyt this endentur with thair awyn handis hafande the force and effect of thair seillis the day and yer and place befor writyn<sup>126</sup>

Tenor vero decreti sequitur et est talis In the naym of Gode amen We Johnn Lord Lindesay of the Biris Gilbert Lord Kennedy Wilyam of Murray of Polmays Alexander Stewart of Galstoune Johnn of Schaw yhoungare Thomas Lowis of Mannare and George of Grenlaw burgess of Edinburgh be ane assent and consent be thir partis underwryting that is to say Johnn of Maxwell of Calderwode knycht and Gawan of Maxwell his sonys sone on the ta part and Jamys of Hammyltoun of Comiskeith Master David Guthre of Kyncaldroume thesaurare til our soverane lord the Kyng and Master Robert Hammyltoun cancellare of Glasgu procuraturis unrevocabill to the said James of Hammyltone on the tother part evinly chosin be a compromissione maide in to the Justice ayre of Lanark thare beand haldyn the nynt day of Februare the yhere of Gode Jai iiii<sup>c</sup> sexti and foure<sup>127</sup> be me the Lord Kennedy forsaid Justice for that tyme to decide decerne and finally decretit to quhilk of the partis forsaid the grunde rycht of the landis of Blaremade wyth thair pertinente [*sic*] lyande in the Lordschip of Snar in the baronry of Crauford Johnn Ande Wythin the Shirefdome of Lanark rychtwysly pertinys as law Richt faith ande gude conscience will eftyr our knowlage and cunningg the said partis beande sworyn be the fathis in thare bodys before the said Lorde Justice on the said Justice ayre to stande and abyde in the said matiris and actioun and deliverance of ws forsaid And we Rycht swa beande sworne be the fathis of our bodys to deliver and decerne the grundrycht of the said landis as Rych [*sic*] faith and gud conscience will Ande we tharefore the said Johnn Lord Lindesay of the Biris Gilbert Lorde Kennedy Wilyam of Murray of Polmayss Alexander Stewart of Galstoune Johnn of Schawe yhongar Thomas of Lowis of Mennare and George of Grenlaw burges of Edinburgh The forsaid Johnn of Maxwell of Calderwode knycht for the franktenement of the said landis be hym selfe comperande and the said Gawan hys sone sone be hym selff na his procuratoris nocht comperande bot contumacily absentand hym on the ta part And the saidez Master David Guthre and Master Robert procuratores to the said James of Hammyltoun for hym on the tother part comperand The allegatioun awaymentis and resonos of bath the partis be for ws hard sene and understandyn charteris evidentis Instrumentis and othir munimentis to the sad Landis pertenyng and the cause of thaim concernyng that thai wald use for thare richtis in the said cause be fore ws schawyn sene red and undirstandyng The said partez be ws oft and mony tymis remowit and agane Incallit and the meritis and the grund of the matir and caus be ws ribly avisit and undirstandyng eftyr Law Rycht faithe gude conscience our knowlage and cunningg We hawande God be for Ee<sup>128</sup> halely be ane assent and consent decidis decernez finally decretis endis and deliveris in this wy[se]<sup>129</sup> The grund richt and al that pertenyng thare to of the forsaid Landis of Blaremad wyth thair pertinence To the forsaid James of Hammyltone of Comiskeith and his ayris to pertene and perpetually to remane in fee and heritage fore ever mor ande this till all thaim quham it afferis or may affere we mak kend be thisoure present deliverance and decrete In wytnes of the quhilk thyngis To thir present lettrez we hawe hungyn to our Selis at Edinburgh the aucht day of the moneth of Maye the yhere ofoure

125. The word “if” may possibly be needed here for sense, but is not in the transcript.

126. For ease of reading, we have inserted a line break here that is not found in the transcript.

127. i.e. 9 February 1465.

128. For this phrase meaning “having God before our eyes”, see note 100 above.

129. Correction of MacGregor’s transcript.

Lorde a thowsand four hundredth sexti and fyve<sup>130</sup> Beand present the said party and procuratouris and witht nobil men James Lorde Hammylton Wilyame Lord Borthwic Robert Colwille of that ilk Archbald Dundas of that ilk Williame of Borthwic sone ande apperand ayre of the said Lord Borthwic knycht Alexander Lindesay of Dunrod Patrik of Culquhone Duncane of Dundas Alexander Hammylton John Moubray of Hoppringil<sup>131</sup> and Herbert of Murray wytth mony othirez Sequitur subscripto notarii Et ego Ricardus Roberti presbyter Sancti Andree diocesis publicus auctoritate imperiali notarius Quia predicti decreti seu deliberationis prenom[*lacuna*] ceterisque aliis et singulis dum fit ut premittitur anno die mense pronotat [*sic*] Indictione decima tertia Pontificatus Sanctissimi in Christo patris et domini nostri domini Pauli divina providencia pape secundi anno primo Apud Edinburgh infra pretorium in domo interiore eiusdem hora sexta vel eacirca post meridiem unacum prenominat[*sic*] testibus presens inter fui eaque sic fieri et dici vidi et audivi ac in notam recepi Ideoque hoc presens publicum Instrumentum [*lacuna*] decretum iuste continent [*sic*] de mandato dictorum Judicium manu mea propria scriptum Subscripsi signoque et nomine meis solitis et consuetis unacum appensibus Sigillorum Dominorum Judicium signam Rogatus et requisitus in fidem et testimonium domini premissorum Scriptum fuit instrumentum predictum propria manu ut apparuit dicti magistri Alexander [*sic*] Leche notarii publici unacum Signo et subscriptione eiusdem Sigillabatur dicta endentura compromissionis Sigillis prefati domini Johannis Maxwell militis pro parte sua ac nobilis domini Roberti Domini Boyde pro parte dicti Gawani nepotis ut apparuit Insuper Sigillatum [*lacuna*]ma[?] arbitralis predicta Sigillis [*lacuna*] predictorum Dominorum arbitratorum ut evidenter apparuit unacum Signo et subscriptione manuali descreti viri domini Ricardi Roberti notarii publici In quorum omnium et singulorum fidem et testimonium premissorum presentes litteras sivi presente transumptum seu transumpti publicum Instrumentum ex inde fieri et per notarium publicum nostrumque scribari transumptum exemplari et in hac publicum formam redegei mandamus Sigillique nostri officii jussimus et fecimus appensione com[*lacuna*] Dat [*sic*] et act [*sic*] in ecclesia cathedrali Glasguensis loco consistoriali eiusdem die prima mensis Junii Anno incarnationis domini millesimo quadringentesimo sexagesimo quinto Indictione decimo tertio pontificatus Sanctissimi in Christo patris ac domini nostri domini Pauli divina providencia pape secundi anno primo<sup>132</sup> Presentibus ibidem Circumspectis et discretis viris dominis Georgio Grahame preposito ecclesie colegiate [*sic*] de Hammyltoun Johanne Musfalde vicario perpetuo ecclesie perochialis de Kylmawris Johanne Restone juniore presbiteris Jacobo Wauss et Roberto Brounyswalde clericis Glasguensis diocesis Cum multis aliis testibus ad premissa vocatis specialiter et Rogatis.

Notarial docquet by John Restone presbiter of the diocese of Glasgow NP.<sup>133</sup>

Seal of the officialate of Glasgow appended.<sup>134</sup>

---

130. i.e. 8 May 1465.

131. We suggest that the transcript here should have read "Barnboughe": see above, note 102.

132. i.e. 1 June 1465.

133. MacGregor's description.

134. MacGregor provides a small sketch of the seal (not reproduced here).