THE KING, COUNCIL AND COUNCILLORS IN SCOTLAND, c.1430-1460

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This thesis has been composed by me and is the result of my own work and research.

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ABSTRACT

The personal reigns of James I and James II of Scotland are in some ways similar but in others disparate. Both were active and took an interest in the affairs of their administrations; but whereas James I generally remained in the Perth-Stirling-Edinburgh triangle, his son frequently perambulated his realm. James I effectively ran the administration himself, with only a few loyal servants; James II delegated, and his circle of advisers was wider. Some of them are examined in the thesis. The accident of death as well as the policy of forfeiting nobles caused a great vacuum in Scottish politics by 1439, and the Livingston family swept in to put a stranglehold on the granting of offices and pensions. This topic is considered at some length. In 1449, the Livingstons and their followers were ousted. The final defeat of the Douglases in 1455 saw the king's power barely challenged. His authority extended into judicial matters too. The extraordinary Dundee v. Montrose boundary dispute (1432-62), considered in detail here, was not immune from his touch, even although Montrose claimed that it was a fee and heritage matter and so outside the jurisdiction of the king and council. Like his predecessors, James II did not wish his council to consider judicial business too often, but to cater for his subjects' needs he had to allow this at times. The judicial work could be exacting. It was quite possible to be a career "lawyer" in Scotland. Although the identity of only a few are known, such men were putting great pressure on the courts. The council had to battle to keep up with developments. A major force in the 1440s, it declined in the 1450s only to return with its vigour undiminished in the 1460s. Its rôle in the administration was quite secure.
ACKNOWLEDGEMENTS

After years of labour, it is not surprising that there are many, many people to whom I owe thanks for their encouragement during my work. To any I have forgotten to thank in this list, many apologies. On the academic side, there is principally my supervisor, Professor Geoffrey Barrow, who has provided constant support and help, especially when it was needed most after I took up full-time employment. I have also benefited from being able to pick the brains of Dr. Michael Lynch. Hector MacQueen has more than once been able to put me on the right track when my patchy knowledge of Scots law has caused me to trip up. I have much enjoyed the company of fellow-postgraduates in my department. While we were all engaged on our own topics, one frequently finds that someone else's specialised knowledge will save one much searching in foreign fields. David Ditchburn in particular has provided me with references to documents in foreign archives which would otherwise have been unknown to me. Those reading the bibliography carefully will see that I do not mention the recent Ph.D. thesis of Dr. Christine McGladdery (of St. Andrews) on the political history of the reign of James II. Although I occasionally met Christine, I felt it advisable to decide not to read her thesis when it became clear that she would complete before me, in the hope that we might come to different conclusions and thus provoke more interest in the period. I can genuinely say that I have no idea what Christine says in her thesis.

Since a major aim of this thesis was to provide a list of acta of James II, I owe a considerable debt to archivists and to private owners of MSS throughout the country. Serious students of medieval Scottish history cannot do anything without using the family papers
of the landed gentry and nobility. Some have chosen to deposit their family papers in local or national record offices, but others (not unreasonably) prefer to hold on to what is theirs. The private owners who have afforded me access are: The Bishop of Aberdeen (Menzies of Pitfoddes MSS), Viscount Arbuthnott, the Duke of Atholl (per Mrs. Jane Anderson, Atholl archivist), the Duke of Buccleuch and Queensberry, the Marquis of Bute, Niell Campbell of Strachur, Esq., Earl Cawdor, Sir John Clerk of Penicuik, Bt., Sir Ivar Colquhoun of Luss, Bt., the Earl of Crawford and Balcarres, the Earl of Erroll (per Mr. M. Fitzroy), Captain A.C. Farquharson of Invercauld, Malcolm Fraser of Reelig, Esq., Major J.J. Graham of Fintry, the late Earl of Haddington, the Duke of Hamilton and Brandon, Mrs. P. Hay of Duns, Baron Home of the Hirsel, James Irvine-Fortescue of Kingcausie, Esq., Mrs. G. Kinloch-Smyth of Balhary, the late Marquis of Linlithgow (per the Hopetoun Trust), the Hon. G. Maitland-Carew, the Earl of Mansfield and Mansfield, Miss Moncreiffe (per Barbour, Renton and Finlayson, Chartered Surveyors, Perth), the Earl of Moray, the National Trust for Scotland (per the Drum and Craigievar Castle representatives), the Duke of Roxburghe, the Royal Faculty of Procurators of Glasgow, South Leith Kirk Session (per Messrs. Mowat and Mackenzie), the Earl of Southesk, Miss E. Stirling of Glorat, A. Stirling of Keir, Esq., the Stirling-Maxwell of Pollok Trustees, the late Earl of Strathmore and Kinghorne, the Earl of Wemyss and March and Mrs. M. Williams (Udny Castle MSS). In a few cases, the owners preferred examination of the MSS in situ. I can only record my thanks to them for putting themselves out to accommodate me, and for lunching me regally!
Some unsuccessful searches were conducted, although it is still hoped that some day the MSS will reappear. This particularly refers to: Messrs Condie Mackenzie, the Kirkdail Writs, Maxwell-Witham of Kirkconnel MSS and Messrs. Pagan and Osborne. It cannot be emphasised too strongly that this is not a "hit-list".

I am likewise indebted to the staff of a variety of local and national record offices and libraries. In a very few instances, the searching has been carried out by post. The institutions are: Aberdeen City Archives, Aberdeen University Library, Brechin Public Library and Museum, the Ewart Library (Dumfries), Nithsdale District Archives (Dumfries Archive Centre), Dundee District Archives, Edinburgh City Archives, the Scottish Catholic Archive (Edinburgh), the National Library of Scotland, Moray District Record Office (Forres), Department of Scottish History, Glasgow University (Argyll Transcripts and Vatican material), Strathclyde Regional Archives (Glasgow), Hull University Library, Inverness Museum, the Stewartry Museum (Kirkcudbright), the British Library, the Public Record Office, London University Library, the John Rylands Library (Manchester), Montrose Museum, Angus District Council staff in the Tolbooth, Montrose, Northumberland Record Office (North Gosforth), the Bodleian Library, Perth Museum, Perth and Kinross District Archives, St. Andrews University Library, Central Region Archives (Stirling), and York Minster Library. In addition, I was afforded considerable assistance by: the Director of Libraries, Angus District Council, the Archivist, Dundee University, the Director of Legal Services, Inverness District Council, the Curator, Dick Institute, Kilmarnock and the Institute of Historical Research, London.

I have deliberately omitted from the above the Scottish Record Office. I cannot express my thanks too much to the staff there. For
a couple of years I was a permanent fixture there, and inevitably questions occurred to me with which I plagued the staff. I would certainly include in my thanks not only the curatorial staff but the repository assistants who had to cart in box after box of records for me to see. It would be unfair to single out anyone in particular, but certainly a special mention is deserved by the National Register of Archives (Scotland), who put me in touch with the various private owners of MSS in Scotland. I am proud that very soon I shall be able to call the staff there my colleagues. So much research into Scottish history would be the poorer if the SRO did not exist.

Speaking of colleagues reminds me of the debt of gratitude I have incurred to my present boss, George Dixon of Central Region Archives. He tried his best to encourage me whenever I was flagging, and knew to treat me carefully if I tried to insist to searchers that they would be bound to find their ancestors if they would only look at the 1451 (sic) census! I am naturally sad to be leaving the employment of the Region after 2½ happy years, but will always recall those years with pleasure.

I also am aware of debts owed to those who very kindly put me up for a few nights when I was on my travels in search of MSS. I was particularly fortunate in having a string of friends and relations in the south whom I could rely on in this respect: my sister and brother-in-law, Katherine and Dick Arnott; my uncle and aunt, John and Pamela Orton; friends from undergraduate days, Paul and Liz Millward and Dave and Clare Edwards; and friends of the family, Gwyneth and John Chalmers. Travelling is always easier when you can be sure of accommodation for the night. I would also like to thank
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Permission to print transcripts of various documents in this thesis was granted by the Director of Libraries, Angus District Council; the keeper of the Muniments, St. Andrews University Library; Baron Home of the Hirsel; and the Archivist, Dundee District Archives. Appendix G is a reprint of an article which used material found during my research which was not central to this thesis but which has illuminated a couple of topics: A. Borthwick and H. L. MacQueen, 'Three Fifteenth Century Cases', *Juridical Review* (1986), 123-51. It is reprinted with the permission of W. Green and Sons, Ltd., and the approval of Dr. MacQueen.

My final vote of thanks is easily the most significant of them all. When I was unsuccessful with my application for a state postgraduate scholarship, my parents agreed to subsidise me instead since it was something I particularly wanted to do. As it happened, they were not called upon to make such a sacrifice, as I obtained at the last minute a Vans Dunlop scholarship awarded by the Arts Faculty. My parents continued to support me in other respects, through thick and thin, up until I obtained my own salary and flat, since when they have tolerated happily my using the family home as a sort of hotel. I am only too aware that completion of this thesis, let alone a post in my chosen career, would have been quite impossible without their support.
Last but not least, a word about the Montrose archives. For the period I was studying, they were without parallel in Scotland, and I could see that students of later periods would not be wasting their time there if they made use of them. Yet they are almost unknown. This is not the town's fault. It is indicative more of the poor provision of local record offices in Scotland until recent years and of a dearth of serious research into the Scottish past.

As I burrowed deeper and deeper into the records, my view on how I might write my thesis changed quite dramatically. Chapter 7 indicates what there is to be found there.

Even more remarkable is the fact that we are lucky to have so much now surviving. A hundred years ago or so, the H.M.C. did visit the town and John Stuart compiled a favourable report on the records. Although the town did care especially for its important burgh charters, it seems to have thought less of the more miscellaneous items. Fortunately for posterity, in stepped Mr. J.G. Low. An antiquarian rather than a historian, and with very fixed views on certain aspects of Montrose's history, in my view the present richness of the town archive is really his monument. He had the endearing habit of "talking" to the volumes in which he made his copious notes. From this we learn that John Stuart (of the H.M.C.) made his favourable report despite spending "three days in a dark damp hole of a room". Things had not improved by Low's time (he was active from the end of the nineteenth century up to World War II), as he writes: "It is a cold job working in this damp smelly room with hundreds of deeds connected and handled by those who had the [?plague] - many of the oldest deeds are worm-eaten...".

We learn also that the town decided to send some of the "valuable
papers, charters etc. ... to the Police Office, George St. - for care" (the proposal in recent years to send Argyll and Bute District Archives "to jail" thus has a precedent!). "Many of the rubbish papers was (sic) sent to 'The Ragstore' Baltic Street (Mrs. Duke) and I bought lots of the most valuable ones...".

Mr. Low was certainly an inveterate grumbler, but a final quotation from him certainly struck a chord with me, in respect of my years of searching all over the place: "... oh its a hopeless task to get them all copied and inserted as they are in a piteous state of decay and fragile state"!
LIST OF ABBREVIATED TITLES

In general, the abbreviated titles used in this thesis are those as recommended in SHR xiii (1963), Supplement, i-xxxii. The following abbreviations are only those not quoted in that list.

ACA: Aberdeen City Archives.

Asloan MS: The Asloan manuscript. A miscellany in prose and verse, written by John Asloan in the reign of James the Fifth (ed. W.A. Craigie; Scottish Text Society, n.s. vols. xiv, xvi; Edinburgh, 1923, 1925).

AUL: Aberdeen University Library.


BL: British Library.


CRA: Stirling, Central Region Archives.

DDA: Dundee District Archives.


EGR: City of Edinburgh District Council Archives.

EHR: English Historical Review.

EUL: Edinburgh University Library.


HMC: Historical Manuscripts Commission (printed reports, cited by number and appendix).


Macdougall, James III: N. Macdougall, James III: A Political Study (Edinburgh, 1982).


NRA(S): National Register of Archives (Scotland).

PKDA: Perth and Kinross District Archives.


Reid, 'Douglases': W.S. Reid, 'The Douglases at the Court of James I of Scotland', Juridical Review lvi (1944), 77-88.


SRA: Glasgow: Strathclyde Regional Archives.

SRO: Edinburgh: Scottish Record Office.

StAUL: St. Andrews University Library.
Stevenson, Wars: Letters and Papers Illustrative of the Wars of the English in France during the Reign of Henry the Sixth, King of England (ed. J. Stevenson; Rolls Series, no. xxii; London, 1861).


CHAPTER ONE

INTRODUCTION

An examination of the role of the king's council in the administration of the realm during the reign of James II is hampered primarily by a lack of consistent record of its activities.* There does not now exist a series such as the Acta Dominorum Concilii or Acta Dominorum Auditorum, which permitted Dr. Trevor Chalmers to make a significant contribution to the understanding of late medieval administration in his doctoral thesis. These series, wrongly split by Thomas Thomson in the early nineteenth century, provide a good picture of the work and personnel of an important part of the work of the king's council, its judicial business. Dr. Chalmers was able to use the sederunts recorded here to build up a picture of the changing nature of the judicial council in the reigns of James III and IV.

No such source exists for the reign of James II. That said, we are certainly not denied any knowledge of the judicial activities of the council in this earlier period. Use must be made instead of extracts, usually issued under the quarter seal, which record decisions reached by the council. Essentially, such extracts provide us with much the same information as found in the consistent record: a sederunt, a statement of the parties in the action and any decision reached. It would be wrong to use these

* Footnotes will be found at the end of the chapter to which they refer. There are deliberately few footnotes to this chapter, as most of the matters discussed here will be picked up later elsewhere.
sederunts in the way Dr. Chalmers was able to, however. His analysis included tables of occurrences of individuals as councillors, with percentages. We have so few extracts that to provide similar statistics would be meaningless.

Despite the paucity of extant decrees, it would be wrong to write off such an interesting record entirely. The make-up of each sederunt can still be analysed, naturally making extensive use of other records, in an effort to determine the type of person who would appear on the judicial council. It might be possible, too, to discover whether the council were packed with supporters of one side or another or not, or perhaps whether the difficulty of the matter under consideration led to a higher number of councillors present or not. In addition, there is the matter of legislation affecting the make-up of the judicial council passed in the reigns of James I and II. Can the proposed changes be seen to have had the desired effect? The nature of the dispute might also be of interest, but harder to examine. Nevertheless, it is clear that such an approach will be useful. Some of the disputes aired look on the surface fairly pedestrian, but yield to a little prodding in other sources and turn out to be extraordinary affairs. Most remarkable of all is the long-running dispute between Montrose and Dundee, although it could hardly be said that it was an uninteresting one on the face of it. An argument effectively about the rights of trading freely in a particular area would be bound to affect both burghs immensely. Perhaps, in this case, the most remarkable thing is not the
extraordinary extent of documentation that we have (over forty
documents directly relating to the dispute are known), but that
it took thirty years to settle: and then counting only from
the first document we have clearly recording trouble, whereas
we could possibly extend the dispute by at least six years.

A source available to both Dr. Chalmers and us which could
be used to provide tables of daily councillors is the *Registrum
Magni Sigilli*, which in its present form is incomplete. In his
thesis, Chalmers discussed quite fully the background to and the
sources for what he styled the king's daily council. This body
was one which was generally present when the requests for Crown
patronage were made. It included usually a number of the major
officials, such as the keeper of the privy seal, the secretary
and perhaps the treasurer, who could provide information from
their records concerning the subject of the request. Laymen
predominated generally; the clerics who were there would be
officials. There might (in the later fifteenth century) be
between eight and ten men on this body. Their identity is
revealed by the witness lists to Crown charters recorded in the
above source. Such lists can be used in this respect, as the
composition of the body can be shown to change: some regular
attenders might be appointed ambassadors, for example, and they
therefore disappear from the witness lists for a period. Naturally,
it was a body of men who were interested in royal administration;
there were many lords who (for a variety of reasons) were keener to
remain on their own estates.
Chalmers's views on the daily council seem quite reasonable, and underpin the discussion of the political council which forms the first half of this thesis. The size of the daily council differed at times from that found by him, but essentially it had the same basic task: the oversight of patronage. It need not be doubted that such a body did exist in the reigns of James I and II. Royal patronage was a significant aspect of the administration of the realm, and no king could govern without dispensing some.

Dr. Chalmers did indeed make use of the Great Seal to make much comment on changes in political fortune. Such an approach has been considered here, but rejected. While accepting that Dr. Chalmers did not always have a consistent record to hand, and that he did not spend a long time searching through the Scottish Record Office (or elsewhere) to plug the gaps, which has been done here, the holes in the reign of James II are still greater than at the later period. Particular periods could be elucidated in this way; but it might be risky reading too much into any such tables. A particular problem in this respect is the periods into which such tables would have to be split. While the search for additional acta issued by the king has been remarkably fruitful, we would still have to split the reign into three units of concentrated study: namely, 1439-40; 1450-52; and 1458-59.

A case could be made for regarding each of these periods as particularly valuable. 1439-40 is the time when the Livingstons and the Crichtons came to the fore, and we might hope that a detailed study would throw light on the way they had managed to drag their allies into power with them. 1450-52 is immediately
after the fall of the Livingstons, and here we might hope to find evidence of how the political community adjusted to such a traumatic event. 1458-59 is perhaps the time when the king's own power was barely fettered. A comparison of occurrences as witnesses here with what can be put together for the preceding years might indicate the extent to which the king was a free agent, and could pick his own councillors.

The case for such an approach is certainly strong. Here, however, we do not wish to carry out a detailed analysis of the politics of the period which produced such changes, but we will certainly comment on the number of appearances as witnesses to royal charters made by particular individuals. Rather, we wish to comment on the network of friendships erected by those most often at court, to determine if they influenced the course of business. It is an approach which will make much greater use of biographical detail than found in Dr. Chalmers's thesis, for example. It will be more towards the approach found in Dr. Kelham's thesis, although not being nearly so restricted as it was in its approach to three particular magnates.

We hope to be able to study the range of contacts of the major personalities on the council. This approach will, it is hoped, show if those who apparently wielded greatest power in the council were able to use their position at court to influence the king's patronage, most especially by securing fees or offices for their friends or relations. As a test case, the author attempted to analyse the dealings of the Livingstons of Callendar and related branches, largely in the period 1439-49, with
considerable success. It was quite evident (as will be seen in due course) that the Livingstons of Callendar were able to instal friends and relations in positions of authority, and obtain pensions for some too, despite being in a position of authority for ten years at most. Admittedly, that such results should appear is not altogether surprising. Scottish politics at that time tend to be seen as a battle for supremacy between the earls of Douglas, the Crichtons and the Livingstons. Each suffered in some respects in the minority of James II (it is worth recalling one Earl of Douglas was judicially murdered, and lord Crichton was put to the horn), but the most dramatic fall from grace seems to have been that of the Livingstons in 1449. The passage of the Auchinleck Chronicle on the latter event, remarking on how all whom the Livingstons had put in office were ousted, has often been noted. But there has appeared in print no analysis of what the Livingstons had obtained for their friends and relations, and if this were all lost in 1449-50. This test showed the comments of the (often unreliable) Chronicle to be true. We wish, then, to extend this study to take in others, and not simply to elucidate what the Crichtons or earls of Douglas might have obtained for their followers during this same period and later.

Such an approach will permit us to comment on a recent assertion of Dr. Grant, that in Scotland the localities were relatively immune from changes in the central administration. This, he contends, contributed to a more stable political atmosphere
in Scotland, as against (say) England. This view is part of what might be called the current orthodoxy, namely, that the Crown was happy to allow the magnates to deal with local affairs, and interfered only rarely. What upset there was usually took place in court circles. Involvement in central administration was restricted to those who had an interest in such matters.

A contention, then, that the fall of a particular family plus followers from grace had an effect on office-holding instantly brings us into conflict with the contention that local politics were insulated from events at the centre. Inevitably, if some men profited from another's fall, the effect of this would surely be felt in the main area of local power of the victim. In the case of outright forfeiture of property, surely there could be no other result? Admittedly, in the case of the Livingstons, the forfeiture was annulled within three years, permitting them to reclaim the family estates; but it is more notable how after the fall the families affected were generally quiescent, if we can fairly judge from an almost total lack of record of them in the remaining years of the reign of James II. Once bitten, twice shy seems an appropriate epithet in such circumstances.

While we may question the view that events at court barely touched local politics, it would be unwise to assert that the entire realm was changed as a result of even such a calamitous fall as that of the Livingstons. A strong point in favour of Dr. Grant's view is that the office of sheriff was not liable to annual changes, such as did happen in England, which
could inevitably lead to efforts to influence the awarding of the office. Within the main period of study here, we are aware that in the majority of sheriffdoms the office of sheriff continued in the same hands, unchanged. On the other hand, it can be shown that in nine sheriffdoms the office did change hands. Our case is surely bolstered by the fact that of these nine two were diverted to Livingstons, and a third to a Livingston follower. There is evidence to show that the events of 1449-50 caused another upheaval in these same sheriffdoms. That the Crichtons can be shown to be involved in two or three of the others is no less interesting. It further suggests that the approach of analysing the power of the main councillors by looking at their affinities is worth following.

By a study of the affinities of some of the councillors, and their rôle (if any) in central administration, we hope to find evidence of the relationship between the Crown and the local communities. Recent work has veered away from seeing late medieval Scottish politics as dominated by a feuding nobility and a Crown so weakened by minorities that it could be dictated to by a powerful clique. The stress now is on co-operation: government was almost by consent — although the nobility recognised that anything other than a monarchy was not possible.

Despite the idea of a partnership between the Crown and the magnates, it can only really be said that previous authors have been unable to talk at length about the rôle of more than a few magnates in the routine affairs of the government of James II.
Here, we hope to rectify the picture somewhat, by attempting to discuss the activities of those who are seldom mentioned, but who are clearly not nonentities. One such is Patrick, 1st lord Glamis. Even in Dunlop's Bishop Kennedy he rates only a couple of references, while other authors have barely mentioned him at all. But surely a man who witnessed over 230 royal charters in the period 1441-1458, almost all in the 1450s, must have had some importance? About half of these charters he witnessed as master of the king's household. This total is about a quarter of the number of charters issued during the reign which are now extant. We must, to some extent, be wary of calling someone like him an "arriviste", in the manner of the Livingstons or the Crichtons, say. Patrick's grandfather was the first member of the family to shoot to fame, during the reign of Robert II. It appears the family declined in status in the first half of the fifteenth century, but nevertheless there was a history of service to the Crown behind lord Glamis.

Apart from commenting on what almost could be termed "the great unknowns" in this way, we hope to throw light more generally on the activities of the baronial classes in the administration. It may be suggested that one reason why the activities of some barons are quite unknown at this period is the complete lack of sederunts at parliaments and general councils in the reigns of James I and II. This is indeed a major handicap. Lacking such evidence, one has to hope that they will appear as royal charter witnesses at times when parliament or general council was sitting if one is to see them as playing any rôle in the administration.
Examination of the charter witnesses in the first half of the reign of James II at times of known assemblies produces on the whole no "bulge". For this reason, it is perhaps easy to write off the odd appearance here and there of particular barons as being little more than an indication of a presence because of a troublesome matter being discussed.

If, however, we are prepared to suspend temporarily a willing sense of disbelief, we might extend our bounds of searching for documents issued at a time of an assembly to include those apparently dealing with titles to minor estates transacted between private persons but dated at the time and place where the assembly was meeting. This, it is suggested, will prove to be of considerable value. With careful study it is surprising quite how many such documents can be discovered. Frequently, one obtains therefrom a lengthy set of witnesses; and it is reasonable to assume that the persons named there were at that place at that particular time because of the assembly. Evidence will be adduced later to support this contention. Admittedly, when the assembly was at Edinburgh, it is quite likely that one would find documents which concern purely local matters, and would probably have been issued at that time and place regardless of any assembly. It would be unwise perhaps to include witnesses to such transactions (often minor personages, even in a local context) as having been present at the assembly. But it would seem quite wrong to exclude all such documents from the reckoning for this reason. We frequently find that persons named in
transactions at times of assemblies are far from their natural base. It is an obvious conclusion that they had come to transact important business, and what more important than to attend council or parliament?

The reverse of an argument such as this is that perhaps we can also find evidence of major figures clearly being absent from major assemblies, because documents referring to their presence are issued many miles from where the assembly was taking place. This is certainly more difficult to show; but there can hardly be a more pathetic case than that of George Dunbar of Kilconquhar, and a document he issued at Kilconquhar on 4 August 1455. At Edinburgh at that time a parliament was considering the permanent annexation to the Crown of a quantity of land in order that the king could live of his own. In addition, with the Douglases now defeated and forfeited, measures were taken to ensure that any person in the future who aided the Douglases would himself be forfeited; indeed, one statute suggests that some people were in fact forfeited on this occasion. Such an assembly was surely one which Dunbar might have been expected to attend; for he was none other than the forfeited Earl of March, as his seal (still attached) shows, now apparently doing little but seeing out his days. While it could be argued that he was not present at the parliament because of his reluctance to acquiesce in further measures against another of the older magnate families, we might no less wonder if this is a sign of his being yesterday's man, no longer of any consequence in the realm. Time-share developments came 500 years too late to rescue him, it seems!
Such a study will indicate, it is hoped, the extent of political involvement amongst the greater and lesser barons of the realm by their very presence at assemblies of the Three Estates. It might be wondered if the factional politics of the troubled minority years brought a reduction in numbers attending such assemblies, as there might have been a reluctance on the part of some to become involved in the squabbles of others. If it is possible to pick out a reduction of this sort, it may be important to consider if it is not a carry-over from the reign of James I, and so not necessarily a development. The years of James I's personal rule seem to have been a period of administration by only a few politically-minded men who were prepared to accept the tight control exercised by the king. Indeed, it could be suggested that the confusion caused by the murder of James I brought a greater number of barons into the limelight, as it was determined to seek what might now be called consensus politics. It is a moot point if this move were successful or not.

One conclusion of the thesis as a whole can be stated firmly: that, however wide the net might have been cast, the administration was carried out at a high level by those who can be shown to be associated with one another in various ways, and who often tried to introduce their own acquaintances into the circle of government. Such connections certainly present problems to a thesis of this sort. If it is hoped to show that the connections produced antagonisms between groups of people on occasion, it is necessary to try to be consistent in the argument, but studies of the affinities can be particularly troublesome in
this respect. Small barons can sometimes be shown to be associated with more than one leading figure. The problem then is to try to discern who was their major patron, and, perhaps, if they tried to play one off against another. Examples of this trait might include the Cranstons of that ilk (patrons being either the earls of Douglas or the Crichtons), and James Parkley of that ilk (again the earls of Douglas were involved, but with the Livingstons and Douglasses of Dalkeith also concerned). A related issue is of course the unanswerable problem of deciding if a particular man would have made his own way into government circles without the help of one patron or another. We are tempted to conclude that it would be hard for an unattached man to make any progress in such circles without a benevolent patron.

Not everyone would become a regular councillor, or gain sufficient foothold to receive patronage. While wary of stating that disappointed office-seekers would be working against those who did hold power, and thus there would arise constant bickering, it must be accepted that for some the holding of office was unlikely because they had enemies, or lacked allies, at court. This would certainly be a blow to those who did seek a foothold in administrative circles; but as we lack completely any domestic correspondence for the period, we will always be on unsure ground if it is argued that there were many who did not seek any post in central government. Some undoubtedly can be found more often than not dealing with matters on their own estates. Often it would be sheer distance which prevented them from being on the council, unless the king should happen to visit their area of predominance.
It may be too that there were others who were reluctant to become involved in government as they had disputes with the king. The earls of Douglas in their later years are an example of this.

The judicial council was not immune from the problems posed to the political or daily council by the need to distribute patronage. While the council would only in the reign of James III have to organise itself in such a way that it could easily deal with causes, it was already showing signs of development from a purely ad hoc body dealing with causes as and when they occurred. At this stage, it probably still hoped to find a way of settling disputes elsewhere, in particular by boosting the authority and jurisdiction of the session. Despite this, the judicial council was still required to deal with a variety of complex disputes. Use of ancillary documents often brings it home how troublesome matters could be for the council. The Dundee v. Montrose dispute has already been briefly noted, but it would be a mistake to think that all causes heard by the council admitted of an easy solution.

It is almost axiomatic that if there is a dispute which needs a settlement one party will be unhappy with the way the settlement was reached. The decrees made by the judicial council (and even the threat of their action) were no exception to this, and evidence can readily be produced indicating that the council and its officials were the target of criticism from disappointed litigants. Inevitably, if a litigant was unhappy with what the council had done or would do, then we will be aware of this, as the litigant would take out a notarial instrument recording his
dissatisfaction. This may disguise the fact that many disputes were in fact settled without bother. Despite the criticism, it is evident that the council was accepted as a forum where some disputes could be aired. The political and the judicial council overlapped considerably in terms of personnel, as one might expect. The officials and some of the more regular royal charter witnesses amongst the baronage generally made up the sederunt, but a not insignificant number were men of a different calibre: if not practised judges, then at least experienced men with more than a inkling of legal affairs. The council could only benefit from their presence. It may be suggested that the seeds of the later professional judiciary were now being sown.


4. APS, ii, 42 c.2.
CHAPTER TWO

PREPARING THE SCENE: THE POLITICAL COUNCIL c.1424-c.1439

(i): Introduction

The unfortunate habit of Scottish kings in the fifteenth century dying prematurely means that to study them it is invariably necessary to turn one's attention to the last few years of the previous reign, and also to look forward a few years too into the following reign. In this way, one hopes to discover what the prevailing conditions were which would dictate the young king's upbringing and perhaps his way of reacting to affairs when he himself was an adult. One would also hope to discover what legacy he left to his successor. This need not, however, necessarily lead to a blow-by-blow account of all this elongated period. One rather wishes simply to pick up some feature of which echoes might later be found.

It is not the intention to study the period from roughly 1430-1460 by means of examining all the various twists in political fortune which affected the administration of the realm. This more narrative approach has already been used by Balfour-Melville, Dunlop and Macdougall,¹ to some effect. Their essential aim was to provide a biographical study of their subject: inevitably this led to describing in some detail the events which affected their subjects' lives. Students today might not wish to accord such a prominent role to Bishop Kennedy as Dr. Dunlop did,² but, as the title of her biography implies, she wished to illustrate the times in which her subject lived as well as to try to determine his influence on the course of events. Such an outcome is inevitable
given the often patchy state of the records even as late as the mid-fifteenth century. That said, her biography will remain a volume of extreme value, as she was able to use such a variety of sources to illustrate her points.

Although we do not wish to examine in depth all the political incidents in the section of this thesis dealing with the political council, nevertheless our study of the council and the councillors is bound to be underpinned by the basic course of events. It will be necessary then first of all to comment on the period in general before turning to a more detailed study of the council.

Any new student of the reign of James I is confronted instantly with the same problem as previous scholars: how to explain adequately the assassination of the king. The identical problem confronts students of the reign of James III. It is indeed fortunate that we are not faced with the need to try to give a similar explanation for the death of James II, which looks as if it can only have been one of those unfortunate accidents against which it is impossible to legislate. Not so with the death of his father. In this thesis, however, the manner of his death and the reasons for it do not have overwhelming importance. It certainly led James II to have a quite different upbringing from the one which would have occurred had his father died a few years later of natural causes. Thus the death of his father is almost more important here in that it happened suddenly while the heir to the throne was a minor. There was no prospect at all of the young king immediately stepping into his father's shoes and following a similar policy. Indeed,
it is highly likely that the young king had no grasp of what was happening in the country as a whole, as he was only six and a half years old.

James I is usually seen as a king who took an exceptional, personal interest in the machinery of government. The frequent gatherings of parliament or general council had to deal with a good deal of legislation, as we learn from the various collections of statutes made then and later. It is indeed common for later collections of statutes to begin what was regarded as modern law with the statutes of James I, which tends to heighten the impression of a fresh start being made when James returned from his English captivity in 1424.

Modern writers have often tended to assert that James I was the driving force behind such change. Nicholson writes:

"... James's greatest source of strength was his own powerful personality and the moral support he drew from a people that longed for firm rule; the king who showed that he could oppress the mighty could prevent the mighty from oppressing the weak". 3

Again:

"... none of James's predecessors or successors was so committed as he was, persistently, determinedly and emotionally, to pursuing the common weal". 4

One senses that James I is a hero for Nicholson; but later one finds:

"Lacking any personal involvement in government the faceless men who served him felt no commitment to his ideals, and some of them longed to display their own clashing individualities as soon as he was removed from the scene. James's only apparent partner in government had been the three estates". 5

He later describes the king as "totalitarian", with a "royal authority that was sometimes cantankerous and vindictive". 6
It is he who also comments that the nobles not involved in planning the king's assassination probably heaved a collective sigh of relief at the news of the murder, even though they participated in the search for the assassins. Nicholson's adulation is thus tempered by thoughts of the king's policy perhaps being dictated by what he thought was right, but not appreciating that the country he was ruling was in some respect different from that in which he had spent a substantial part of his years of increasing maturity.

Balfour Melville also would see James I as a man who made his own policy:

"James, more than his immediate predecessors or successors, formulated and pursued his own policy with the aid of servants, who were little more than willing, if able, tools".

This was despite the king increasing the number of officials capable of giving advice. Although the post of steward of the king's household disappears, it was replaced apparently by that of master of the king's household. In addition, although the significance of the office of chamberlain seems to have diminished, two new posts concerned with financial affairs made their first appearance: the treasurer and the comptroller.

One could well imagine the reign being one where there was a great deal of tension between the Crown and the nobility. After all, the king had arrested some significant members of the nobility within months of returning to Scotland; and the reign ended apparently in an earl plotting to kill the king, and being executed for his part in the affair. The list of magnates arrested is certainly quite remarkable. In 1424, those to suffer were Walter Stewart, eldest of the three
surviving sons of Murdoch Duke of Albany; Malcolm Fleming of Cumbernauld; and Thomas Boyd of Kilmarnock the younger.  

Later in the year, it was the turn of Sir Robert Graham, younger son of Sir Patrick Graham of Kincardine, and Duncan, Earl of Lennox. During the parliament of March 1425, the Duke of Albany, his wife Isabella, their third surviving son Alexander, Sir John Montgomery and Alan Otterburn, the duke's secretary, had also been arrested. Two months later, this group was tried in a continued session of that parliament, and the Duke, his sons Walter and Alexander, and the Earl of Lennox were all executed. The Lord of the Isles especially, and the northern chiefs generally, suffered spectacularly in 1428-29. The king ventured north, where he seems to have intended to hold a major assembly (this may have been a stratagem to ensure the various chiefs walked peacefully into his trap). The assembly did not take place, but in turn the northern men had to yield to the power of the Scottish Crown. A significant part of this process on behalf of the northerners was to seek a remission of rancour from the king - but it was a remission granted on the king's terms.

The texts of two remissions are known to us (it is quite possible that others were issued, but have now been lost). The first, dated 4 August 1428 and issued at Inverness, is in favour of George Munro and twenty-seven others, apparently in the usual terms, but with a significant clause at the end. It reads: "Let this remission pass as long as the aforesaid persons live west or north of the water of Nairn, as in the treaty made at Inverness and they shall not be under our arrest". Such additional clauses after the full text of the document has been
written are unusual. It is suggested that we should see this clause as having been added by the king, and indeed quite possibly written by him.

The second remission does not run in the standard form, and also has an additional clause. Here, Dominic Grogych and twenty-five others gain remission for their withdrawal from Inverness made against the king's will, and for "congregatio" made against statutes of the king's parliament. The additional clause here reads: "Let this proceed as long as the said persons are of true societas and comitiva of Angus and Malcolm McIntosh, and are not under our arrest".14

The Lord of the Isles suffered no less than the other northerners. In August 1429 he had to appear in abject humiliation before the king at Holyrood to receive his pardon.15 It is hardly surprising to find that Nicholson considers James I's Highland policy a failure. It was one based more on cowing the northerners, than on coming to terms with them.16

Further arrests took place in 1431, one of those now arrested, quite remarkably, being the Earl of Douglas. Late that year, it appears that he and the Lord of the Isles again were released from captivity at the queen's request. It is not clear why they were arrested in the first place. Another man, John Kennedy of Cassillis, was also arrested that year, and only escaped abroad in 1434.17

If, by these actions, James was creating enemies, he was also finding other means of causing enmity. He had been released in 1424 partly on condition that he paid a ransom of 60,000 marks. As guarantors for this sum, members of the Scots baronage had to agree to act as hostages until the sum was paid over. Partly
because it appears that the full amount of the ransom was never paid, those sent south as hostages had to be prepared for a long stay. Not unsurprisingly, some died while in the south. According to Balfour-Melville's table of the hostages, no fewer than sixteen died away from home. Although there is no evidence of hatred for the king because of this (one of the problems caused by the lack of domestic correspondence for this century), it would not be surprising if this caused upset. That said, it is a little strange that the taxation aimed at furthering the release of those unfortunate enough to be imprisoned should be unpopular.

The hostage issue was not the only potential flash-point between the Crown and the nobility. James II is often criticised for not rewarding his magnates enough for their services. If this is the case, then it was something he learned from his father. Apart from the forfeitures levied on the Duke of Albany and the Earl of Lennox as a result of their executions, the Earl of March similarly lost his patrimony when he was forfeited by parliament in January 1435. The Earl of Strathearn found his earldom withdrawn, and received instead the earldom of Menteith, but one not of its traditional extent. In addition, he was packed off south as a hostage, not returning until as late as 1453.

In addition to the forfeitures, the king was hardly lavish in making gifts to other members of the baronage. A study of the surviving acta of the king shows that hardly any outright gifts were made to anyone. Most of the charters granted were of confirmations, or those where one party resigned land to the Crown and another received it instead. It is likely this type of
transaction was initiated by the parties concerned, and not by
the Crown, which simply acted to rubber-stamp the arrangement.
One of the king's first actions on his return was to pass a
statute to the effect that the only pensions which would
henceforth be payable by the custumars and other financial
accountants were those inspected by the Crown and found
acceptable. Balfour-Melville estimates that just before
James returned in 1424 about £700 a year was expended on pensions
(out of a revenue of £2,827. 18s. 6½d), whereas in the year after
the act referred to this sum was down to £136. 16s. 4d. While
£600 (in new currency) was paid out in 1434-35 in pensions, most
of this went either to the queen or was in the form of short-term
payments.

If is added to the potential trouble-makers a portion of
the clergy, some of whom were undoubtedly vexed by the king's
attitude to the Church (he wished to rid the realm of barratry
and may have risked being excommunicated for his general
attitude to the Church), it may be seen that James could
easily have built up a substantial body of enemies. Indeed,
had it come to a pitched battle in a civil war which ended in
the death of the king, perhaps the temptation would be to line
up the enemies much as can be done with James III, and conclude
that his only supporters were the favourites: those who witnessed
his charters most often, plus those interested in the arts (James
I was a poet; and he expended considerable sums on rebuilding
Linlithgow after a disastrous fire in 1424).

Whatever the causes of the king's death, the end came with
dramatic suddenness. While staying at the Dominican monastery
in Perth during a general council, the king was attacked late at night on 21 February 1437 and murdered. It is clear no such attack on him was expected. No help was at hand, and there was no escape from a determined band of marauders.

It is clear that the murder was a tremendous shock for the realm, and very frightening for the administration. The very first surviving document of the reign of James II is a privy seal letter addressed to the alderman, bailies and community of the burgh of Perth, commanding them to fortify the burgh with walls, ditches, etc., for "resisting of the feloune traitours that horribly has murthered oure progenitoure of ful noble mynde quham God assoilze". Those implicated in the murder were hunted down, and themselves executed in savage reprisals. The executed included Walter, Earl of Atholl, the king's uncle; it has often been thought he himself aimed at taking the throne, or at the very least being regent during the lengthy minority of James II which would ensue. It was the queen mother, however, who first took on this rôle.

The patchy state of the extant official records has always made it hard for historians to determine quite what was going on in the last few years of the reign of James I, and in the first half of his son's reign. The Register of the Great Seal is entirely lacking between 1432 and 1439, and largely from late 1441 to late 1449. The Exchequer Rolls have gaps in the early 1430s, although (by Scottish standards) there is a reasonable run of accounts in the 1440s. There is certainly some legislation from parliaments and general councils, but it is a source which has to be used carefully. For example, the act of 1428 by which James I apparently wished to erect a
Scottish House of Commons makes splendid reading, but there is no evidence at all that anything resulted from it. 33

This is an important point, because the scene for the minority of James II was obviously being set in the latter years of James I. If that period is in some respects ill-recorded, then it is hardly surprising that the events of subsequent years are often hard to decode as well.

What is known to have occurred, however, is that the 5th Earl of Douglas was appointed lieutenant-general, and that the administration had to set about coping (for the first time since the reign of David II) with a king who was a minor and resident in the country. This they did none too well. Dunlop wrote:

"Where there had been a masterful sovereign bent on reducing all his subjects to obedience under the King's law, faction again raised its head, bringing in its wake anarchy and desolation. Rank individualism and the disintegrating forces of feudalism once more came into their own in the hapless land whose King was a child". 34

That is rather an extreme view, which today would not find much favour. There is a greater desire now to see co-operation between the Crown and the nobility as the keynote. Lacking a civil service, the Crown relied on the nobility to carry out its tasks away from the centre. The nobility in turn recognised that co-operation with the Crown in this way would bring rewards, whereas disaffection would not. 35

If there were such hopes of continuing partnership during the minority of James II (one, indeed, where the nobility would act in harmony to govern for the common good), they were soon dashed. Douglas, the lieutenant general, died in June 1439; a significant loss, partly because his heir was only 14 or 15. 36 Not only that,
but the queen mother lost control of the young king, when he was seized by the Livingston family and taken to Stirling. This remarkable act, although settled by an "Appoyntment" at a general council in September 1439, was to set the scene for the coming ten years.

Far from the administration now being run for the common good, it is thought that it was being run to benefit any one of three factions: that of the Crichtons, headed by William, later first lord Crichton, the chancellor, based in Edinburgh; the Livingstons, headed by Sir Alexander Livingston of Callendar, whose area of dominance was east Stirlingshire; and the earls of Douglas, who (thanks to acquisitions in past years) could claim bases in both the Lowlands and the Highlands.

Of the three factions, the Livingstons were foremost. They were possibly implicated in the judicial murder of the young Earl of Douglas and of Fleming of Cumbernauld in November 1440. They do not seem to have discouraged the attempted arrest of Crichton in 1444, and the siege of Edinburgh Castle just before the parliament of June the following year. Although Crichton quickly returned to prominence, he would be despatched in May 1448 to forward negotiations concerning the king's marriage, despite holding the important post of chancellor. With the earls of Douglas suffering problems over succession to the estates, consequent on the execution in November 1440 of an earl who had no heirs of his body, the Livingstons' rivals could be seen to be faced with difficulties. The field was then set for that family to establish itself in the nooks and crannies of the administration. Their lack of administrative experience seems not to have counted against them.
It was not only the troubles besetting their obvious rivals which opened the door for the Livingstons. It is surely doubtful whether they would have been able to move in in the way they did had the higher nobility in Scotland in the late 1430s been stronger and more numerous. That it was not is in part due to the policies of James I (the various forfeitures and executions referred to earlier), and in part to the simple fact of life and death. Following the death of the Earl of Atholl for his part in the assassination of James I, only these earls remained: Douglas, Ross, Orkney, Crawford, Angus, Menteith and Sutherland. Of these, Ross had only apparently been recognised as such shortly before the death of James I, but was most unlikely to play a constructive role in the administration. The Earl of Orkney, although a Scottish landowner, owed his title to the kings of Norway. The Earls of Crawford were not often found at court. The Earls of Sutherland and Menteith were hostages for James I in England.

Naturally, the earls were not the only potential members of the king's council, one which might take over the administration while the king grew up. But the evidence of the witnesses to James I's charters suggests not many of the baronage were frequent attenders at court. Of those appearing more than most, Crichton, Forrester of Corstorphine and Ogilvy of Lintrathen were obvious candidates for continuing service. It would take more than that for the administration to continue to operate. Naturally, the clergy would continue to perform their tasks as well. As we shall see later, the problem was more serious than the brief outline here implies.

When, to cap it all, the king was so young, the ship of state
would need careful handling if it were to remain stable. As for the king himself, we are only occasionally aware of his presence in the first half of his reign. A document in the Home muniments summarised by Fraser in his Historical Manuscripts Commission report thereon led to thoughts that his majority had been declared in 1444, probably to suit the Douglas/Livingston alliance. But notice of his activities thereafter before his marriage in 1449 is not common. Certainly, in the period with which we are concerned at present, the king's role was not significant.

(ii): The Reign of James I

In attempting to determine the role of the king's council in the reign of James I, we are faced with a major problem: the sheer paucity of references to that body, whether in a judicial or a political sense. The reign of James II positively abounds with information in comparison. While part of the problem is undoubtedly that we are witnessing a period when records only gradually become more available, nevertheless there must remain a feeling that perhaps the council was not crucial to the administration of James I. No charter is said to have been granted with the advice of the council. In the first half of the reign of James II, we frequently find such a statement being made, as we shall see later. It may well be a mark of that king reaching his majority that it was no longer necessary to use such a phrase in charters, as we can find barely any reference to the council thereafter in this type of record. The point here is that the references to the council in charters granted in the early years
of his son's reign would suggest that the council did exist before (as one would expect). It was simply the case that the fact of its advice was not recorded.

A major determinant for us settling on the personnel of the council must therefore be charter witness lists. Only two men witness charters steadily throughout the reign, Sir John Forrester of Corstorphine and Sir Walter Ogilvy of Lintrathen. There are a number of others, however, who are frequently witnesses, and who may therefore be reckoned members of the king's daily council: William, Bishop of Glasgow (before his death in mid-1426); Sir Robert Lauder of the Bass; Mr. John Cameron, later Bishop of Glasgow; Mr. William Foulis; Mr. Thomas Myrton; Mr. John Winchester; Mr. Richard Craig; and Sir William Crichton of that ilk. One thing links all these men: they each held some post in the administration. It is undoubtedly the case that it was the very fact of their holding a post which made them charter witnesses. These, then, were the men who formed the basis of James I's daily council.

Such a list might be thought to contain a few surprises. With the exception of the Bishop of Glasgow, there is not a bishop in sight amongst this group. Was the king's policy towards the Church upsetting the major clergy too much for them to wish to be associated with him? There is not one earl. One must certainly take issue with Reid's remark in his article on the Douglas influence in the reign of James I, where he asserts that "The Earl himself was also present at frequent intervals at least until 1432". It is much more realistic to say the Earl was absent for long intervals in between occasional appearances.
Is it likely that this summary of the frequent charter witnesses in the reign of James I gives a true picture of the composition of his council? There must, unfortunately, be a little uncertainty about whether or not we have obtained a genuine picture of the daily council by the occurrences of the frequent witnesses to charters. There is one privy seal warrant for a charter, 20 May 1429, which instructs the chancellor to prepare a charter of confirmation with as witnesses "testibus consuetis". This warrant is the only one of four known for the reign which has any reference as to what should appear in the testing clause.

The charter resulting from this warrant certainly does show what could be styled "the usual witnesses". The implication behind this is that the witness list is not a good indicator of who was present at court at the time when it was determined to issue the charter of confirmation. One source which will often help to determine the names of those present at court when the decision was made to grant a charter is denied us for this period: that is, instruments of resignation. It looks quite possible, however, that it is not necessarily a case of our lacking such documents for this period, but rather they did not exist in the first place. Such instruments are relatively common in the reign of James II, although there are few in the minority period. It is probable that there was felt as yet no need for this type of document.

If we wish to obtain an idea of those regularly at court at this period, we would really have to rely on the witness lists to royal charters, and to any notarial instrument which records action carried out either before or by the king. As stated
before, the instrument of resignation does not exist, it seems, in the active reign of James I. There are strangely few other instruments recording action carried out by the king, or before him. To all intents and purposes, therefore, the list of daily councillors above is probably the best we can supply.

Just as it is not possible to add to the list of the daily councillors from a range of other Crown-centred documents, it is also impossible to add substantially to the list by picking out other magnates who were commonly in the vicinity of the Court, to judge from their appearances as witnesses to private transactions. Here the problem is more lack of consistent evidence, rather than necessarily that there were no others. It is certainly possible to find individual barons in the vicinity of the court every so often, but not frequently enough to merit their inclusion in the list of daily councillors.

Nevertheless, there are some barons who ought to be added because when we are aware of their presence they are either at court or performing a task on behalf of the administration. Thomas Somerville of Carnwath is an obvious candidate. He has the air of a man who was a councillor largely because he was judged to have some legal ability. Another is Sir James Douglas of Balvenie, later 7th Earl of Douglas. Neither of these two witnessed more than a few royal charters, but still deserve to be regarded as part of the administration. Each held offices, Somerville being justiciar, and Douglas being sheriff of Lanark.

Men like Sir Walter Haliburton of Dirleton can usually be found involved in official duties (such as being an auditor of causes) at times of parliament or general council, but we find them so infrequently
otherwise that it might be wrong to include them amongst a group of even occasional councillors.

It must be borne in mind that the list just given of daily councillors does not mean that all named were present throughout the reign. Sir Robert Lauder, for example, makes regular appearances as a witness of charters between 1424 and 1428, but only occasionally thereafter. Crichton first witnesses in March 1429: he can only be seen as a councillor from then onwards at earliest. Mr. Richard Craig first appears in October 1431 (it is likely, in any case, that he was only a minor functionary). Winchester appears first in December 1429; Foulis in September 1426. Even Cameron, later Bishop of Glasgow and chancellor, has to be ruled out of consideration for a long period, because he was acting on behalf of the Crown at the Council of Basle.

It is clear, therefore, that the daily council of James I was composed of only a small group of men, who owed their position to their tenure of office. The officials who could normally be expected to be daily councillors were the chancellor, the chamberlain, the treasurer and the keeper of the privy seal. It is possible the master of the king's household can be added, not simply because Crichton held this office. Ogilvy of Lintrathen appears occasionally in this guise before Crichton obtained the post.

This group, seen as individuals, shared two things in common. First of all, they had links with the earls of Douglas. These links were the subject of an article by Stanford Reid, so it is not a discovery to be able to say this. Secondly, on the whole,
they were still alive at the end of February 1437, which would be important for the new administration.

Reid suggests that the basis for the Douglas domination was laid during the Albany governorship. At this time, "... the House of Douglas seems to have held a position only second to that of the regents themselves". Not content with this alone, Douglas seems to have been able to cultivate links with James I even while he was in England. Reid refutes the suggestion that James would have wished to take revenge on Douglas on his return, perhaps for his part in the murder of the Duke of Rothesay, the king's brother. The death of the 4th Earl, at Verneuil, would in any case have prevented any vengeance.

Thereafter, it is argued, the 5th Earl of Douglas was able to influence the king's actions by having plenty of men allied to him by ties of blood, marriage, or feudal bonds present at major events, such as the Coronation, or the trial of the Albany faction. In addition, those holding major offices were similarly tied to the earl of Douglas. John Cameron, Bishop of Glasgow from 1426, was foremost in this respect. Having been secretary, he was appointed chancellor soon after the death of the previous incumbent, William Lauder, also Bishop of Glasgow.

Allowing for the difficulties facing the author, this account of the significance of the earls of Douglas is quite persuasive. Certainly, the men whom we picked out as being probably the most prominent of James I's officials are included amongst the men Reid was discussing. But it is important to realise that the Douglas influence was effected, if at all, by others. It was not based on the Earl's own presence at court, on the whole.
On only twelve occasions during the reign did the Earl witness royal charters. As far as can be told, he was not a regular attender of general council or parliament: his presence can be attested only at assemblies in March 1426; March 1428; April 1429; October 1429; March 1430; March 1432 and March 1433. From the place-dates of his own charters, it looks as if he must also have been at court in December, 1431; April, 1436; and December, 1425. By far the greater quantity of his own acta were issued while he was at his own estates, whether at Bothwell, Edibredschelis, Newark, Lochmaben or Wigtown. Most certainly, the court was not being over-awed by his presence; it looks more likely that he was content (as apparently were most barons) to reside on his own estates.

Reid asserts in addition that the privy council was manned by Douglas adherents, citing a document of 1424. While it is certainly true that those named in this document (and indeed in another action heard before the council in the same year) were largely Douglas men, it is important to appreciate on how few occasions we are able to glimpse the council at work, at least insofar as documents which specifically refer to it are concerned. These two documents of 1424 are the only ones known to this author which mention more than a couple of councillors when the council was undertaking judicial business. Indeed, there are remarkably few documents which inform us of the judicial activities of the council between 1424 and 1437.

The paucity of references to large groups of councillors after the first year or so after the king's return arises, it is
suggested, because the administration was dependent on the king, as other secondary authorities have asserted. Although the magnates might turn up for general council or parliament, it seems as if in other circumstances they were not involved in the administration, except in a few cases. We are heavily dependent on royal documents to supply us with information on political affairs at this period. Only a small body of men is regularly referred to therein. When we do come across other documents which clearly display some of this body at work, we are not also supplied with the names of other magnates in such quantities as to suggest that the royal documents are badly understating the number of magnates involved in the administration. On the occasions when we find references to other magnates, it is either at their estates, or at best at court while parliament or general council was sitting.

It would certainly be wrong to discount the fact of Douglas influence, especially as a similar method of estimating influence will be used here with regard to the Livingstons in the reign of James II. Douglas's appointment as lieutenant-general soon after the death of James I was a recognition that, if the queen mother were not strong enough to exercise control, then the Earl of Douglas was an obvious choice as the strong man to try to combine the forces which would lead to a sensible administration. A question such as: "Would the Livingstons have been able to take control if the 5th Earl of Douglas had lived on for another 10 years?" is unanswerable. It is hard to imagine that the takeover would have been accomplished so effectively, however.
The second linking factor is that almost all were still alive in 1437, and could surely therefore be expected to provide a solid basis for the new administration, headed by the lieutenant-general. Each of the post-holders had been in office for a number of years, so their collective experience of government might be expected to ease things as the new regime recovered from the traumatic blow of the king's murder. Yet after barely two years this group was a declining force, and a previously-unheralded family was on the point of taking the first steps towards asserting overall authority. Why was this possible?

A significant reason is the removal by death of a remarkable number of major political figures. In the case of magnates, by no means all the heirs were of age to assume any role in political affairs. Dr. Grant has recently argued persuasively that compared to other countries the general pattern of extinction amongst the Scottish magnate class after 1375 was significantly low. This pattern of survival cannot, of course, legislate against a series of deaths within a short space of time. This topic deserves fuller examination, as the accounts of the families involved in Scots Peerage and elsewhere do not give a true picture, as evidence now available shows.

Looking first of all at those picked out as the regular councillors, Crichton, Forrester, Foulis, Winchester (now Bishop of Moray), Craig and Cameron (Bishop of Glasgow) were all still alive. The additional men we picked out, Somerville and Douglas of Balvenie, were also still alive. The only one of this extended group who was apparently dead was Sir Robert Lauder
of the Bass. As already suggested, this shows that the new regime had an excellent basis for continuing to operate on the same lines as before, while allowing that the important figure was no longer present.

Even Lauder's death has been doubted. It is often difficult to settle on dates of death for major magnates even as late as this. But with the Lauder family we encounter an absolute minefield. A few accounts of the family exist, one of which is very vague (as its title implies), whereas another at least gives authorities and so its conclusions can be checked. They turn out to be very doubtful. For example, the author apparently ignores a definite statement that William Lauder, Bishop of Glasgow, was the son and heir of a Robert Lauder, and relegates him to third in his genealogical table. It is, admittedly, unusual to find a son and heir as a clergyman, especially one who advanced so highly.

The crux of the problem seems to be that there were at least two Robert Lauders alive at about the same time. It appears that the man styled Lauder of the Bass or Lauder of Edrington was one and the same, but that it was not necessarily he who was father of the Bishop of Glasgow. This Robert Lauder apparently died in or about 1436, in which year three of his four grand-daughters were served heir to him in the lands of Auldcathy. We can be sure that it was the Lauders of Edrington who held Auldcathy from documents elsewhere. A major remaining problem is that there continued to be Lauders of Edrington and the Bass, the Christian name "Robert" being
standard for the apparent head of the line. It is hard to fit this continuing existence of the family into a scheme where a service to three grand-daughters would be possible. The answer may be that the main estates were entailed to male heirs, and so could not fall to daughters of the eldest son who had predeceased his father. 73

We cannot be sure quite when Sir Robert Lauder died. The last known reference to him is in October 1431, as an auditor of causes in parliament. 74 His death was significant, however, as he had held the post of justiciar as well as being sheriff of Lothian and keeper of Edinburgh Castle. He was certainly replaced as justiciar before his death, whereas he may have continued to hold the other posts until his death. 75

Lauder is thus the first of many who will be found dying at this time. Elsewhere amongst the baronage, it is clear that James Hamilton of Cadzow was dead, also in or about 1436. The service of the grand-daughters of Sir Robert Lauder proceeds on a Crown brieve simply because the barony of Kinneil, of which the lands of Auldcathy were part, was in ward. 76 The Hamiltons were barons of Kinneil. 77

Sir John Lyon, Lord of Glamis, is thought to have died about 1435. 78 Gilbert Hay, the son and heir apparent of Sir William Hay of Errol, died apparently on 7 September 1436, while his father was still alive. 79 James Edmondston of that ilk may only recently have come of age after a number of years tutory. 80

This tally is not particularly impressive, of course. Lauder is the only significant figure from this group. But
if we extend our search a few years, and look for those who died in the last years of the 1430s, the result is more interesting. It is important, of course, to take into account too, the losses amongst the bishops.

Not all those who died about this time left heirs who were minors. Stephen Crichton of Cairns, for example, who must have died c.1436, left a son and heir, George, who was clearly of age, as he was sheriff of Linlithgow. 81 Andrew Gray of Broxmouth seems to have died by February 1440 (and possibly by mid-1439), but his son and heir Andrew had already featured as a witness to transactions. 82 Alexander, Earl of Crawford, who died before 8 September 1439, was succeeded by his son and heir David, who was apparently of age c.1425. 83 William, son and heir of Thomas Somerville of Carnwath had already witnessed a number of private charters before his father's death c.1440. 84 John Ogilvy of Lintrathen, who had succeeded his father Walter by January 1439, may have been born c.1402. 85 George Campbell of Loudoun (whose father Hugh had died at some unknown time before 1438) was old enough to act as a commissioner of the Earl of Douglas to hear a petition concerning land which had been recognized in 1438. 86

Some barons were succeeded by sons who were probably minors. The son and heir of Sir Thomas Boyd of Kilmarnock, who died in July 1439, is a strong candidate. If the account of the family in Scots Peerage is correct, Robert Boyd was the fourth generation of the family in the first half of the fifteenth century. It is hard to imagine that he could have been of age, even though he seems to have been
able to kill a man in a fight in May 1445. 87

William, 6th Earl of Douglas may have been only about fifteen years old when his father died in June 1439. This may not have been quite such a blow as it would be in modern times: the young Earl was able to attend the general council of September 1439. 88 It seems to have been expected of noblemen in medieval times that they took part in political affairs at a much younger age than would be the case now. William, 2nd Earl of Angus died in late 1437. Having apparently come of age only c.1418, he would not have been very old by this stage (nor, indeed, would his son and heir James have been either). 89 While William had not led a very active life politically, his death was a loss: a man who had led the Scots forces at Piperden in September 1435 was of some standing in the country. 90

The death of William Hay of Errol in late 1437 meant that he was succeeded by his grandson, also William. His lands were quite clearly in ward for a few years, so there was no prospect of his playing any role in the early years of the minority administration. 91

Most importantly, we find that not only the baronage was subject to enforced change of personnel at this time. Henry Lichton, Bishop of Aberdeen since 1422, died at the end of 1440. 92 Robert Cardeny, Bishop of Dunkeld since 1398, died early in 1437. His successor, James Kennedy, was not an experienced clergyman at all, but had royal connections in his favour. He only lasted three years in Dunkeld before the death of Henry Wardlaw, Bishop of St. Andrews since 1403, saw him promoted there. Kennedy's
successor at Dunkeld lasted only six months, dying without being consecrated. Although the Bishop of Ross might be thought to have less significance in a political context, John Bullock, then Bishop, had attended the general council of September 1439, shortly before his death. The death of the Bishop of the Isles also seems to have occurred about now.

These were major losses. When account is also taken of the great stress the Church was undergoing at the time, resulting in alternative presentations to some of these sees by antipopes, one can readily appreciate that the administration was facing more trouble than it would have wished so soon after the murder of the king.

The difference that these deaths made can be illustrated in other ways than simply tabulating them as above. One of the four extended lists of those attending parliament or general council in the reign of James I is provided by a judgement in the case Margaret, lady of Cragy against Philip Mowbray concerning the lands of Leuchold in the barony of Dalmeny given in the parliament of March 1430. The judgement lists twenty-three men styled "lords of parliament" (comprising seven bishops, six earls and ten barons), and the chancellor was also present. The opinion of each of these men was canvassed. Ten years on, of those named, the following were dead: the Bishops of Dunkeld, Aberdeen and of the Isles; the Earls of Atholl, Douglas, Mar, Caithness, Angus and Crawford; plus, of the barons, Hay of Errol and Somerville. The lords of Gordon and of Dalkeith would not live much longer.
A review of this nature shows just what gaps there were amongst the politically-aware men in Scotland in the early years of the reign of James II. It may cause less surprise, then, that the Livingstons were able to move in and take such a quantity of available posts, with allies of the Crichtons perhaps also able to make some headway. With this in mind, we may now be able to appreciate more some of Bower's remarks about life in Scotland during the minority years. He clearly sees James I as a hero, and is most distraught at his death. While we may suspect that some of Bower's disenchantment with the following years stems from the problems caused by schism within the Church, he does not go so far as to say that it was this which caused other unrest. His comments suggest that people attending courts turned up bearing arms, and that the realm lacked now the benefits brought by peace and tranquility. One of Bower's main concerns was a lack of respect for law and order, which resulted in the powerful thinking little of protecting the weak. He looked forward to the day when James II could begin properly to assert his own authority.\textsuperscript{97} Bower was writing towards the end of the 1440s, but if there was trouble of the type he suggests in Scotland then, it was surely caused partly by the lack of leadership which arose from the series of deaths at the end of the 1430s.

It would be fair to ask how there could be a lack of leadership when the majority of the officials of James I were still alive to provide a solid basis for the future. One reason seems to be that not all of the politically-interested barons pulled their weight. A good example is Thomas Somerville of Carnwath.
Thomas Somerville really seems to have been an important cog in James I's government. It is by no means easy to find him as a witness of royal charters, but his service was given elsewhere, most significantly in the legal field. He acted as a councillor in judicial business, and was also an auditor of causes in parliament. He gave long service as a justiciar as well, being appointed in 1428 (apparently to replace Sir Robert Lauder), and certainly continuing to act until 1435 in this capacity. It looks likely that his replacement in this office was the Earl of Avandale. As a man probably in his late 60s on the death of James I, he may well have become too infirm to continue any of his duties. It is noteworthy that with one exception we are only aware that he remained alive in the late 1430s by the fact of his son and heir William being so described in witness-lists to various private charters.

The author of the eccentric Memorie of the Somervilles considered that Thomas Somerville was content to spend the majority of his life on his own estates before his death in December 1434, paying little heed to Somerville's activities in public affairs. It is accepted that there are only limited times when Somerville can be found at court, yet his career suggests a man whom the post-1437 administration could use. Since he actually died about 1440, his career in this respect would certainly have been of limited duration, but it was an able servant who was lost.

Another death robbed the administration of the treasurer, Sir Walter Ogilvy of Lintrathen. It can be hard working out
quite who was in this post in the reign of James I, but it must be possible that he was treasurer at the death of the king. He was certainly treasurer by June 1437. He was a more regular witness of royal charters before 1437 than Somerville, although he must have spent a substantial part of 1436 in France, where he was despatched with the king's daughter Margaret, future wife of Louis XI. Like Somerville, he was a councillor in judicial business, but there is no evidence for him being an auditor. He profited from his loyal service to the king. He had a licence to build Airlie Castle, as well as obtaining a grant of land in the earldom of Menteith on another's resignation. In addition to being treasurer, he was for a period master of the king's household. In short, his career was typical of the trusted servants of James I; but he was removed by death from the political scene, perhaps as early as 25 June 1438, when another is found holding his last post of treasurer. It is likely he was about 60 when he died.

To balance these deaths of important administrators some new figures appear. Sir Walter Haliburton of Dirleton was one, becoming treasurer on (probably) 25 June 1438. He was a man who had been on the fringes of the administration for a number of years, as his frequent appearance as an auditor attests. There is no sign of his having had any interest in financial affairs before his appointment, however. He had witnessed two charters of James I only. It is likely he was appointed to fill the post by the influence of the Earl of Douglas.

Another who appears to have taken on a more significant role is James Douglas, Earl of Avandale, despite what by then must
have been a considerable age. His first accretion of authority was to obtain the title Earl of Avandale, for in the reign of James I he had simply been James Douglas of Balvenie or of Abercorn. It is reasonable to suppose the title was created for him in early 1437. He was also appointed justiciar, probably succeeding Somerville, a post he may have held until his death. At the same time he seems to have been sheriff of Lanark. His appearances as royal charter witness before 1437 usually just coincide with parliaments or general councils, but he was sufficiently in favour with the king to obtain confirmations of his tenure, or grants on another's resignation. He appears as one of what is probably the council in May 1438, when there was a complaint raised about a spuilzie in the lordship of Nithsdale. He was also one of those despatched to confer with the Lord of the Isles in Bute early in the reign, on business unknown, but involving a powerful group of men. The Scots Peerage's remark about him, that "he does not appear largely in public affairs after 1438, one reason no doubt being increasing corpulence, which in his case is said to have been excessive", is apparently wide of the mark.

The aim of this rapid survey of politics in the 1420s and 1430s has been to show that by 1439 the kingdom was bereft of substantial political figures. In this respect, 1439 was perhaps the more crucial year than 1437. Further deaths after the death of James I and before the Livingstons' seizure of power had increased the vacuum in the administration. Up until June 1439 the 5th Earl of Douglas
was probably the most significant figure (apart from the queen mother) in the administration. No doubt he had assisted in the elevation of his uncle James Douglas of Balvenie to the title Earl of Avandale within weeks of the murder of James I. There is no reason to suppose that the Douglas interest would necessarily be harmful to the Crown interests during the minority. What would follow need not be taken as a pointer to what had preceded. Douglas was certainly associated with the majority of the powerful political figures who remained, but his influence may well have been benign rather than harmful. Occasions such as his grant in 1434 of a charter in favour of the Charterhouse monastery near Perth over land in Sprouston (Roxburghshire) which was witnessed by three bishops, two earls, Douglas of Balvenie, the sheriff of Roxburghshire and three squires are an indication of his place in the realm. Magnates and bishops expected to be associated with him, but events would show they were quite capable of following their own line of action.
CHAPTER TWO: FOOTNOTES

1. Balfour-Melville, James I; Dunlop, Kennedy; Macdougall, James III.


4. Ibid., 305.

5. Ibid., 313.

6. Ibid., 317.

7. Ibid., 325.


10. Ibid., 243.

11. Ibid., 243, 245. For Alexander as third surviving son, see Ibid., 352, note to lines 3-4.

12. Ibid., 259, 261; Chron. Pluscarden, ii, 283. Balfour-Melville argued that the parliament did not take place: James I, App. B.


14. Family of Rose, 126-27. Regrettably it has been impossible to find the original MS of this remission (it ought to be in SRO: GD 125), as it would have been useful to have been able to compare the handwriting of the additional clause in this document with that in the document previously cited.


17. Chron. Bower, viii, 263; Chron. Pluscarden, ii, 284. A legal opinion of the early 1460s shows that Kennedy died still under sentence of forfeiture, which had repercussions as far as his heir's land tenure was concerned (NLS: Ch.16,632). It is suggested that this apparently hitherto unknown fact will need to be taken into account in future discussions of the rise of the Kennedy family in later years, because the Kennedys were a significant family. James Kennedy, Bishop of St. Andrews 1440-65, was a brother of this John Kennedy, as well as of Gilbert Kennedy of Dunure, later 1st lord Kennedy. Their mother, Mary, was a daughter of Robert III (SP, iii, 448-49).


20. APS, ii, 23.


22. APS, ii, 4.


24. To say that he risked excommunication is perhaps a little strong, but there was much parading of interests on both sides. See e.g. R.K. Hannay, 'James I, Bishop Cameron, and the Papacy', SHR, xv (1918), 190-200; St. Andrews Copiale, xli-liv. A modern interpretation of the period is D.E.R. Watt, 'The Papacy and Scotland in the Fifteenth Century', in R.B. Dobson (ed.), Church, Politics and Patronage in the Fifteenth Century (Gloucester, 1984), 115-32.

25. Macdougall, James III, esp. chap. xi.


27. Ibid., 301, 303, 329.

28. PKDA: B 59/24/13/1.


31. RMS, ii, s.d.

32. ER, iv, v.

33. APS, ii, 15.

34. Dunlop, Kennedy, 20-21.


36. SP, iii, 170.
50.

37. APS, ii, 54-55. The original MS of this is now SRO: SP 13/16. Although it is usually on display in West Register House, it was possible to check the text against that printed in APS, and it was found that the printed text was quite sound. While in this thesis MS versions examined by the author are usually cited in preference to any printed texts, here the printed text will always be cited henceforth because of the difficulty surrounding examination of the MS.

38. Dunlop, Kennedy, esp. chap. i.

39. Ibid., 33-34; cf. NLS: Ch. 15,557.


41. SRO: SP 7/14.

42. SP, iii, 171-72.

43. Lords of the Isles Acta, lxvi-lxvii. The Earl of Ross was also the Lord of the Isles.


45. Balfour-Melville, James I, App. D.

46. HMC, xii, App. viii, Home no. 85. For comment thereon, see e.g. Macdougall, James III, 12; Nicholson, Later Middle Ages, 339-40. For further comment on this document, see below, pp. 189-91.

47. Watt, Fasti, 148.

48. Reid, 'Douglases', 85.

49. SRO: RH6/278.

50. RMS, ii, no. 121 (26/5/1429).

51. RMS, iii, no. 1928. It may be wrong to regard Crichton as a regular councillor from precisely here onwards, as this was a major charter (in favour of the new Charterhouse monastery at Perth), and the witness list (of twenty-five, with others unnamed) is easily the largest in the reign.

52. SRO: GD 20/1/192.

53. RMS, ii, no. 138.

54. Ibid., no. 60.

55. J.H. Burns, Scottish Churchmen and the Council of Basle (Glasgow, 1962), 16-17.

In RMS will be found a run of charters of James I, by no means /
55. means complete, between 1424 and early 1432. The comments contd on the regular witnesses are based on these charters and a series of unregistered acta. As the reign of James I has not been exhaustively analysed here, there seemed no need to provide a list of acta of James I as well as for James II, but since there is a gap between the end of RMS for the reign and the death of James I it seems advisable to note the witnessed charters only of James I in that period which have been used in preparing this chapter. They are as follows:

1432: AUL: MS 3043 Bundle 59; Glasgow University (Scottish History Dept.) Argyll Transcripts vol. 21 s. d. 20/3/1432; SRO: GD 1/19/3; SRO: GD 55/546; SRO: GD 55/521; SRO: GD 16/3/12; SRO: GD 16/3/140; SRO: GD 125/2 s. d. 30/5/1432; SRO: GD 185/2/1/1; NRA(S) 336 Broun-Lindsay of Colstoun, Special Inventory no. 7; SRA: TD 1029 2/1; SRO: GD 137/320; Glas. Univ. (Scot. Hist. Dept.) Argyll Transcripts vol. 21 s. d. 4/11/1432.

1433: SRO: GD 16/6/3; SRO: GD 33/11/1; Lennoxlove (Hamilton MSS) Bundle 22; SRO: GD 44/12/10/3; NLS: Acc. 6803 1/1/2; EUL: J.M. Thomson photos no. 54; SRO: GD 1/1042/3.


1435: SRO: GD 124/1/136; SRO: GD 50/186/1/3; SRO: GD 212/18 s. d. 2/6/1439; SRO: GD 6/591; SRO: B 34/20/1; SRO: GD 163/1/1/3.


56. Reid, 'Douglases'. This article does not provide detailed analysis, partly because war-time restrictions meant that not all sources were available to the author.

57. Ibid., 78.

58. Ibid., 80.

59. Ibid., 81-85.

60. In chronological order: RMS, ii, no. 11; RMS, iii, no. 1928; RMS, ii, nos. 127-30, 134, 142, 152; AUL: MS 3043 Bundle 59; RMS, ii, nos. 199, 200.

61. By respectively: RMS, ii, no. 84; SRO: GD 224/876/29; RMS, iii, no. 1928; RMS, ii, no. 134; APS, ii, 28; RMS, ii, no. 199; APS, vii, 139.

62. Respectively: SRO: GD 212, Notebook 6, Inventory of Condie Charters no. 11; SRO: GD 86/11; RMS, ii, no. 58.
Bothwell: NLS: Ch. 16,011; Lennoxlove (Hamilton MSS) Bundles 452 and 22; Floors (Roxburgh MSS) Bundle 702 (HMC 39); Fraser, Douglas, iii, nos. 383, 385. Edibredschelis: NLS: Acc. 7750 1/3; Hirsel (Home MSS) Box 92/3; Floors (Roxburgh MSS) Bundles 703 (HMC 46, 47) and 702 (HMC 41). Newark: Floors (Roxburgh MSS) Bundle 702 (HMC 41). Lochmaben; SRO: GD 207/5/6. Wigtown: SRO: CD 72/2. All these charters are dated between 1424 and 1437.

SRO: CD 119/167.

Paisley Registrum, 70.


Ibid., Pedigree: sheet 1 (after p. 54) and cf. 27, 29.

Cf. Watt, Graduates, 331.

Hirsel (Home MSS) Box 3 bundle 16 (HMC 60).

Hopetoun MSS (Marquess of Linlithgow) Bundle 2614.

The tailzie of the main estates is in RMS, ii, no. 29. Auldcathy was held of the Hamiltons and may have been subject to a different entail: Hopetoun MSS (Marquess of Linlithgow) Bundle 2614.

StAUL: B 65/22/27. We may be quite sure that he had died before 1442, however, by a dispensation dated 22/7/1442 for Robert Lauder of Bass and Janet, daughter of Alexander Hume, knight, to marry, despite being related in the second and third degrees (CPL, ix, 249, noted briefly in CSSR, iv, no. 885). Janet was Hume's daughter by his marriage with Marion Lauder, daughter of John Lauder, who in turn was Sir Robert Lauder's son (SP, ix, 107). If the Robert Lauder in 1442 were identical with this Sir Robert Lauder (as is necessarily the case if one does not kill one off c. 1436), then a man would be marrying his own great-granddaughter.

He was last paid as keeper of Edinburgh Castle in the account from March 1430 to May 1431 (ER, iv, 541). Crichton was first paid as captain of Edinburgh Castle in the account of May 1433 to June 1434 (ibid., 573). There are no accounts in the intervening years. Lauder was still sheriff of Lothian 2/7/1430 (NLS: Ch. 17,077). Crichton also succeeded him here (ER, iv, 607). For Lauder as justiciar, see MacQueen, Ph.D. thesis, 327.
53.

76. Hirsel (Home MSS) Box 3 bundle 16 (HMC 60).


78. SP, viii, 270.

79. SP, iii, 563 (with corrections at ix, 85).

80. RMS, ii, no. 61; Dunfermline Registrum, no. 405.

81. SP, iii, 323-25; ER, v, 22.

82. SP, iv, 272-73. Darnaway (Moray: Kinfauns MSS) Box 1 bundle 1 no. 7 (not seen) suggests Andrew Gray senior was dead by 29/6/1439. SP, iv, 274 shows that the son married in 1418.

83. SP, iii, 17-18.

84. The date of the father's death is very hard to ascertain, but it must have occurred c.1440, when his son witnessed a charter of James, 7th Earl of Douglas as William, lord of Somerville (HMC, xi App. vi, no. 131). An example of a charter witnessed by William before his father's death is SRO: GD 211/3/551 (10/11/1437).


86. EUL: Laing Charters no. 117. Accidentally omitted from this section were the Leslies of that ilk. David Leslie of that ilk died in March 1439, to be succeeded in turn by his "cousin" Norman Leslie of Pythkill, who died early the following year and was succeeded by his son George (later the 1st Earl of Rothes), who was born c.1417 (SP, vii, 269-73).

87. SP, vi, 140-42.

88. SP, iii, 170; APS, ii, 54-55.

89. Hirsel (Home MSS) Box 92/2; SP, i, 174-75.

90. As a royal charter witness: RMS, ii, nos. 127, 130, 134, 152. In 1434 he was sent with two others to take Dunbar Castle into the king's hands (Chron. Bower, viii, 291). At Piperden: ibid., 293, 295.

91. The death had clearly occurred by 12/6/1437: St. Andrews Copiale, no. 91. The ward is indicated there, and also in ER, v, 91, 109-11.

92. Watt, Fasti, 3.

93. Ibid., 97-98, 295; Dunlop, Kennedy, 18-20, 39-41.

94. APS, ii, 54-55; Watt, Fasti, 268.
95. Ibid., 203.
96. APS, ii, 28.
98. Charters he is known to have witnessed are: SRO: GD 157/368 p. 10 (30/5/1424); RMS, ii, nos. 15-17 (4/2/1425), nos. 38-40 (7/3/1426), no. 45 (24/4/1426).
99. As councillor: SRO: GD 119/167 (28/11/1424); Paisley Registrum, 70 (30/12/1424). As auditor: StAUL: B 65/22/27 (20/10/1431); APS, ii, 23 (10/1/1435). In addition, he can be found rendering advice to the auditors in March 1432 (DDA: TC/CC 1/27).
100. He appears first Melrose Liber, ii, no. 525 (early 1428). He is subsequently named as justiciar in documents of 25/9/1430 (SRO: B 30/21/11/1); 4/11/1430 (AUL: MS 1160/18/9, f. 1r-v; printed in App. G of this thesis as part of the article by the present author and a colleague there reproduced); 10/3/1432 (DDA: TC/CC/1/27); 13/10/1434 (EUL: Laing Charters no. 113); 29/1/1435 (SRO: B 58, Peebles Charters box 1 no. 11). Avandale, his successor, was the former James Douglas of Balvenie. For him as justiciar, see App. C of this thesis, s.v. Justiciar.
101. SP, viii, 7.
102. SRO: GD 17/1 (a charter he issued 13/6/1438).
103. James, lord Somerville, Memorie of the Somervilles: Being a History of the Baronial House of Somerville (Edinburgh, 1815), i, 173-76. All dates given in at least the fifteenth century portion of this book must be taken with a pinch of salt.
104. For comment on the date of Somerville's death, see no. 84 above.
108. SRO: GD 16/1/1; GD 16/3/12.
109. He was master of household 11/12/1430 (PRO: E.39 4(7a)). He was apparently last styled master 30/5/1432 when he witnessed three royal charters: SRO: GD 16/3/140; SRO: GD 125/2, s.d.; SRO: GD 185/2/1/1.
110. See App. C, s.v. Treasurer.
111. Wilson, House of Airlie, 47.
112. See App. C, s.v. Treasurer.

113. RMS, ii, nos. 81, 127.

114. Avandale was the second son of Archibald, 3rd Earl of Douglas, who died c.1400. The first son, also Archibald, is estimated to have been born c.1372, so Avandale may have been born later in the 1370s (SP, iii, 161-65).

115. Ibid., 173; App. C, s.v. Justiciar.

116. ER, iv, 670; AUL: MS 1160/18/10 no. 1.

117. He witnessed charters dated: 30/5/1424 (SRO: GD 157/368 no. 10); 3/6/1424 (RMS, ii, no. 3); 4/2/1425 (ibid., nos. 15-17); 28/7/1426 (Irvine Muniments, section II no. 4); 8/1/1427 (RMS, ii, nos. 74, 75); 17/7/1428 (ibid., no. 108); 31/3/1429 (RMS, ii, no. 1928); 4/2/1431 (RMS, ii, no. 186); 8/1/1432 (AUL: MS 3 043 Bundle 59). Compare these dates with the list of assemblies of the Three Estates in App. B of this thesis.

118. See e.g. RMS, ii, nos. 38-40, 72, 77.


120. ER, v, 84, 87. The death of Sir Walter Ogilvy noted above establishes the terminus ante quem of this meeting.

121. SP, iii, 173.

122. Floors (Roxburgh MSS) Bundle 703 (HMC 47). The charter was granted at Edibredschelis.
CHAPTER THREE

THE POLITICAL COUNCIL IN THE MINORITY OF JAMES II

(i): Unfettered "Livingstonism"?

The last chapter concluded by noting how the minority administration had a struggle on its hands if it wished to operate successfully in the king's interests. While there were some survivors from the administration under James I, the passage of barely two and a half years had seen some removed from office (possibly at the behest of the 5th Earl of Douglas) while others had died. While a source such as the Registrum Magni Sigilli now recommences in its present form after a gap of about seven years, it is not a source which provides the sort of guidance on contemporary politics that one might have wished. It can certainly be used to indicate the composition of the daily council (by use of witness lists to royal charters), but there are only hints in it of any discussion which might have taken place before the issue of a charter. It is also a very limited source in its own way, as it deals largely with titles to property. It cannot provide clues as to discussions on how to tackle the administration in the aftermath of the death of the lieutenant-general, the 5th Earl of Douglas. One would need to turn to records of parliament for that type of information, but again there is really little help available.

We lack any definite statement in contemporary sources that after the murder of James I it was intended to conduct the administration principally by means of the council, but it certainly appears that this was the result. Two assemblies were held in the opening few months of the reign, followed quickly by an
Exchequer audit; so no doubt these were the occasions when policy in the next few years was discussed. No replacement of officials can be traced in the first two years of the new reign, except when the treasurer, Ogilvy of Lintrathen, died. The extant official records for this period are scanty, to say the least. No charters are known to have been issued in 1438, thus depriving us of witness lists; and indeed there are only two charters now extant which show that Cameron, Bishop of Glasgow and chancellor, did in fact remain in office until May 1439. This lack of issued documents may in part be explained by the fact that the intention was to keep in the king’s hands all lands which were in James I’s hands on the day he died. It was evidently possible to circumvent this rule, on application to the council, but it may have discouraged people from seeking confirmation of tenure or resigning land in favour of another.

A change appears in mid-1439, apparently at about the time Crichton replaced Cameron as chancellor. Charters began to be issued quite regularly, allowing us for the first time in the reign an insight into the daily council. The appointment of Crichton may have been part of his own bid for power. It is noticeable that the post of comptroller changed hands twice in 1439. William Cranston, who held the post from some time in 1439 until September 1441, was an associate of Crichton. If Crichton did intend to put his own stranglehold on the administration, he would have been greatly helped by the death in June 1439 of the 5th Earl of Douglas. John Forrester of Corstorphine, the chamberlain, was easily the longest-serving baron in the administration, but there is no sign of his having ever adopted an aggressive stance. Crichton
was easily the more powerful of the two especially now that he held the post of chancellor.

His applecart was quite upset by the events of 3 August 1439, when Alexander Livingston of Callendar seized the queen mother and apparently imprisoned her new husband, Sir James Stewart, and another. This was a startling move, carried out by a small group of men who had clearly been angered by something. Dunlop suggests it was the queen's remarriage which prompted the action. It could certainly have been hardly better timed to coincide with increasing trouble in the administration as barons and bishops died.

The seizure of such a person could hardly pass unnoticed, and a month later an "Appoyntement" was sealed during a general council at Stirling. The names of Livingston's associates are revealed here as: Sir William Cranston, James Livingston, his son and heir, and his brother Alexander. The Livingstons did very well out of this settlement: the queen accepted that her captors acted: "...of gude zele and motife and of grete truth and leaute that was in tham bath to our soveryne lord the king and his sawfte and to the said princess in her worschip". She stated that she harboured no ill-will against them; and with the advice of the Three Estates committed her son's keeping to Sir Alexander until his majority, and permitted him to reside in her castle of Stirling. Her retinue was enjoined not to cause any harm to the Livingstons for their actions either.

The settlement was sealed by three bishops, an earl, three barons and three burgh commissioners, although they did not all have to hand their own seals, and the seal of an abbot is appended too. It was important for the Livingstons to have the affair
settled publicly, and no less to have an air of respectability granted it by its bearing so many seals. They had not only obtained a pardon, but also a foothold in the administration, which they entirely lacked before. It was crucial that they had in their custody the young king, as they could henceforth bargain from a position of strength.

It is important to appreciate how inconsequential the Livingstons were before their action of early August. In the cases of the other councillors who have been briefly looked at already, they had all had some demonstrable contact with the administration of James I in the years immediately before 1437. This is not the case with the Livingstons.

Sir Alexander Livingston had some involvement with the king's council shortly after the return of James I in 1424. Twice he can be found on the council that year when judicial matters were under consideration. Early the following year he witnessed a private charter when the king himself was present. In May he was on the assize which convicted the duke of Albany and others. That is the sum total of his known connection with royal affairs in the period 1424-1439. He did not witness any royal charters, not even those with the greatly extended witness lists. We cannot even show him to have been present at any other parliament or general council through his being referred to as a witness of a private charter granted while an assembly was meeting, as we can with plenty of other barons.

Little information is thus forthcoming about the activities
of Sir Alexander before 1439. As for his son and heir, James (also mentioned in the 1439 "Appoyntement"), the best we can do is to state that he was alive. He witnessed a single charter of the Earl of Douglas in August 1432. He was most certainly not captain of Stirling Castle at some point before 1435, as is usually stated. The authority for this is a reference to him in the Exchequer Rolls. The accounts here always need to be treated with caution, and this is a case in point. An examination of the MS roll shows clearly that a good many passages in this account (of monies received and spent in connection with the burghs' contribution to the king's ransom) were written after 1435, when the accounts were presented. Sums were noted as being still due at the account in 1435, and at some later date when the debts were cleared the clerk evidently brought out the old rolls and added the necessary details. When James Livingston is referred to in this account as "then captain of Stirling Castle", it must indicate an addition probably after 1449.

All was to change after the capture of the queen. Only ten days after the seizure, Sir Alexander witnessed his first royal charter, and in the subsequent ten years it is hard to find any document which has a royal connection and is more than a simple brieve where there is no mention of anyone with the surname Livingston. At first, it looks as if the action of the Livingstons were really just a palace coup; but, with the benefit of hindsight, it is clear that we ought to describe the events thereafter as a revolution, albeit a gradual one.

The Livingston revolution was one which involved members of
the family and their associates obtaining a whole series of offices and, as far as can be told, financial concessions by the Crown. It is not a subject which has been analysed in any detail before now, so this will be attempted here. A significant point is that the Livingstons were able to bring patronage to associates as well as to themselves. Unravelling this is a problem, so it must be stated that the following is not exhaustive, but it is hoped it is representative of the profit the Livingstons made from their newly-won royal links.

A few years were to pass before either Alexander or his son James actually held an official post. By 2 May 1442 James was captain of Stirling Castle, a post he was to hold until the fall in September 1449. In March 1445 he can be found as keeper of the king's person, a post which again may have remained his until the fall. James's final office was that of chamberlain, which he held from 29 June 1448. Again, this office was lost in September 1449; but he would regain it in 1454 once the family had been pardoned. He first witnessed a royal charter in February 1443, but he had clearly been a councillor before this. For example, he witnessed in May 1442 one of the protests made by Sir Robert Erskine against the actions of the chancellor in his efforts to obtain the earldom of Mar. This was not a one-off appearance as a councillor, as he appears again in June 1442, just when the Coldingham priory dispute was under discussion and when the Exchequer audit was taking place.

Alexander's tenure of office is harder to pin down. He was certainly justiciar from about 1444 until the fall. It is likely he succeeded the 7th Earl of Douglas (who died in 1443) in
this post. He was sheriff of Stirling by 1448. It is not known when this post was obtained, but in the 1420s it was held by the Cunninghams of Auchinbowie. It would not be surprising if they had been ousted by Sir Alexander from office. Apart from this, he acted as an Exchequer auditor, and had just acted as an ambassador to England when the family was arrested, but he is not known to have held any other post. Part of the explanation of this may have been his age. It is worth remarking that his seizure of the queen in 1439 occurred when he had reached what would be regarded now as normal retirement age for men. He was the first son of his father's first marriage. As his father had apparently four sons by this first marriage, and the contract for his second marriage is dated 15 August 1381, it would be reasonable to conclude that he was born in 1375 or earlier. His role may well then have been that of the elder statesman.

Alexander's son, Alexander, can be shown to have acquired the posts of constable of Stirling Castle, and captain of Methven Castle. The former post he held from at latest September 1442, and the latter he obtained after the death of Alexander Ogilvy of Inverquharity, in January 1446. A John Livingstone is named in the Auchinleck chronicle as captain of Doune Castle. It seems not unlikely that this John is the one sometimes styled "of Ballintoun/Banton", and thus a brother of Sir Alexander.

Discussion of the posts obtained by the Livingston family (and lost in 1449) usually starts and finishes with these men. But it is clearly a mistake to do so. By examining the activities
of other Livingstons, and checking their relationship to Sir Alexander Livingston, we can add significantly to the offices which the Livingstons were able to divert to their family and associates.

An example of a Livingston who was able to carve out a niche for himself, without actually obtaining any office, is William Livingston of Balcastle, who was probably the second son of the second marriage of Sir John Livingston of Callendar. This second marriage was to Agnes, daughter of Sir James Douglas of Dalkeith, probably in 1381. William was one of at least three children of this marriage.

The link with the Douglases of Dalkeith can be readily documented from 1421, when Livingston was leased land by Douglas of Dalkeith, near to Dalkeith. In 1438, a further lease was obtained of land there. His property interests were not confined to this area, however. On the resignation of his mother, Agnes Douglas, to her brother in 1428, Livingston obtained land in the barony of Kirkmichael (Dumfriesshire). Indeed, it was a conflict over the lands of Finglen in the barony of Newlands (Peeblesshire) with a William Geddes which resulted in a Livingston-related document being issued only three days after the first arrests of the family in September 1449. Perhaps seeing the way the wind was blowing, William Livingston obtained a remission of rancour from the king especially concerning his activities in the lands of Finglen. It looks as if he felt he needed to secure his position.

This branch of the family can be tied to the Douglases of Dalkeith in other respects. Transumpts of charters made at
Dalkeith in 1426 and 1444 were witnessed by William and Henry Livingston of Callendar, evidently the two step-brothers of Sir Alexander Livingston. The same men witnessed a charter granted by Douglas of Dalkeith in 1433; and served on the inquest in 1443 which served the heir to the Dalkeith estates. It is curious that this link appears to have expired after the 1440s. The table of witnesses to the charters of the earl of Morton in Dr. Kelham's thesis shows no-one of the surname Livingston. William Livingston of Balcastle survived until about 1460, when he was succeeded by his eldest son Edward, so it would not have been impossible for the links to have been maintained.

The career outlined here shows that links with the Douglases of Dalkeith are perhaps of greater significance. But the chance of sudden death brought this link into greater prominence. James Douglas of Dalkeith, brother of Agnes, appears to have died in 1441. Thereafter, there was a squabble within the family as to the successor, which brought the Crown in as a more than interested outsider. For a number of years, there are references in the Exchequer Rolls to work being carried out at Dalkeith, apparently at Crown expense. William Livingston is referred to in this respect. It must have been very useful for Sir Alexander Livingston to have a step-brother closely linked with the Douglases of Dalkeith. In 1423, as part of the measures leading to the return of James I, preparations were made to send hostages from amongst the baronage to replace him. Each of the barons selected was "valued": the lord of Dalkeith was assessed at 1500 marks, the equal top valuation. This may well indicate the value of his family estates, and that if the
Livingstons could work their way in at a time of uncertainty for the head of the family it might be possible to cream off some of this vast wealth.

We can demonstrate family aggrandisement more clearly with Sir Robert Livingston of Drumry. Indeed, it would appear indisputable that it was the family link with the Livingstons of Callendar which furthered his career. In discussing this man's career, a major problem instantly occurs. It is not possible to be one hundred percent certain that all the actions to be noted here were of one and the same man. This is, as usual, partly because successive generations of the family used the same Christian name for the head of the family. Lacking a family charter chest in which there might be services of heirs, some guesswork is necessary.

It is suggested, however, that the version of the family tree given here is closer to the truth than those found elsewhere. It seems accepted that the Robert Livingston who is here considered to have died c. 1425 had already been dead for over twenty years, one theory being that he had been killed at Homildon.\(^{47}\) Accepting this theory meant that a series of other documents about his son and heir, Robert, could not be properly fitted in. It is allowed that there are still documents which it is impossible to fit into the theory proposed here, namely that Sir Robert Livingston of Drumry died c. 1425 and was succeeded by his son, Robert, who died in 1466.\(^{48}\) The latter Robert and Sir Alexander Livingston had a great grandfather in common, Sir William Livingston, lord of Gorgie, Craigmillar and Drumry, who died c. 1339.
Despite his territorial designation, Sir Robert Livingston of Drumry (the son) played no apparent rôle in affairs in Dunbartonshire. His main interests seem to have been in Fife, where he was baron of Lochore. Although a couple of his charters do survive, it would be hard to build up a picture of his household. One charter was issued while Sir Robert was attending parliament in 1432. Witness lists from these occasions can often be difficult to handle in respect of building up a picture of the granter's household, but the difficulties are compounded here in that the witnesses are mainly what we might style royal figures. This is certainly interesting in itself, as at this stage Sir Robert had no rôle in the administration of the realm, as far as can be told, and the charter seems a minor matter.

Sir Robert's service to the Crown seems to have begun only after the Livingstons came to power. It is likely he was knighted about the time of the king's coronation. While he witnessed seven charters of James II between 1440 and 1448, his chief service to the Crown lay in his acting as sheriff of Fife. There is no evidence of his having acted as sheriff-depute before taking on the role of sheriff. It seems his predecessor in office, John Lumsden of Glegerno, was still alive during Sir Robert's tenure of office, although again this is slightly uncertain as John Lumsden's son and heir was another John. We have dates of neither Sir Robert's entry to office nor of his departure from it. Lumsden was sheriff in March 1442, and Andrew Lundy in 1449, so Sir Robert's tenure of office must fall between these dates.
It was surely the link with the Livingstons of Callendar which brought Sir Robert to office. It was very unusual for the office of sheriff to change hands. It is interesting to note that the sheriffdoms in which it did happen in the reign of James II are: Lanark, Banff, Forfar, Berwick, Edinburgh, Perth, Dumfries, Fife, Kinross, Stirling and Linlithgow. The last four all fell within the Livingston orbit, and they were able to put their own men into office there. These appointments did not survive the fall of the main family in 1449.

In addition to this tenure of office, payments can be found in the Exchequer Rolls to Sir Robert's sons, William and John, in the form of pensions. John had been acting as the king's janitor. These payments seem to have ceased in late 1449. Not very much money is involved, but of course other sums could have been revealed in accounts now lost.

The events of 1449 did not mean the end of Sir Robert's political career. There were no more appearances as witness to royal charters; but he acted as a councillor in a judicial matter in 1456, and was present at hearings of troublesome legal disputes in a general council in 1453 and a parliament in 1458. He held a justice ayre in Annandale in 1454. In 1459, and again in the 1460s, he was involved in diplomatic activity, by which time he must have been in his 70s. James Livingston of Callendar was not the only member of the family to return to politics when the forfeitures were rescinded, but in the case of Sir Robert his later activities were modest compared with the heady days of the 1440s.
The third and final more distant relative of the Livingstons of Callendar who profited from his family ties is Robert Livingston of Middle Binning, the third son of Henry Livingston of Mannerston who died c. 1439. This Robert Livingston was one of the merchant burgesses who served the king as comptroller in the fifteenth century. The succession of holders of this post, certainly in the reign of James II, suggests no great enthusiasm for the office amongst the likely candidates. Dr. Murray has noted that a number of comptrollers left office having had to pay from their own pocket the expenses of the royal household, even if only temporarily.

Robert Livingston held office as comptroller from November 1447, to (presumably) September 1449, when he was one of those arrested in the purge. The existence of one document in particular has led to speculation that this Livingston was arrested and executed so the king would no longer have to pay off a debt owed to him, pending from the Exchequer audit of the summer of 1449. The sum involved was £930. It seems extraordinary that the king should go to such lengths to extinguish such a sum. Anyone who is familiar with the reign of James II's contemporary in England, Henry VI, will be aware of the vast debts piled up by the Lancastrian kings which did not lead to wholesale executions. The extinction of the debt was thus rather a by-product of the death of Livingston, not the cause.

Financial considerations generally have been suggested as one of the reasons for the arrest of the Livingstons. While Nicholson has stated that it would always be hard to show definitely that there was any fraudulent dealing in the Crown's financial affairs.
by the Livingstons, he noted that the Crown's financial position certainly needed securing. Dunlop is more positive in asserting that the Livingstons' hold on financial posts made it possible for them to divert funds to their own uses.

Can anything be made of this?

It is certainly noticeable that the Livingstons were able to issue mandates for payments to persons which were then allowed in the Exchequer audits. A number of instances of this can be shown. It is more difficult to estimate the importance of this, however. Reading through the Exchequer Rolls from about 1430, one finds very few occasions when any person other than the king was able to issue precepts for payment which were then allowed at the audit. The comptroller was clearly able to do this. It is, therefore, surely significant that we are able to find occasions when James Livingston issued precepts for payments, even before he became chamberlain. In comparison we can find very few occasions when Crichton had issued precepts for payments, and none at all issued by Douglas.

In addition, the administration evidently wished to distinguish in accounts rendered after 1449 periods when Livingston-allied officials had held office. In part, this would reflect the desire to prevent new officials being responsible for the debts of their predecessors, a desire probably more strongly felt by the new officials than by the administration. Examples of this are relatively common in the accounts. But in the case of post-1449 accounts, this separation of periods of accountability seems carefully emphasised. Twice in the accounts of the custumars of Edinburgh for the period 18 July 1449 to 21 July 1450 there
are notes of allowances to be made to the accountant for payments made on the precept of James and Robert Livingston after the last audit and before the entry of Alexander Napier to office as Comptroller.\textsuperscript{68} There is no evidence of accountants seeking allowance for payments they had made on the instructions of comptroller Livingston only to have their requests refused. It is suggested, however, that there was some doubt about payments authorised by comptroller Livingston, but it was determined to admit them in accounts.

Robert Livingston the comptroller was the only Livingston who was clearly favoured by the Crown before the post-1439 surge to power. He had acted as custumar of Linlithgow and master of works at Linlithgow Palace, in the early 1430s, posts he apparently continued to hold into the reign of James II.\textsuperscript{69} In addition, he received from James I an unusual privilege, that of constructing a tenement on the king's road in Linlithgow beyond the limits of the ground there for the space of eight feet. This gift was in recognition of his services.\textsuperscript{70} His period of office as comptroller may therefore be seen as the climax to a long spell of useful service to the Crown in the financial sphere. It is possible, indeed, that his kinsman Henry had been comptroller too, from 1442-1444.\textsuperscript{71} It is not possible to settle on the identity of this man, although he must be reckoned part of the "clan". With the Christian name "Henry", it is indeed likely that he was one of the Mannerston branch, in which that name was common.

Up until now we have been looking for instances of Livingstons themselves holding offices. Although most such offices have now
been identified, it is certain that others were able to obtain positions through their influence. One way of looking for this is to see who was ousted from a post at the end of 1449.

Some of these men can be identified from entries in the Exchequer Rolls. Both the Linlithgow custumars seem to have been replaced in late 1449. One was Robert Livingston, the comptroller, whose career has just been noticed; the other was John Raa, who is first mentioned as custumar in the account of July 1446 although it has to be noted that this account is the first one extant of the Linlithgow custumars since the start of the reign. In a Linlithgow context again, it is not surprising to find that when the master of works at Linlithgow Palace accounted in 1451, his term of office is definitely stated to have begun on 1 October 1449.

It is intriguing to notice that when Sir David Murray of Tullibardine rendered his account as bailie of the earldom of Strathearn in September 1450, his accounting period was stated to have begun on 24 September 1449. This shows a remarkable coincidence in date with the arrest of the Livingstons, which apparently took place on 23 September 1449. No accounting is known to have been taking place in late September 1449, so although we do not know who Murray's predecessor in office was it looks as if it were someone ousted in the fall of the Livingstons.

The Livingston influence was also felt in Dumbarton. Here, Robert Callendar became custumar in 1443/44, apparently replacing David Galbraith, who was to return to office in 1450. Callendar is a man of some interest in his own right, and can be associated
with the Livingstons. It is curious to find him as custumar of Edinburgh before his move to Dumbarton, as Edinburgh is a place where one would expect Crichton influence to predominate. In addition to being custumar of Dumbarton, he was keeper of its castle, and later also of Dunoon Castle. He acted as sheriff-depute of Dumbartonshire in 1444.

It is most likely this man is the same as Robert Callendar of Dorrator, who was a tenant of Livingston of Callendar. Making this assumption allows us fuller knowledge of his career. In September 1442 he witnessed a charter of James Dundas of that ilk, in the company of Alexander Livingston, constable of Stirling Castle and John Livingston of Ballintoun. Curiously, he served on the inquest which retoured James Douglas as heir of his father Sir James Douglas of Dalkeith in 1443 in various lands in Galloway and Annandale.

Robert Callendar was arrested with the Livingstons in September 1449, but he appears not to be associated with them in the trial at the January 1450 parliament. Very little is known of his subsequent existence before his death in late 1459. His son Robert was served heir to him the following January, the retour showing that the lands of Dorrator lay in the barony of Callendar. The post of custumar hardly involved a right to be a councillor of course; it was its local significance which gave it some importance. What we have seen here is how the Livingstons were carving out an area where their interest predominated. They could hardly hope to make much headway in Edinburgh, of course, but in Linlithgowshire, Stirlingshire, Dunbartonshire, Clackmannanshire and Fife they were the power block.
The Livingstons were able to obtain posts elsewhere for their allies. Sir John Sibbald of Balgonie looks as if he can only have been appointed master of the king's household as a result of their influence. He is an elusive man, and so hard to talk about. He had, however, witnessed two charters of James I (which was two more than any of the Livingstons). The reason for his holding office as household master is surely because he was a son-in-law of Sir Alexander Livingston. In 1430, Sibbald and Livingston's daughter Johanna had to seek a dispensation to remain married, as they were related in the third and fourth degrees of consanguinity. They had apparently already had children. Sibbald first appears in office in May 1442, and the latest evidence known for him in office is a decree by the council in a judicial matter in October 1448. He evidently remained alive, however, until c.1453, as a pension of £5 per annum from Crail continued to be paid to him until then. It is known that his successor in office was in post by April 1450, so it looks probable that he too was ousted in late 1449.

Very little else is known about him, although we find that he held land in Fife, Strathearn and in the regality of Kirriemuir. He received from James II a charter erecting his lands in Fife and Strathearn into the barony of Balgonie. He witnessed one Douglas charter, but in 1444 when he was well-established in office, so it is doubtful if the earl was a patron. He witnessed twenty-five charters of James II, first of all (significantly) in September 1439, and last in April 1449. He seems all
round now a rather faceless individual, yet clearly one who owed his advancement to the Livingstons.

There are two other rather anonymous men whose association with the Livingstons brought them seats in high places and subsequently ignominy. One is Sir John Cockburn of Dalginch; the other is Sir William Cranston of Corsby. The latter, whose ancestry has not been determined, may in fact be also connected with the earls of Douglas. It is certainly likely he was of the same stock as the Cranstons of that ilk, who were certainly linked with the Douglases in their guise as fellow-Borderers. One might then be tempted to look to the Douglas family as patrons.

The second time we are aware of his existence, however, he must be linked with the Livingstons. He appears to have had a rôle in their seizure of the queen mother in August 1439, as he is a party to the indenture settling the affair the following month. Although he may have had a place at court before 1437, the evidence is too slim, being simply a note that he had been present when land was resigned to James I shortly before his death.

Cranston first appears as a witness to a royal charter in February 1440, and is well-nigh ever-present thereafter up to March 1446, witnessing in total fifty-nine charters up to then. Quite why his service in this respect should finish at this stage is not clear. It is possible it indicates more of a link with the Douglases, which can be shown at a later stage. He was, for example, included in November 1449 in a major Douglas group which obtained a safe-conduct from Henry VI. Months before he had been
appointed a bailie by Douglas to give sasine. In August 1451, he briefly reappeared as a witness of royal charters, and he had a life-grant of land in Berwickshire from the king in June that year. A further, strange twist in his career occurred in February 1452, when he apparently took part with the king in the ferocious attack in Stirling Castle which left the 8th Earl of Douglas dying from numerous stab wounds. In 1457 and 1458 he acted as a councillor in judicial matters.

In comparison, the career of Sir John Cockburn of Dalginch is straightforward. No doubts need be harboured as to his patron. Both Livingston of Callendar and Livingston of Drumry witnessed an indenture of July 1435, by which Cockburn's wife settled with the sons of her previous marriage the question of succession to estates of which she was heiress. Connections with the Erskines, claimants of the earldom of Mar, may also be noticed, but at intervals. It is unlikely these connections were of sufficient importance to elevate the Erskines to the position of their patrons.

Like Cranston of Corsby, Cockburn first witnesses a royal charter in February 1440, but his appearances in this way occur right up to February 1449. In total he witnessed seventy-six charters. He never appears after the fall of his patrons in this capacity, although he was a councillor in a judicial matter in 1457. He was apparently not associated with the seizure of the queen mother, but first appears in a royal context in December 1439.

Both Cranston and Cockburn occupy curious positions. Oddly, one seldom finds them referred to in notarial instruments with a royal connection issued at this time. If they did not witness charters, they could not be ranked highly amongst associates of the
Livingstons. Yet their public careers are remarkably coincidental with the Livingstons, and the conclusion can only be that this was no casual coincidence, but a demonstration of definite links.

Another possible associate of the Livingstons who held office is Alexander Nairn of Sandfurd. Although his estates were in Fife, he is likely to have been a burgess of Stirling. Nairn certainly appears in office at about the right time, being comptroller in the mid-1440s; but the problem lies in his having held the same office for the last two years of the reign of James I, and being able to take up office again in the early 1450s. It is quite impossible to link the Livingstons with the administration at either of the latter times. Furthermore, he was in fact replaced in office by Robert Livingston of Middle Binning in 1447.

His appearances outside the royal sphere do not tie him into the Livingston orbit. Twice he witnessed charters of the Earl of Douglas, and less than a month after the Livingston forfeitures he witnessed a Crichton charter. There does not appear to be any gap in his Crown service either, as one might have expected with a Livingston associate. In March 1450 he is a councillor hearing a judicial matter, and he had even been one of the lords of parliament elected in the same parliament which had forfeited the Livingstons to try to settle a dispute between two burghs. Nairn should probably be therefore seen as an exception to the rule that the Livingstons were able to control the gift of offices during their period of ascendancy.
Of no less significance are those whose careers were brought to an end by the rise of the Livingstons. We have already looked at some barons who could be expected to hold an important position in the minority administration, but who faded from view. Beyond these men there were others, usually lairds, who held perhaps only a locally important post and who were ousted to suit a Livingston-favoured man.

John Lumsden of Glegerno, sheriff of Fife, falls into this category. As with a number of men so far discussed, he is quite overlooked in secondary accounts of the period. A survey of his career shows, however, that he ranks highly amongst the sort of men James I used in carrying out his instructions in the localities.

For a man who took his territorial designation from lands in Haddingtonshire, he displayed remarkable interest in matters in Fife. The explanation for this is presumably that he also held land in Fife, and that by choice or instruction he had to remain there. His public career began well before the period covered by this thesis, as he is found as sheriff as early as 1397. This makes his removal from the post during his lifetime more unusual. He was certainly a very active holder of the post, to judge from surviving records, carrying out a whole range of duties in person.

In addition to this, he held other offices, probably of a temporary nature. In 1425 he was a justiciar in hac parte. Ten years later, there is a reference to him as sub-chamberlain of Scotland. The previous year, he and another had acted as
Unfortunately it is not possible to bolster this apparent interest in financial affairs by references in the *Exchequer Rolls*. He is found on two occasions in 1432 as an auditor of causes in parliament.  

This brief resumé of his career ought to suffice to show his value to the administration. He was replaced, however, as sheriff of Fife by Livingston of Drumry probably in late 1442 and, although he turns up as auditor of causes at parliament in 1445, all later references to him are simply in a local context. He was, however, employed by the burgh of Crail to act on their behalf in a legal dispute in the court of the four burghs in 1449 or before. For his services in successfully refuting there a falsing of a doom made by Cupar in Crail's chamberlain ayre, the burgh leased some land near the Burgh Muir to him. His experience going back many years in legal affairs must have been invaluable. He seems to have died 1452 x 1454.

Loss of influence can be found too amongst officials who had a place on the council. Sir John Forrester of Corstorphine is one such. For a man who witnessed charters issued by James I right up to the time of his death, he appears in subsequent years remarkably infrequently. Of the nine charters of James II he witnessed, six are dated before the end of 1439. He did apparently remain in his long-held office of chamberlain, but was certainly removed before his death, which may not have occurred until c.1450. It has been suggested that it was his removal from office which prompted his assumed patron, the
Earl of Douglas, finally to turn against the Livingstons. It may be noted, however, that Forrester can only be twice found as a witness of (the many) Douglas charters issued after 1424. Connections between the two families may well have continued, but they are not apparent now. It does look as if well before his removal from office Forrester had long ceased to have a significant role in the administration.

An official with a slightly shorter career, but in a perhaps more significant post, who was also sacked is Mr. William Foulis, keeper of the privy seal. He had held office since September 1426 at the latest, having been promoted at the behest of the Earl of Douglas, it is presumed. He was a consistent witness of James I's charters, but very quickly fades away in the early years of the next reign (his last appearance as a witness being 10 July 1439). His successor as privy seal (another Douglas protégé) was in office by August 1440, but, as with Forrester, it is clear it was not death which robbed Foulis of office.

Indeed, he continued to take a small part in the administration. In June 1441 he acted as an auditor of causes; and the following month was appointed an ambassador to go to Brittany to negotiate the marriage of the king's sister Elizabeth. If he did go there, he must have returned by May 1442, when he was one of the council when Sir Robert Erskine sought a decree against the chancellor for his alleged delaying tactics in respect of his service to the earldom. This appears to be the last reference to him as alive.
It must be suspected here that there was less Livingston influence in the removal of Foulis from office, even though it does seem to occur at the right time for the thesis advanced here. A Douglas supporter had a firm hold on this post for another nine years. It may be that his immediate patron, the 5th Earl of Douglas, had died, and he was unable to count on the support of the 6th Earl.

Apart from a desire to check the truth of the remark in the Auchinleck chronicle about the Livingstons' allies having been pushed out of office as well as them in 1449, it has been necessary to adopt this type of approach to the Livingston-dominated period because it is not possible to build up a picture of their household by means of examining the careers of witnesses to their charters. The reason for this is very simple: there are no documents of any sort issued by either Sir Alexander Livingston or his son James between 1424 and 1460 known to this author. This is a quite remarkable statistic. It is accepted that by using these terminal dates an element of cheating occurs, as a charter of 1422 issued by Sir Alexander, and a precept of sasine of 1461 issued by James are known. These two documents hardly help in building up a picture of their usual allies, of course.

A gap such as this (doubtless exacerbated by the loss of the family papers) does help to point to some anomalies in the careers of the Livingstons. The 1440s saw the real beginnings of a parliamentary peerage in Scotland. One would think that it would be only natural for the Livingstons to ensure that they
were ennobled in this way while they controlled the reins of patronage; yet they were not. It was only in 1458 that James Livingston of Callendar was granted the title Lord Livingston. By then it was six years since the annulling of the forfeiture on the family, and four since he had clearly returned to favour by his reappointment to the office of Chamberlain. 134

One reason why there are really no extant documents issued by them is perhaps that they did not have extensive estates which could be used to provide for younger sons, etc. The service of Lord Livingston in 1467 in lands in Stirlingshire does show that a large amount of land was held there, however. 135 It is surely significant that the Callendar branch of the family does not figure at all in the lists of hostages for James I, which can give some indication of the standing in society of those who are listed there. 136 The only Livingston referred to in these lists is a Robert, who is likely to have been of the Drumry branch. He was assessed at 400 merks, which compares with an average assessment of 400 merks for barons of his level. 137

It is remarkably difficult to discover what Sir Alexander and James might have ever been doing outside their work for the Crown. Seldom does either witness a charter granted by a private individual; and when Sir Alexander does, it must have been because the charter was granted where the Court was then resident and he (and other councillors) were named as witnesses because they happened to be present. 138

Although neither Sir Alexander or James were "ever-present"
after they had begun to act as witnesses to charters, it is normal to find either one or the other there, if not both. Sir Alexander witnessed 119 charters between his first appearance on 13 August 1439, and his last on 6 April 1449; while James witnessed 56 charters between 8 February 1443 and 21 July 1449. In view of the fact that James was only a witness when the Register of the Great Seal is largely a blank record, his total is very good. In comparison, Lord Crichton witnessed 122 charters between 1 June 1437 and 10 December 1449. Although Crichton had a long absence as witness 1443-45, not many charters were then being issued, so his total may represent a reasonable bench-mark.

The Livingstons themselves suffered less than others at the top in the 1440s, however, as their presence was constant in the person of one or the other until the fall. Men such as Crichton, the Earl of Douglas, Kennedy (Bishop of St. Andrews) or Cameron (Bishop of Glasgow) enjoyed positions of prestige for a while before dropping out once more. Sir Alexander certainly had spells where he cannot be traced as a witness (for example, between October 1441 and April 1442, or late 1446/early 1447), but they tended to be times when few charters were being issued, and his absence might be compensated for by the presence of his son. It is possible that his absence arose because of a reluctance to travel from Stirling, understandable in a man of his advancing years.

Beyond the acquisition of offices, it is not easy to find specific evidence of the Livingstons using their position on the council to sway patronage in the direction of their allies. A
nice example of how they were able to reward a kinsman is supplied by a gift of a ward by James II to his then privy seal, Mr. James Lindsay, in 1453. The gift states that it is to stand "Notwithstanding letters under our Great Seal granted before by Alexander Livingston knight and James Livingston his son to the late Robert of Livingston and his assignees of the aforesaid ward". The Robert Livingston referred to here is clearly the comptroller. The wording of this clause suggests that the Livingstons had had access to the Great Seal despite the existence of the chancellor, and it may be reasonably wondered if this is the only occasion when they diverted patronage to men of their choosing. It is the only occasion known to us, however, when such a clause is included. It is suggested that an occasion which allowed the Livingstons to make up their own charters was when chancellor Crichton was absent for about a year from mid-1448 negotiating for the king's marriage. As the secretary (Ralston, Bishop of Dunkeld) was also an ambassador, the only custodian of a seal remaining was the privy seal Turnbull, Bishop of Glasgow. No temporary replacement for Crichton seems to have been appointed.

The hand of the Livingstons can be seen in other affairs too. The marriage of Janet, one of the heiresses of Walter Fenton of Baky to William Halkett looks as if it must have been furthered by the Livingstons. In 1470, Janet Fenton related how she had been snatched from her home area by the late Sir David Stewart, and taken to his castle at Rosyth, where she was forced to marry his son Robert, despite being barely five years old. Stewart
then used her seal to seal letters harming her rights of fee and heritage in favour of his son's heirs. After their deaths, Henry Stewart (David's son) continued to hold her, until forced to release her by the king's letters. But she was seized again at Dunfermline by Henry's brother William, and again the king's letters were needed to release her. Henry used her seal also to ratify the previous forced gifts she had made to Robert, all of which she now revoked. 143

Janet had been the wife of William Halkett since about 1448, it seems. It looks as if by the Livingstons' influence she had really just leapt out of the frying pan into the fire, for the first mention of her as Halkett's wife comes from a charter whereby she grants all her lands to him for his life, after whom to his heirs by her, whom failing her heirs whatsoever. This charter was granted at Callendar, and bore the seal of James Livingston as well as her own. Amongst the witnesses were James's brother Alexander, constable of Stirling Castle, David Livingston, and a host of other local men. 144 The precept of sasine followed a few days later, for the Inverness-shire lands. 145 Amongst the bailies was Celestine de Ylis, brother of John, lord of the Isles. He was already, or would become, brother-in-law of James Livingston's daughter Elizabeth, who married the Lord of the Isles. 146

The Livingston link with this Fenton heiress may well have been effected by a clear link with another, Margaret Fenton, who was the wife of Walter Ogilvy of Beaufort. Walter Ogilvy was the second son of Sir Patrick Ogilvy of Grandon and Auchterhouse, who had died c.1430, and was the brother of Alexander Ogilvy of Auchterhouse, sheriff of Angus. 147
It is certainly rather surprising to find that Ogilvy of Beaufort was linked in any way to the Livingstons. A study of the occasions when he is referred to puts him almost wholly in an Angus context, where his involvement in affairs was quite frequent. It must be suspected, therefore, that the association took place to benefit both sides: for Ogilvy, the benefit was to further his own position in Angus; for the Livingstons, it was to obtain an ally in that area.

Two documents, dated 6 and 7 July 1445 demonstrate the association. Both are indentures, one between Ogilvy and the lords of the king's council and the other between Ogilvy and the Livingstons alone. By the latter, the earlier of the two, Ogilvy bound himself to deliver to James Livingston Christian, the daughter and heir of the late Sir John Erskine of Kinnoull, so she could be married to one son or another of him; in return, the Livingstons would do their best to have passed by king and council a tailzie of all the lands and annual rents belonging to Walter's brother Alexander, without cost to Walter; they would also try to obtain a confirmation of Walter being sheriff depute of Angus and Banff under his brother; and finally they would try to obtain a grant of the lands of Brethirton for Ogilvy, to be held of the lord Keith.

The later indenture, between Ogilvy and the lords of council (including both Livingstons) is a more general bond of mutual support. The parties are obliged to each other to provide support in all lawful causes, and to prevent the other coming to harm. This bond of mutual support is one of only two
known where one of the parties was the king's council. Some of its significance probably escapes us now, although it may well be related to the events of late June 1445 when Edinburgh Castle was besieged by the king's men as part of the actions against the Crichtons.

Ogilvy stood to gain more from the deal than the Livingstons did. His brother, the sheriff of Angus was facile, and could not carry out his duties as sheriff. Walter presumably therefore wished to retain the post in the hands of the family, and the way to do so was to be appointed depute under his brother. Instances can be found of him carrying out these duties, so it looks as if this part of the bargain were put into effect, although in 1459 one finds Walter Lindsay of Beaufort obtaining a grant of the office of sheriff depute. It does not look as if Ogilvy were ousted from his post in 1449, however, so he cannot be counted amongst those removed from office on the fall of the Livingstons.

As for the other parts of the bargain, we can find Ogilvy granting the lands of Brethirton to another in 1446, despite the statement in the indenture of 6 July that it was hoped to obtain a confirmation for him therein. None of James's sons are known to have married Christian Erskinè; in fact, his son and heir was apparently facile, and never married. There is no evidence that Ogilvy warned the Livingstons of their impending arrest: by the second indenture he was supposed to warn them of any potential trouble if he could not prevent it himself.

This pair of unusual documents may therefore be said to have
promised more than they achieved. They illustrate neatly, however, the means by which men attempted to consolidate their position, in Ogilvy's case by seeking support from the current political supremos. The ties here created must have brought the Livingstons into touch with the Fenton heiresses, thus leading to the marriage of Halkett and Janet Fenton just noticed.

Part of the Livingston ethos was to intrigue in favour of their allies. No less was it to intrigue against others who might upset their position either nationally or locally. In the former context comes the jockeying for supremacy with the Crichtons. Comment on this has been deliberately kept minimal here, partly as the topic has already been treated at some length by Dunlop and Nicholson, and partly because it is not the aim of this thesis to develop the discussion of this important subject, in spite of the contribution which newly-found material can make.157 Locally, the Livingstons must have had to watch for the Erskine interest. Without being certain that the Livingstons realised the threat posed by the Erskines and manoeuvred so as to counter it, we can still show that good relations between the families were unlikely.

The Erskines were, of course, the principal claimants of the title and lands of the earldom of Mar following the death of Alexander, Earl of Mar in 1435. It is intended to comment on the claims and counter-claims in this complex affair later: the council was frequently involved, in its judicial guise.158 Here, however, it will suffice to pick out some of the features of the affair as it developed before 1450.
Sir Robert Erskine, the claimant, based his claim on the grounds of kinship with Isabella, Countess of Mar, not with the late Earl. Although it would have been impossible for him to lay a claim while the late Earl was alive, it is certainly significant that it was only after the death of James I that Erskine began to forward his claim. It suggests he saw little hope of pressing a successful claim while a powerful king was on the throne, and that he hoped to capitalise on the uncertainty of minority rule.

We are first aware of him pressing his claim in 1438, when he attempted to obtain a service in half the earldom. Before the Livingstons' rise to power, it was already obvious his claims would receive a rough ride. He was certainly unable to achieve much of substance before the general council of November 1438 blocked the granting of lands in the hands of James I on the day he died, which would presumably have included those of the earldom.

After the Livingstons' rise, the matter continued to crop up before the council. In August 1440, the general council reached an agreement with Erskine in an effort to settle the matter for a few years at least "for the gude and the quiete of the land". Basically, the aim was simply to determine the keeping of the castles of Kildrummy and Dumbarton. The indenture indicates that the Erskines then had custody of Dumbarton, although it was likely they would soon obtain Kildrummy instead. The names of thirty-one men present, deputed by the whole general council upon this and other matters, are given, including Sir Alexander Livingston and Robert Livingston of Drumty, as well as their allies such as Sibbald, Cockburn and Cranston, whom we have already touched on briefly.
Sir Alexander was one of the council in March 1441 when Erskine's procurator tried to obtain from the chancellor a precept of sasine for him in the lands of Garioch. James was on the council when, in May 1442, Erskine himself attempted to force from the chancellor either a precept of sasine for Garioch or his service therein returned with an endorsement. Neither was apparently present, however, at the general council of April 1449, when Erskine's son and heir entered a plea concerning the earldom of Mar and Kildrummy Castle.

It would hardly be possible to say that the Livingstons stamped their personality on the issue, but it was certainly important for them. The Erskines were a major force in Clackmannanshire, of course, and were obvious rivals for a dominant role in Stirling burgh. But Stirling was the Livingstons' home town, and their position nationally would be much undermined if they were ousted from the principal town in their area and, indeed, one of the more significant towns in Scotland. Stirling was effectively the gateway to the North: those going by land were bound to pass through the town. The struggle to control it was an important affair.

In this respect, therefore, the efforts by the Erskines to obtain what they saw as their rights in the earldom of Mar assumes another guise. Success there would lead to a higher income, and even though they might have to decide to take up their main residence in the North, they could also look for a political rôle at the centre and leave the management of the estates in the hands of others. If this were their policy, their Clackmannanshire estates were handily placed, allowing reasonable access to Stirling, Perth and Edinburgh as well as
being close to a major royal burgh.

Dumbarton Castle was also tied up in the Livingston-Erskine confrontation. The August 1440 indenture just noticed indicates that Erskine at that time had Dumbarton Castle in his custody, probably as a result of the murder of the last keeper, Sir John Colquhoun, the previous year (his son-in-law). The Castle was the scene of a strange incident in December 1443, the upshot of which appears to have been that the custody of the Castle was granted to Robert Callendar who, as we have seen, was a Livingston associate. In 1448, however, the Erskines obtained a discharge from the king of all fermes and revenues received from them in the sheriffdom, and of the custody of the Castle, from the start of their custody (undated) to Martinmas 1445. It is hard to fit this discharge into the apparent history of the Castle in the 1440s. Dumbarton was not as significant a town as Stirling, but with the downfall of the Lennox family in 1425 there was a political vacuum in the area. If the Livingstons could push allies in there, their stranglehold across central Scotland was the greater.

The Livingston-Erskine confrontation was thus a dispute over local power-bases which was played before a national audience. It was generally the chancellor who was the subject of the Erskines' complaints concerning the blocking of their efforts to obtain their asserted rights, but it is surely likely the council's policy was one which was approved of by the Livingstons, if not even proposed by them. It looks as if we can find echoes of the dispute later in the century, too, even though one may run the risk of reading history backwards, and is wrongly
seeing a separate dispute as having roots long before. In 1482, a protest was entered on behalf of the 2nd Lord Livingston against Thomas Lord Erskine being a judge in the case of a brieve purchased by William Livingston of Balcastle. It looks likely this is a part of the quarrel between the Livingstons and the Erskines which had been heightened by the idiocy of the 2nd Lord Livingston. His fatuity prevented him from acting on his own behalf, and the field was thus laid open for the Erskines to move into Stirling, which it appears that they did. The first Stirling protocol book, beginning in 1469, has a host of entries indicating the activities of the Erskine family. The death of the 1st Lord Livingston c.1467 had robbed the family of a powerful figure-head, and the fortunes of the family would inevitably tumble thereafter.

(ii): The Fetters Applied

We have been paying attention to the activities of the Livingstons and their associates almost exclusively up until now, but we have rather skated round an important matter: that the posts of chancellor, keeper of the privy seal and secretary were certainly not occupied by Livingston favourites. These posts were of great significance in the administration, and clearly guaranteed their holders a place on the king's daily council. It would certainly be wrong, therefore, to assume that the Livingstons were an entirely dominant force on the council. They were never able to lay their hands on these posts, and indeed it may well be that their failure in this respect meant that their downfall was inevitable. No less important than the fact that they were unable to put their nominees in these posts is the fact that each of the
posts became available after their rise to the top.

Are we obliged to conclude that their control was at best tenuous? It may be suggested that the councillors were well aware of the dangers which would arise if one faction had in effect unlimited access to the seals. One cannot see that there was in operation an Order of Chancery as outlined by Thomson, the effect of which was to prevent a document being issued under the great seal if there had not been a series of preliminary brieves. 171 No doubt the documents needed here would be incompletely kept originally in any case, but one might still hope for a few more extant privy seal warrants for charters than there are now if such a system had been working, let alone signet precepts. 172

During the minority period, it looks, however, as if there were some checks on the issuing of sealed charters. Mr. Richard Craig, vicar of Dundee, witnesses a few charters in late 1440 as "director of chancery". 173 He had been a regular charter-witness up to then from c.1432, but had never been styled anything more than "Clericus regis" or "Clericus cancellarie". The few charters he does witness as director of chancery are most curious for this reason, as no other holder of such a post is known until 1477, when Mr. Alexander Murray appears in that guise. 174 In 1441, Craig reappears as simple "king's clerk", before disappearing completely as a witness after January 1441, even though he certainly remained alive. 175

It is naturally impossible to be certain what Craig's duties as director might have been. It is notable, however, that he ceases to hold this office (and no longer acts as a charter
witness) just before the chancellor, Crichton, begins to sign the tags of charters. The signature takes the form of the word "Cancellarius" written at right angles to the great seal. The first charter to bear the signature is dated 31 March 1441. It may be noted that because the signatures are naturally only found on engrossments (and so not in RMS), it could be possible that Crichton had been signing charters before then. The previous now-extant engrossment is dated 10 August 1440, before Craig obtains the title director of chancery. There is no sign of a signature on this document.

In all, Crichton's signature can be found on fifteen charters from March 1441 to 6 August 1443. This is almost every charter issued during that period. Some charters may be omitted from the total simply because there is no tag now extant; but others clearly were not signed in this way.

It is suggested that this policy was adopted in order to check the issue of documents under the great seal, and that the short-lived post of director of chancery may have been the precursor of this. The intention was to prevent the passage of charters which were simply authorised by one particular faction: the Livingstons' acquisitiveness may already have become apparent. The period of the signatures coincides very neatly with the dramatic slump in documents issued under the great seal. Crichton's successor as chancellor, the Bishop of Dunkeld, does not appear to have been required to adopt this policy, but his signature is found on two documents in 1445.

A result of this check on the use of the seals was to limit the number of outright gifts made by the Crown during the minority years.
The fingers of one hand can be used to count such gifts at this time, at least of hereditary grants of land. No policy of rewarding the favourites of one faction or another can really be ascertained in this respect. As noted before, the Livingstons' particular control may rather have been in obtaining monetary gifts for their associates.

A further means of control might be exercised by a council of advisers taking an active role in the supervision of patronage especially and the administration generally. The impression gained from reading through the documents showing the work of the administration before 1450 is of a desire to involve the council more directly than had been the case in the reign of James I in general business. On thirty occasions before October 1449, a sealed document refers to the council (excluding those documents which were decrees of the council acting in a judicial capacity). These references often take the form of a phrase that a confirmation of a charter was granted "with mature deliverance of council". Sometimes the general council is specified as the assenting body, so it is evident that it was desired to obtain as wide a consent as possible to a particular action. The references to the council in this way are scattered through the period 1437-1449; naturally they bulk larger in years when more acta now survive, but the pattern is so general as to suggest it was a policy at this stage to indicate in the document that it was not the result of a faction-led administration. To bolster this argument, it may be noted that from October 1449 to the death of James II only another nine documents refer to the assent of the council, and almost all of these are found before July 1450.
This impression of an active conciliar concern in routine administration may be said to occur in the Exchequer Rolls also. We are certainly not flush with references to the council, but it is interesting to see how they tend to peter out c.1450 as well, thus according with the evidence of the acta. The council seems to have been most active in the years immediately after the murder of James I according to the Exchequer Rolls evidence. It had to decide on such matters as how to pay debts to an accountant when there was a reallocation of debt payment to the burgesses of Aberdeen after the murder of James I. It appointed auditors for the accounts of the master of works at Linlithgow. The earldom of Mar question had to be considered by it once. Sometimes it authorised concessions to particular persons. Not all of this seems exceptionally important; but it again points to the council at this stage being as a body responsible for much routine work, in a manner which cannot really be seen either before or after.

On occasion it is evident that the body giving its assent to the issuing of particular documents was the general council. It is suggested that the frequency of meetings of either general council or (more rarely) parliament during the minority years is a further indicator of an effort being made to obtain a wider consent for the administration's actions. The frequency of the meetings of the Estates can be appreciated by the list in Appendix B.

Admittedly, the frequency of meetings perhaps only mirrors the position during the active reign of James I, when parliaments
especially were regularly summoned. Indeed, the mid-fifteenth century was a period when assemblies of the Three Estates were common occurrences. Since taxation was rare in Scotland, it may reasonably be wondered why this was the case. The judicial functions of the Estates may well be the answer, although at this stage we are not always aware of judicial business being transacted when the Estates met.

It is necessary at this point to digress a little to comment on the matter of attendance at assemblies of the Estates. Since it has been suggested that the minority years saw a reliance on the council as the means of government, it might be expected that when assemblies were called the Three Estates would appear in some quantity to approve of what had been done. Showing that this was the case is hard. In parts the problem may be side-stepped by remarking that the necessary evidence just is not there. Royal documents were not issued in great quantity at any time between 1437 and 1449, except for about 21 months after Crichton first appeared as chancellor in May 1439. It is not always possible to make good this lacuna with documents issued by private parties possibly having a bearing on royal policy.

Some assemblies can be shown to have had a substantial attendance. Both general councils in 1440 attracted large numbers, even though this is not shown by increased length of witness lists to royal charters. Indeed, if it were not known from a privy seal letter stating the fact of a meeting of the Estates it would not be possible to state that any form of assembly had gathered in August 1440! The previous meeting that year (in February) might have been picked up from a charter
of 18 March which lists sixteen witnesses, but even that is unregistered. 

Accepting that that charter was granted during the general council (which is more than likely), and making use of a miscellany of other documents, we can find about fifty men who were definitely in Edinburgh at the right time. There is no entry for this assembly in APS, so we cannot discover if any legislation resulted; but important matters were discussed nevertheless. Most notable was the effort to settle the succession of the Seton of Gordon estates.

The August assembly also attracted a large number. The indenture between the king plus the Estates with the Erskines provides the names of over thirty men who were definitely present. This time the main business must have been the problems over the earldom of Mar, the subject of the indenture. Again, this number can be supplemented slightly by other royal documents. Indeed, the indenture in naming those associated with the king in the making of the indenture, claims that they were "deputed by the whole general council on this and other matters", implying thereby that a host of others could have been present.

Similar comments can be made about the general councils in April and June 1441, namely that it is only from unregistered acta that we can be sure that there were assemblies in those months. Subsequently we can only be sure (during the minority years) of a large attendance at the parliament of June/July 1445. We can identify about sixty who were there at the right time. This was an unusual occasion, as the
parliament was diverted from Perth to Edinburgh because of the siege then taking place there; and in addition it was held at the time of the annual Exchequer audit, so it was quite possible that many more burghs especially were represented than the sources already cited indicate. 194

The list of parliaments and general councils in the Appendix may be supplemented by occasions when it is suspected that the council was sitting with some formality. The admission of a new prior to Coldingham by the king in June 1442 looks as if it took place at a formal gathering. Both the notarial instrument on his admission, and the great seal letters thereon, notice the presence of the council. 195 As the instrument records that the king was advised by his council then present, however, this may be nothing more than a group of daily councillors.

A better example of a formal gathering may be provided by events a year later. On 15 July 1443, the king and lords of his council made an indenture with the chapter of Brechin anent the church of Cortachy. The seals of three councillors were affixed, but no other names are recorded. 196 Two days later, a charter was issued in which ten witnesses are named. 197 The subject matter is simply a standard resignation for new infeftment. At this time the Exchequer audit was of course taking place, 198 which probably explains the larger witness list than usual. The same cannot be said about what happened a month later, when Livingston of Callendar purged himself before four bishops of any part in the judicial murder of Fleming of Biggar in November 1440. Also present were the abbot of
Cambuskenneth, two officers of state, four barons, the provost of Stirling and two clergy men, as well as two notaries. 199

Four days later, the letting to brough of a fishing was sought by the commissioners of Montrose from "lords representing the king's council" (six are named). 200 The importance of this lies in the latter event possibly taking place on the same day as the Earl of Douglas attacked Barton Castle (a Crichton stronghold) claiming to be acting on the king's behalf. 201 Unfortunately, it is not possible to be certain of the year of this event. Dunlop places it in 1443, but Nicholson and Macdougall date it to 1444. It is very hard to settle on one year or another. It is tempting to argue that 1443 fits well because we have evidence of a larger-than-usual gathering of magnates just before the attack took place. Against that, there is the fact that Crichton witnesses a charter as chancellor (albeit for the last time in his first spell in office) on 15 September 1443, which is presumably unlikely to have happened if his land and kin were then under siege. 203

Two further important assemblies took place in the minority period which have passed largely unnoticed. Both were concerned with diplomatic business. In July 1446 a council met (prorogued from May) at which the business to be considered seems to have been a French proposal to make peace with England, and also to contemplate marriage alliances. 204 In May 1448 the king was again preoccupied with marital matters, now mainly his own. Letters were sealed at Stirling appointing ambassadors to deal with this and with the possible marriages abroad of James's
sisters Joan and Eleanor. Domestic matters were apparently dealt with too, including a major confirmation of charters for the Knights Hospitaller, and probably once again the earldom of Mar problem. It is not possible to show this time a substantial attendance, however; but the letters of appointment of the ambassadors do speak of the "mature deliverance of council" the king had had.

It is hoped that this review of some of the definite assemblies of the Estates and others where the evidence is not clear cut has shown that there was certainly the potential for regular counsel for the maturing king. Even the apparent gap in meetings between July 1445 and April 1449 can be shown to be punctuated with likely assemblies. It should not be thought that the Livingstons' grip on offices had so dampened enthusiasm for politics amongst the rest of the baronage that they refrained from journeying to court when summoned to assemblies. As yet, however, they seldom acted as witnesses to royal charters, so far as can be told, which is significant. The great change in character between witness lists before and after 1450 is in the list of barons. Men like lords Glamis, Graham, Gray, Lindsay of Byres or Somerville hardly every appeared before 1450, although it cannot be doubted they were beyond the age of majority. As we have already seen, the Livingston supporters on the whole slipped away after 1450 (the obvious exception being James, 1st Lord Livingston, after his return to favour).
(iii): Conclusion

The mere presence of Livingston supporters on the council was not sufficient to save them from a calamitous fall in September 1449. The motive for the arrest of Sir Alexander Livingston, his son James, Robert Livingston, the comptroller, John Livingston, captain of Doune Castle, David Livingston of Greenyards, and Robert Callendar, captain of Dumbarton Castle is not at all clear. 207

Dunlop suggests a variety of possible causes, including James II's increasing maturity (he was almost nineteen, and recently married); the need to produce a marriage portion for his wife; a desire to cut back on the monetary fraud of the Livingstons; and a loss of support by the Livingstons from their erstwhile allies, cowed largely by their increasing hold on offices. 208 Nicholson also notes the financial motive, and suggests in addition that the king wished to forestall a Livingston-MacDonald alliance (the daughter of James Livingston was to marry the young Lord of the Isles). 209 Macdougall also comments on the Crown's financial weakness in particular. 210 All authors comment on the statutes of the January 1450 parliament (where the comptroller and Alexander Livingston the son were condemned to death), denouncing the crime of treason, whether committed against the king or his late mother, as it seems likely that the passing of the statutes at this time and the fall of the family were not unrelated. 211

The various theories outlined above can all be bolstered to some extent by circumstantial evidence. Nothing new has alas! emerged from a careful study of the additional material. It is worth noting, however, that when the Livingstons (and their
associates the Dundases and the Bruces of Clackmannan) obtained a remission of rancour in August 1452 the document contains, amongst the standard clauses, an unusual rider:

"Non obstantibus quibuscunque actis seu decretis in consilio generalibus [sic] seu parlamentis inantea editis seu factis Et presertim in quoddam acto sive decreto alias edito in quo continebatur quod quicumque imponeret manus in personam nostram regine aut principis aut nostris castris quibuscunque quod eo facto proditoriam absque ulla remissione committeret traditionem". 212

It is likely this unusual clause is a pointer to what caused the fall of the family, although it does not specifically indicate that the seizure of the queen and the young king in 1439 had been a long-standing bone of contention.

As has already been seen, the arrest of the Livingstons had consequences right across central Scotland, as men put in office by the Livingstons were replaced. The council was affected as well. Not only were the posts of chamberlain, comptroller and master of the king's household now vacated, but a treasurer now reappears (probably for the first time for many years) and perhaps even a new secretary.213 At one fell swoop all that the Livingstons had built up over the years was in tatters. If the Livingston takeover was a revolution (as was claimed earlier) then no less was this.

The forfeiture imposed on the family naturally led to the family estates being escheated to the Crown, and a number of gifts of forfeited land were made by the king in the next couple of years, from which we can see that the main estates lay in Stirlingshire, but with land in Perthshire as well. 214
Just as it is hard to find the Callendar branch of the family granting out land (or even simply issuing confirmations of tenure), so it is hard finding grants or confirmations by the Crown for them. Nothing came the way of Sir Alexander Livingston, as far as can be told, although a charter of 1458 implies that land escheated to James I on the treachery of the constable of Falkland was granted to Sir Alexander and to James. James was more successful, obtaining land in Perthshire from the earl of Crawford, subsequently confirmed by the king. His brother, Alexander, was favoured with the erection of the barony of Philde, following a resignation of some land by his brother James and another. All these gains were now lost, at least for the time being.

Nicholson considered that the Livingstons' problem was that they lacked a "strong territorial base on which traditional loyalties might have been founded". He also suggests that they were little more than a faction of burgesses. This understates the family's land-holdings; it would be better to say that they were a faction of lairds and burgesses, with neither appellation being necessarily derogatory. With powerful interests in Linlithgow and Stirling, they were more than just rank and file burgesses.

It is true, however, that they did not rank highly amongst the baronage. Their associates (men like Cockburn of Dalginch) were of the same rank as they. Although they do appear in the Douglas orbit it seems they did so as just another group of lesser lairds, of whom there were many others in the Douglas sphere.
Their rise to power is perhaps testimony to what can be achieved by those who sense a gap in the ranks of the traditional leadership. The Auchinleck chronicler commented on the fall of the Livingstons that it was a "gret ferlie"; but it was not an event over which many would lose much sleep.
# TABLE A: FAMILY TREE OF THE LIVINGTONS OF CALLANDER (Simplified)

Sir William Livingston of Callendar (1364)

Sir John Livingston of Callendar (14/9/1402)
(1) = ? Menteith m. 1381 (2) = Agnes Douglas (c.1430)

William Livingston Others
of Balcastle

(see that line, Table C)

Sir Alexander Livingston of Callendar (c.1456)

<table>
<thead>
<tr>
<th>Robert</th>
<th>John</th>
<th>James</th>
</tr>
</thead>
<tbody>
<tr>
<td>? Dundas</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

James, 1st lord Livingston (1467)

= Marion ?Berwick

Alexander L. Janet Elizabeth? Joanna Helen
of Philde = James Hamilton, = James Dundas = John Sibbald = William Menteith
(1/1450) lord of Cadzow of Dundas of Balgonie of Kerse

James, 2nd lord Livingston (no marriage known)

Alexander Mr. David Elizabeth Euphemia Marion

= John, Earl = Malcolm Fleming = William, 3rd
of Ross & lord of the Isles. lord Crichton

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Note: In brackets: dates of death
TABLE B. FAMILY TREE OF THE LIVINCSTONS OF DRUHRY (Simplified)

Sir William Livingston, lord of Corgie,
Craigmillar & Drumry (c.1339)
  * Margaret ?

John Livingston of Drumry (c.1367)
  * dau. of Sir Michael Wemyss
  of that ilk

Sir Robert L. of Drumry and E. Wemyss (c.1425)
  * ?

Sir Robert L. of Drumry & E. Wemyss (1466)
  * Margaret Douglas

William L. of Drumry
  James L.,
  later of
  Newbigging
  John
  Robert
  Isobel
    * John Kinninmond
    of that ilk
  Margaret
    * John Wemyss

natural daughters

Note: In brackets: dates of death
TABLE C: FAMILY TREE OF THE LIVINGSTONS OF BALCASTLE (Simplified)
TABLE D: FAMILY TREE OF THE LIVINGSTONS OF MANNERSTON/MIDDLE BINNING (Simplified)

Origin not known

Margaret Livingston
  = ? Scougall

Thomas Scougall

Henry Livingston of Mannerston (c.1439)
  = ?

John
  (c.1439)
  = Agnes Airth, of Plane

Henry
  (by 23/7/1476)
  = Helen Drummond

Agnes
  = Alex. Forrester
  of Torwood

Christian
  = William Scott
  of Fordale

Issue

Henry Livingston
  of Middle Binning

(1) = Marion Bikkerton
(2) = Margaret Parkle

Robert

Issue

Notes: In brackets: dates of death
Lairds of Mannerston underlined
CHAPTER THREE: FOOTNOTES

1. For assemblies see list in Appendix B. The Exchequer audit is found in ER, v, 1-7.

2. Appendix A, nos. 05, 16. This Appendix is a list of the extant acta of James II. It encompasses charters enrolled in RMS as well as engrossed charters not in that source but existing in various archives elsewhere, as well as a host of administrative precepts. All citations of royal acta for this period will be to this Appendix. It is prefaced by an introduction which establishes the reasoning behind it.

3. APS, ii, 31-32, 53.

4. See for example App. A, nos. 05, 16.

5. For Cranston as comptroller see Appendix C, s.v. Comptroller. This Appendix is a list of officials in the administration of James II. Citations to it will always indicate to which office reference is made. For Cranston as associate of Crichton, see below, pp. 138-40.

6. SP, iii, 170.

7. Asloan MS, i, 215. It is possible that Crichton struck back weeks later with his own seizure, of the king himself: Nicholson, Later Middle Ages, 329-30 and sources cited there.


9. APS, ii, 54-55.

10. SRO: GD 119/167; Paisley Registrum, 70.

11. Hull University Library (Maxwell-Constable of Everingham MSS) DDEV 80/14.


13. For example, RMS, iii, no. 1928 (31/3/1429); RMS, ii, nos. 199-200 (20/3/1432, 31/3/1432).

14. Floors (Roxburghe MSS) Bundle 703 (HMC 46).

15. Dunlop, Kennedy, 29; SP, v, 429.

16. ER, iv, 658.

17. SRO: E 38/186.


19. Appendix D, s.v. Stirling. This Appendix is a list of captains or keepers of royal castles in the reign of James II, arranged by castle. Citations to it will always indicate to which castle reference is made.

21. Ibid., s.v. Chamberlain.


23. SRO: GD 124/1/151.


29. He was constable from at least 1442 to 1448: NLS: Adv. Ch. B65; ER, v, 268; Glanis (Strathmore MSS) Box 4 no. 88.

30. App. D, s.v. Methven; Asloan MS, i, 220.

31. Ibid., 235.

32. Livingston, Livingstons, 33. For simplified family tree, see Table A: The Livingstons of Callendar.

33. Ibid., 33. For simplified family tree see Table C: The Livingstons of Balcastle.

34. RMS, ii, no. 144.

35. SRO: GD 97/2/10.

36. SRO: GD 97/2/5, 6, 8.

37. The conflict is shown by SRO: GD 97/2/12. The remission is App. A, no. 264.

38. Hirsel (Home MSS) Box 129 bundle 4 (HMC 291); SRO: GD 150/6.

39. SRO: GD 150/97, 103.


41. App. A, nos. 1143, 1144 (precepts of sasine in favour of William's son and heir Edward). William was apparently still alive on 22/1/1460; NRA(S) 49 (Dalmahoy of Auchindinny) p.1: Auchindinny writs s.d. 22/1/1460.

42. SRO: GD 150/103.

43. SP, vi, 352-53; App. A, nos. 92, 126.

44. ER, v, 146, 147, 150, 180-82.
45. The valuation of Douglas of Dalkeith (and the other hostages) is at Rot. Scot., ii, 242.

46. For comment on the valuations, see especially various works by A. Grant: e.g. his D.Phil. thesis, 29-32; and Independence and Nationhood, 132-33 (where he expresses some doubt about how close the correlation is between the valuations of the magnates and of their estates).

47. Livingston, Livingstons, 15-16. For simplified family tree see Table B: The Livingstons of Drumry. Other views of the genealogy are in SP, viii, 368-70; Moncreiff, ii, App. xv (659-61). Neither of these accounts is in the least watertight. A Robert Livingston is said in one authority to have been killed at the battle of Homildon in 1402: HMC, x, App. vi, 77-78. If this is genuine, then one would need to fit another Robert Livingston into the genealogy provided here.

48. A good example of a document which causes this theory problems is Binns Papers, no. 10, a charter of confirmation of a charter of 24/8/1457 which refers to a James Livingston, son of the late Robert Livingston, laird of Drumry. But as his son and heir was William Livingston (cf. ER, v, 338, 343, 352 etc.); as Sir Robert Livingston of Drumry continued to appear after 1457 (e.g. SRO: GD 49/5); and as we can find William Livingston succeeding Sir Robert Livingston of Drumry in the main estates, c. 1466 (ER, vii, 385, 479 etc.), it is evident that there must be a mistake in this source. A special service following Sir Robert's death indicates that he died on 8/3/1466: NLS: Acc. 4322 Box 10 Bundle 7.

49. Fraser, Wemyss, ii, no. 47.

50. The first reference to him as a knight that has been found is Dunfermline Registrum, no. 406 (31/7/1437). It is largely this which suggests that there was a death of a Sir Robert Livingston of Drumry in c. 1425. Inchcolm Chrs., no. 45 (12/5/1423) refers to Robert Livingston, knight, lord of Drumry, and his son and heir Robert. References to Robert Livingston between 1425 and 1437 do not show him styled as knight. Furthermore, Fraser, Wemyss, ii, no. 39 (12/10/1425) shows that Robert Livingston was attempting to prevent a breaking of his sasine of Wemyss. This is surely the action of a man newly-succeeded to his heritage, not one long established in it.


53. Ibid., s.v. Sheriffs: Lanark; Banff; Forfar; Berwick; Edinburgh; Perth; Dumfries; Fife; Kinross, Stirling; Linlithgow.


55. As councillor: App. A, no. 790; at general council: NLS: Ch. 16,060 (cf. App. A, no. 692); parliament: APS, xii, 25 no. 46. In addition, he was elected at the October 1456 parliament to the session sitting for the second month (APS, ii, 46 c.8); and at the March 1458 parliament to visit hospitals in the diocese of St. Andrews with a view to their reformation (ibid., 49 c.12).
56. ER, vi, 333.


58. The link of this branch of the Livingstons to the Livingstons of Callendar is not known. Both Mannerston and Middle Binning are in Linlithgowshire: Mannerston was held of the Lindsays of Byres, and Middle Binning of the Crown. Livingston, Livingstons, 385-95 presents a reasonable account of the family in the fifteenth century, although in the light of present knowledge it would be possible to amend some of the account. For simplified family tree see Table D: The Livingstons of Mannerston/Middle Binning.


60. App. C, s.v. Comptroller.


62. For financial difficulties of Henry VI, see R.A. Griffiths, The Reign of King Henry VI (London, 1981), esp. 107-11, 377-79, 394. At 394 Griffiths states: "By 1449 - and probably earlier - the Lancastrian regime was well and truly bankrupt". A single debt of £930 would not have been especially important to Henry VI.

63. Nicholson, Later Middle Ages, 349.

64. Dunlop, Kennedy, 108-09, 330-31.

65. E.g. ER, v, 428, 452, 457, 473 etc.

66. E.g, ibid., 172, 173, 180-82 etc.

67. Ibid., 36, 71, 91.

68. Ibid., 387.

69. ER, iv, ad indicem.

70. SRO: GD 76/2/1.

71. App. C, s.v. Comptroller. Since Robert of Middle Binning was succeeded by his son and heir Henry who was also a burgess of Linlithgow, it is quite possible comptroller Henry was Middle Binning's son and heir. For succession of Henry to Robert, see App. A, no. 674, and cf. ibid., no. 716.

72. ER, v, 372-73.

73. Ibid., 223.

74. Ibid., 458.

75. Ibid., 417.

76. Asloam MS, i, 235.
77. ER, v, 182, 422.
78. Ibid., 125, 146.
79. App. D, s.v. Dumbarton; Dunoon.
80. NLS: Ch. 15,555, 15,556.
82. SRO: GD 150/103.
83. Asloans, i, 235-36.
84. SRO: GD 97/1/9.
85. RMS, ii, nos. 138, 140.
86. CSSR, iii, 174. He had at least one illegitimate child too: CSSR, iv, no. 1012.
87. App. C, s.v. Master of the King's Household.
88. ER, v, 565. SRO: GD 188/24/4 is a precept of sasine issued by the Earl of Angus, 1/5/1453, in favour of Sibbald's son John following the father's death.
89. App. C, s.v. Master of the King's Household.
90. App. A, no. 84.
91. SRO: GD 25/1/61.

To avoid cluttering the footnotes of this thesis with lists like this, it has been decided to set a limit of twenty-five occasions as witnesses to Crown charters to be cited completely in footnotes. Beyond that total, only the first and last appearances will be cited. In this thesis, each individual charter witnessed by a person is counted as one appearance, even if a string of charters had been issued on that day each of which he witnessed.

93. APS, ii, 54-55. Although he is not named there as Cranston of Corsby, it is suggested that the indenture's Sir William Cranston and Sir William Cranston of Corsby were one and the same.
95. App. A, no. 05.
95. Ibid., nos. 30 (first), 190 (last).
97. Thirlestane (Lauderdale MSS) Bundle 77.
98. App. A, nos. 517, 518, 547, 625-27 (as witness); Ibid., no. 475 (for life-grant).
99. Asloan MS, i, 239-41. It looks as if the "Sir William of Gremston" stated there to be amongst the murderers is in fact Sir William Cranston: cf. Fraser, Douglas, i, 473.


101. SRO: GD 15/390.

102. SRO: GD 124/1/145, 156, 545.

103. App. A, nos. 30 (first), 253 (last).

104. Ibid., no. 946.

105. SRO: GD 20/7/184.

106. A Robert Nairn served a long spell as custumar of Stirling: ER, v, vi, ad indices (where he is also revealed to have been a provost of the burgh). Alexander Nairn was keeper of Doune Castle (App. D, s.v. Doune), only nine miles from Stirling. He was not sole owner of Sandfurd, as there was at the same time a family Duddington of Sandfurd: see e.g. SRO: GD 86/12; SRO: GD 20/1/195. The family interest in land there may well have been acquired by marriage.


108. Respectively: Floors (Roxburghe MSS) Bundle 702 (HMC 41); App. A, no. 309.

109. Ibid., nos. 321, 304.

110. See above, pp. 44-45.

111. For his land tenure, see especially App. A, nos. 409, 601.

112. Notes on his activities as sheriff can be found in St. And. Copiale, 451 and Inchcolm Chr., 177. The dates in the latter account have to be checked to ensure that they are correct. For example, it is asserted there that Lumsden was styled sub-chamberlain and sheriff on two occasions: 19/1/1430 and 19/1/1433. The two authorities are one and the same document dated 19/1/1435.

113. NLS: Ch. 6022.

114. St. And. Copiale, no. 62 (= RPSA, 417); EUL: Laing Charters no. 111.

115. DDA: TC/CC 1/27; StAUL: B 65/22/23.


118. StAUL: B 10/14/3.
119. It is assumed he was alive in July 1452 when there is a reference to him and to his son and heir (SRO: GD 90 vol. 5 f.1), but he must have died by September 1454 when his son and heir (also John) had clearly succeeded (StAUL: MS 37,490 no. 7). That it was the father who was still alive in 1450 but was dead ten years later is shown by his being elected to determine the contentious Dundee v. Montrose cause at the parliament of January 1450, and by his omission from the summonses to the July 1460 parliament when the surviving members of the 1450 commission were recalled: App. A, nos. 1132, 1133.

120. Ibid., nos. 05, 16, 17, 19, 22, 23, 67, 179, 191.


122. He must have died by 7/8/1450, when his son and heir Alexander was styled "of Corstorphine": APS, vii, 159.

123. Fraser, Douglas, iii, nos. 383, 384.

124. RMS, ii, no. 60.

125. He was secretary to the 4th Earl of Douglas (App. A, no. 365); and he witnessed two documents issued by the 5th Earl of Douglas: SRO: GD 11/10; Lennoxlove (Hamilton MSS) Bundle 22.


129. SRO: GD 124/1/151.

130. A document calendared at 28/8/1443 in CSSR, iv, no. 943 shows that he had died by then.

131. Asloan MS, i, 235.

132. HMC, xi, App. vi, Hamilton i, no. 9; NLS: Acc. 5474 Box 1 Bundle 58 no. 11.

133. Grant, 'Peerage', passim.

134. There is a chance that this belated raising to the peerage occurred because Sir Alexander Livingston had lived on until c.1456. The date of his death is not known, but it is surely significant that it is only on 13/9/1456 that James Livingston has the territorial designation "of Callendar" in a Scottish document (CR, vi, 113). Rot. Scot., ii, 359 refers to James Livingston of Callendar on 3/1/1453; and Ibid., 362 to James lord of Livingston on 22/5/1453: but these references are quite exceptionally early.

The annulling of the forfeitures is: App. A, no. 670. His return to office is shown in App. C, s.v. Chamberlain.
135. SRO: GD 97/2/24.

136. The hostages are conveniently listed in Balfour-Melville, *James I*, 293-95.


139. *Ibid.*, nos. 18, 254 (Alexander); 129, 260 (James).


143. Glamis (Strathmore MSS) Box 4 no. 100. Sir David Stewart died c.1444: Fraser, *Douglas*, iii, no. 78. This protest throws curious light on the man who had commissioned Bower to compile the Scotchchronicon: Chron. Bower, viii, 339. One of Janet Fenton's letters ratifying the forced alienations is at Glamis (Strathmore MSS) Box 4 no. 85 (10/1/1446).

144. Glamis (Strathmore MSS) Box 4 no. 88 (confirmed by the king on 2/9/1458: App. A, no. 958).

145. Glamis (Strathmore MSS) Box 4 no. 89.

146. *Lords of the Isles Acta*, 303-05, 312. The date of the marriage of the Lord of the Isles to Elizabeth Livingston is unknown.

147. *SP*, i, 109-10.

148. For a sample of his occurrences, see the following, all in the SRO: GD 237/140/1/5; GD 70/1, 2, 3; GD 123/35/1; GD 45/27/106; RH 6/311; GD 205/4/4, 5; GD 248/778/R36; GD 204/657, 728.

149. SRO: GD 45/27/106.

150. SRO: RH 6/311.

151. The other is Forfar (Brechin MSS) City Charters no. 86. At a pinch the indenture between the king with the general council and the Erskines (made in August 1440) could be reckoned a third: App. A, no. 65.

152. Asloan MS, i, 218; Dunlop, *Kennedy*, 62-64.


154. Ogilvy as sheriff-depute: SRO: GD 26/1/4/41; GD 44/13/10/3; A.B.III., iii, 7-8. Lindsay as sheriff-depute: Manchester (John Rylands Library; Crawford MSS) Box E. Lindsay was the brother of the 4th Earl of Crawford, who died in 1453 (*SP*, iii, 18-21). Walter Ogilvy was appointed by his brother Alexander governor for life of all his lands and possessions by his letters of 17/3/53, confirmed later the same month by the king (App. A, no. 688).
155. SRO: GD 70/1.

156. Livingston, Livingstons, 61.

157. No doubt Dr. Christine McGladdery's Ph.D. thesis will have given a modern account of the struggle for supremacy.

158. See below, pp. 210-18.

159. SP, v, 601-02.


161. Ibid., nos. 13, 14.

162. Ibid., no. 65.

163. SRO: GD 124/1/149.

164. SRO: GD 124/1/151.

165. SRO: GD 124/1/159.

166. I.M.M. MacPhail, Dumbarton Castle (Edinburgh, 1979), 29-30; Asloan MS, i, 216. The king and council were at Dumbarton shortly before the indenture was sealed, presumably to obtain first-hand knowledge of the situation: SRO: GD 240/9/1/2 (6/8/1440); cf. ER, v, 129.


168. App. A, no. 243. Cf. MacPhail, Dumbarton Castle, 30-32, where the discharge is apparently not known. MacPhail rightly picks up links between the Erskines and the keepers before Robert Callendar, but suggests a more amiable link between the Erskines and the Livingstons than is seen here.

169. SP, v, 431-32.

170. It is accepted that if there had been an earlier volume entries concerning the Erskines would have been found. In the sixteenth century, there still existed minutes of Stirling town council from 1444: it is most unfortunate that these have long since vanished (Stirling Recs., i, i-ii). A calendar of entries in the protocol book is: Abstract of Protocol Book of the Burgh of Stirling A.D. 1469-1484, ed. A.W.C. Hallen (Edinburgh, 1896).

171. J.M. Thomson, The Public Records of Scotland (Glasgow, 1922), 64-67. Thomson does not actually set a date on the introduction to Scotland of the Order of Chancery, but he does note that Sir Thomas Craig wrote that in his day James I was credited with its introduction.
172. The only privy seal warrant for a charter now extant for the reign of James II is dated 23/2/1456: App. A, no. 800. By chance, this warrant is part of a series of documents effecting a change of vassal (the Earl of Sutherland's son). The notarial instrument on the resignation of the lands to the king is dated 22/2/1456, and the privy seal warrant for the charter, the charter itself and the subsequent precept of sasine followed on the next three days (NLS: Dep. 313 Bundle 2 no. 11; App. A, nos. 800-03).

173. Ibid., nos. 69-76.

174. RMS, ii, no. 1280.

175. He was last a witness on 24/1/1441 (App. A, no. 83). He was still alive on 26/2/1446: SRO: GD 26/1/4/36.


177. Ibid., no. 62.

178. Ibid., nos. 88, 97, 101, 103, 104, 107-12, 114, 116, 124, 131.

179. Charters without tags between Ibid., nos. 88 and 131 include nos. 96, 102; those with tags but not signed at all are rarer: nos. 92, 99.

180. Ibid., nos. 166, 174.

181. The only hereditary grants of land before 1450 are Ibid., nos. 16, 22, 102, 212.

182. Ibid., nos. 01, 05, 06, 16, 22, 46, 49, 55-57, 64, 90, 105, 121, 124-26, 128, 129, 155, 179, 194, 200, 225, 237, 238, 243, 257, 259, 262.

183. Ibid., nos. 266, 306, 316-318, 344, 357, 364, 1105.

184. ER, v, 10.

185. Ibid., 10-11.

186. Ibid., 60-61.

187. Ibid., 32, 35, 147 etc.

188. App. A, no. 64.

189. Ibid., no. 47.

190. The evidence comes from NLS: Ch. 17,088; Floors (Roxburgh MSS) Bundle 702 (HMC 41); App. A, nos. 43-47. It is accepted that not all those found in these documents would have been of sufficient standing to attend parliaments, but it may be noted on the other hand that very few bishops are included here.
191. Ibid., no. 65.

192. Ibid., no. 90 (April 1441); no. 98 (June 1441).

193. The evidence for this comes principally from Brechin Reg., i, no. 56 and App. A, nos. 171-75. Also helpful is Montrose: M/W1/4/1. Floors (Roxburghe MSS) Bundle 692 (HMC 13) is a private charter dated 13/6/1445 at Edinburgh, but at that point parliament may have been gathering at Perth (APS, ii, 33).

194. For the siege see Asloan MS, i, 219; for the Exchequer audit see ER, v, 176-214.


196. Forfar (Brechin MSS) City Charters no. 86.

197. App. A, no. 130

198. ER, v, 124-42.

199. NLS: Ch. 15,557.


201. Asloan MS, i, 217-18.

202. Dunlop, Kennedy, 57; Nicholson, Later Middle Ages, 339; Macdougall, James III, 12.

203. App. A, no. 134. It should be noted that Crichton's signature does not appear on the tag of this charter, the first one to lack his signature for some time; see note 178 above.

204. Dunlop, Kennedy, 87-88. The presence of various members of the baronage is attested by SRO: GD 70/1 and GD 224/529/1/18.


207. Asloan MS, i, 235-36. Sir Alexander Livingston was arrested a few days later than the others. He was in Durham on diplomatic business on 18/9/1449 (CDS, iv, no. 1216). It may be suggested that his absence from the country was the occasion for the hatching of a scheme to overthrow the Livingstons.

208. Dunlop, Kennedy, 103-10.


210. Macdougall, James III, 14-16.

211. APS, ii, 35-36.

213. App. Ø, s.v. Chamberlain; Comptroller; Master of the King's Household; Treasurer; Secretary.


215. Ibid., no. 1000; RMS, ii, no. 2593.

216. EUL: J. M. Thomson photographs no. 9; App. A, nos. 205, 236. The property was later returned to Crawford (ibid., no. 487), but in April 1458 is found as part of the Livingston estate again (ibid., no. 929).

217. Ibid., no. 253. This charter is engrossed in a hand which is quite definitely not contemporary, but it would be unwise to cast doubt on the validity of the grant.


219. Asloan MS, 1, 235.
(i) Introduction

In the last chapter, the aim was to show how the disposal of offices was largely dictated by a faction on the council. With its destruction in September 1449 a number of offices became available: were they now filled by followers of another faction, principally perhaps by associates of the chancellor, William lord Crichton, or of the Earl of Douglas? Or was the king himself now at an age to begin to run the administration as he wished? Up until now, the king has barely been mentioned as an active participant in events, but in the remaining years of his reign it is clear that his own personality shines through just as his father's had in the previous reign. Although the principal power bloc in the minority had fallen, others were still forces to be reckoned with, mainly that of lord Crichton. If the king wished to assert his own power, he would still have to cast off the shackles imposed by such hangovers from the minority.

This discussion of political affairs in the reign has been split conventionally (with a break at 1449-50), but there is nothing wrong with taking the dividing line as 1455, as Macdougall does in his introductory chapters to his study of James III. The year 1455 was another watershed in its own way, as it marked the final defeat of the earls of Douglas. The murder of the 8th Earl at the king's hands in 1452 was probably the more critical event, but it dictated strategy in the next three years, so the two events have to be taken together.
In this chapter the earls of Douglas and the Crichtons will be studied in a manner similar to that used in the discussion of the Livingstons, while the king will be studied separately.

There are differing views of how the pattern of life was dictated in the 1450s. Dunlop naturally prefers to see her hero, James Kennedy, Bishop of St Andrews, as the real focus of stability in the realm (despite his absences on diplomatic business or attending the Jubilee festivities in Rome in 1450-51). She claims it was Kennedy who was the probable author of the statutes of the parliament of June 1452 which, amongst other matters, cleared the king of any guilt in the murder of the 8th Earl of Douglas four months before and saw the creation of a host of new lords of parliament. Likewise, Kennedy's hand is noticeable (claims Dunlop) in the 1455 Act of Annexation, whose intent was to create a block of inalienable land which would provide the king's wherewithal to live.

Kennedy's mediatory abilities were much needed. The first half of the decade was dominated by the need to do something about the Earl of Douglas, who "rose on their [the Livingstons] ruin to the highest peak of his already overgrown power". The absence of the Earl at Rome (for the Jubilee) was a costly mistake on his part. The Crichtons and William Turnbull, Bishop of Glasgow, plotted the downfall of Douglas in his absence. He returned to find he had to yield to the king's mercy at the parliament of June 1451, and although it seemed as if a modus vivendi could be worked out, the end for the 8th Earl came even more cataclysmically than it did for.
the Livingstones, as he was stabbed to death by the king with his followers at Stirling in February 1452.

Although the new (9th) Earl tried to show the king that he was not to be overawed by this action, he could not muster the support of enough like-minded men to make a sufficiently weighty protest. Indeed, it would seem that the only reasonable revenge which could be exacted for the murder was the assassination of the king. James I was assassinated by a small group of single-minded men, but the 9th Earl contented himself with ravaging Stirling. Once again, a truce of sorts was patched up, principally in August 1452 and in January the following year, but an underrcurrent of mutual suspicion remained, and it was no surprise that civil war burst out early in 1455, culminating in the defeat of Douglas’s troops at Arkinholm in May. The 9th Earl remained alive, but his continuing residence in Scotland was unthinkable, and he fled south. He and his principal supporters were forfeited in parliament in June 1455.

The field now being clear, James II's own ambitions and personality became clearer. Dunlop is critical of him: "James II showed himself a consummate opportunist who adroitly changed his sails to suit the political winds"; "James ... launched himself in the pursuit of personal ambitions that made him restive under the eye of his cousin [Kennedy] and impatient of any control"; "The King desired to found a strong dynasty and to extend his territorial dominions". Internally, his acquisitiveness can be seen most clearly in the matters of the earldoms of Mar and Moray (not to forget the Douglas estates); externally, Berwick, Roxburgh and the Isle of Man came under his close attention. That said, he was
evidently not averse to the creation of new peers, most notably in 1452 and 1458. It may be this readiness to give timeous concessions which brought him popularity, as otherwise one might be forced to see him as another James I. The readiness of the people to join him in his actions may be seen in the continuation of the siege (eventually successful) of Roxburgh despite the king's tragic death on 3 August 1460, when a cannon exploded in his face.

Macdougall is more critical of James as a person: "The royal record after 1455 is not only one of wilfulness but also of failure". He considers it hard, however, to give an assessment of the king's character: he certainly seems to have been popular, but had to face criticism of his actions, notably in the March 1458 parliament. Whenever matters really came to a head (notably in the Douglas affair), it was the king who had been the first to act. It was not a continuous story of success. More than once the king had to backtrack, as for example in late 1454, when a series of deaths robbed him of loyal administrators such as chancellor Crichton and the former privy seal, William Turnbull, Bishop of Glasgow. While Douglas weakness as much as royal strength brought success in that sphere of operations, in the longer term the monarchy was the force that would bring political and social stability.

These introductory remarks will act as a stage-setter for this chapter, whose aim is to discuss the 1450s in a similar fashion to the discussion of the minority years just completed. While that chapter sought to show how one family in particular
was able to impose a remarkable degree of control on the grant of offices, it is hoped to show that this type of control did not exist in the 1450s. Posts naturally still became available, and associates of particular councillors can be shown to have obtained some, but no one family stands out as before. The main reason for this was the existence of a strong, adult king, who may not always have had an interest in the day-to-day running of the administration, but who would not let any one family impose its will on business.

(ii) The Crichtons

Very little has hitherto been said about William, 1st lord Crichton, chancellor for almost half of the reign. He was clearly a contender with Livingston for the (unofficial) post of most influential man in the minority administration. Despite his background of service to James I, and the fact of his appointment as chancellor before the Livingstons made their bid for power, he usually came off second-best before the events of late 1449. It was quite a different story thereafter.

Crichton was master of the king's household by 10 March 1432, a post he continued to hold into the reign of James II. He had, however, acted as a witness of royal charters before his appointment as household master, and it is clear that he was one of the select band of loyal adherents of James I. He had, in fact, been invested as a knight by James at his coronation festivities in May 1424. His son and heir, James, was similarly invested at the baptism of the future James II in
1430, again a mark of some favour. Although Crichton was an ambassador to Norway in 1426 to attempt to settle the matter of the annual payment due by the Scots for the transfer of the Western Isles in 1266, it is doubtful whether at so early a stage Crichton should be seen as politically active. His service on this occasion, however, may well have prompted his later rise to office.

Reid suggests that he was just one of the many Douglas associates at the court of James I who furthered Douglas policies. It is certainly reasonable to associate him with the earls, at least until the death of the 5th Earl in 1439. On five occasions before then he can be found witnessing documents issued by the earls. In addition, he was appointed a procurator of Douglas in 1436 to resign land to the king. The first evidence, indeed, of Crichton's being chancellor is provided by a witness list to a charter granted by Douglas on 4 May 1439.

The friendship with the earls of Douglas is likely to have been sundered by the "Black Dinner" in November 1440 in Edinburgh Castle. There is very little solid evidence for this affair. The scrappy Auchinleck Chronicle gives only a few lines to it, simply noting that the young Earl of Douglas and his brother David were executed, followed three days later by Malcolm Fleming of Biggar. Later chronicles, such as Pitscottie, provide much more colourful versions of the incident. It is hard from these sources to fix on the prime movers behind the affair, but the fact that it took place in the Crichton stronghold of Edinburgh allows a reasonable suspicion that Crichton did not oppose the execution at the very least, and indeed most probably encouraged it.
If the power base of the Livingstons was Stirling, then the Crichtons' was Edinburgh. One must assume that the reason for this lay in Edinburgh being close to their own castle: it is not easy to find Crichton links with Edinburgh before Sir William's appointment as captain of Edinburgh Castle c. 1433. He would seem to have succeeded Sir Robert Lauder in this post. Crichton indeed may have risen to prominence in Edinburgh as a result of a fall from grace of Lauder, as Crichton is also found succeeding him as sheriff of Edinburgh. As was noted in the discussion of Lauder earlier, a simpler reason for the fall of Lauder may have been ill-health followed by death. Whatever the cause, the king's willingness to put his master of household in this important office added to his prestige and gave him a most important base. Sir John Forrester of Corstorphine, chamberlain and a former master of household, was much closer to Edinburgh in terms of the focus of his estates, but he was apparently not so favoured by the king, and indeed faded from the political scene early in the minority years.

To what extent was Crichton able to use his position to further his own career, or to provide a helping hand to his associates, just as the Livingstons clearly did? If there is evidence for this, did things change in any way after 1450? Once again, these questions will be answered by referring not only to the activities of Crichton but also by looking at his associates.

The *Exchequer Rolls* indicate that he did feather his own nest by claiming expenses for keeping Edinburgh Castle. The
accounts prior to 1437 imply that he might have obtained £100 p.a. for being captain, but it was a different matter when he was more than just master of household. By the early 1440s, he can be found claiming a pension of 700 merks from the burgh customs of Edinburgh, to be paid until the king's majority. Although this payment may have ceased, by 1445 he seems to have been intended to receive as much as £700 p.a. for his fee (later this fell to £266 13s. 4d). It may be significant that the last time he appears to receive this sum is in the account for 1449-50. Subsequently he was paid less, as was the Bishop of St Andrews, the next keeper. Perhaps there is an indication here of tighter financial control on the assumption of power by the king.

In addition to these payments for the custody of Edinburgh Castle, Crichton obtained some charters from the king. He resigned his lands of the barony of Crichton in his own favour in 1440, and the following year did the same with lands he held in Annandale. A further charter by the Earl of Crawford on the resignation of Douglas of Dalkeith was confirmed by the king in 1440. Most of the king's council were witnesses to the original transaction, suggesting that it was a matter which needed council's approval. Crichton's tenure of land here was further strengthened by a resignation by Crawford in 1450.

In addition to this grant of land in Dumfriesshire in 1450, Crichton also obtained land in the sheriffdom of Edinburgh in the same month. In what is a slightly obscure transaction, Crichton is found obtaining the lands of Castle Law on the resignation of another one day, and the next being granted them by the king.
in recompense for a debt of almost £2,000 owed by the king to Crichton, largely because Crichton had paid some of the king's household expenses.\textsuperscript{27}

The evidence supplied by those grants (and by two others concerning land in Edinburgh and in Peebleshire)\textsuperscript{28} allows us to talk with greater authority on how Crichton had managed to swing patronage in his own direction than it was possible to do with the Livingstons, mainly the Callendar branch. Admittedly, only one of these charters may be ranked an outright gift by the king, but it gives an insight into the character of the man. He was clearly hoping to increase his territory and no doubt thereby his income.

Having obtained the post of chancellor by 1439 he could hardly obtain a higher post in the administration for himself. That he managed to retain the post for all but about four years thereafter before his death says a good deal for his ability. As a layman, he was more likely to be the victim of intrigue than a major figure from the clergy. Nevertheless, he was certainly rather fortunate that the Bishop of Dunkeld, who succeeded him as chancellor c. 1443, died so young.\textsuperscript{29}

Crichton returned to favour despite being heavily involved in the political upheavals of the mid-1440s which saw him besieged briefly in Edinburgh Castle in 1445. Within days of the siege finishing, he was back as a royal charter witness.\textsuperscript{30} Indeed, it looks likely that he obtained a new title at this stage too as part of the settlement of this affair, as from now on he is usually styled "William, lord of Crichton" when acting
as a witness. Although the normal peerage style was "lord x" rather than "lord of x", there seems to have been no set practice in the early years of this new, parliamentary peerage. Although it is 1448 before he is styled simply "lord Crichton", it may be accepted that his peerage was one of those probably created in 1445. In this respect too, one can see him as being a step ahead of the Livingstons, as it was only in 1458 that the then head of that family was ennobled.

Crichton returned as chancellor in November 1447 after the death of the Bishop of Dunkeld (elevated briefly to the bishopric of Glasgow). From then until his death in 1454 he can be found where one would expect: at court. For about a year, however, he was absent abroad, acting as an ambassador to seek a bride for the king. As well as the 122 charters he witnessed before the end of 1449, he witnessed another 304 before his last appearance on 16 September 1453. There is no sign of him signing the tags of charters as he had done for a spell when first in office, but similarly there is no reason to doubt that he was not involved in the day-to-day administration.

Just as the Livingstons were able to find niches for members of their family in minor offices, so the same can be said with Crichton. His own son and heir James was appointed chamberlain by 30 March 1451, and since there is no other known holder of the office after the fall of James Livingston in 1449 it is quite possible he had in fact held the office from about then. James Crichton was apparently not an active holder of the post, as very little information about his activities can be traced.
He does not appear as a charter witness during his tenure of office, for example, except on two occasions. The post of chamberlain was not his only office, however. He was captain of Kildrummy Castle from late 1450 until 1452, and in 1453-54 was keeper of Dunbar Castle. This last post especially is unusual for a man who had been belted Earl of Moray at the parliament of June 1452, but with the Douglas holder of the same title still alive it would certainly be difficult to substantiate the claim. He appears to have succeeded his father as sheriff of Edinburgh. Any hopes that he might be able to carve out a separate career for himself were dashed by his death soon after his father in late 1454.

A more substantial figure was Sir George Crichton of Cairns, later Earl of Caithness. Sir William's grandfather and Sir George's father were brothers. Sir George's career is most curious: it seems as if he may be characterised best as a carpet-bagger. What authority he was to come to hold was surely as a result of his links with Sir William, yet he does not seem to have desired to limit his range of contacts. Apart from witnessing charters of Sir William Crichton, he can be found once as a witness to a charter granted at Elgin of the future Earl of Huntly. At some point prior to 1446, he obtained a grant of land in Clackmannanshire from Huntly, so the relationship may have been closer than this single instance of witnessing a charter may suggest. Twice he can be found amongst Borderers, and twice amongst the associates of Fife lairds. Although one can probably show much the same for other lairds, this geographical extent is rather exceptional.
There are hints of a burgeoning public career in the reign of James I, despite the fact that his father remained alive until at least July 1434. He witnessed only one charter of James I, and was apparently present shortly before the king's murder when some lands were resigned to him for a regrant. His father had been sheriff of Linlithgow and he evidently succeeded him in office, but it is quite impossible to say how long Sir George held the post because there is very little information about the post-holders in this sheriffdom. Sir George was the recipient of a minor favour from James I.

When Sir William took over as chancellor, Sir George began to appear more frequently as a witness to transactions when members of the court were involved. His appointment, therefore, as ambassador to travel to Brittany in 1441 to negotiate concerning the marriage of the king's sister Elizabeth need not cause any surprise. The letters of appointment reveal that he had been appointed admiral of Scotland, a post he probably held until his death. He was not, however, of sufficient standing as yet to be a regular charter witness, and it is doubtful that he could be reckoned a member of the daily council before 1450.

The fall of the Livingstons changed his career, however. Without being ever-present, he frequently now witnessed royal charters (fifty-nine all told between February 1450 and April 1454). He acted as a councillor and an auditor in judicial matters. By late 1452 he was a justiciar besouth Forth, and at some unknown time after the fall of the Livingstons he had been appointed sheriff of Stirling (the previous known sheriff being Sir Alexander...
It is possible he surrendered this office before his death, as the account of James (later lord) Livingston as sheriff in July 1455 began in July 1454, and there is a reference to arrears of his last account. But a more remarkable claim to fame comes in his being appointed keeper of Stirling Castle, almost certainly as the direct replacement for James Livingston. In view of the fact that Livingston had been deeply involved in the trials and tribulations of the Crichton family in the mid-1440s, one wonders whether the irony of this was just as apparent to contemporaries as it seems now.

In addition to this formal post, he was belted Earl of Caithness at the parliament of June 1452. This was the same parliament which saw the belting of lord Crichton's son as Earl of Moray. Crichton was frequently styled as Earl thereafter, but it is clear that his creation was not favoured by all, as he resigned all his claims to it to the king within two years, provoking a rebellion by his son and heir. This involved the king besieging Blackness Castle to force a surrender; the Auchinleck Chronicle reports that the son had seized his father as well as the castle, as he was clearly unhappy about being excluded from the earldom. There may have been bad blood between father and son before 1454, however, as charters in favour of Sir George generally refer to the grant being made to him and his assignees, rather than the usual him and his heirs. A series of documents were needed to provide a settlement of the affair which would satisfy Sir George's son.

Sir George died in August 1454. Sir George's second marriage was probably accomplished as a result of his presence at court. His wife was the widow of Sir
James Douglas of Dalkeith, who died probably in 1441. Sir George made quite certain that his wife obtained her terces in some of her late husband's lands in Dumfriesshire. In 1459, five years after Sir George's death, his widow asserted that within eight days of his death she had revoked a resignation of the barony of Morton which she had made, as she complained she had been forced to make this resignation by her husband. She was only one of a number of widows in the fifteenth century who claimed they had been imposed upon in this way.

It may well have been the hope of Sir George that his son and heir James would be able to take part in political affairs too, even though it was suggested that relations between them may have been strained. Certainly James can be found witnessing instruments of resignation of land to the king for a reinfeftment before his father's death, and he continued to do so at irregular intervals thereafter. He only witnessed one royal charter, however, and it would be wrong to see him as a councillor. His public career apparently continued in much the same way in the next reign. When he married a daughter of Andrew lord Gray he was able to acquire a useful dowry. An instrument of February 1457 records that he had by then received 377 merks 5s. (paid in stages since 1454); and there is a note appended from the following year that another 150 merks were paid over. A marriage of this nature was undoubtedly one of the perks of public life.

The final Crichton who will be discussed in detail is Sir Robert, of Sanquhar. Just as was the case with Robert Livingston of Middle Binning, whose family link with the Livingstons of Callendar was uncertain, so it is with Sir Robert Crichton; the pedigree of
the family is apparently not settled. There is really just one aspect of his career which is significant, and that is his appointment to the office of sheriff of Dumfries in November 1452. It is uncertain, though very likely, that the previous sheriff (Thomas Kirkpatrick of Closeburn) had died. In view of the area of the appointment, it is likely that the previous sheriff was a Douglas nominee, so it is significant that the new sheriff was a Crichton, even though he was a Dumfriesshire laird, and had on four occasions up to 1451 been in the presence of two of the earls when they were carrying out various actions. He seems to have been active personally in office, although he must have attended the parliaments of June 1452 and March 1458, and was once a councillor in judicial business. Just as we could point to the Livingstons having pushed their kin into office, so here we may do the same with the Crichtons.

A number of kinsmen of the Crichtons were granted fees or other perks soon after the fall of the Livingstons. Regrettably the actual identity of those so rewarded is not clear, but it cannot be doubted there were family ties. A good pointer to this is the very fact that the fees first appear after 1449, suggesting that before then the Crichtons did not have such a grip on patronage that they could divert some to their kin.

Adam Crichton, for example, received a fee as a member of the king’s household in 1453-54, paid out of revenues from the king’s lands in Linlithgowshire: a pointer to his family ties. On 16 February 1455 an Adam Crichton, squire, witnessed a resignation to the king in favour of another: they could well be
David Crichton, the king's familiar, received fees in 1453-55, again partly from revenues from Linlithgow. He also had a ward of lands in Berwickshire. A man of the same name witnessed a resignation to the king in December 1452, and a relaxation by the king of a recognition in July 1458.

Amongst other Crichtons rewarded one might pick out Alexander, who was constable and master of works at Kildrummy Castle while its captain was James Crichton of Frendracht, lord Crichton's son and heir. Patrick Crichton was paid £3 12s. by the custumars of Edinburgh on the king's orders in 1452 x 1453. He may be the man of the same name who witnessed lord Crichton's charter granted in June 1452.

No less is there an echo of the remark that the Livingstons were able to find rewards for their associates. Soon after 1449, one can find evidence of Crichton associates being rewarded for their service, and it is to this aspect that we shall turn now.

The Scotts of Buccleuch are a family who profited from their ties with the Crichtons. The geographical location of their lands might lead one to conclude that it would be ties with the earls of Douglas which would serve them best. Interestingly, however, this is not the case. Prior to 1437, two occasions can be found when Sir Walter Scott witnessed a Douglas charter, but none thereafter (although it is allowed that Scott was present with the Earl in other matters after 1437). It is suggested that the Scotts cast their lot in with the Crichtons, perhaps after seeing
the way the wind was blowing: a link with a new political force was the road to future success.

Evidence displaying links with the Crichtons is not hard to come by. In 1437 and 1440, Crichton granted land to Sir Walter Scott for homage and service, and in November 1444 he granted land to Scott's natural son John. It is evident that the Scotts were supporting the Crichtons in their darkest hour, for not only is there this last charter but in October 1444 both Sir Walter and his brother Stephen witnessed charters of Sir George Crichton. Although Sir William was still styling himself chancellor in these documents, he had ceased to be influential in court circles and was being driven back on his heels.

With the exception of a royal charter in 1439, Scott's support for the Crichtons brought no reward before 1450. Thereafter, it was a different story. Stephen Scott was the first to benefit, being granted in May 1450 land in Stirlingshire forfeited by the late comptroller, Robert Livingston. Sir Walter was granted land the following year, which he resigned in favour of his son and heir two years later. The son, David, was himself granted land in Linlithgowshire in 1452, significantly shortly after the murder of the 8th Earl of Douglas. All of these gifts were made for services rendered by the Scotts. If there were any doubts about where their loyalties lay, these would have been allayed by their service at Arkinholm in May 1455, which marked the end for the Douglases. Four months later, David Scott was granted land forfeited by John St. Michael of Whitchester, one of Douglas's allies; and in 1459 his father was rewarded with land in Lanarkshire.
Even in the following reign their service against the Douglases was rewarded. 93

Not only had the Scotts profited from their links with the Crichtons, but also they had pleased the king, who continued to favour them after the death of their patrons. While not a charter witness after April 1442, Sir Walter was twice on the council when judicial matters were dealt with in the 1450s. 94 He also served as the master currour in the Ettrick Ward of Ettrick Forest, being paid an annual fee of £6, until his death in 1469. 95 There can be little doubt that the Scotts of Buccleuch ended the reign of James II richer in landed estates than they had begun it. Having latched onto the back of a patron, they held on to gains made while their patron was at the top, and after his death continued to improve their position by dint of service to the ultimate authority: the king.

Crichton's control in Edinburgh brought him into touch with a powerful body: the burgesses of Edinburgh. In 1426, he had been accompanied to Norway as a fellow-ambassador by Thomas Cranston, a man who had already been provost of Edinburgh. 96 Cranston was strong enough on his own account to carve out a career in the lower ranks of the royal administration of James I, 97 but it is clear the contact made in 1426 was not forgotten. While Crichton was captain of Edinburgh Castle, Cranston was its constable. In view of the Mint being at Edinburgh, Cranston was able to obtain the post of warden of the Mint, for which he earned a pension. 98 He rendered yeoman service as custumar of Edinburgh too. 99

Perhaps as a result of Crichton's protection Cranston was able to hold his post as warden of the Mint into the 1450s. 100 There
is little indication of other reward for his services, however. Thomas Cranston may well have died before the position had so improved for the Crichtons that they could sway patronage in his direction. He did act as sheriff-depute of Edinburgh (as did his son and heir William), lord Crichton being the sheriff. The son William was appointed comptroller soon after Crichton was first elevated to the chancellorship, but this was a short-lived success.

All the same the family were content to support the Crichtons. Thomas twice witnessed lord Crichton's charters, one of which William also witnessed. One of the charters witnessed by Thomas was in the dark days (for the Crichtons) of November 1444. The rewards may not have flowed in but both Cranstons had sufficiently made their presence felt to be called on for service by the administration. Thomas acted as ambassador to negotiate with England in late 1449, and may just have been intended to go (or possibly did go) abroad with the ambassadors including Crichton who were to arrange the king's marriage.

With the experience of sitting on Edinburgh town council, it is not surprising that both Cranstons served the administration in judicial hearings. Thomas was both an auditor and a councillor in judicial affairs. His son, William, also a provost of Edinburgh, was present on the session as well as on the council during judicial hearings, and was an auditor too. All his service in this respect occurred at the end of the reign, but as early as September 1439 he had sealed the "Appoyntment" between the queen mother and the Livingstons which settled the dispute between them following their seizure of the queen mother. In short
the Cranston. were typical of burgesses of the period who would look to the Crown for perks, having achieved as much as they could in their own burgh. In addition, they were lairds as well as being burgesses (their territorial style being "of Airhouse"). More and more as the fifteenth century wore on one finds minor lairds as provosts of important burghs, and not just in Edinburgh.

In view of Crichton's position in Edinburgh it is surprising that he can be shown to have had contacts with so few of its burgesses. The Cranston. are almost the exception rather than the rule. It may be that the town council was strong enough to withstand attempts to force it to toe a particular line. The Livingston-dominated administration must have been quite wary of the town, however, as it is noticeable how seldom the court was at Edinburgh from 1442 to late 1449, as shown by the place-dates of the royal acta. The Exchequer Rolls, which occasionally permit glimpses of the court on its travels, tend to bear out the evidence of the acta.

The interpretation of the evidence for Crichton control of patronage after the fall of the Livingstons is not easy. Certainly it can be shown how the Crichtons themselves were able to pick up useful posts such as justiciar, sheriff of Dumfries or chamberlain. Likewise it can be shown that one or two of their allies obtained posts of consequence at a local level. The fact that they only lived for a few years after the fall of the Livingstons means that they did not have much time to insinuate their followers into other offices. The large-scale clearance in 1449-50 was a marvellous
opportunity for them to do so, however. If they tried to move in as the Livingstons had done they must be accounted failures; but no doubt the administration was wary of such happenings and would not have permitted such a concentration of power. In addition, the Earl of Douglas remained alive and active and would be keen to see to his interests and those of his allies. The political scene was not as void as it had been in 1439; to have built an all-controlling power block in the years after 1449 would be a more remarkable achievement than it had been ten years before.

All the same, it may be noticed how the Crichtons themselves had obtained positions of strength in various parts of the realm. The Livingstons had a stranglehold across central Scotland; the Crichtons (rather like the Douglases) had their bases scattered across the country, with James Crichton, Earl of Moray having interests in the north and Sir Robert Crichton of Sanquhar having interests in the south-west. More centrally, lord Crichton would hope to have Edinburgh (and probably East Lothian) in his pocket, while Sir George Crichton had substantial interests in Linlithgowshire, spreading into Stirlingshire (on Crown request) and in addition having his newly-acquired title of Earl of Caithness to boot. The extent of their control north of the Forth-Clyde line was not very great, but it was not to be expected that every nook and cranny would be filled by one of their associates. Perhaps the marriage of lord Crichton's daughter to the son and heir of Patrick lord Glamis in 1450 is an indication of efforts by Crichton to gain a foothold in the north-east, as well as promoting the interests of lord
Glamis himself, who would become master of the king's household that year, the start of a decade of loyal political service by that man. 112

With the Livingstons a significant drawback was the lack of documents they had themselves issued, as no use could therefore be made of witness lists in an effort to list their supporters. No such problem arises with the Crichtons. The problem is more in determining what use can be made of the witness lists which occur to list their allies. Naturally a good many acta issued by lord Crichton were dated from where the court was then resident. Witnesses on these occasions are frequently others at court who might not be associates of the Crichtons themselves. Alexander Nairn of Sandfurd, who witnessed Crichton's charter of 18 February 1450, is a good example. 113 His career in Crown service dates from late in the reign of James I, when Crichton was hardly of sufficient authority to bestow patronage for the king. The two men would have been well-known to each other from then on, as Nairn was comptroller on three separate occasions, but this is the only link of this nature known to us. 114 It would seem wrong therefore to class Nairn as a Crichton associate. On the other side of the coin are those like the Scotts of Buccleuch, who were surely allies of the Crichtons.

A significant point of contact between the associates of the Crichtons and of the Douglases (who will be the topic for examination in the remainder of this chapter) is that usually they continued to serve the Crown after the death of their patrons. As was seen earlier, this was not the case with the Livingstons' associates
(who probably had little choice in the matter, it must be admitted). The evidence does suggest that the patrons had brought reward to other associates who were no less evidently determined to hold on to what they were granted. Royal favour was fickle at the best of times: a forfeiture was not necessarily permanent, but (in the case of the Livingstons) it probably caused more long-term harm to the Livingstons' associates than to the Livingstons themselves. Allies of the Crichtons had no such trouble in the months after the deaths in quick succession of lord Crichton and the Earls of Moray and Caithness. Others might now proceed to obtain pensions rather than some of the Crichton kin, but there was no clear-out of officials. The Crown-magnate partnership in administration is well-illustrated in some respects by a study of the Crichtons' activities.

(iii) The Earls of Douglas

The various earls of Douglas active in the reign of James II present problems. How does one assess their real authority? It is easy to say that as they were the major landowners beside the king then their influence was equally significant. If there had been only one earl alive in the reign, then there would be good reason for considering them in this way. In reality, however, there were no less than five, only one of whom held the title (as far as the administration was concerned) for more than three years. The title was not passed from father to son in strict succession either. The 7th Earl (1440-43) succeeded by a tailzie, the 6th Earl (1439-40) having died without issue. The 9th Earl (1452-55) was brother of the 8th (1443-52), who had also died without issue. Both the 6th and 8th Earls succeeded when quite young, although in the case of the latter his youth seems to have been no impediment
to involvement in political affairs. The 8th and 9th Earls were most in need of establishing their position in the period under consideration. The 8th Earl ought to be included as a regular councillor, it seems, after his succession in 1443, but it would be unwise to see him as continually present at court. It is clear that matters affecting his estates needed considerable attention. The 9th Earl, on the other hand, was evidently not a regular councillor ever. He can certainly be found at court both before and after his succession, but the atmosphere there after 1452 cannot have been to his liking.

As has already been noted, this thesis does not aim to cover in detail all the political wheeling and dealing. It is hoped rather to consider here how, if at all, the earls of Douglas were able to reward their supporters (mainly after 1449) both by a consideration of the careers of some of their supporters, and by picking out their own activities.

When the main source for the activities of all persons in the country is the title-deeds of estates, then this is bound to colour the approach to any particular person who is studied in some detail. An examination of the occurrences of the 8th Earl of Douglas in documents affecting his own estates leads to the conclusion that his position even there was not in the least as secure as might be expected. Such a conclusion need not cause much surprise, as it has long been known that with the execution of the childless 6th Earl the family estates were not passed in one compact unit to the 7th Earl, but split. The 7th Earl is usually
seen as having done his best to reunite the estates for his son and heir's benefit, by means of careful marriages. 117

It must not be thought that this policy solved the problems, however. Annandale especially seems to have been irrecoverable. It had passed into the king's hands on the death of the 6th Earl, and clear indications can be found of the Crown asserting its rights there. It is possible, however, that the Crown had trouble collecting its dues from the area. The account of the king's steward of Annandale rendered in July 1454 made specific reference to fermes there having been in the hands of tenants for over thirteen years, since the death of the 6th Earl. 118 This particular account is the most detailed of the three for the area found before the forfeiture of the 9th Earl. The first is very vague, and does not even give a starting-point for when the lands came into the king's hands. 119 Against this evidence of uncertainty on the part of the king, he clearly felt able to act as lord of Annandale in granting charters or licences to infeft. 120 Although the 8th Earl may have entertained some hope of laying claim to some of Annandale, the conclusion must be that this area was lost to the earls. 121

More seriously the Earl was greatly hampered in his efforts to obtain the Roxburghshire estates. This is a matter which has been touched on elsewhere by the present author in conjunction with a colleague. 122

Briefly, the death of the childless 6th Earl in 1440 meant that his sister Margaret succeeded to the estates which had belonged to Archibald Douglas before his succession to the earldom of Douglas in 1388. In 1444, however, the 8th Earl married Margaret, with
the evident intention of reclaiming these lands, which must have included the barony of Hawick. In 1446, the Earl was infeft in the lands of the barony of Hawick. It would seem, however, that Margaret's youth should have meant that her lands were in ward, yet the Earl was apparently able to style himself lord of the barony of Hawick when issuing documents. 123

It is hardly surprising that the Earl's position here was insecure. The difficulty is most readily ascertained from a plea by Oswald Abernethy in March 1447, that he would hold in chief of whomsoever was found by inquest to be the baron of Hawick. 124 The Earl's title was clouded by the fact that William Douglas of Drumlanrig was the rightful baron of Hawick, but he was in non-entry. 125 In June 1451, the matter came to a head when Douglas of Drumlanrig attempted to take sasine of the barony from the Earl, who refused to proceed in the matter as he stood under the king's respite. 126 The position should have been regularised in July 1451 by the king's confirmation of the Earl's tenure of the lands of Hawick, etc., now united into the barony of Sprouston and to be held in free regality. 127 Yet a year later Douglas of Drumlanrig can be found resigning the lands to the king for a new infeftment from him, thus bypassing the Earl. 128 This action may not have resulted in a formal Crown charter and consequent precept, however; and by November the 9th Earl was in a position to issue his own precept to infeft Douglas of Drumlanrig in the usual way. 129

This case simply covered one barony, of course, and the lack of anything so obvious for the rest of the Douglas estates might suggest that it was the exception rather than the rule. There was
trouble elsewhere, however. The marriage of Euphemia, widow of the 5th Earl to James lord Hamilton may have brought a useful ally there, but she took with her rights in some estates where the earls of Douglas had previously acted, such as in the barony of Buittle (Kirkcudbrightshire) or in Clackmannanshire. These were not major losses (and were part and parcel of life when widows remarried as frequently as they did). It was likely that the tenants would be faced with greater uncertainty, as they attempted to discover the identity of their new superior. Confusion could easily arise, however, and allies might be alienated by being carelessly treated. The loss of allies was all the more important when the chips were down and support was a necessity, not just useful.

While the 8th Earl was active in estate matters, frequently granting charters, the witness lists make interesting reading, especially when compared to those of the 5th Earl. Gone were the days of the major political figures in the realm, clergy and laymen, witnessing Douglas charters. Now, one will find men who were associated with Douglas by tenure only. No doubt the witnesses were men who were personally loyal to Douglas; but the contrast is perhaps rather in the quality of the witnesses. The political heavyweights witnessed Douglas charters because he himself was a major figure and commanded respect. It would seem that this was no longer the case, as far as the 8th and 9th Earls were concerned.

This change does not materialise because the Earls were not issuing charters while they were at court. The 8th Earl issued
five documents at Stirling and four at Edinburgh. Only one of
these documents which was witnessed shows a number of royally-
connected men present. In the remainder of these and other
documents he granted, there are men who very occasionally witnessed
a Crown charter, or appeared on other occasions at court, but none
who were themselves king's councillors. The Earl himself
was regularly at court. He witnessed 83 charters issued between
July 1444 and January 1452.

It can be readily shown that the 8th Earl profited personally
from the fall of the Livingstons. Shortly after the parliament
in which the Livingstons were forfeited was over, he was granted
land in Linlithgowshire which had been forfeited by James Dundas,
who had also suffered on that occasion. In May 1450, he again
profited from the latter's forfeiture, and also then obtained
land in Lanarkshire and Linlithgowshire forfeited by Robert and
James Livingston. In between, his town of Strathaven had been
erected into a free burgh of barony. Surprisingly, perhaps,
nothing was obtained for either of his brothers, Archibald, Earl
of Moray or Hugh, Earl of Ormond.

With these in the bag, Douglas left for Rome, where the Jubilee
Year was under way. It was a pilgrimage which was to have
disastrous consequences, however, as the king took the opportunity
of his absence to make a decisive move against his estates. Quite
why this happened is not clear. There are suggestions that some
were unhappy about what Douglas might be negotiating either abroad
or in England, where he was received on his return in February 1451.
Macdougall suggests that it was the question of the earldom of Wigtown
and the lordship of Western Galloway which prompted the king's actions.
On the death of Margaret, widow of the 4th Earl of Douglas, possibly in late 1450, the king may have decided that these lands were now the Crown's, and was reluctant to allow Douglas to lay any claim to them. To assert his rights, the king assembled an army and attacked the Douglas estates. 135

On his return, Douglas had to yield to the king, as the Auchinleck Chronicle shows. It is likely that this action by Douglas meant that he was unable to give Douglas of Drumlanrig sasine in Hawick in the affair recently noticed, as the Earl claimed he stood under the king's respite. 136 A settlement was reached, however, at the parliament of June 1451, when the king regranted Douglas almost all his lands on his resignation and gave him a general remission. It is hardly surprising that "... all gud scottismen war rycht blyth of that accordance". 137

The king was in the mood for reconciliation, and even more so in October 1451, when he confirmed the Earl's tenure in part of Galloway which had been apparently deliberately omitted in the charters of July. The king's concessions may have been related to actions of the Lord of the Isles, who (if Grant's view is accepted) had been in revolt since March that year, and had seized the king's castles of Urquhart, Ruthven and Badenoch. James Livingston, the Lord's father-in-law, was associated with him in these actions. 138 It is possible that James II hoped he could now rely on the Earl to help him in a move against the Lord of the Isles. If this is the case, then the Earl's bond with the Lord of the Isles and the Earl of Crawford would have prevented such an action. 139 Anger at Douglas's stubbornness in refusing to break this bond was the cause of his murder at Stirling in February 1452. As the Earl appears to
have been wary of the king's policy at this time, relations between them must have deteriorated sharply since the major settlement in June 1451. It can hardly be doubted, however, that the country would have been stunned by this remarkable event.

James II's action in personally striking the first blow against Douglas dominated the events of the next three years. The new Earl was instantly on the defensive. Amongst those who took part with the king in the murder were apparently loyal Douglas allies, such as Sir Simon Glendinning of that ilk (whose career will later be studied). If the king could do this to one of his own lieges and not be calumniated for it, there was little the new Earl could do. The next parliament, in June 1452, took care to pardon the king's actions. The Three Estates claimed that both the king and diverse barons had attempted quite reasonably to persuade the Earl to desist from fomenting rebellions and making leagues with others, but these blandishments he utterly rejected. They also claimed that on the day of his death the Earl was not present under any respite or security granted by the king, as had been asserted.

The subject of bonds was to appear in relations with the 9th Earl. Naturally at first there was a spell of civil war, during which Douglas effectively renounced his allegiance to the king, and the Earl of Huntly (claiming to act for James II) defeated the Earl of Crawford at the battle of Brechin. The parliament which cleared the king also forfeited Crawford. Further punitive action followed.

The desire to heal divisions must still have been apparent, however. A further parliament met at the end of August 1452. During it, the king with representatives of the clergy, the barons
and the burgesses sealed a remission for the Livingstons and their accomplices. Although the Earl of Douglas was apparently not present at the assembly, he sealed an obligation to the king at this time. The problems of the earldom of Wigtown and the lordship of Stewarton were referred to in this document, as well as Douglas agreeing not to pursue James in respect of his brother's death. He promised to revoke any bonds contrary to the king, and to do to the king "honor and worship in all far as lies in my power, I have and such sovereignty as I can be content of reason for safety of my life". He would also carry out his duties as a warden of the Marches.

This was the beginning of a settlement. The Earl still did not appear at court, and it took a further bond in January next year to restore anything like normal relations between the king and his subject. Douglas understood he was to obtain entry to Wigtown and Stewarton by the time of the next general council at Easter. In return, he would give James letters of manrent and service against all men. James was still worried about bonds Douglas might have made: Douglas agreed to annul any that might harm the king. He would also serve the king loyally in all causes.

James had back-pedalled furiously, even to the extent of allowing the Earl to marry his brother's widow. Douglas was appointed an ambassador to England in April 1453, and a truce was sealed as a result of negotiations carried out by him. This was his only known contact with the court after 1452: he seems to have preferred life in areas where he felt safe, which did not include any town where the court might go. Douglas's influence on the council was effectively nil. He witnessed only one royal charter, and
even that one was in 1449.  

His brothers the Earls of Moray and Ormond did not feature in this way either: they had both last witnessed a royal charter in September 1451. None are known to have attended the various assemblies of the Estates between 1452 and 1455. It is certainly interesting to see that, according to the place-dates of royal acta, the king did not venture south of the Edinburgh-Stirling line after 1452 until the actions leading up to the defeat of the Douglases in the spring of 1455. It is almost as if the two sides were in separate camps, with a massive no-man's land between them. The Bishop of Galloway was the only man who could be classed as a king's councillor who ventured into the Douglas camp: he witnessed the Earl's charter in October 1453.

The atmosphere of mutual distrust was unlikely to last long before one side or another moved against the other. It was the king who struck first. The deaths of his staunch allies Crichton and Turnbull, Bishop of Glasgow the previous year had simply confirmed him in his position of ultimate power. The Auchinleck Chronicle, commenting on the savage raids he now conducted south, said:

"And all that wald nocht cum till him furthwith he tuke thair gudis and brynt thair placis and tuke faith of all the gentillis clerlie". 

Little support was forthcoming for Douglas, and the final straw was the defeat at Arkinholm of his brothers Moray and Ormond on 1 May 1455 by an army of Borderers. Moray was killed in the battle, and Ormond captured and later executed. The Earl himself fled to England. Sentences of forfeiture were levied on all of them and on their allies in parliament in June 1455.

As this brief account of the 8th and 9th Earls has shown,
it is hard to discuss the Douglases after 1439 without giving some attention to the dissensions their simple existence provoked. If by the end of the 1440s the Livingstons were the main stumbling-block for the young king as he reached maturity, the Douglases were a similar handicap by the mid-1450s. It is hard to see that after the murder of the 8th Earl the two sides could ever have settled into peaceful co-existence. One or other had to fall.

The Douglases could have been a valuable source of local government for the Crown. With so many baronies and regalities in their hands, they ought to have had an extensive network of bailies or stewards holding courts and the like. While there are few records of such activities, it would be wrong to say that no record means no activity in this respect, and that it was a case of every man for himself. Equivalent records of royal courts are similarly lacking.

The earls did hold some offices under the Crown. The 7th Earl was evidently sheriff of Lanark, and the 8th Earl had this office confirmed to him in July 1451. Less certainly, the 8th and perhaps the 9th Earls were lieutenants of the king, but the evidence for this is patchy. Although evidence can also be found for the Earl of Huntly and Duncan lord Campbell holding such posts, the duties are not known. It is likely that the office was not of such importance as that of lieutenant-general, which the 5th Earl of Douglas had held after the assassination of James I.

At a casual glance, it might be thought that the influence of the earls of Douglas on the work of the council was bound to be immense. One would simply need to note the posts held by Mr. John Ralston, Mr. William Turnbull, Mr. George Schoriswood and
Mr. James Lindsay (each of them being secretary or keeper of the privy seal, and Schoriswood also being chancellor). All had been involved with the earls in a clerical capacity before moving into Crown service. When one might think of adding chancellor Crichton and others to this list, it would be more surprising if one were to argue that the influence of the earls of Douglas was in fact not of great importance. Which is closer to the truth?

This is a problem which does not admit of an easy answer.

In the last chapter, the influence of the Livingstons was examined by a similar method. It was found that not all that many posts actually on the council were held by Livingstons or their allies, but that their influence was still outstanding. If it is suggested then that the Douglases may have boosted the public career of such men noted above, but that they exerted little effort on behalf of their patrons, might this not seem to contradict the position we wished to establish before? It suggests that the evidence was being used to support one side of the argument, but being quite ignored when it would equally support the other.

The comments on the earls of Douglas recently made indicated that even after 1450 they did not have an easy time. Earl William certainly did well out of the lands forfeited by the Livingstons, but it is less easy to spot his associates or allies obtaining similar rewards. Nothing was gained by William's brothers, the Earls of Moray or Ormond, for example, or by Earl James. Careful study does show one or two plusses for Douglas allies, however.

If one were looking for a man who was elevated to a post in the administration as a result of Douglas influence, one might pick Mr. James Lindsay as an example. Having been secretary of
the 8th Earl, and promoted to being provost of Lincluden collegiate church (a Douglas foundation), he can be found as keeper of the privy seal by November 1452.

Linday has an eccentric career, and is very hard indeed to discuss. He was an inveterate benefice-seeker in his early years, like many of his contemporaries, and as a result his name is frequently found in the series *Scottish Supplications to Rome* and *Calendar of Papal Letters*. To give a detailed account of his career as revealed here would be tedious, and largely unnecessary. His links with Douglas and with the Crown are of greater significance.

His earliest known link with the Douglases is 1440x1441, when he witnessed a charter of the 7th Earl. Following the succession of the 8th Earl, he regularly appeared as a witness of the Earl's charters, serving as his secretary. During this time, he was presented to the rectory of Douglas by the Earl, in June 1443, and five years later presented to the provostship of Lincluden collegiate church, also by the Earl. In November 1448 he first witnessed a Crown charter.

His career did not really take off at this point, as might be expected. It is suggested that this was because the Earl, although in favour before setting off to Rome, was never fully accepted into court circles after the fall of the Livingstons, and his associates suffered as a result. Lindsay did, however, attend parliament in June and October 1451 (the Earl had been forced to yield to the king in June, as has been seen).

Thereafter, he began to appear in royal service. In January and in September 1452, he is styled clerk register, although it is
not at all certain that he was the genuine holder of this post. He certainly was privy seal by November 1452, and continued to hold that post until September 1454. It is very likely his patron had become the queen: he is styled her factor in 1452 and her chamberlain the following year, and it is quite clear that when the queen's power was at its height after the king's death in 1460 he was recalled to office at her instance. Indeed, in 1455 she resigned some land to the king in his favour.

This outline of Lindsay's career may indicate that he had deserted his old patron in favour of the richer rewards to be had at court. It is therefore hard to say why he was so suddenly ousted from power in late 1454, to the extent that never again did he witness a Crown charter in the reign of James II. It is suggested that the fall from grace of Lindsay is in part at least connected with the final struggle against the Douglases. The coincidence of the events is striking, but it would be wrong to rely on that alone.

In June 1456 he was obliged to obtain a remission of rancour from the king specifically for any criminal action he might have been supposed to be harbouring against the king, the realm or the lieges (there is no mention of treachery in the document, incidentally). It may be that this included lining his own pockets, as the remission also refers to Lindsay having given full account of monies received by him. The paucity of records do not permit a definite conclusion in this respect, however.

What his crimes were is unknown, but there is a revealing remark in the Auchinleck Chronicle thereanent. In remarking on the return to favour of Lindsay in 1460, including the post of
privy seal, it says:

"nocht withstanding that the said master James was excludit fra the counsall of the forsaid king [James II] and fra the court and for his werray helynes and had bene slane for his demeritis had nocht bene he was redemit with gold". 170

"Helynes" means arrogance or pride which is difficult to fit into a scheme of criminal behaviour. 171

It is possible two things caused him to lose favour. First, he was the queen's favourite, and this may have upset the king, or his confidential advisers. Second, he was clearly a Douglas associate. He may not have been linked with the activities of the 9th Earl, but it was only recently that he had been secretary of the 8th Earl, and he was still provost of Lincluden, of course.

His departure coincided with the return of James Livingston, who was back in office as chamberlain by March 1454. 172 Livingston must have enjoyed the personal favour of the king, despite what his family might have done. The Livingstons had been hurt in the long run by their association with the Douglases, the 8th Earl having made personal profit out of their fall. Lindsay himself had been granted a ward of lands which the Livingstons had previously edged towards one of their own family. 173 The potential for conflict was there, and it may have been such a combination of factors which wrecked Lindsay's career. If this view is correct, he evened the score later. After the death of James II, he was reappointed privy seal. Livingston, still chamberlain, subsequently barely appears at court at all, as far as can be told. Up to 1460, he was usually present as a witness of royal charters; thereafter, hardly ever. 174
The evidence for Mr James Lindsay is therefore ambivalent insofar as pointing to the Douglases improving his standing at court is concerned. This is not the case with all Douglas allies. One to profit was Andrew Ker of Altonburn, whose background links him quite firmly to the Douglases. As a landowner in Roxburghshire, the earls were his natural lords, and there is much evidence showing him as a tenant of the Douglases. The Andrew Ker who was alive in the 1440s and 1450s was the son of an Andrew who died c.1445, and himself had as son and heir another Andrew. Ker witnessed a Douglas charter as late as 9 February 1455. That this was not a chance occurrence is shown by his doing the same in March the previous year. In June 1453 he had made an indenture of mutual friendship with another, in which they agreed to assist each other in all matters, excepting only their allegiance to the king and to the earl of Douglas. It looks, then, as if he maintained his allegiance to the Douglases right up to the end.

That does not necessarily mean that his career followed an unbroken line in this respect. There may be good reason to suspect that links with the Crichton family were not insignificant. Most notably, Ker's father witnessed a charter granted by Sir William Crichton in November 1444, at the height of the Crichtons' difficult spell. The month before, he had obtained land from Sir George Crichton. The important point here is probably that these transactions involved Ker's father, not him. The link with the Crichtons may not have been maintained after the father's death. When it comes to determining who might have swung some patronage the way of Ker after 1449, then, it is more likely correct
if Douglas is chosen. In July 1450 Ker was granted land on the forfeiture of Sir Alexander Livingston.\textsuperscript{181} In February 1452 he was granted the lands of the barony of Auld Roxburgh.\textsuperscript{182} Both grants were for service of the grantee. He was clearly in Edinburgh within days of the murder of his (presumed) patron at Stirling, and associating there with lords who were not allied to Douglas;\textsuperscript{183} but it might be unwise to read into this an enmity to Douglas. One could argue that this was an effort on the part of the king and council to show to Douglas that they were not plotting against him. By granting land to a major associate of the Earl, they might have hoped to display their friendship.\textsuperscript{184}

Neither the murder of the 8th Earl, nor the defeat of the 9th in 1455, seem to have removed Ker from politics. In 1453 he was appointed a bailie \emph{in hac parte} in a royal precept of sasine.\textsuperscript{185} He was a councillor in judicial business in 1456 and 1458.\textsuperscript{186} Less easy is it to say that this shows him being accepted by the post-Douglas administration as a trusted servant.

In April 1456 he was tried and acquitted in a wardenry court of treasonable behaviour with some Englishmen, and indeed he may have been connected about then with the death of James Rutherford of that ilk, who was apparently slain in a conflict with the English.\textsuperscript{187} The parliament of October 1455 had been most concerned with the matter of defence against raids by the English, and it is likely this trial and the actions of parliament are related.\textsuperscript{188} There is no known evidence that Ker was here inciting English raids as part of a campaign to bring back Douglas; but it is most interesting that in 1471, when he was again tried for treachery, he was also accused of "art and part of advice and assistance in
the traitorous inbringing of James Douglas, traitor from England within Scotland". 189

Andrew Ker of Altonburn may be considered a probable adherent of Douglas through thick and thin. His loyalty brought him little profit, however. The land granted him on the forfeiture of Sir Alexander Livingston would have reverted on the annulling of sentence imposed on the Livingstons. 190 More permanent was the grant of the barony of Auld Roxburgh; but this hint of reward for service to the Crown seems to have fallen on deaf ears, as Ker continued to put service to Douglas first.

Another family who maintained loyalty to the Douglases and did not profit substantially thereby was the Haliburtons of Dirleton. The head of the family presents a puzzle in the minority of James II. Sir Walter Haliburton frequently acted as an auditor in parliament in the 1430s, 191 and (although not a charter witness) seemed to be on the way to the top when appointed treasurer on the death of Ogilvy of Lintrathen in 1438. 192 But it is not possible to find references to him holding the post after April 1440, and it may well be that he was removed from the post soon after the Livingstons rose to power. He lived on until c. 1447, 193 but no-one else is known to have held the post of treasurer at this time.

His son and heir John was most clearly a Douglas associate. In April 1450, he granted charters over land in Berwickshire to both the Earl of Douglas and his brother James. 194 Each charter noted that the grants were made for the donee's council and help, and were made in the donor's great necessity. Six months before, the master of Douglas had witnessed Haliburton's charter for the
son and heir of the late James Auchinleck of that ilk (another clear Douglas associate). These beneficent gestures brought nothing in return, however, and indeed John lord Haliburton's public career was non-existent, quite a contrast to his father's. The evidence of his activities rather interestingly tends to show him divesting himself of his land (and even the office of sheriff of Berwick): the implication being that this family at least was under acute financial pressure.

Another member of the Haliburton family provides a more significant link with the Douglasses: Mark Haliburton. While the relationship of the head of the family to Mark Haliburton cannot be traced now, it cannot be doubted there was one. Mark was briefly secretary of the 9th Earl of Douglas, although he had witnessed a Douglas charter as early as 2 May 1449. He frequently acted as witness thereafter, and was first styled secretary on 28 March 1454. He was named in a major grouping of Douglas followers in a safe-conduct from Henry VI to go to Rome, dated 22 May 1453, issued while the Earl was in England on official business (sealing a truce on behalf of James II with Henry VI's envoys).

Land came the way of this Haliburton as a result of ties with Douglas. Remarkably, he was able to resign land in Carrick he had obtained in this way to the king for new infeftment after the Douglas forfeitures. He was even so trusted as to take part in leasing Crown land in Galloway, and act as justice-clerk there. His association with James II was short-lived, however, as he himself was forfeited (and quite possibly executed) either in late 1456 or early 1457.
The careers of the Haliburtons and Ker of Altonburn were not parallel, but they both show how difficult and unrewarding loyalty to the earls of Douglas was. No less dangerous was merely flirting with loyalty to the Crown, as Mark Haliburton in particular learned.

The family Cranston of that ilk provides a good example of how men who were apparently loyal supporters of the earls of Douglas were prepared to switch the emphasis of their allegiance to the Crown. It cannot be told usually how readily such men did make such a switch; but it may be guessed reasonably from how quickly they were appointed to office by the Crown.

Thomas Cranston of that ilk witnessed six documents issued by various earls of Douglas between 1435 and 1449. In addition, he witnessed the indentures of August 1447 which settled the problem of the succession to the Douglas estates. Frequent examples can be found of him (and his son and heir, William Cranston of Cra'iling) obtaining grants of land from the earls. A major instance of this was on 10 September 1441, when Cranston of that ilk obtained Crown confirmations of four charters in favour of his predecessors, two of which were from the 5th Earl of Douglas. Most of the family estates were in Roxburghshire, but there was also land in the sheriffdom of Edinburgh.

With a career like that it would only be natural to think that when both Thomas and William obtained land and an office in 1452, such a diversion of patronage had been accomplished for them by the Earl of Douglas. It seems, however, that this is not the case. All three gifts involved were made after the murder of the 8th Earl, so soon after (indeed) that they must represent an
effort by the king to forestall any rebellion by formerly loyal supporters of the late Earl. 209.

It looks as if the king had attempted to buy off a strong Douglas ally; and it would seem as if this were accomplished successfully. Neither Cranston is known to be associated with the 9th Earl of Douglas. These gifts do in fact mark the beginning of a semi-public career for the Cranstons, although it is only Thomas whose work is subsequently recorded.

Thomas Cranston was appointed bailie of Ettrick Forest after its forfeiture to the Crown in 1455, a post he appears to have held until his death. 210 In 1458, when he was confirmed in his tenure of land in Roxburghshire (which he had formerly held of the earls of Douglas), he was further confirmed in the office of "bailie of all the lands of the whole regality of Sprouston wherever they may be in the realm". 211 He acted as a councillor in a judicial matter on one occasion. 212 The parliament of March 1458 chose him as one of the delegates "to commone and provyde apon the mater of the mone for the profet of the Realme". 213

The evidence would indicate that the Cranstons of that ilk (like the junior branch, the burgesses of Edinburgh who were examined before) 214 were prepared to cast off their former allegiance to a great magnate in favour of serving the Crown. The evidence suggests no less that the king realised that their position in local society was such that they needed to be favoured, not alienated: in this way, they might continue to perform tasks previously expected of them by their former master.

Sir Simon Glendinning of that ilk was one of those who helped the king dispatch the 8th Earl of Douglas in February 1452.
Macdougall comments on him (and the others named by Auchinleck as taking part in the attack) that: "... these seven men, as might be expected, had a strong interest in the success of the king and the elimination of the Black Douglases". This is a reasonable remark to make of the others named as being present, but much less so of Glendinning.

If we had to select a Douglas associate who would not participate in such an act it is Glendinning. While he is never associated with the earls in their pilgrimages to Rome or elsewhere, as measured by the grant of safe-conduct by Henry VI, most of the information we have about him puts him into the Douglas world.

On eight occasions between 1443 and 1453 he witnessed Douglas documents. He did not witness any charters issued by the 8th Earl after May 1449, so it is certainly possible that for some reason he became disaffected by some of the Earl's activities; but the fact still remains that here is a regular charter witness who then helped in the murder of his patron. Not only that, but the same man then proceeded to witness three charters issued by the dead man's brother.

Despite the temptation, however to consider that the unreliable Auchinleck Chronicle has again slipped up in the account of the death, the presence of Glendinning probably should be accepted. On 8 March 1452 Glendinning witnessed a royal charter, one of five where he so appeared in the reign. If it had been his hope that he would now profit from his change of overlord, it would have been quickly clear to him that he would only be picking up crumbs. He had barely profited at all from the different world of post-1449 Scotland; little further benefit accrued after 1452.
He was present at Corhead in July 1452 when land was resigned to and regranted by the king, in the presence of a considerable number of the king's allies, while on the attack against the 9th Earl.\footnote{219} Seven years later, he witnessed the relaxation of a recognition by the king, while he was in Perth presenting his account as bailie of Eskdale.\footnote{220} With the addition of one appearance as a royal charter witness in 1455 (while the king was at Tongland), and a confirmation of his tenure in 1459, this is the sum of his known royal activities before 1460.\footnote{221}

Evidently it was hard to persuade the king that old allegiances were genuinely cast off, as has been seen already with Mark Haliburton, the 9th Earl's secretary.

This examination of some of the supporters of the earls of Douglas has shown, it is hoped, that the loyalty of the adherents was coming under considerable Crown pressure in the 1450s. A crucial moment appears to have been the murder of the 8th Earl in 1452. The opposite might have been expected. James II's policy of rewarding potential rebels with grants of land or office was successful in forestalling a massive surge of sympathy for the new Earl. Some clearly were faithful to their old ties; others preferred perhaps to play things by ear. It soon became apparent that the route to preferential treatment lay in supporting the king, not the Earl.

Within the constraints of this work, it is hoped that a reasonable selection of adherents has been made to illustrate this point. In choosing to highlight the efforts by the Livingstons to obtain power in the minority years, there is certainly a danger that the influence of the earls would be understated. Grant,
indeed, has warned that this is easily done.²²²

It is certainly not the desire here to discount the influence of the earls entirely. It is very likely that the creation of the earls of Moray and Ormond in 1445 was at the instigation of their brother, the 8th Earl.²²³ Less certain, however, is the Douglas influence over the erection of the lordship of parliament for Sir James Hamilton of Cadzow, or indeed of the others probably created about now.²²⁴ Grant has suggested that most of the greater barons now appearing with these titles simply adopted them.²²⁵ Hamilton's title could equally be said to have been created at the instigation of his grandfather, Sir Alexander Livingston, as at that of Douglas.²²⁶ It is evident that those who took their styles about now did not by that step begin to take regular part in the administration. Not even the new Earls of Moray and Ormond were more than very occasionally charter witnesses.²²⁷

A significant reason for the eventual overthrow of the Douglases may well have been a loss of loyalty towards them amongst former adherents. A variety of evidence points towards this. It has already been seen how men who might have been reckoned Douglas allies chose not to support the earls as the reign progressed. Men like the Cranstons began to receive offices from the king, and it was to him that they decided to turn in the 1450s, especially after the murder of the 8th Earl. Naturally, such Crown grants could only last if the king could retain the upper hand over the 9th Earl. This was especially true in cases such as the office of sheriff of Wigtown (granted to Sir Andrew Agnew) or of the crowner of Roxburgh (granted to William Cranston of Crailing).²²⁸ The king here was tending to assert
a presence in previously Douglas-dominated areas.

The case of James Lord Hamilton is a good illustration of how the 9th Earl was faced with shifting loyalty. Although the grandson of Sir Alexander Livingston, he was also the husband of the widow of the 5th Earl of Douglas, so he could be thought an obvious Douglas ally. He was certainly a tenant of his. While it is not easy to link him with the actions of the 8th Earl to any great extent, it is clear that the two were not at loggerheads.

Hamilton can be much more obviously linked with the 9th Earl. For example, he was with the Earl when Stirling was ravaged in a revenge attack in March 1452. Three months later, he was still defying the king in company with the Earl. In August 1452, he subscribed the Earl's agreement with the king. He witnessed a Douglas charter in 1454, and as late as February 1455 was profiting from the Earl's largesse. Weeks later, having had the king attack his lands and having been unable to obtain English support for the Earl, he yielded to the king. He was briefly imprisoned, but soon the rewards flowed in. He was appointed sheriff of Lanark. Land forfeited by Douglas was granted to him. He was granted the marriage of the Earl of Crawford. He appeared on the council in judicial affairs. Appending his seal to the document recording the forfeiture of Douglas may have been a test of loyalty for the king from him. If so, he must have passed with flying colours: his public career took off from this stage.

Douglas, on the other hand, may have tried hard to maintain the loyalty of his followers. A good example is provided by the murder of Sir James Auchinleck by Richard Colville in 1449.
While there has to remain some doubt about the identity of the victim (there possibly having been two Auchinlecks of that ilk alive at the same time), it looks as if he were a man who was a constant adherent to the earls, frequently witnessing their charters. His public career, minor though it was, was doubtless achieved at Douglas's instigation. The picture of him which can be built up is of a member of the household of (quite likely) successive earls. The 8th Earl can only have been shocked by his murder, and instantly avenged himself upon Colville. Douglas would hardly have lost face in the eyes of contemporaries by this action.

At the parliament which forfeited the Douglases, the king would naturally have wished for a substantial attendance. The text of the forfeitures lists as being present and assenting to the judgement: four earls (plus the seal of another, who sent a procurator); sixteen lords of parliament, plus two barons who acted as procurators of the Lord of the Isles; nine burgess representatives; seven bishops; and one prior named personally, together with others unnamed. This represented a good attendance, and showed that the new peerage was ready to support the king. Earlier it was noted that James Livingston had been replaced as keeper of Stirling Castle by Sir George Crichton of Blackness, which seemed quite ironical in view of the probable enmity between the families. Was it the same spirit which prompted the sending of the same James Livingston as sheriff of Lanark in ea parte to carry out the formal summonses on the Douglas adherents?
TABLE II. FAMILY TREE OF THE EARLS OF DOUGLAS (Simplified)

Archibald, 3rd Earl

Archibald, 4th Earl, duke of Touraine (1424)
= Margaret Stewart, dau. of Robert III

Archibald, 5th Earl (1439)
= Euphemia Graham

Margaret, maid of Galloway
= (1) 8th Earl of Douglas
= (2) 9th Earl of Douglas
= (3) John Stewart, Earl of Atholl, half-bro. of James II

William, 6th Earl (1440)

James "The Gross", 7th Earl (1443)

William, 8th Earl (1452)
= "Maid of Galloway"

James, 9th Earl (1491)
= "Maid of Galloway"

Archibald, Earl of Moray

Hugh, Earl of Ormond

John D., lord of Balvenie

NOTE: In brackets: dates of death
CHAPTER FOUR: FOOTNOTES

1. For what follows, see generally Dunlop, Kennedy, chap. 2.

2. Ibid., 108.

3. Ibid., 166, 175, 193.

4. Macdougall, James III, 37. For the following in general, see ibid., 16-50.

5. Earliest reference to Crichton as master of household is: DDA: TC/CC 1/27. For continuation into reign of James II, see App. C, s.v. Master of the King's Household.

   Great confusion surrounds the holder of this office in the late 1420s/early 1430s. Walter Ogilvy of Lintrathen can be readily found as master as late as 30/5/1432: SRO: GD 16/3/140; SRO: GD 185/2/1/1, etc.

6. He first witnessed a Crown charter on 31/3/1429 (RMS, iii, no. 1928), and witnessed steadily in the 1430s.


8. Ibid., 263.


10. Reid, 'Douglases', 81.

11. Floors (Roxburghe MSS) Bundles 702 (HMC 41: 4/5/1439), 703 (HMC 46: 2/8/1432); Lennoxlove (Hamilton MSS) Bundle 22 (11/1/1433); SRO: GD 11/10 (n.d.); RMS, ii, no. 13 (18/7/1423).

12. SRO: GD 86/11.

13. Floors (Roxburghe MSS) Bundle 702 (HMC 41).

14. Asloan MS, i, 233-34.

15. See e.g. Macdougall, James III, 9-10, and sources cited there.


17. For Crichton as sheriff, see ER, iv, 607 (an account 22/5/1434 x 27/6/1435); SRO: GD 28/64 (10/3/1435). The last known reference to Lauder as sheriff is dated 4/2/1431 (RMS, ii, no. 186).

19. *ER*, iv, 573, 621; *ER*, v, 33.


21. Ibid., lxiv-lxv, 180, 310.

22. Ibid., 380, although the sum here is stated to be £266 3s. 4d.

23. *ER*, v, vi ad indices.


25. Ibid., no. 42.

26. Ibid., no. 362.

27. Ibid., nos. 363, 364.

28. Ibid., nos. 330, 446.


35. For Crichton's signature on charters, see above, pp. 93-94.


38. App. D, s.v. Kildrummy; Dunbar.

39. *Asloan MS*, i, 242; SP, iii, 63.


41. *Asloan MS*, i, 226.
42. SP, ii, 323; SP, iii, 56.

43. As witness of Crichton charters: e.g. SRO: GD 224/876/33;
SRO: GD 90/3/1; App. A, no. 529. As witness of Huntly

44. Ibid., no. 201.

45. Respectively ibid., nos. 67, 613; SRO: GD 15/390 and SRO: GD 212
Notebook 6 Condie Charters no. 15.

46. SRO: GD 119/164.

47. RMS, ii, no. 60; App. A, no. 05.

48. Last reference to father as sheriff: Fraser, Haddington, ii,
no. 292 (19/8/1432). For George Crichton as sheriff: App. C,
s. v. Sheriffs: Linlithgow.

49. ER, iv, 599.

50. As witness to Crown charters: App. A, nos. 18, 90, 114, 205;
ibid., nos. 80, 83 show him amongst royal councillors.

51. Ibid., no. 105; ER, v, 118.

52. App. C, s. v. Admiral.


54. Ibid., nos. 716, 723.


56. ER, vi, 98-101. Although the arrears in this account is
exactly the sum owed by Sir George, it does not mean he was
necessarily the last accountant. Arrears were often carried
over from one account to the next.


58. Dunlop, Kennedy, chap. 1 has an extended account of the
intrigue in the 1430s and 1440s.

59. Asloan MS, i, 242-43.

60. Ibid., 221.

61. App. A, nos. 328, 430, 603, 604, 648; Blair Castle (Atholl MSS)
Box 26 parcel 5 no. 2.

62. Ibid., nos. 727, 729; SRO: GD 32/20/2/1, 2.

63. Asloan MS, i, 226.

64. See the service of his heir on Dalkeith's death: SRO: GD 150/103.
Sir George's wife had apparently been briefly married to Sir Colin
Campbell of Glenorchy: a sentence of divorce between them was
pronounced on 7/5/1449 (Glas. Univ. [Scot. Hist. Dept.], Argyll
Transcripts, vol. 2 i, s.d. 7/5/1449).

66. RMS, ii, no. 993 (partly represented in App. A, nos. 1106, 1112, 1113).

67. See for example Janet Fenton, discussed above pp. 83-84. and Christian Glen, forced to make alienations by her husbands David Ogilvy and David Aberchirder (Manchester: Rylands Library [Crawford MSS] Box P bundle 1 no. 8; and SRO: GD 26/1/4/36).

68. SRO: GD 224/529/1/25 (25/6/1452); EUL: Laing Charters no. 134 (18/7/1452); SRO: GD 109/1 (24/9/1454); SRO: GD 25/1/58 (12/10/1454); SRO: GD 15/339 (28/1/1457).


70. SP, iii, 330.

71. Blair Castle (Atholl MSS) Box 26 parcel 5 no. 3. SP, iv, 275 notes that the marriage contract is dated 14/2/1463. Why there is such a difference in the date of the contract and the date of the marriage (which had certainly taken place before 1457) is unclear. The notarial instrument does not, however, name the daughter Crichton had married. One cannot, therefore, be sure that it was the same daughter who was the subject of the 1463 contract.

72. SP, iii, 219-20.


74. ER, vi, 168-69.

75. As charter witness: Lennoxlove (Hamilton MSS) Bundle 452 (20/5/1435) and SRO: GD 224/529/1/18 (23/7/1446). Present in legal business: SRO: GD 119/164 (6/7/1434) and SRO: AD 1/53 (7/6/1451).

76. As sheriff, see e.g. SRO: GD 28/119; SRO: RH 6/346; Dumfries House (Bute MSS) Bundle A419 no. 9; Scone (Mansfield MSS) Bundle 1835 no. 19. At parliament: SRO: GD 224/529/1/25 and APS, xii, no. 46 respectively. As councillor: App. A, no. 790.

77. ER, v, 648; ER, vi, 233-35.

78. Kinnaird Castle (Southesk MSS) Charters 1 Top Left drawer bundle 4 no. 71.

79. ER, v, 623; ER, vi, 12, 111, 94.


81. ER, v, 463.
82. Ibid., 500.

83. Dumfries House (Bute MSS) bundle A419 no. 7.

84. As charter witness: Hirsel (Home MSS) Box 92/3 (29/11/1434; cf. EUL: Laing Charters no. 122); Floors (Roxburghe MSS) Bundle 702 (HMC 41: 6/8/1432). Later documents involving Douglas: SRO GD 224/529/1/18 (23/7/1446 charter of mutual excambion confirmed that day by the Earl); Floors (Roxburghe MSS) Bundle 702 (HMC 43: 1/3/1447 serves on inquest conducted before the Earl).

85. The existence of an extensive family charter chest (SRO: GD 224) means that we are very well informed about this family, and the problem here is more to be selective than to squeeze out information from meagre sources.

86. SRO: GD 224/876/33 and GD 224/890A/9/7 (1437); SRO GD 224/890A/9/6 and GD 224/876/36 (1440); for son: SRO: GD 90/3/1.

87. Floors (Roxburghe MSS) Bundle 692 (HMC 12).

88. App. A, no. 16.

89. Ibid., no. 352. On the rescinding of the forfeitures, Scott had to surrender the lands in favour of Henry, son and heir of Robert Livingston: Glorat (Stirling of Glorat MSS) G'16.


91. Ibid., nos. 579, 580.

92. Ibid., nos. 774, 1020.

93. RMS, ii, no. 772.


95. ER, vi, vii ad indices. It is interesting to note that J.M. Gilbert, Hunting and Hunting Reserves in Medieval Scotland (Edinburgh, 1979), 136-37, does not include Scott amongst those who might have continued to hold their posts in the Forest subsequent to their transfer in 1455 from Douglas to Crown control.

96. Crawford, 'Scotland's Foreign Relations: Scandinavia', 86-88 (as ambassador); Edinburgh City Chr., 221 (as provost).

97. For Cranston as treasurer and receiver-general in 1434-35, see HBC, 187. On 1/5/1426 he presented with another an account as custumar of woollen cloth exported from the realm, to which office he had been specially deputed by the king (ER, iv, 412).

98. As constable of Edinburgh Castle, see: ER, iv, 680; ER, v, 31, 36, 67; SRO: GD 224/890A/9/3, 4; App. A, nos. 114, 119. These references are all 1434 x 1442. As warden of the Mint: ER, v, 6, 7, 91, 103, 127-28, 151, 278, 303, 388.
ER, iv, v ad indices.

The index entry for him in ER, v suggests that he was not warden of the Mint after 1443, but reading the volume shows that this is quite misleading. See footnote 98 above.


App. C, s.v. Comptroller.

SRO: GD 90/3/1; SRO: GD 224/876/33 (also witnessed by William). The former of these was granted in November 1444.

App. A, nos. 262, 270, 361. Rot. Scot., ii, 332 shows him being offered a safe-conduct by Henry VI along with William lord Crichton and others to journey abroad. This safe-conduct was issued just before Crichton was instructed to arrange the king's marriage: cf. footnote 33 above.

App. A, nos. 172, 175, 268, 302.

SRO: GD 122/1/506, 507.

On the session (to which he was elected at the general council of October 1456: APS, ii, 46 c.8); App. A, nos. 848, 867. On council: ibid., no. 946. As an auditor: ibid., no. 1145.

APS, ii, 54-55.

Airhouse is 5¼ miles NNW of Lauder, very close to Oxton and the old Roman road. The land was held of the Cranstons of that ilk: SRO: GD 157/398. Thomas Cranston was the uncle of Thomas Cranston of that ilk who will be discussed later as an ally of the earls of Douglas.

The Cranston of Airhouse genealogy is most complex. The present author spent a considerable time three years ago attempting to settle it, proceeding into the mid-sixteenth century in an effort to check that the earlier section was reliable. The web got more tangled in so doing; conversely, it became more likely the tree produced was more or less correct. To describe the research at length would be to fill side after side, so here it will be simply briefly explained why the Thomas and William Cranston discussed are almost certainly father and son.

Part of the problem is that William is often described as "of Soonhope", a place about a mile east of Peebles. There is no information to hand about the superior of Soonhope: indeed, before this century, the only reference known to me is that there was a John Ker, hunter at Soonhope, recorded in a perambulation of c.1190 (Glasgow Registrum, i, no. 89). In a mortification of 1438, Thomas Cranston and his son and heir William are referred to: a Thomas Ker is there described as one of the ancestors of William alone. In this charter, Thomas's wife is named as Marion, with no surname. It is suggested /
109. suggested she was an heiress, and that William would succeed contd to her portion of her father's estates. Since in 1392 there was a Thomas Ker, burgess of Edinburgh, it is further suggested that the Kers had moved from Soonhope into Edinburgh at some point, and that Thomas's wife Marion was a Ker (Edinburgh St. Giles Registrum, nos. 44, 19).

While this is speculative, it is noticeable how William Cranston of Soonhope appears to become William Cranston of Airhouse after the father has apparently died. The style is not consistent, but this is not necessarily significant; it is more important that William should be so styled, and only after Thomas's death (see e.g. App. A, nos. 848, 867, 946; SRO: GD 220/1/A1/8/9; SRO: GD 150/117, 118; SRO: GD 430/9). The grant of Airhouse had been made by Thomas Cranston of that ilk to his son Thomas and his heirs male, whom failing the lands would revert (SRO: GD 157/398). Since on that Thomas's death we have a William Cranston of Airhouse, the line must have continued. For these reasons, it would be harder to deny firmly that Thomas and William were father and son than to accept the identification proposed here.


111. See e.g. ER, v, 183, 224, 266, 267 (all showing residence at Stirling); ibid., 274, 299 (at Falkland).

112. Glamis Castle (Strathmore MSS) Box 4 no. 90. For Glamis, see below, pp. 197-201.


The following documents are known to have been issued by Lord Crichton: 1) SRO: GD 28/64 (10/3/1435); 2,3) SRO: GD 224/876/33, GD 224/890A/9/7 (13/3/1437); 4) SRO: GD 224/890A/9/6 (6/3/1440); 5) SRO: GD 224/876/36 (7/3/1440); 6) SRO: GD 90/3/1 (19/11/1444); 7) App. A, no. 529 (16/5/1448); 8) App. A, no. 289 (4/12/1449); 9) Midlothian Chrs., 306-11 (26/12/1449); 10) Glamis Castle (Strathmore MSS) Box 4 no. 90 (17/2/1450); 11) App. A, no. 309 (18/2/1450); 12) EUL: Laing Charters no. 129 (15/5/1450); 13) Dumfries House (Bute MSS) Bundle A419 no. 7 (10/6/52); 14) SRO: GD 28/104 (25/10/1452); 15) SRO: GD 28/107 (13/1/1453).

114. For Nairn as comptroller, see App. C, s.v. Comptroller. For his career before 1437, see also ER, iv, 668, where he is shown rendering an account for the chamberlain 11/6/1434 x 28/7/1435.

115. The account of the succession of the various earls in SP, iii, 168-83 seems sound enough. See also Table E: The Earls of Douglas.
116. Notice has already been taken of the 5th and 7th Earls: above, pp. 34-35, 45-47. The 6th Earl could reasonably be included amongst those who needed to establish a position too, but his early death tends to rule him out of consideration. Next to nothing is known of his activities (SP, iii, 170-72).

117. Dunlop, Kennedy, 35-36; Nicholson, Later Middle Ages, 331-32; Macdougall, James III, 10.

118. ER, v, 668-71.

119. Ibid., 357-58; the second account is ibid., 520-21. It may be noted that the steward of Annandale under the king was the same man as had been in office under the earls of Douglas: App. A, no. 61.

120. See e.g. ibid., nos. 207, 254, 255, 309, 327. The king also had a captain of Lochmaben Castle from at least 1445: App. D, s.v. Lochmaben.

121. See the indenture of (possibly) 30/10/1445 between the 8th Earl and Joan, widow of the 6th Earl, at SRO: RH 6/321. This document (here in the form of a transumpt made in 1450) is in poor condition and in parts illegible. It seems that the Earl stated that he hoped to help the Countess recover her terce from Annandale. One of the other clauses was to the effect that the Countess would surrender all her terce rights, except Annandale, to the Earl.

122. A. Borthwick and H. MacQueen, 'Three Fifteenth-Century Cases', Juridical Review (1986), 123-51; esp. 139-46. This article is contained in Appendix G in this thesis. It is only fair that I should credit Dr. MacQueen with much of the elucidation of the particular case commented on here.

123. See Borthwick and MacQueen, op. cit., 139-43 and sources cited there. Another document not noticed there in which the 8th Earl styles himself lord of the barony of Hawick is Glasgow Registrum, ii, no. 350 (4/10/1447).

    The 8th Earl's wife was apparently only eleven years of age on their marriage (CPL, x, 130-31). Douglas had a gift of her marriage from the king in February 1450 (App. A, no. 303).

124. Floors (Roxburghe MSS) Bundle 704 (HMC 51).

125. SRO: GD 224/876/45 (service of heir in 1450, noting that the death of Sir William Douglas had occurred in 1444).

126. SRO: AD 1/53.


128. SRO: GD 224/529/1/25.

129. SRO: GD 224/529/1/26.
130. Lands affected included Kirkgunzeon in the barony of Buittle (see SRO: GD 10/12-14) and Shanbody in Clackmannanshire (see SRO: GD 212 Notebook 6 Condie Charters no. 11 and Fraser, Douglas, iii, no. 78).

131. These remarks are based on the following (being documents issued by the 8th Earl known to this author). 1) EUL: Laing Charters no. 122 (20/8/1443); 2) SRO: GD 25/1/61 (20/4/1444); 3) App. A, no. 612 (29/6/1444); 4) SRO: RH 6/310 (24/8/1444); 5, 6) Floors Roxburghe MSS Bundles 703 (HMC 49) and 620 (10/5/1446); 7) SRO: GD 224/529/1/18 (23/7/1446); 8) SRO: GD 55/564 (26/9/1446); 9) App. A, no. 385 (6/8/1447); 10) Glasgow Registrum, ii, no. 350 (4/10/1447); 11) App. A, no. 271 (2/5/1449); 12) Thirlestane (Lauderdale MSS) Bundle 77 (15/5/1449); 13) SRO: GD 184/5 (23/6/1449); 14) Floors (Roxburghe MSS) Bundle 1004 (19/8/1450); 15) App. A, no. 931 (26/4/1451); 16) Hirschel (Home MSS) Box 3 bundle 8 (HMC 80; 28/4/1451); 17) Hirsel (Home MSS) Box 131/1 (6/5/1451); 18) App. A, no. 532 (8/10/1451); 19) App. A, no. 661 (26/1/1452); 20) Dumfries (Ewart Library) R.C. Reid MSS Vol. 120, Barnbarnoch no. 5 (28/1/1452). The documents here issued at Stirling are nos. 2, 4-6 and 18; and those issued at Edinburgh are nos. 7, 14, 19, 20. No. 2 has a witness list composed mainly of king's councillors. Thomas, Bishop of Galloway, a regular councillor, witnessed no. 19 in this list.

The following are not included in the above list because there are no texts: APS, vii, 139 (28/7/1446); ibid., 159 (7 and 8/8/1450); ibid., 160 (4/2/1450; a date obtained by rearranging the text as printed to provide a possible date).

This footnote will be used in the remainder of this thesis as a standard reference when acta of the 8th Earl of Douglas are noted. Citations will quote the footnote number, indicate that it refers to the list of acta, and then simply give a number.


133. Ibid., nos. 306, 307, 357, 335.

134. Dunlop, Kennedy, 123-26; CDS, iv, no. 1231 (for Douglas's return).

135. Macdougall, James III, 17-18 (cf. Dunlop, Kennedy, 131-32). The place-dates of the king's acta allow very little time for a punitive action, although he was at Peebles on 4/3/1451, and had been in Ayr in February (App. A, nos. 421-27, 437). The Peebles document would fit with an attack on Craig Douglas on the Yarrow, which he is supposed to have razed to the ground some time this year (ER, v, lxxxvi).

136. Asloan MS, i, 239; SRO: AD 1/53.

137. Asloan MS, i, 239; App. A, nos. 485, 486, 488-494, 496-504.

139. NLS: Adv. MS 33.2.15 (i), 157 (printed in Lords of the Isles Acta, 68). The actions of the Lord of the Isles could hardly be seen as anything but hostile to the Crown, yet there is no reference to the raids in the remission for the Livingstons in August 1452 (App. A, no. 670). This is a little strange.

140. Asloan MS, i, 239-41.

141. See below, 163-65.

142. APS, ii, 73.

143. Asloan MS, i, 241-42; Dunlop, Kennedy, 134-41.

144. APS, ii, 41; App. A, no. 670.

145. NLS: Adv. MS 34.3.11, 19-20.

146. NLS: Adv. MS 22.1.14 f. 163v.

147. CPL, x, 130-31.


149. The following documents were issued by the 9th Earl: 1) NLS: Adv. MS 34.3.11, 19-20 (Douglas, 28/8/1452); 2) SRO: GD 10/14 (Bothwell, 14/10/1452); 3) SRO: GD 224/529/1/26 (Lanark, 28/10/1452); 4) Lennoxlove (Hamilton MSS) Bundle 16 (Threave, 1/11/1452); 5) Scone (Nithsdale District Archives) G 2/1 (Dumfries, 4/1/1453); 6) NLS: Adv. MS 22.1.14 f. 163v (Lanark, 16/1/1453); 8) Wigtownshire Chrs., no. 141 (Kirkcudbright, 26/10/1453); 9) SRO: GD 25/1/57 (Douglas Castle, 28/3/1454); 10) App. A, no. 758 (Douglas Castle, 28/3/1454); 11) Lennoxlove (Hamilton MSS) Bundle 17 (Peebles, 9/2/1455). In addition, he issued documents at Jedworth on 28 and 29/4/1451; Hirsel (Home MSS) Box 3 Bundle 8 (HMC 201).

150. App. A, no. 259. His brother, the 8th Earl, also witnessed this document, the king's marriage contract.

151. Ibid., no. 527. Dunlop, Kennedy, 135, n.2 doubts the validity of this charter (which granted right of testament to bishops) because it has the same witnesses as the original issue of this charter, on 24/1/1450 (App. A, no. 307). This point is accepted, but as my citation of the 24/9/1451 charter in the Appendix of acta shows there is in the Brechin archives an original charter bearing that later date. It is not impossible that this occurred when Brechin sought an engrossment of the registered charter, one which was simply redated without altering the names of the witnesses.
152. Wigtownshire Chrs., no. 141.

153. Asloan MS, i, 243-44.


156. For the 9th Earl as lieutenant, see SRO: GD 158/72 (1/6/1450). The evidence for the 8th Earl as lieutenant is awkward. Dunlop, Kennedy, 409 remarks on a petition to the Pope in 1444 for an indulgence made by the king and "the Lieutenant-General". This petition is calendared at CSSR, iv, no. 1035, where there is no reference to a lieutenant-general. With the help of Professor I.B. Cowan, I was able to see Dr. Dunlop's notes on this petition, in which she made no mention of Douglas being lieutenant-general. It would seem, therefore, that she based her remarks in her biography on the assumption that Douglas held that post rather than citing part of the petition verbatim. It is important that this reference should be nailed now, as it appears to have become part of current orthodoxy. It is suggested that Dr. Grant's remark in Independence and Nationhood, 192, that "[the king] was made to appoint Earl William lieutenant-general in 1444" is based on this (though cf. SP, iii, 175-76). No other contemporary reference to Douglas as lieutenant is known to me.

157. For Huntly, see: Asloan MS, i, 237-38; SRO: GD 44/13/10/3(i). The latter reference is the matrimonial contract of the Master of Huntly and Elizabeth, countess of Moray in 1455, printed in Spalding Misc., iv, 128-31. Even although that print is said to have come from a later transumpt, it has been very poorly transcribed, and the fact of Huntly being styled lieutenant is not picked up in print. The SRO version cited is the original.

For Campbell, see SRO: RH 6/325; Glas. Univ. (Scot. Hist. Dept.) Argyll Transcripts vol. 2 i s.d. 20/2/1447, 1/12/1448; App. A, no. 343. With regard to Campbell as lieutenant, and to the powers of the office, it is significant that twice Campbell sought a transumpt of a charter of Robert II, 24/5/1382, in favour of Gillespie Campbell and his son and heir of the post of lieutenant and special commissary in Argyll; the first occasion on 10/5/1437 (at Stirling), and the second on 13/5/1439 (Glas. Univ. [Scot. Hist. Dept.] Argyll Transcripts, vol. 2 i s.d. 10/5/1437, 13/5/1439). The first transumpt was made during a general council (see App. B, s.d. 6/5/1437), when consideration would have been given to appointing a lieutenant-general, as the 5th Earl of Douglas did in fact become. The second was made within weeks of Douglas's death, which occurred on 26/6/1439 (SP, iii, 170). Campbell must surely have been trying to protect his ancestral claims.
157. There is one other contemporary reference to a lieutenant known: ACA: CR 51, 192. Here, Ranald Cheyne is styled pretended deputy lieutenant at a hearing in Aberdeen burgh court. Cheyne's authority as deputy lieutenant was denied. Cheyne may have been an associate of William Hay Earl of Erroll: certainly the Cheynes of Essilmont gave bonds of manrent later to the Earls of Erroll (J. M. Wormald, Lords and Men in Scotland: Bonds of Manrent 1422-1603 [Edinburgh, 1985], 23-24, 64 and Appendix A, s.v. Erroll).

158. Burns, Scottish Churchmen and the Council of Basle, 61 indicates some of the problems (basically that there was more than one James Lindsay in mid-fifteenth century Scotland). Watt, Fasti, 313, 364 also notes briefly identification troubles; the index to that volume lists five fifteenth-century James Lindsays. NLS: Acc. 5474 Box 1 Bundle 58 no. 6 shows that Mr. James Lindsay of Covington, provost of Lincluden, was quite definitely also archdeacon of Lothian (Watt, Fasti, 313 is unsure; this reference is to Lindsay's collation, dated 15/7/1454).

159. HMC, xi, App. vi, Hamilton i no. 131.

160. He witnessed nos. 1, 3-5, 7-9 of the acta of the 8th Earl of Douglas listed in footnote 131 above. His last appearance as a witness was on 6/8/1447.

161. NLS: Acc. 5474 Box 1 Bundle 58, nos. 1, 3.


163. He witnessed four Crown charters in 1449 (ibid., nos. 250, 253, 254, 260), as well as being an Exchequer auditor that year (ER, v, 336). He was appointed an ambassador to England in August 1449, but this was the ill-fated mission which included the soon-to-fall Sir Alexander Livingston (Rot. Scot., ii, 334).

164. Dunfermline Registrum, no. 437 (showing presence in Edinburgh on 10/6/1451); StAUL: B 10/14/4 (showing attendance at parliament 13/10/1451). For Douglas's problems in June 1451, see above, pp. 122, 149.

165. App. C, s.v. Clerk Register.

166. App. C, s.v. Keeper of the Privy Seal.

167. ER, v, 524-25, 556 (as factor and chamberlain); Asloan MS, i, 232 (for recall to office as privy seal).


169. Ibid., no. 822.

170. Asloan MS, i, 232.


173. App. A, no. 713 (the subject of a little comment above, pp. 82-83). Livingston must have resented the fact that Lindsay was on the way to a position of power, helped by a link with Douglas, while the Livingstons had been double-crossed. Livingston would have been happy therefore to intrigue against the new man.

174. James Livingston's return to prominence, and his second decline after 1460, is discussed below pp. 203-06. For another view of Lindsay, see Macdougall, James III, 52.

175. See e.g. Floors (Roxburghe MSS) Bundle 702 (HMC 39, 41, 43).

176. Special service of Andrew II as heir to his father: Floors (Roxburghe MSS) Bundle 702 (HMC 43); reference to Andrew III: Floors (Roxburghe MSS) Bundle 690 (HMC 6).

177. See nos. 10, 11 of the acta of the 9th Earl listed in footnote 149 above.

178. Floors (Roxburghe MSS) bundle 690 (HMC 5); cf. SRO: GD 98 box 2 (108.12).

179. SRO: GD 90/3/1.

180. Floors (Roxburghe MSS) Bundle 692 (HMC 12).


182. Ibid., no. 567.

183. Blair Castle (Atholl MSS) Box 26 parcel 5 no. 2, a charter of sale of 14/2/1452 granted at Edinburgh by Andrew lord Gray in favour of Sir George Crichton; amongst the witnesses is Andrew Ker of Altonburn.

184. The circumstances of the murder suggest that it was not a premeditated act, even though the king may have had evidence of Douglas making alliances derogating the Crown authority: APS, ii, 73; Asloan MS, i, 239-41. Ker was associated with Douglas in major safe-conducts from Henry VI of 12/11/1450 and 12/5/1451 (Rot. Scot., ii, 343, 346).


186. Ibid., nos. 790, 1013.

187. Floors (Roxburghe MSS) Bundle 690 (HMC 7); ER, vi, 97 (for death of Rutherford).
188. APS, ii, 44-45. Cf. the comments of Dunlop, Kennedy, 164-65), who does not refer to this trial.

189. HMC, xiv App. iii, Roxburghe no. 54.

190. NLS: Ch. 16,012 (25/11/1467 sasine for James, 2nd lord Living- ston in Catscleuch following the death of his father; land which had been granted in 1450 to Ker by the king on the forfeiture: App. A, no. 376).

191. RMS, ii, no. 146; StAUL: B 65/22/27, 23; DDA: TC/CC 1/27; APS, ii, 23 (all 1430 x 1435).


193. His son had clearly succeeded by 9/2/1447 (SRO: GD 55/559). It is possible that the succession had occurred by 28/7/1446 (APS, vii, 139), but this evidence is not contemporary.


196. App. A, no. 613 (divesting self of office of sheriff of Berwick). Other grants of land by him include ibid., nos. 355, 408; RMS, ii, no. 962. The grant to the Master of Douglas was a wadset, redeemable on Haliburton paying Douglas 500 merks; HMC, xii App. viii, no. 25. The Haliburtons were carrying out extensive rebuilding at Dirleton Castle during the fifteenth century, and it is suggested that the temporary alienation of some of their estates was done to raise money for this rebuilding. The building work is summarised in J.S. Richardson and C.J. Tabraham, Dirleton Castle (Edinburgh, 1982: SDD guide), 4-5.

197. See especially in this regard SRO: GD 158/72, a discharge of 1/6/1450 by Lord Haliburton to both the Master of Douglas and Mark Haliburton of any right to the lands of Bedshiel (Berwickshire).

198. See no. 11 of acta of 8th Earl of Douglas in footnote 131 above.

199. See as witness of charters of 8th Earl also no. 13 in list of his acta in footnote 131 above. As witness of charters to 9th Earl, see nos. 8, 11, 10 of acta listed in footnote 149 above. The last-mentioned charter he witnessed as secretary to the Earl.


202. Ibid., nos. 775, 815, 816.
203. ER, vi, 206, 353.
204. Ibid., 343; App. A, no. 859.
205. In date order: Lennoxlove (Hamilton MSS) Bundle 452; Floors (Roxburghe MSS) Bundle 702 (HMC 41); nos. 7, 11, 12 of acta 8th Earl in footnote 131 above.
206. App. A, no. 286. This was an important matter as Archibald and James Douglas were twins; James was decided to be the elder.
207. Ibid., nos. 107-10.
208. For another Douglas charter in his favour, see nos. 5, 6 of acta of 8th Earl in footnote 131 above. Cranston also witnessed the charter of John lord Haliburton in favour of James, Master of Douglas granted on 11/4/1450: App. A, no. 355.
209. Thomas was granted land in Berwickshire now to be united into the barony of Greenlaw (ibid., no. 571). William was granted the office of crowner of Roxburghshire and land in Peeblesshire forfeited by the late William Lauder of Hatton (ibid., nos. 573, 584). All three gifts were made for the grantees' service. In addition, Thomas must have been granted five merks' worth of the lands of the barony of Symington, then in ward, although the date of the grant to him is not known (ibid., no. 713).
210. ER, vi, vii ad indices; Gilbert, Hunting and Hunting Reserves, 136, 158.
211. App. A, no. 923.
212. Ibid., no. 944.
213. APS, ii, 48 c.7. He was also a specially-constituted sheriff in hac parte in April 1459 (NLS: Ch. 15,829).
214. See above, pp. 138-40.
Links between the Cranstons of that ilk and the Crichtons may also be briefly noted. See SRO: GD 224/890A/9/7; SRO: GD 224/876/33; App. A, no. 330; EUL: Laing Charters no. 129.
215. Macdougall, James III, 23. For the murder, see Asloan MS, i, 239-41.
216. See nos. 1, 7, 8, 11, 12 of acta of 8th Earl in footnote 131; and nos. 5, 6, 8 of acta of 9th Earl in footnote 149 above. Asloan MS, i, 237 appears to indicate that a man of this name was killed in mid-1449, which would fit with a gap as witness of Douglas charters about then. The text is vague, however, and the Auchinleck chronicle is notoriously unreliable. No other indication is known to us of Glendinning dying in 1449.
217. App. A, no. 578; the others he witnessed are ibid., nos. 516-18, 775.
218. Ibid., no. 432.
219. EUL: Laing Charters no. 134; Dunlop, Kennedy, 139-40; Asloan MS, i, 242.
220. SRO: GD 224/529/1/32; ER, vi, 556-58 (for his account).
221. App. A, nos. 775, 1021. He was also with the Scots commissioners in September 1458 when an indenture was sealed: SRO SP 6/20.
222. Grant, 'Revolt of the Lord of the Isles', 172 n. 8.
223. See e.g. Nicholson, Later Middle Ages, 342.
226. Hamilton was the son of the marriage between Janet Livingston and James Hamilton, lord of Cadzow; see Table A.
228. Ibid., no. 463, 650, 573.
229. SP, iv, 347-52.
230. He held the barony of Drumsargard of the earls: Lennoxlo (Hamilton MSS) Bundle 17.
231. He accompanied the Earl to Rome during the visit for the Jubilee celebrations: Rot. Scot., ii, 343; Dunlop, Kennedy, 124, 405-06.
233. NLS: Adv. MS 34.3.11, 19-20.
234. See nos. 10, 11 of acta of 9th Earl in footnote 149 above.
235. Asloan MS, i, 244. He must have suffered sufficiently for Robert lord Fleming to feel it necessary to obtain in July 1456 a remission of rancour for depredations committed on Hamilton: App. A., no. 827.
237. Ibid., nos. 790, 946, 1013.
239. His public career continued into the reign of James III: SP, iv, 352. A notable mark of favour was his being allowed to marry Mary, sister of James III.

240. It seems as if there were estates called Auchinleck in both Forfarshire and Ayrshire, the holders bearing the Christian names John and James: see RMS, ii, Index of persons s.v. Auchinleck. The confusion suggested by the entries here may be illusory, but efforts to unravel it have been unsuccessful so far.

As charter witness, see: Floors (Roxburghe MSS) Bundle 702 (HMC 41: 18/2/1440); HMC, xi App. vi, Hamilton i no. 131; nos. 1-5, 7, 8 of the acta of the 8th Earl listed in footnote 131 above.


242. Asloan MS, i, 234; Dunlop, Kennedy, 108 and sources cited there.

243. The standard text for this is APS, ii, 75-77, but it can be shown to have been poorly edited. Inspection of MSS in the National Library of Scotland (conceivably including one used in compiling APS) allows the addition of three lords of parliament and eight burghs to the list of those present, as well as completing the names of the procurators of the Lord of the Isles: NLS: Adv. MS 22.1.14, f. 227v-228v.
CHAPTER FIVE
THE POLITICAL COUNCIL IN THE LATE 1450s: THE KING'S MEN

(i) The king and his patronage

It would be both impossible and wrong to conclude the discussion of the political council and the councillors in the reign of James II without an extended section on the king himself. The older he became the more it was his choice which would control the gift of land, offices and minor pensions. Again the problem is more to condense the subject into a chapter whereas it could fill more than one quite comfortably.

In this chapter it is intended to look at some of the king's advisers in much the same way as supporters of the Livingstons, Crichtons or Douglases were examined. There were many whose public career depended on continuing favour from the king: it is not possible to study them all here, so some selection is needed.

The balance of power had now tipped decisively in favour of the king, and it would remain that way for the remainder of the reign. The final defeat of the Douglases certainly was an important element in this: the last piece of the jigsaw, perhaps. It has to be remembered, however, that for quite some time the king's own authority had been increasingly apparent. It looks as if he had begun to surround himself with his own favoured advisers in the early 1450s, and this pattern barely altered after 1455. There was no wholesale removal of officials from their posts, as had been the case in 1449.

First of all, however, the king himself deserves some attention. The implication of the extended treatment given to the Livingstons (and, to a lesser extent, to the Douglases and the
Crichtons) is that the king's own role in government was minimal before 1450. It would be wrong to say that this was also true of the years after 1450 before the fall of the Douglases.

For about half the reign, however, the evidence suggests that the king himself had little part in government. The comments of Bower (who was writing in the 1440s) would suggest that James II was not really in control of his administration then. Bower noted the poverty of the realm, lacking the powerful ruler snatched away so suddenly. All that could be hoped for was that the young king would have learnt something from his father:

"So far this young man furnishes a lively reputation for himself, at least in the eyes of his unoffending subjects. God be praised that signs of virtue are being consolidated as he enters the early years of full age". ¹

It is likely that the king's minor role was not necessarily the intention of his council. Parliament in 1440 expressed the hope that the king would be either present in a town where a justice ayre was taking place, or at least nearby. It also wished him to ride throughout the realm where there might be any rebellions, slaughters or other criminal acts.²

There is very little evidence of the king on the road, however. A glance at the place-dates of his acta before 1450 shows that the vast bulk of them were granted at Stirling or Edinburgh. Beyond those two towns, journeys elsewhere can be picked up, but not in such profusion to suggest that the act of 1440 about his attendance at justice ayres was being followed.
(There is very little evidence for justice ayres in the minority years, it may be said). 3

Glimpses only are provided of the king's presence or his instructions in other matters. The siege of Barnton in August 1443 or 1444 was supposed to have been carried out on his instructions. 4 James was apparently present in person at the siege of Edinburgh in mid-1445, and at the parliament then sitting. 5 He had also attended the general council of February 1440 and of November 1443. 6 Other occasions when he was present include the admission of John Oll as new prior of Coldingham in June 1442; and at a resignation of land by a woman in favour of her son two years later. 7 Few instances of his presence can be found beyond these occasions before 1450.

It is very tempting to take as a more typical occurrence a document of August 1443, which records the plea to the king's council to let at borgh a fishing on the North Esk by the commissioners of the burgh of Montrose. There is a statement here that

"they could not have easily the presence of the same our lord the king since he was sleeping in bed, as it was asserted". 8

Very tempting; but quite unique, and therefore simply to be treated as a curiosity.

Previous authors have argued that in 1444 James's majority was declared, largely in an effort by a Douglas/Livingston alliance to further their own aims. A result of this was a diminution of the authority of the queen mother (as the king could claim to be quite on his own from then onwards). In addition,
the Livingstons could begin to demolish the pretensions of others, as they still had the control of the king, and could persuade him to declare as treason actions which they might not have approved of. The evidence for this has rested entirely on a summary of a letter in the Home muniments made by Sir William Fraser. Inspection of the original suggests that Fraser's reading is wrong. Instead, the document indicates that the donee may continue to hold land which had been granted to him beforehand up until the king's legitimate age. This concession was made notwithstanding that a general revocation of lands, possessions and offices had recently been made. This means that no majority had been declared. What it does mean is that any grant of land, etc. made previously would be revoked, and could only be made permanent on the king reaching his majority, which would occur at an unspecified future date. Therefore, no permanent advantage would accrue to any person who either before or after this obtained a grant of land or office.

It is hard to say when James's majority might have been reached instead of the date of 1444 previously accepted. An undated statute concerning the revocation of all alienations of lands and of moveable goods which were possessed by James I on the day of his murder and made thereafter talks of "the tyme of his [the king's] aige of xxv yeris". This would fall in October 1451. No excessive increase in the number of charters granted can be picked up about that time, as could have been the case had persons been hoping to obtain confirmations of their
tenure, or new grants, once it was certain that the charters then granted would be respected without question thereafter. Certainly, 1452 was a busy year, measured by the number of extant acta; but so were 1450 and 1451, while the years 1453 to 1457 were only apparently half as active according to the same gauge.

Documents commenting on the king's full age were issued to mark his twenty-fifth birthday in 1455, however. It is after this occasion that there can be found references to the king's revocation. The conclusion would seem to be that in 1455 it was realised that it was the last year for the king to take advantage of the quadriennium utile and revoke what he might regard as forced alienations. It fell rather helpfully after the defeat of the Douglases and the subsequent settlement by parliament on him of lands and rents which were permanently Crown property. By this stage in his life, James was in complete control of the government, and measures such as these were icing on the cake.

James had been clearly following the activities of his administrators for some years before the final declaration of his full age. This can be seen in one respect by the quantity of acta to which he appended his own signature. Forty-six documents issued under a royal seal are signed in this way.

Although it is hard to be certain about what occasions might have demanded the king's signature, it may be noted that grants for his wife, feu-ferme grants, some remissions of rancour and (as a particular class) charters for the Earl of Huntly were signed.
Rules cannot really be seen in the appending of the signature. There was no form of wording used in the testing clause concerning this. Therefore, one has to rely on the existence of engrossments of enrolled charters to know if a particular charter which might fit into the above categories had been signed or not. The signatures occur at irregular intervals throughout the 1450s. Of course, it has to be remembered that a vast number of precepts for payment allowed at the Exchequer audit were stated to have been signed by the king as well. It does help to confirm that James was playing a part in the administration of his realm.

It was from about 1455 onwards, however, that two important parts of his policy were able to take shape. The driving of the justice ayres and the leasing of Crown lands were evidently seen as ways of raising the king's income, most necessary as taxation income was occasional, and his own growing household had to be catered for. In both of these matters, the king's councillors were used. Their use reflects the importance of these matters to the king. Although James delegated to others here, he was present certainly when justice ayres took place.

The king's own active role is no less apparent from the frequent perambulation of the realm he indulged in in the 1450s. This begins to be noticeable from 1451; in February of that year he can be found at Ayr and Lanark. The place-date evidence of his acta thereafter shows that a journey was typical in February/March, with another one sometimes later in the year.
The middle months of the year were generally passed in the Edinburgh/Stirling/Perth triangle.

Two reasons in particular explain the king's perambulations. First, some were undoubtedly connected with the struggle against the Douglases. This is particularly the case with the journey to the south-west in March 1452, shortly after the murder of the 8th Earl of Douglas.\(^1\) It is probably also true of the jaunt to the same area in October 1455, when the need was partly to settle the area in the aftermath of the Douglas collapse and especially to oversee the setting-up of the administration of this new portion of Crown land.\(^2\)

Second, the holding of justice ayres contributed to the perambulations. Parliament in 1440 had expressed the hope that justice ayres would be held twice a year, and that the king would be at the very least near at hand to the town where they were held. There is little evidence that justice ayres were being held before 1450. It was a different story thereafter. Evidence from both the Exchequer Rolls and from occasional records of the court show that justice ayres were quite common in the 1450s.\(^3\)

It is likely that some of the king's perambulating took place at times when the ayres were being held. The king's council would be present with the king close to where the ayres were being held, and the councillors could then readily advise the justiciar when difficult matters arose.\(^2\) A clear example is the hearing of the claim to the earldom of Mar in November 1457.\(^3\) This is obviously an exceptional case, because of its importance financially and politically to both the Crown and the Erskine claimant. The presence of councillors at the case is easily attested.
Other examples of the king's proximity to the justiciar on ayre can be shown. A curious example is that of the ayre in Annandale in March 1455. At this stage James was already on the attack against the Douglases in the same area. Only miles away, Laurence lord Abernethy in Rothiemay was hearing a case of mortancestor. It might be wondered if Abernethy were acting as a red rag to a bull in being justiciar here. He was clearly an associate of the Douglases up to at least 1440, yet here he was now as a Crown servant. Abernethy suffered for his pains; the accusations against the 9th Earl in 1455 included one that he had harried Abernethy's grange.

Apart from being seen to be providing the possibility for his lieges of obtaining justice, the king was aware that the justice ayres were profitable to him. This aspect may well indicate one reason why he chose to travel with the council on ayre. The inhabitants of Galloway were quickly aware of the change of superior: an ayre held May 1455 x September 1456 raised £600 6s 8d for the royal coffers. No less than £1,105 was expected from ayres held at Dumfries in the years 1457-59. On this occasion, it seems that compositions reduced the sum actually payable, but it indicates the rewards which could be obtained. It is not surprising therefore that those who acted as justiciar were frequently councillors. Sir George Crichton, earl of Caithness; William Sinclair, earl of Orkney (chancellor 1454-6); and Andrew lord Avandale (appointed chancellor in 1460) were amongst those who acted in this capacity in the 1450s.

Hand in hand with an increased interest in driving the ayres
went leasing of Crown lands. This was a policy largely of
the late 1450s, and seems to have arisen as a result of the great
accretion of territory to the Crown following the Douglas
forfeitures. The king's commissioners soon thereafter
travelled to Galloway and began to lease the newly-acquired
land. Moray, Fife, Strathearn and the Ettrick Forest were also
leased in the same way. Those involved as the king's commissioners
were men such as the Bishop of St Andrews, Patrick lord Glamis,
the Bishop of Moray and Ninian Spot, the comptroller. By no means
all were regular councillors; but so many were that it would be
only reasonable to see this as part of the council's regular work,
which would be of great benefit to the king. It was too important a
task to leave to minor officials.

Since there can be added to the duties of the councillors an
occasional need to act as ambassadors either to England or abroad,
and to partake in judicial hearings, it may be seen that much was
expected of the king's councillors in the 1450s. James I had
apparently managed to conduct his policy with only a very limited
number of councillors, largely those who were his officials. The
increase in the extent of the Crown lands (which brought about
the policy of leasing) alone would have meant that James II would
have been sore-pressed to conduct affairs as his father had
done. There is evidence to suggest, however, that James II
widened the scope of the daily council, probably to cope with this
increase of business. In doing so he would oblige himself to
try to reward his servants for their work; this he tried to do.
Events would show that continuing service to the king in this way
was not guaranteed for life. Some were seemingly driven from office; others may rather have chosen to leave.

Following the appearance of the new peerage titles in the 1440s, and the gradual increase in their number in the 1450s, it would not be too surprising to find that those with these titles often appear as witnesses to royal charters. What may be more surprising is that those who are known to have been so created in the June 1452 parliament almost without exception seldom appear in this guise. The coincidence of their creation and the murder of the 8th Earl of Douglas has led to speculation that their service in this respect had prompted their elevation.

Of the seven created then, Darnley (who had witnessed his first charter on 25 March 1452) witnessed thirty-seven charters in total. Lord Hailes witnessed twenty-seven; lord Boyd twenty-one; lord Fleming twenty-six; lord Borthwick twenty-two; lord Lyle twelve; and lord Cathcart eight. These figures are not very impressive, as they cover the whole reign; some had appeared as witnesses before 1452. As a comparison, lord Glamis (who was quite definitely a regular councillor) witnessed 238 charters in the reign; admittedly only seventy-three of these were after the June 1452 parliament, but Glamis does not appear as a witness after 1458, so it may highlight the difference.

In decrying the role of the new creations of 1452, it is not the wish to deny them any significance in the administration. Fleming, for example, acted as master of the king's household. It is evident, however, that they did not enjoy the particular favour of the king which would have brought them a role as regular councillor.
Who were the king's regular councillors in the 1450s?
In turning to examine some of them now, it will be often noted that few had any public career at all before 1450: a clear sign that politics before and after 1450 were dominated by different men.

Patrick, first lord Glamis, may be selected as a good example of how some of the new peers profited from service to the king. As has just been noted, he witnessed no fewer than 238 royal charters between 1441 and 1458: a formidable tally.

This statistic alone would make one think he would have featured before in accounts of the period: yet even in Dunlop's biography of the Bishop of St Andrews, Glamis barely creeps into the footnotes. Not even his tenure of the post of master of the king's household has brought him in from the cold. 36

If a catalyst were sought for Glamis's elevation to a position of strength the marriage of his son Alexander with Agnes, daughter of William lord Crichton in 1450 would be a strong candidate. 37 Two months after the date of the bond for his daughter-in-law's tocher, Glamis first witnessed a royal charter as master of the king's household. 38

While patronage of Crichton most likely did obtain him this post (which ensured him a place on the council), it would be wrong to write off his earlier career. He had in fact witnessed a royal charter as early as April 1441. His appearances in this respect before 1450 were few and far between, but he had most certainly played a minor part in politics before then, and had
come into contact with the king's council.\textsuperscript{39}

It is clear that he attended four assemblies of the Three Estates in the 1440s: in April 1441, June 1445, July 1446 and April 1449.\textsuperscript{40} In the June 1445 parliament, he was elected a lord of the articles. At about this time, he obtained one of the new peerage titles, in common with a number of others, taking the title lord Glamis. (It would not really have been possible for him to have used his surname, Lyon, for his title although it was apparently only in the sixteenth century that the herald's title "Lord Lyon" appears).\textsuperscript{41}

Glamis had had reason to be thankful for the existence of the king's council twice in the 1440s. In 1442, he had to plead for the letting at borgh to him of lands in Aberdeenshire which he claimed were his.\textsuperscript{42} In 1449, lands in Forfarshire were disputed between him and another. Glamis had to fight against efforts by the other party to defeat him by royal letters which Glamis claimed were not of the right kind to eject him from his fee and heritage. Eventually, he was able to obtain a decree of the council to restore him to possession.\textsuperscript{43}

Glamis's duties as master of the king's household are not known. The post was one of those created by James I on his return in 1424 from captivity in England, and was usually held by a baron. Tenure of the office seems to have often been brief in the early days of its existence.\textsuperscript{44} It is clear, however, that by this stage the holder of the post merited a place on the daily council: Glamis (and his successor lord Gray) are usually to be found amongst witnesses to royal charters.
While Glamis must have yielded his post at the end of 1451, his service to the Crown most certainly did not end there. He is not known to have fought against the Douglases, but he continued to witness royal charters steadily up to late 1458. His departure from office need not be seen as a fall from grace because of a patron's activities: it was perhaps just that the king wished to appoint another in his place, knowing that he could rely on Glamis's continuing support.

Glamis gave particular support to the king in the north in the later 1450s: it would almost seem as if he had been appointed the king's agent there. Glamis was one of the king's commissioners involved in leasing lands between the Dee and the Spey in 1455-56, and again the following year. Similarly in 1457-58, and in the following year, leasing of the earldom of Moray was carried out, and Glamis was one of the commissioners. As James was in the Inverness area in October 1457, and Glamis witnessed royal charters at that time, it is tempting to think that the leasing was under way about then.

Apart from service in this respect, he obtained the posts of keeper of Kildrummy, Kindrochit and Balvenie Castles, for which he received payments of £33 6s 8d, and £10 per term respectively. It is possible these posts contributed to his absence from court at times. For example, in 1457, he witnessed eleven charters: only one of these was issued at Edinburgh, whereas the others were all issued during the king's prolonged sojourn north. The tenure of these posts did pull him away from the centre of his estates, although since 1380 the Lyons had held the barony of
Belhelvie, a few miles north of Aberdeen.  

His offices in the north notwithstanding, Glamis was still able to attend some assemblies of the Estates. With the exception of the parliaments of June 1452 and of March 1454, it looks as if he would have been in the right place at the right time for all assemblies in the 1450s, to judge from his witnessing royal charters.  

He had an important role to play in the great Montrose v. Dundee dispute, which dominated the Scottish political and legal scene in the reign of James II. He was elected as one of the lords of parliament in January 1450 to whom the matter was submitted for determination. It was a matter which he would have been well aware of from his native heath; he had been present in Dundee at a general ayre in February 1448 when the affair was given one of its regular airings. The case dogged him to his dying days. He was one of those summoned to parliament in June 1460 to conduct another hearing. His name, however, is scratched out in the brieve of summons (dated 24 March 1460): three days before he had died.  

It cannot be shown that Glamis profited greatly from his association with the king. Apart from fees received as keeper of the three castles noted before, his reward seems to have been limited to a gift of the ward and marriage of the heir of Thomas Fraser of Lovat. He had managed by some means to obtain a grant of lands of one of the Fenton heiresses in 1447, but this was before his service to the king had really commenced. These rewards might seem minor; but he had re-established the place of his family in the administration of the realm (his grandfather had married a daughter of Robert II and had been appointed chamberlain,
as well as receiving lavish gifts). His sons would slip quite easily into the role he vacated by his death.

Patrick lord Graham was quite a contrast to Glamis; his service to the Crown was largely restricted to presence at court. His early career is much harder than Glamis's to discern. It is known that he accompanied James II's sister Margaret when she sailed to France in March 1436 to marry the future Louis XI. He was certainly at the June 1445 parliament and the February 1443 general council, but he is not known to have been present at any other assemblies of the Estates until possibly as late as May 1450. That said, he had acted as a councillor in a judicial matter in October 1448. He had also received three small payments from the king which were allowed in the Exchequer audits.

It was about 1450 that his period of service to the king really began, however. He is known to have held only two offices. That of captain of Dumbarton Castle it is clear he obtained on the fall of the Livingstons. His period of office may only have lasted a year or two; certainly there was a new keeper by 1455. By c.1459 he was sheriff of Perth, a post he may have held until his death. There is very little evidence for his activities in this respect, however, as deputies seem to have carried out the duties when briefs of inquest were being served, for example.

From 1455 Graham steadily witnessed royal charters until the end of the reign. All told, he witnessed 191 charters, of which 135 were issued between 1455 and 1460. It is hard indeed to tie him to any one faction or another; he acted as a witness regularly before and after the murder of the 8th Earl of Douglas, for example. It need not be doubted, however, that he was not one of the
Livingston associates.

In addition to this, Graham acted as an ambassador for the king to England in 1457, following which a truce was sealed, and he also had safe-conducts for a similar purpose from Henry VI in 1451 and 1459. On three further occasions he acted as a councillor in judicial business, as well as being an auditor of causes in parliament. His career in this respect would continue into the 1460s. He does not have the well-nigh exemplary record of attendance of Glamis at assemblies of the Estates, but he was certainly present at what may be considered the important parliaments of the 1450s: those of June 1452; July 1454; June 1455; and March 1458, as well as being present at others.

Graham received three charters of land he had resigned in the 1450s. A resignation in 1455 saw the erection for him of the barony of Kincardine. Three years later other lands were erected into the barony of Mugdock; and the following year he had erected for him the barony of Airthrey. In 1459 he also received a licence to build cruives on the Allan Water in Stirlingshire.

Graham may reasonably be seen as a counterpart of one of the faceless men encountered as charter witnesses in the 1440s, such as Sir John Cockburn of Dalginch. This may be a rather harsh judgement, as certainly he was a man whom James II could rely on for loyal service. His family ties in the early fifteenth century may have led him more to the earls of Lennox or Strathearn, but with them gone it was clear that service to the Crown was the only way forward.
The return to royal favour of James Livingston c. 1454 has the air of the return of the prodigal son. Not only had the king sealed (in the company of the Three Estates) a general remission for the Livingstons in August 1452, he had also apparently forgiven James for escaping from his custody at Holyrood following the arrest of the family in 1449 and for soon thereafter associating with his son-in-law, the Lord of the Isles, in attacking royal castles in the north. Grant sees these escapades by Livingston as being the precursor to the murder of the 8th Earl of Douglas in February 1452, whereas the revolt of the Lord of the Isles (who was allied by bond to Douglas) has in the past generally been seen as a result of the murder.

Livingston's return demonstrates how much royal favour dictated the running of the administration. The Livingstons had clearly upset the political community so much by late 1449 that it would happily acquiesce in their arrest. Only two and a half years later they would have their crimes remitted and be allowed to resume their lands, many of which had in the intervening period been granted out to others. Two years further on and the king would reappoint one of the family to an office he had held at the time of his arrest.

James Livingston's first known occurrence as chamberlain after his career was revitalised is dated 7 March 1454. While this reference is provided by a non-royal document, there seems no reason to doubt that he had genuinely returned to office, as four months later he is one of the Exchequer auditors. Furthermore, by October the following year he had in addition obtained the post of master of
the king's household. He would lose this post early in the following reign, but he would hold office as chamberlain until his death c. 1467.

In the last five years of the reign of James II, Livingston was almost always present at court. He witnessed 183 royal charters between May 1455 and July 1460: it is clear that he generally accompanied the court on its perambulations of the realm. This means, of course, that he cannot have felt that his duties as chamberlain needed much attention. He was usually present at Exchequer audits before 1460, but he is seldom found on ayre when evidence of their being held in Aberdeen, Montrose and Peebles is available. Trusted deputes would hold the ayres instead.

It is clear that this time there was to be no possibility of his pushing his associates into offices, minor or major. He himself was probably in office only as an example of royal favour. In due course he obtained a lordship of parliament: he was elevated as lord Livingston at the parliament of March 1458. Even this date of 1458 is three years later than has previously been considered the date of the erection of the lordship. The date is usually quoted as being 1455, and it seems that the sole evidence for this is the quite unwarranted editorial addition of the word dominus between "Jacobus" and "Livingston" in a late copy of a royal charter printed in the Aberdeen-Banff Illustrations. Subsequent writers have accepted this, to the extent that George Burnett was driven to make a ludicrous error in his index to the Exchequer Rolls volume 6 (which runs from 1455 to 1460).
is the remarkable entry there: "Livingston, James of Callendar, James lord Livingston so called", followed by three page numbers. It does not seem to have occurred to him to wonder why up to 1458 James was simply styled James Livingston. As he was not yet a lord of parliament, the scribe of the Exchequer rolls was only being correct in his rendering of the name.

Livingston's creation as lord Livingston was probably the result of a personal favour from the king, as would have been his other rewards in the last years of the reign. His various lands in Stirlingshire, Lanarkshire and Perthshire were erected into the free barony of Callendar in April 1458, and about the same time he was briefly allowed to lift the fermes of land in Fife. He was restored as sheriff of Stirling, but appears to have lost this office by early the next reign.

The extent of royal favour conveyed to him by James II personally is brought home no less by events in the minority of James III. From being generally present with the court in the late 1450s Livingston went to being generally absent, as far as can be told. Lacking the exhaustive analysis needed to confirm this it can be only put forward tentatively, but it would appear that the favour shown him by James II was not shared by his consort. Her disfavour towards him is surely the cause of his absence in the early 1460s, at least until her death. It has already been noticed how the queen's clear favourite Mr. James Lindsay made a comeback just as Livingston faded from the scene, and how this was a reversal in fortunes from events c.1454. It is possible that Livingston was tarred by association with the Lord of the
Isles, his son-in-law, who was again provoking trouble at the time. Livingston witnessed a charter of confirmation granted by the Lord of the Isles at Bute on 27 June 1461 in the company of a number of other magnates and major clergy. Although he was the only officer of state amongst the witnesses, it is possible that a meeting was taking place in an effort to persuade the Lord of the Isles to temper his actions. Livingston's presence does suggest that he had maintained contacts with the Lord despite the latter's mistreatment of his wife, Livingston's daughter. This explanation for Livingston's absence from court in the early 1460s may not be quite right, but that the absence had a definite cause is certain. It is not the chance of survival of documents which obscures the matter. Livingston's return in 1454 was not favoured by all.

Very little attention has so far been paid to the clerical element amongst the king's councillors. This is certainly not right, as a good number of minor and major clerics would figure amongst James's regular councillors: men such as John, Bishop of Moray, Thomas, Bishop of Galloway (and later of Aberdeen), and James, Bishop of St Andrews.

George Schoriswood, Bishop of Brechin, is certainly a candidate worthy of study, as he can be shown in the king's service gradually advancing through the ranks (both clerical and lay) from the days when he was nothing more than a minor chancery clerk.

His early career certainly presents a problem. It might be possible to propose as his patron both lord Crichton and the
earls of Douglas, much as happened with the Cranstons. He appears too early in the reign for him to be seen as a king's protegé right from the start; but by the end of the reign he certainly was.

The first royal charter he witnessed was as early as June 1441, and that this was no fluke is shown by another ten appearances in this way before the end of 1443 (this being a time when few charters were being issued). He appeared only once more (in 1448) before his almost inevitable presence began in January 1450. At this stage his designation is simply "king's clerk" or "clerk of chancery".

His career can, however, be pursued elsewhere before 1450, if not consistently. He is first referred to in April 1432, when the prior of Durham Cathedral proposed to present him to the Bishop of St Andrews for induction to the vicarage of Stichil on the resignation of the last vicar. The presentation was apparently not executed.

A more successful presentation was to the rectory of Culter, in which he had apparently been instituted by March 1448. About now there are hints that the Earl of Douglas was his patron. He witnessed, as one of the Earl's clerks, Douglas's charter of 26 September 1446. In May 1449 he also witnessed a precept of sasine Douglas issued. In March 1447 he was present while the Earl was holding a court in Newark Castle, and drew up a notarial instrument. The March 1448 reference above shows him acting as procurator for Mr. James Lindsay when he was presented by the Earl to the provostship of Lincluden.
Collegiate Church.

Against this evidence of Douglas allegiance can be set evidence of Crichton allegiance. In the Crichtons' darkest days in October/November 1444 thrice did he witness their charters. While there is thereafter a long gap, he also witnessed lord Crichton's charter of 10 June 1452. As Schoriswood was able to live with the defeat of the Douglases, it may well be that the Crichtons were more his patrons than the Douglases, but it is hard to decide which of the two might have been more important in his early career.

By the early 1450s, he was clearly quite capable of standing on his own two feet. Elevation in the clerical sphere to the chancellorship of Dunkeld (by early 1452) was quickly followed by lay promotion, to the post of king's secretary (by March 1453). Schoriswood was no longer a mere clerk, and was destined for greater things. During the absence of the comptroller, Alexander Nairn of Sandfurd, in England in mid-1452, Schoriswood had carried out the duties of comptroller. More was to come. Late in 1453 the see of Brechin became vacant on the death of John Crannach, and the king successfully presented Schoriswood to the bishopric. As early as January 1454, he was described as "elect of Brechin", although it was March before Rome accepted his presentation. By 20 November 1456 he had been appointed chancellor. This was the apogee of a career of a man whom Dunlop reasonably sees as a "royalist". She remarks further that he was "pliable", and a man "well pleasing to both King and Queen".
Schoriswood had already taken part in the leasing of Crown lands in Galloway; subsequently, he would also travel to Fife, the Ettrick Forest, Strathearn and Methven, and to the earldom of March for the same purpose. Such was his authority that the king would readily delegate work to him (sometimes he acted where the king would otherwise have done, for example in letting to borgh lands which had previously been recognosced). He even acted as the king's mouthpiece on occasion.

He comfortably witnessed more royal charters than any other man in the reign: no less than 521, of which only twelve were dated before 1450. It is hardly surprising to find, then, that his activities in his episcopal see were minimal. On 8 May 1456 an instrument was drawn up on the declaration of union of two chapels in his diocese, in which the bishop's presence is referred to. On 10 September 1457 he granted a charter to a citizen of Brechin while he was in the city. A glance at the king's itinerary as shown by the place-dates of his acta will make it clear that the bishop was taking advantage of the fact that he was passing by with the court to call in at his cathedral to see if any business needing attention had cropped up in his lengthy absence.

It is therefore quite a surprise to find him being ousted from his post as chancellor shortly before the death of James II. No satisfactory explanation for this can be found, although Dunlop suggests that the bishop was too associated with the Lancastrian cause in England for him to remain in office when the Yorkists were effectively taking control. It may also be noted, however, that
the bishop seldom appeared in even substantial gatherings of political figures of Scotland thereafter. As he died by early 1463 it may be that illness had struck him down.

The careers of supporters of the king such as the above show how much their continuing service to the Crown brought rewards. Being politically aware and interested brought its problems, however. Royal favour was a double-edged sword, as others found out.

The king's handling of the earldom of Mar dispute showed how confident he was of his position after the defeat of the Douglases. By the time of the settlement in November 1457 the issue had been a matter for discussion for almost twenty years, since Sir Robert Erskine had tried in 1438 to obtain a service to the late Isabella, Countess of Mar and Garioch in lands she had held. Sir Robert died in the early 1450s, but the cudgels were taken up by his son and heir Thomas. It was he who was the disappointed claimant in November 1457. It is clear that he had attached himself to court circles in an effort to swing the decision his way, and the dashing of his hopes resulted in his apparently withdrawing from the court.

Retaining the king's favour was essential to preserve a place at court and any office. Thomas lord Erskine might be seen as one who had struggled to do this but in the end had to accept that the king invariably had the trump card: the earldom of Mar.

Thomas lord Erskine appeared on record in a way in which his father did not: he witnessed royal charters of the reign of James II. As Thomas's first appearance as a witness dates to 14 March 1452, it
may be reasonably suggested that he was one who saw that benefits might accrue from the fall of the Douglases, and was easily persuaded by the king to attend at court. All told he witnessed ninety-eight royal charters issued between then and January 1460: not a spectacular number, but certainly showing a regular attendance at court.\footnote{115}

More important than this overall total is the fact that only seventeen charters were witnessed by him after the decision concerning the earldom of Mar in November 1457.\footnote{116} Up until then, Erskine had witnessed charters in most months of the year: thereafter there were lengthy spells of absence between his presences at court. In addition to witnessing charters, he was also a councillor in judicial business once; he acted as lieutenant of John lord Lindsay of Byres, justiciar, once; and witnessed resignations to the Crown for reinfeftment, all before November 1457.\footnote{117} Before the death of James II he did not reappear in these capacities. His only significant contact with the king after the Mar verdict was to obtain a charter from the king in January 1459, and even then it proceeded upon his own resignation.\footnote{118} The evidence all points to Erskine having hoped that by attaching himself to the king he might have a better chance of obtaining the earldom.

The king's treatment of the Erskine claim has received some harsh treatment from historians. Macdougall is a recent commentator, and in the space of a page or so savages the king for his arbitrary actions, for cheating the Erskines and for bribing the jurors who denied lord Erskine the chance of being served heir to his father Sir Robert in half the earldom. He regards the
king as having been quite content to flout the law. 119

It is possible, however, to reach a different conclusion in regard to the Erskine claim (which, it may be noted, was probably limited to half the earldom only). An examination of various documents shows that intimidation was being carried out no less by the Erskines than by the king. Since it is a complicated issue, and deserves fuller treatment elsewhere, the present account will try to outline rather than analyse the affair.

Sir Robert's claim seems to have been based on the fact that his mother, Janet Keith or Barclay (whose parentage is uncertain) may have been a co-heiress with Isabella, Countess of Mar, to the lands of Mar. His father, at any rate, entered a protest in parliament in March 1391 for his spouse for half the earldom. The issue was greatly clouded by a likely forced marriage of Isabella to Sir Alexander Stewart c.1404. Sir Alexander cajoled her to infeft him in the earldom, although in the end Robert III confirmed only a charter whose destination was to his heirs of the marriage between them, whom failing to her heirs on either side. Countess Isabella died in 1408. Her husband later had from James I a charter to him and his natural son Thomas, with reversion to the king and his heirs. Sir Alexander died in 1435, having been pre-deceased by his son, and it is evident that now the Crown regarded Mar (and Garioch) as having fallen to it. 120

It is significant that Sir Robert made no move until after the death of James I. It is very likely he did not think it worth pressing his claim against a king of great strength, and that it
was only the succession of a minor which encouraged him to think again. Erskine had made an indenture with Sir Alexander Forbes in November 1435 which referred to his claim to Mar and Garioch, but no issue of this is known until after the murder of James I. Erskine must have obtained a brieve of inquest from chancery early in 1438 to determine if he were heir of the late Isabella, Countess of Mar, as there is a special service dated 22 April 1438 which would have proceeded thereon. It has not been picked up before that this service was not accepted by chancery, as an endorsement shows. Although much of the endorsement is illegible, even using ultra-violet light, enough is visible to show that the service omitted to say that the lands were in the king's hands in ward and that the true heir had not prosecuted his right. Another brieve of inquest was issued on 25 May, which seems to have resulted in a special service on 16 October 1438. Erskine was then served heir to Isabella in half the lands of the earldom of Mar, and sasine was taken on 21 November.

Erskine's reaction to this may be gauged from some of his subsequent actions. He invariably styled himself Earl of Mar when granting charters, while the Crown just as invariably styled him (at best) lord Erskine. In August 1440 a composition was made between the king (with the advice of a substantial number gathered in a general council) and Erskine. The latter would keep Kildrummy Castle until the king's majority and then surrender it. On obtaining Kildrummy, Erskine would yield Dumbarton Castle, which he seems then to have been occupying. On the king's majority, Erskine would have the opportunity to let the king and the Three
Estates see his claims, and a decision would be made as to them. Erskine also had claims to the earldom of Garioch, which occupied him considerably in the early 1440s. His procurator protested in March 1441 that the chancellor (Crichton) had refused to give him a precept of sasine in the lands there following a service, to which Crichton replied that he had no memory of having received the service. In May 1442 Erskine was still troubled by this, and forced the lords of council to instruct Crichton either to allow him a precept of sasine or return his service with an endorsement. Erskine also negotiated with those such as Robert Lyle of Duchal and William, Earl of Orkney who had claims to part of Garioch, clearly trying to buy them off.

All was quiet on the Mary side until mid-1448, when the king briefly journeyed north, apparently to redress grievances. The Erskines at this stage clearly had custody of Kildrummy Castle, as the king had to write to them to ensure two of his officials would be permitted to enter the castle. In April the following year, a protest was laid before the king and the Estates in the matter of Mar and Kildrummy Castle which shows that the king's officials were now lifting the fermes of the lands there. A further protest in the parliament of January 1450 indicates that the Erskines were to be further delayed in this matter, as the king decided he was able to retain in his hands until his legitimate age all lands and lordships with which his father had died vested and saised. The king was prepared to have his privy council examine Erskine's claims meantime. Sir Robert died soon thereafter and it
was his son Thomas who protested for his own rights in the council general of March 1453, when it seemed that the king was on the point of going north and action would follow on his arrival.  

Although the king did indeed visit the north later that year, no action is known to have taken place in respect of Mar. It was not until well after the defeat of the Douglases and the time of the king's perfect age that the question of the rights to the earldom was adjudicated.  

The document recording the adjudication, dated 5 November 1457, is in many respects a curious one. It is in the form of letters issued jointly by the justice benorth Forth (John lord Lindsay of Byres) and by the sheriff hac vice of Aberdeen (Walter Lindsay of Kinblethmont), and asserts that it was issued while on a justice ayre. Yet the first third is effectively the record of a summons of error before the king's council of the assize which had served Sir Robert Erskine heir to Countess Isabella, while the following half or so is the record of a dispute between Thomas lord Erskine and the chancellor (the Bishop of Brechin) as to the veracity of Erskine's claim to consanguinity with Countess Isabella and thus whether or not Sir Robert could be said to have died saised in half the earldom. The last section is the verdict of an assize as to this last point, which stated that he did not die saised in half the earldom, and as a result the Erskine claim was disallowed. It would seem that the cause was heard before the justiciar because it involved a falsing of a doom of the sheriff court (in which the original service of Sir Robert Erskine had taken place). It is known from another
cause of summons of error for a wrongful retour that it was possible at this stage to hale an assize before the council to have a service overturned. 136 It looks as if the king were ensuring that the stable door was quite closed against Erskine by combining a justice ayre with a sitting of the council in judicial matters. Erskine had with him two skilled forespeakers, but he was quite cornered, and none of the arguments presented for him would be of any avail. 137

The dispute was one which involved settling the right to a substantial income. The accounts of the Crown officials administering the lands of the earldom in the late 1450s show that the gross money rents totalled almost £400 p.a. 138 Neither party would wish to lose such an income. It has been claimed that the king packed the assize which rejected Erskine's claim in November 1457 with his supporters, including men such as George lord Leslie, who would five months later be elevated to the title Earl of Rothes. 139 Certainly the fact that no less than eight of those present on the assize were also on the king's judicial council hearing the cause of summons of error immediately preceding the refusal to serve Lord Erskine heir to his father in the lands suggests that the verdict was likely to go only one way. On the other hand, two of the assize had no less reason then and later to distrust the king as much as Erskine probably did. Thomas Allardice of that ilk would find himself in prison in early 1459, his goods arrested and on the receiving end of what he regarded as highly dubious justice when a session (which he declared had never sat) made a decree against him. 140
Skene of that ilk, at the time of this decree, was conducting litigation against Janet Keith and her uncle, William lord Keith, later 1st Earl Marischal, over lands he asserted had been wadset to Janet's great-great-grandfather by his great-grandfather. Skene would be forced to frequent parliament on a number of occasions to obtain what he thought were his dues, and had to fight against what looks like favouritism towards a relative of a man who was twice elevated to peerage titles during the reign. 141

Sir Robert Erskine was no shrinking violet either when it came to dispensing patronage. A charge laid against him in the adjudication was that he had granted the sheriff-depute of Aberdeen, Sir Alexander Forbes, land in return for his help in pushing through the service in 1438. This is a charge which can readily be substantiated. Erskine granted him land in the earldom in June 1439 ("for service done and to be done"). 142 Forbes had also been a party to an indenture in November 1435 by which he agreed to:

"do al his bisines and diligent cure to help and to furthir bath with his avis and consale the forsad lord Schir Robert of Erskin and his sun and ayr forsad til al thar rychtis of the Erldomisof Marr and Garvioch with the pertenence and bring them thar to in als fer as his gudli power may streke and nothir spar for cost na travale". 143

In return, Forbes was promised various lands in the earldom, to be granted him within forty days of the recovery of the earldom by the Erskines. It is not surprising, therefore, that Forbes would have favoured their cause. As sheriff-depute (by an earlier agreement with the sheriff, the Earl of Crawford), 144 he was in a good position to do so.
Although the earldom of Mar settlement might seem one more correctly discussed under the heading of the judicial council, there is a notable overlap with the political council. It cannot be doubted that the decision not to favour Lord Erskine at the end of the day was one taken by the political council. The judicial council was able to contribute by hearing a cause of summons of error, but its rôle was less significant.

The adjudication resulted in a quite a rush for confirmation of tenure of estates. Both in November 1457, while the king was still in the North, and in March 1458, during the next parliament, a number of tenants-in-chief of the earls of Mar sought charters from the Crown instead. This was a very necessary step on change of overlord, and one for which a number of tenants had doubtless been waiting for a while. Whereas Sir Robert Erskine had felt able to issue charters in which he styled himself Earl of Mar, his son and heir Thomas had not. Indeed, no documents issued by Thomas after his father's death and before late 1457 are known to us. No doubt Thomas did not wish to upset the applecart and provoke the king into action by arrogating to himself the title of Earl. Sir Robert, after all, had never apparently laid claim to the whole earldom; even at the time of the adjudication the claim is stated to be to the lands of half the earldom. There is more than a suggestion of brinkmanship being carried out on both sides in the whole affair.

(ii) Conclusion

Up to the end of 1449 it is clear that the main force dictating
appointments to office was the Livingston family. In the 1450s, it is less certain that one force can be picked out in this way as being prime mover throughout in appointments to office; but it would not be wrong to say that it was the king. The Crichtons and, to a lesser extent the Douglasses, may have had their successes, but after their deaths there seems to have been no realistic alternative to the king as a source of patronage. The rôle of the queen may at times be suspected too. Inevitably, however, what influence she might have had is bound to be seen in terms of the way things developed after 1460. She could certainly be seen as having begun to build up a little knot of supporters before 1460, but it would have been formed of men who were no less loyal to the king first and who knew that his will and favour were paramount while he was alive.

Retaining the king's favour could indeed be beneficial. James I seems to have been quite tight-fisted in his policy towards rewarding even favourites. James II, on the other hand, can be shown to have been fairly free in his gifts. No doubt the better survival rate of acta of James II as compared to his father's gives greater point to this than may in fact have been the case, but a contrast of this type does seem reasonable.

Quite clearly James II was happier to see his own family rewarded than his father had been. Both his half-brothers John and James came out well. John obtained the earldom of Atholl by March 1453, by which time he can only have been thirteen years old at most (he was a product of the second marriage of James II's mother Joan). In March 1460, Atholl obtained from
James II a grant of the lands of the lordship of Balvenie, with
the castle and lands elsewhere in Banffshire. 147 By then he
had married the wife of the 8th and 9th Earls of Douglas,
Margaret Douglas (the daughter of Archibald, 5th Earl of
Douglas). 148

James Stewart (created Earl of Buchan and lord Auchterhouse
in 1469) was also a son of queen Joan's second marriage. 149 Both
were of course quite young when James II died which might partly
explain their only occasional recorded appearance at court before
1460. Like his brother John, however, his youth did not prevent
his being rewarded by the king. In March and April 1457 he was
granted land in Berwickshire and in Ayrshire forfeited by Mark
Haliburton, who had been secretary to the 9th Earl of Douglas. 150
A further gain came two years later, when the king obtained the
resignation of various lands in Forfarshire and the offices of
sheriff of Forfar and of Banff by Alexander Ogilvy of Auchterhouse,
who was facile. Stewart had in fact married Ogilvy's
only daughter Margaret, so the resignation was perhaps not as
dubious as it might seem. 151 Be that as it may, Stewart's
possession of office was not going to be easy. Only days before
he had apparently resigned these offices to the king, Ogilvy
had consented to his cousin Walter Lindsay of Beaufort being
sheriff-depute of Forfarshire under him for life. 152 What the
upshot of this potentially troublesome dispute was is not known,
as it would require more work than has been done on the early
years of the reign of James III. It is known, however, that
Stewart resigned the office of sheriff of Forfar in 1466 in favour of David, 5th Earl of Crawford, who was Walter Lindsay's nephew.

James's own children were honoured with titles. David was briefly elevated to the earldom of Moray; John became Earl of Mar (once it was decided that the earldom was rightly in the king's hands); and Alexander became Duke of Albany and Earl of March. The two surviving brothers so ennobled were of course too young to have had any public career before 1460, so it is impossible to tell if the king would have continued to bestow honours on them. Despite this, the general impression must be that he was keen to ennoble his own relatives: it was not only servants to the Crown who would be rewarded in this way.

Parliamentary peerages and earldoms were lavishly bestowed in the 1450s. The first batch of creations came in the parliament of June 1452, when seven men were elevated to lordships of parliament, and three others were belted earls. The next major batch came at the parliament of March 1458, when three were created: the Earl Marischal (William lord Keith); the Earl of Rothes (George lord Leslie); the Earl of Morton (James Douglas, lord of Dalkeith); and lordships of parliament for Gilbert Kennedy of Dunure, Laurence Oliphant of Aberdalgie and James Livingston of Callendar.

Apart from these two substantial batches, William, Earl of Orkney was created in addition Earl of Caithness in August 1455. By October that year Sir Andrew Stewart was lord Avandale: it looks possible their titles were approved in the parliament of August 1455. William Monypenny, lord of Conquirsault in France, was
created lord Monypenny in October 1459, quite possibly at the parliament then sitting. Uncertainty surrounds the date of the elevation of Colin lord Campbell to be Earl of Argyll. The earliest known reference to him as such is 7 June 1458, which would mean he could be included amongst those created at the March 1458 parliament, but the traditional date for his elevation is c.1457.

These men (and the others previously elevated to parliamentary peerages) were surely intended to form the basis of the administration in the 1460s, regardless of whether the same king were still alive or not. Naturally, not all of them would be expected to be continually at court. For those like the Earl Marischal or the Earl of Argyll, this might be thought impossible because of the location of their estates (although Argyll did in fact adopt a very public profile in the reign of James III). Their service to the king could be directed more to holding posts of sheriff, and thus seeing to local administration. It would be hoped, however, that they would attend parliament or general council, and attend the court as it perambulated the realm when their regions were visited, much as many did in the 1450s. Room could be found for those wishing to be at court, as master of the king's household perhaps. The legislation about the holding of the session makes it clear that it was expected the lords would take it in turns to sit and hear cases. There was not necessarily any need to travel to Edinburgh to act in this capacity, as it was expected that the session would be peripatetic.
Not surprisingly, there was not such a high mortality rate amongst the leading barons or clergy as there had been in the late 1430s. Earlier it was argued that this mortality rate was the main reason for continuing upset on the council, and from the wreckage emerged the Livingstons. 162 Certainly a number of influential figures did die in the late 1450s or early 1460s. Patrick, lord Glamis died in March 1460, as was noted before. 163 John Winchester, Bishop of Moray died on 22 April 1460. 164 He had witnessed 114 royal charters between 1440 and 1459. 165 The death of George, Bishop of Brechin in late 1462 has already been noticed. 166 William, Earl of Erroll died probably in 1462. 167 Laurence lord Abernethy in Rothiemay had died by March 1461. 168 Patrick, 2nd lord Haliburton died some time before August 1459, but the family had largely dropped from view by this stage. 169 James lord Forbes had died by July 1462. 170 George, Bishop of Argyll died in early 1461. 171

This list (to which no doubt a few names could be added after diligent searching, but not significant figures) barely deserves comparison with that of the losses in the late 1430s. The major posts in the government were filled by those with at least a few years' experience, while amongst those with no post at present were the lords Gray and Fleming, who had each been master of the king's household, and the Earl of Orkney and Caithness, who had been chancellor. 172

Beyond the officials, there were men such as Alexander lord Montgomery, who had witnessed 103 charters granted between 1440
and 1460. Although he had not held any formal post at court, he had been an ambassador to England, and a councillor in judicial matters. John lord Lindsay of Byres witnessed fifty-five charters issued between 1440 and 1459, as well as being an ambassador, a councillor in judicial matters and a justiciar.

These barons (and the clergy and the burgesses) continued to attend parliaments and councils general. Although attendance lists are still entirely lacking for this decade, their lack can partly be made good by using royal and other documents dated while the assembly was in session. In this way, it would be possible to arrive at a figure of almost fifty who were present in Edinburgh while the parliament which forfeited the Livingstons was in session. On this occasion, greater certainty can be attached to this figure as a minimum, as there are lists of lords auditors, of lords appointed to consider a problematic dispute between the burghs of Montrose and Dundee, and of bishops who presented a petition to the king (seeking the right to bequeath goods by testament). Using these lists, and adding names from other sources, it is possible to arrive at the figure quoted.

The parliament of March 1458 was likewise important, although not for forfeitures of major families. Here, creations of new peerages were the order of the day, as well as a host of statutes. Arriving at an attendance figure is slightly harder, but it looks as if one of at least thirty would not be far wrong. Indeed, if one were to include amongst those attending the various men elected to the session, to consider the money and to consider the state of the hospitals, the attendance would be substantially
bigger; but these lists of appointments need not necessarily indicate an actual presence at parliament. 177

A large assembly at the parliament in June 1452 which absolved the king of any guilt in the murder of the 8th Earl of Douglas is also to be expected. On this occasion, it is possible to identify at least thirty who were likely to have been present. 178 It is likely that this figure is a little low, as a number of peerages were created on this occasion. 179 It looks as if a similar number (about thirty) were present at a parliament in July 1454, when a compromise was reached in the matter of the resignation by Sir George Crichton of his earldom of Caithness to the king, thus apparently disinheriting his son. 180

It is accepted that these parliaments just referred to were each important gatherings at the time, and so attendance might have been expected to be large. On the other hand, the figures quoted have to be minima: the patchy nature of the sources means that a host of others could easily have been present without being mentioned in the documents used (which are, of course, largely title deeds).

It is hoped that this evidence will indicate that contributions to the administration came from a wide circle of clergy and laymen in the late 1450s. Earlier, it was shown that James I apparently relied on a small circle of administrators, as revealed mainly by the witness lists to his charters. 181 This provides a contrast with the position twenty years further on, when about fourteen men can be chosen who were in the habit of attending the king's daily council, to judge from the same source.
The fourteen are equally divided between clergy and laymen. The clergy are: Mr. John Arous Archdeacon of Glasgow; Mr. George Schoriswood, Bishop of Brechin; Thomas, Bishop of Galloway and later of Aberdeen; Mr. Robert Liddale, rector of Forest; James, Bishop of St. Andrews; Ninian Spot, later Bishop of Galloway; and Mr. James Stewart, dean of Moray. Only the Bishop of St. Andrews of this group held no significant office. The laymen are: Andrew lord Avandale; Thomas lord Erskine; Patrick lord Glamis; Patrick lord Graham; James lord Hamilton; James lord Livingston; Alexander lord Montgomery; and William Murray of Tullibardine. Only Avandale (very briefly) and Livingston of this group held a major office.

The criterion for selection is simply the fact of witnessing about twenty or more royal charters after the fall of the Douglases and before August 1460. This is admittedly a very low total to choose for the number of charters witnessed, especially as a considerable number were issued in 1458-59. The group of clergy in particular would have their number cut, as Stewart and Liddale only witnessed a few more than the minimum (entirely due to their period of office-holding), and the Bishop of St. Andrews witnessed only seventeen charters in that period. On the other hand, the laymen could perhaps be increased, as William Sinclair, Earl of Orkney and Caithness, witnessed more than the minimum, but his appearances were largely during his term of office as chancellor, which ended in October 1456.

Allowing for such factors, this is a larger group than would be found for the reign of James I, and gives point to the assertion that the administration was in the hands of a larger body in the 1450s. By no means all the regular councillors were officials,
although almost all had held some office in the past if they were not now in post. The cumulative experience of administration was immense, and would be a tremendous boost to the king if he wished to delegate duties.

Because the administration was not the one-man band it had been in effect in the reign of James I, the political council was stronger in 1460 than it had been in 1437. The council was well aware that the king's decision was crucial; he might consult it on anything, but the council could not of its own accord deal with matters unless it had instructions from the king. The references in the Exchequer Rolls to the council in the 1450s are few and far between. If the auditors felt anything needed attention, they would instruct that the king be consulted. Only occasional glimpses are granted of the council's involvements on these occasions. 183

The death of James II brought a dramatic change. Although the queen was still alive, and would be most interested in the well-being of her offspring as well as playing a significant rôle in the politics of the minority, the council clearly felt able to assert itself as an essential source of advice. The administration would continue under its guidance.

There is a positive abundance of information about the council's activities in the Exchequer Rolls in the early 1460s, certainly as compared with the 1450s. Sometimes the references are to the council to be consulted on matters of debt (just as the king was alone in the 1450s), and at others to the council authorising payments to particular persons. 184 It is evident that the council was now acting (and was expected to act) to protect the
interests of the young James III. The fiction was maintained of the king authorising the issue of charters or minor gifts of pensions, but (although as early as 1461 James III signed a privy seal letter of discharge)\(^{185}\) the council would doubtless have been the driving force behind their issue. Chalmers indeed remarks on how the council was associated with the king in dispensing patronage in the minority years.\(^{186}\)

In the chapters of this thesis dealing with the judicial council, it will be noticed how that body seemed to be more active in the early 1460s than earlier.\(^{187}\) It looks as if in this case the judicial council were more active as it was more obviously perambulating the realm than it had been beforehand, and it was more willing to hear judicial matters (especially where these touched the king's rights). It is noticeable how this increase in judicial business is apparently mirrored by an increase in references to the council in a political context. It cannot be doubted that the daily council dealing with patronage was active before 1460, so it would be wrong to suggest that the increase in business was a feature of both aspects of the council. That said, the evidence would suggest that the council in the minority of James III was shaping up to be a stronger body than it had been in the minority of James II. A greater number of politically-aware men were alive, and on the sudden death of their monarch they expected to be part of the new administration and that their advice would be required. If later in the 1460s the Boyds were able to take over in a manner similar to the Livingstons over twenty years before it was (seen in this context) perhaps a
greater surprise than the Livingstons' rise; but that is a matter better dealt with by others.
CHAPTER FIVE: FOOTNOTES

2. APS, ii, 32-33.
5. Asloån MS, i, 219.
6. NLS: Ch. 17,088; APS, ii, 33.
8. Montrose: CR 2/11 (4). The reaction of most thirteen-year-old boys on being woken at 6 a.m. (as James was here) to deal with such an affair would no doubt be fairly colourful.
9. Dunlop, Kennedy, 307-08 (dating the declaration to 1443); Nicholson, Later Middle Ages, 339-40; Macdougall, James III, 12.
10. HMC, xii App.viii, Home no. 85.
11. Hirsel (Home MSS) Box 2 bundle 4 (HMC 85). This document is printed in Appendix F of this thesis.
12. Dunlop, (Kennedy, 308 n.2) is probably correct to associate with the general council of whatever date where this revocation was announced the undated statute printed at the commencement of the series of acts of James II. The statute revoked all alienation of lands and moveable goods which were in the hands of James I at the time of his decease if they had been granted without the consent of the Three Estates (APS, ii, 31).

The list of parliaments and general councils in Appendix B does not include an assembly in November 1444, which is the date cited by Macdougall and Nicholson for the declaration of the majority. In the list here, the last assembly referred to in the document would be that of February 1444. Judgement is suspended as to whether or not a general council did sit in November 1444.

James Livingston, son of Sir Alexander Livingston of Callendar, continued to be styled keeper of the king's person until 1448, which might suggest the king was still a minor (App. C, s.v. Keeper of the King's Person).

13. APS, ii, 31. For possible date, see footnote 12 above.
15. Ibid., nos. 934, 935.
16. APS, ii, 42; cf. H.L. MacQueen, 'Jurisdiction in Heritage and the Lords of Council and Session after 1532', in D. Sellar (ed.), Miscellany Two (Stair Society vol. xxxv, Edinburgh, 1984), 69-70 for comment on the revocation made by James III.

17. App. A, nos. 129, 261, 278, 342, 348, 455, 457, 473, 540, 553, 596, 618, 641, 650, 677, 694, 700, 703, 709, 713-15, 727, 738-40, 743, 778, 782, 805, 807, 818, 821, 843, 845, 850, 859, 869, 883, 906, 907, 911, 1018, 1048, 1061, 1062. There is no contemporary authority for no. 129 having been signed by the king, and it may be better to exclude it from the reckoning.


19. Ibid., nos. 571, 574-78.

20. Ibid., no. 775; cf. ER, vi, 161, 206 referring to residence at Tongland and Lanark.


22. The king was able to deal with complaints addressed to him while on ayre. Thomas Cullace, for example, was to be summoned before the king and council at Dundee on the second day of the next ayre in Angus to answer to a complaint laid by the bishop of Brechin (then also the chancellor) about intromitting with his property: App. A, no. 880.


24. For the king's actions, see Asloan MS, i, 243. The mortancestor case is at SRO: CD 103/1/7, and is printed with some comment in Borthwick and MacQueen, 'Three Fifteenth Century Cases', 127-36 (see Appendix G).

25. As witness of Douglas charters: SRO: GD 224/876/29 (5/3/1428); Floors (Roxburgh MSS) Bundle 702 (HMC 41; 18/2/1440). As a commissary of the 5th Earl, relaxing a recognition: EUL: Laing Charters no. 117 (2/7/1438). As bailie of the 6th Earl, holding an inquest: Hirsel (Home MSS) Box 3 bundle 18 (31/10/1440). In addition, he witnessed the notarial instrument of 25/8/1447, which was part of the process settling the Douglas succession: App. A, no. 286.

26. APS, ii, 76 (where he is styled Henry lord Abernethy).

27. ER, vi, 195.


30. The names of the king's commissioners, and dates and areas of the leasing are usefully summarised in Dunlop, Kennedy, 339 and n.5. Dunlop suggests that James Kennedy, Bishop of St. Andrews, was "prominent among the advisers who recommended such a course". Chalmers sees this aspect of royal policy as another part of the Crown's patronage: Ph.D. thesis, 105-14.
31. See Asloan MS., i, 242-43 for creations.

32. See e.g. Macdougall, James III, 25.

33. As was noted earlier, on these occasions all instances as witness will only be listed when they number up to twenty-five; beyond that figure only the first and last instance are noted.


34. Ibid., nos. 90 (first), 1000 (last).

35. App. C, s.v. Master of the King's Household.

36. Dunlop, Kennedy, Index s.v. Glamis. In one of her few factual mistakes, Dunlop even calls Patrick "Alexander" on one of his rare appearances in her book: op. cit., 178. It seems to this author that (allowing for the poverty of secondary literature on mid-fifteenth century Scotland) Glamis has suffered most from omission in histories of the period.

37. Glamis Castle (Strathmore MSS) Box 4 no. 90.


39. His occurrences as a witness of Crown charters before 1450 are ibid., nos. 90, 216, 244, 253, 267, 269, 271, 272, 275.

40. The following show his presence at the assemblies mentioned: ibid., no. 90; Montrose: M/W1/4/1; SRO: GD 70/1; SRO: RH 4/125 p. 35.

41. For title, cf. SP, viii, 271; Grant, 'Extinction of Direct Male Lines', 230 s.v. Lyon. Glamis's style is not as consistently applied as one might expect (even in July 1451 he is found styled Patrick Lyon of Glamis and lord of Belhelvie: BL: Add MS 33, 245 f. 168r-169r). It would be wrong to think this means he was not a holder of a peerage title. For Lord Lyon, see F.J. Grant (ed.), Court of the Lord Lyon (Edinburgh, 1945), ii.

42. Glamis Castle (Strathmore MSS) Box 4 no. 83.

43. The dispute is found at Glamis Castle (Strathmore MSS) Box 4 no. 92 (two notarial instruments, dated 18 and 28/8/1449, both regrettably in poor condition). The council hearing is App. A, no. 268. No final determination as the overall right to the lands in dispute is known. The case is also commented on below, p. 344.
44. For holders of the post in the reign of James II, see App. C, s.v. Master of the King's Household. The position in the reign of James I is most confused. Walter Ogilvy of Lintrathen, one holder of the office, was also indiscriminately styled treasurer at the same time (HBC, 187). Ogilvy continued to be styled master of household after Sir William Crichton had taken up the office.

45. ER, vi, 271, 364.

46. Ibid., 476, 520.


48. App. D, s.v. Kildrummy; Kindrochit; Balvenie. The fee for Kindrochit (£3 6s. 8d) was accidentally omitted from the text. Examples of fees: ER, vi, 361 (for each of Castles).


51. The coincidence of his witnessing Crown charters at times of assemblies is the main authority for this remark. Exceptionally, his attendance at parliament in July 1454 and October 1459 is shown by App. A, nos. 729, 1108; and at that for June 1455 by NLS: Adv. MS 22.1.14 f. 227v-228v.

52. Election in January 1450: App. A, no. 304; at ayre in February 1448: Montrose: M/W1/14 (Trading no. 2), M/W1/15 and CR 2/11 (4). This remarkable cause is the main topic in Chapter 7 below.

53. The brieve of summons is App. A, no. 1132. SP, viii, 271 cites his tomb inscription as 21 March 1459, but it is clear that this date is 1460 by modern reckoning.

54. ER, vi, 374. A minor gift is noted in ER, v, 503.

55. App. A, no. 223. It is not impossible that this transfer of land had been manufactured by Walter Ogilvy of Bewfurd, who was a cousin once removed of Glamis's wife Isabella. The Fenton marriages and dealings with their estates are discussed as part of the Livingston era above, pp. 83-84.

56. SP, viii, 263-69.

57. Ibid., 273-75. Chalmers, Ph.D. thesis, 265-66 comments briefly on John, 3rd lord Glamis as a judicial councillor in the reign of James III. As a university graduate, as well as being a peer, he was an unusual member of the nobility.


59. His attendance at those assemblies is measured by his witnessing Crown charters at the right time: App. A, nos. 173, 174, 129, 343 respectively.
60. Ibid., no. 246.
61. ER, v, 173, 175, 263.
63. ER, vii, 111, 289; Blair Castle (Atholl MSS) Box 1 bundle 1 no. 17; App. c, s.v. Sheriffs: Perth.
64. App. A, nos. 129 (first), 1146 (last).
65. Ibid., nos. 865, 877; Rot. Scot., ii, 347, 390.
67. See e.g. SRO: GD 28/123; SRO RH 4/30/6; Montrose: M/W1/14 (Trading no. 10), etc.
68. Again, the attendance is mainly judged by periods as a witness of Crown charters. Attendance in July 1454 and June 1455 is shown by App. A, no. 729 and NLS: Adv. MS 22.1.14 f. 227v-228v. It cannot be shown that he was present at the parliament of January 1450, unfortunately.
70. SP, vi, 213-19.
71. Asloan MS, i, 224; App. A, no. 670.
72. Grant, 'Revolt of the Lord of the Isles', 169-75. Previous accounts of these events which take a different view include Dunlop, Kennedy, 133-34; Nicholson, Later Middle Ages, 360-62.
73. See generally Chapter 3 above.
74. For remission, see App. A, no. 670. Examples of the king granting their lands to others include ibid., nos. 311, 315, 376, 402.
75. App. C, s.v. Chamberlain; ER, v, 609.
76. App. C, s.v. Master of the King's Household.
77. Colin, Earl of Argyll was his successor as master of household, and was in office by 1465 (Macdougall, James III, 54); it is not impossible that Livingston was ousted well before then but not replaced. He was still master on 16/12/1460 (SRO: GD 220/2/51). For chamberlain, see HBC, 186.
78. App. A, nos. 757 (first), 1146 (last).
79. As auditor: ER, vi, 1, 113, 292, 382, 488. Chamberlain ayres at Aberdeen are shown by ACA: CR 51 pp. 255, 329, 351 (in 1456, 1458 and 1459; all held by deputes); at Peebles by SRO: B 58/8/1, s.d. 21/11/1457, 7/1/1458 (Livingston may have personally been present then); at Montrose by SRO: B 51/10/1, p. 4 (1456), held by a depute. This evidence suggests that chamberlain ayres were not usually conducted with the court at hand (as the justice ayres were), which doubtless indicates their relative importance to the king.
80. First reference to him as lord Livingston is on 15/3/1458 as witness to a Crown charter: App. A, no. 911.

81. See e.g. SP, v, 430, citing his title as Lord Livingston of Callendar. In App. A, no. 846, Livingston does bear that title, but this can be readily explained away. It is not a registration contemporary with the date the charter bears (6/12/1456), but one which was probably registered about September 1458, at which time Livingston did have the peerage title. A clerk could easily have slipped in a "lord" forgetting that it was not his title in 1456.


83. ER, vi, 740.

84. App. A, no. 929; ER, vi, 418.

85. App. C, s.v. Sheriffs: Stirling. His successor as sheriff was William Murray of Touchadam, who was in office by at latest January 1461: SRO: GD 246/71/2, GD 246/77.

86. Above, pp. 156-57. By a strange quirk of fate, the only document known to us issued by James lord Livingston is a precept of sasine in favour of Mr. James Lindsay issued at Peebles on 6/12/1461 (NLS: Acc. 5474 Box 1 bundle 58 no. 11). The reason for this document (a precept of sasine) being issued can only be guessed at. It need not be a mark of friendship, however, as it could easily be connected with the settlement of a dispute.

87. Asloan MS, i, 231-32.

88. Lords of the Isles Acta, no. 72.

89. Ibid., lxix.

90. Ibid., 312.


92. Ibid., no. 227.


94. NLS: Acc. 5474 Box 1 bundle 58 no. 3.

95. SRO: GD 55/564.

96. Thirlestane (Lauderdale MSS) Bundle 77.

97. Floors (Roxburghe MSS) Bundle 704 (HMC 51).

98. Charters of George Crichton: Floors (Roxburghe MSS) Bundle 692 (HMC 12); of lord Crichton: SRO: GD 90/3/1.

99. Dumfries House (Bute MSS) Bundle A 419 no. 7.
100. Watt, Fasti, 111; App. C, s.v. Secretary. It may be noted that the chancellor of Dunkeld prior to Schoriswood was Mr. Richard Clephame, clerk of the king's council (noted below, pp. 266-67). Royal favouritism is clear here, and perhaps also a link with the council.

101. He rendered an account of his dealings in this post on 2/7/1453 (ER, v, 604-08).

102. Watt, Fasti, 40; for appearance of Schoriswood as "elect of Brechin" see Perth (Barbour, Renton and Finlayson, CS: Moncreiffe MSS) Chest 1 drawer 3 bundle 10 nos. 2, 3 (14/1/1454). The Auchenleck Chronicle, often unreliable in date, claims Crannach died in August 1456: Asloane MS, i, 228.

103. App. C, s.v. Chancellor. He is also styled chancellor when witnessing a royal charter on 15/5/1455 (App. A, no. 757), but this is too early. The table of witnesses to this charter is dubious, and it is suggested that while the subject matter of the charter may be genuine the 1st of witnesses is not. Exactly the same witnesses occur in a charter of 3/3/1459 (also in favour of lord Graham), and even on that occasion they are doubtful (ibid., no. 1031).

104. Dunlop, Kennedy, 192, 185, 153.

105. ER, vi, 201, 615, 545, 366, 392-93, 539.


107. For example, in asking James Skene of that ilk to await the next parliament in the matter of his claim to his lost fee and heritage (APS, xii, 24); or in declaring in parliament that grants at feu-ferme to various men were to stand notwithstanding the king's revocation (StAUL: MS 36,929 3/4; printed in Appendix F below).


109. Brechin Registrum, i, no. 87.


111. App. A, nos. 818, 880-81 (showing here a gap of a month in extant acta, but with the court evidently moving North).

112. App. C, s.v. Chancellor; Dunlop, Kennedy, 207.

113. An exception is Swintons, no. 36 (19/10/1462).

114. Watt, Fasti, 40.


117. As councillor: App. A, no. 790; as lieutenant of Lindsay: Dunfermline Registrum, no. 432; witnessing resignations: SRO: RH 1/6/58b; NLS: Dep. 313 2/11.


120. This paragraph is largely based on SP, v, 585-89.

121. SRO: GD 124/1/137.

122. SRO: GD 124/1/138.

123. App. A, no. 09; SRO: GD 124/1/142 (for service, which was delayed from 30/9/1438 because of absence of some of the inquest who ought to have been present; SRO: GD 124/1/141).

124. SRO: GD 124/1/144.

125. For examples of style Earl of Mar: SRO: GD 204/728; SRO: GD 33/33/1, 2; Drum Castle (Irvine of Drum MSS) Bundle 668. For Crown references to him, see e.g. App. A, nos. 64, 65, 175, 241, 243, 245. The fact that on one occasion in the Exchequer Rolls the clerk referred to his son as "Master of Mar" is not proof that the Crown treated Erskine as the Earl (ER, v, 235).


127. SRO: GD 124/1/149.

128. SRO: GD 124/1/151.

129. SRO: GD 124/1/155, 156.

130. App. A, no. 241; cf. nos. 243, 244 for the journey North by the king.

131. SRO: GD 124/1/159.


133. SRO: GD 124/5/4. Sir Robert was alive on 7/9/1451 (A.B. Ill., iv, 201-02), but his son was styled lord Erskine as witness to a Crown charter on 14/3/1452, so the father must have died by then (App. A, no. 579).

134. See ibid., nos. 701-06 for sojourn North.

135. The original MS version (SRO: RH 6/348) is in very poor condition now, and a printed text (such as A.B. Ill., iv, 205-13) must be used. It is, of course, now impossible to test the veracity of any such printed text.

137. The two forespeakers employed by Erskine are extremely interesting men, but inevitably identification of them is hard. The following notes may tentatively be made on them: 1) Alexander Graham, the more active of the two; indeed, he may be a man whose career was based on his forensic skill. It is possible he was a brother of William, lord of Graham, who died in 1424; Coupar Angus Chrs., no. 134; SP, vi, 215-17. The following is a list of instances when an Alexander Graham is involved in legal matters: App. A, nos. 138, 301, 302; ACA: CR 4 p.412; NLS: Ch. 6023; DDA: TC/CC 1/27; St Andrews Copiale, no. 94; APS, xii, no. 46; SRO: RH 6/334B; SRO: GD 124/1/545; PKDA: B 59/36/1/4; Glamis Castle (Strathmore MSS) Box 4 no. 92; Coupar Angus Chrs., no. 134. This is not an exhaustive list, but should be taken as evidence that it was possible for work on legal affairs to be recurring at this period. Very careful examination of these and other records might permit a more positive identification of this man. 2) Archibald Stewart, a man about whom less is known, but again there is evidence of interest in legal affairs. An Archibald Stewart was twice a councillor in judicial matters, on one of those occasions also acting as the king's forespeaker (App. A, nos. 246, 790). It might be possible to identify him with a man of the same name who was provost of Cupar. That Archibald Stewart was chosen in the parliament of March 1458 to be on the session, and to sit on the committee charged with considering the money (APS, ii, 47-48, cc. 1, 7). The same man was elected with others (including Alexander Graham) to settle a dispute in 1455 (SRO: GD 124/1/545). Other references to him include: Hopetoun (Marquis of Linlithgow MSS) Bundle 2820; SRO: GD 20/1/301; App. A, no. 698. I am a little doubtful that these references all concern the same man.

138. ER, vi, cxxvii.

139. Macdougall, James III, 39; Dunlop, Kennedy, 186.

140. SRO: GD 49/6, and cf. GD 49/4, 5.

141. See APS, xii, nos. 45-47, 49 for dispute, one of the hearings in which actually took place in Aberdeen on 7/11/1457. There is a remarkable letter from George Skene to Sir David Dalrymple, lord Hailes, dated 20/1/1770, in SRO: GD 212 Box 11 file 10 in which the dispute is discussed. The writer claims that Skene, irritated by Keith's delaying tactics, persuaded Struan Robertson to sally from Atholl with 500 men to sweep all before them. Notes are made from contemporary MS authorities, now not known to exist, unless (as I suspect) they are amongst NRA(S) 277 Ramsay of Mar Bundle 10. I have not been able to obtain access to this collection. The Keith family tree is much better elucidated in T. Innes, 'The First Earl Marischal', SHR xxiv (1927), 280-97, than anywhere else.
142. SRO: GD 124/1/145, 146.

143. SRO: GD 124/1/137.

144. App. A, no. 228.

145. See e.g. ibid., nos. 892-94, 902, 909, 910, 915. Mr. John Ballantine kindly drew my attention to a series of inventories of early writs in the Register of Acts and Decrees in the SRO which highlights this point: no. 890 in the above list results from his findings. I would not otherwise have been aware of this useful evidence which has confirmed what I had already suspected. Lack of time prevented a proper study of what Mr. Ballantine has found, but it is clearly necessary in a fuller consideration of the Mar case in the reign of James II.

146. The earliest evidence for John Stewart being Earl of Atholl is NLS: Ch. 16,060, and App. A, no. 692. The queen mother had remarried in mid-1439 (Dunlop, Kennedy, 28).


148. SP, iii, 170, 178; 183.

149. SP, ii, 266.

150. App. A, nos. 859, 864. It seems as if he resigned both parcels of land in favour of others the following year: ibid., nos. 914, 924. For Mark Haliburton, see above, p. 161.


152. Manchester (Rylands Library: Crawford MSS) Box E. The mother of Walter Lindsay of Bewfurd and the father of Alexander Ogilvy of Auchterhouse were brother and sister: SP, i, 109-10.

153. RMS, ii, no. 886; SP, iii, 19-21. See ER, vii, Index s.v. Ogilvy, Alexander for regular payments to him as sheriff.


155. Asloan MS, i, 242-43. The creation of the lords was briefly noticed before, pp. 196-97 when it was remarked that none of the seven were frequently at court thereafter. Of the earls, Moray and Caithness have already been noticed, as they were created for James and George Crichton respectively (above, pp. 130-34). The other earl was William lord Hay, who took the title Earl of Erroll.

157. Caithness: *ibid.*, no. 771; Avendale: *ibid.*, nos. 776-78.


159. *Ibid.*, no. 939; *SP*, i, 332 (for traditional date).

160. See Macdougall, *James III*, passim.


162. See generally chapter 2.

163. For comment on his death, see above, p. 200.


166. Above, pp. 209-10.

167. *SP*, iii, 564.


169. *SP*, iv, 335-36.


172. See generally App. C under each office, and cf. *HBC*. The office of secretary, held by Mr. Archibald Whitelaw, would certainly be an exception to this rule.

173. App. A, nos. 50 (first), 1122 (last).

174. As ambassador: *ibid.*, nos. 06, 270; as councillor: *ibid.*, nos. 268, 705, 1013.

175. As witness: *ibid.*, nos. 27 (first), 1033-34 (last); as ambassador: *ibid.*, no. 515; as councillor: *ibid.*, nos. 705, 1145; as justiciar: App. C, s.v. Justiciar.

176. The sources are: App. A, nos. 290-304; *APS*, ii, 37; StAUL, MS SS.110.R8; Morton Registrum, ii, no. 221; SRO: GD 156/1/4/2.

177. The sources are: App. A, nos. 907-24; *APS*, ii, 47-52. The particular lists referred to are cc. 1, 7 and 12 respectively in the latter source.

178. The sources are: App. A, nos. 641-49; SRO: GD 20/7/325; Scone (Mansfield MSS) Bundle 1145 no. 2; Dumfries House (Bute MSS) Bundle A419 no. 7; Hirsel (Home MSS) Box 131/1.

179. Asloan MS, i, 242-43.
180. The sources are: App. A, no. 729; SRO: GD 28/112-14; Asloam MS, i, 221 (for the dispute).

181. Above, pp. 30-32.

182. See generally App. C under each office.

183. Examples of the occurrence of the council in the Exchequer Rolls before the death of James II are: ER, vi, 69-70, 165, 275, 353, 372, 476, 540, 541, 626. All these references date between 1454 and 1460. It is likely there are no other references to the council in this volume of the Rolls.

184. References up to c.1462 are: ER, vii, 2, 5, 7, 12, 29, 30, 31, 34, 35, 62, 109, 110, 118, 119, 120, 123, 128, 130, 131, 141-50 passim.


188. See e.g. Macdougall, James III, chaps. 3, 4.
(i): Introduction

The last two chapters have illustrated only part of the work of the king's council in the mid-fifteenth century. No less important was the judicial work of the council. At this stage, however, it is certainly a hard task to illustrate the activity of this aspect of the council with as much authority. Quite simply, the records do not survive in such quantity as would allow a detailed examination, although it is quite possible to use what does exist to provide an account of how the judicial council operated before 1460.

Previous writers might well have finished the last sentence at the word "survive". Thereafter some would have proceeded to say that only when the records do survive in a reasonably consistent series (in the reign of James III) would it be at all possible to discuss the judicial council. Prior to this, the best one could hope to do is refer to the items of legislation in the reigns of James I and II which indicated that attention was being given to the matter, but remark that the legislation was apparently not implemented. There are some honourable exceptions to this, such as Professor Duncan, whose views will be noted later.

Here, however, it is hoped to comment on the actual activities of the judicial council in the period 1424-c.1460 by using its surviving records. Naturally, no significant body of material has turned up which can be used in a detailed analysis. Despite the prolonged research which has been carried out, only snippets
have appeared. As an example, one may point to the tag reverse of the royal charter of 12 October 1459. The tag reverse is a fragment of a quarter seal summons of Pringle and others to comppear before the king and his councillors at Edinburgh in an unknown cause and at an unknown period, although the hand looks contemporary. ¹ Only one other quarter seal summons before the king's council survives for the entire reign. ²

It seems unlikely that a vast number of additional council-related items will turn up now for either the reigns of James I or James II. No doubt the odd extract decree will surface amongst the muniments of the lesser-landed families, not all of whose papers are at present accessible. It is certainly disappointing that only a few such items have turned up so far, as the legislative activity does suggest that the council was frequently at work, and it is clear that by 1460 there was a standard format for emitting decrees of the council (being routine, it implies that their issue was frequent).

Partly for the reasons outlined above, a more comprehensive treatment will be given here to the period 1424-37 than was given in the discussion of the political council. The legislation of that time probably should be considered with that passed between 1437 and 1460. It is hoped therefore that a more coherent picture will emerge than would be the case if only the period 1437-60 were considered.

Because the judicial council is seen as the forerunner of the Court of Session, there has been a frequent comment on it by historians and lawyers. After a consideration of the legislation,
the views of some of these authors will be considered, before the actual record and its relation to these views is discussed.

Naturally, only some authorities will be looked at, partly because there has been so much comment before, and partly because there are a few whose writings have served to elucidate the topic more than others. To begin with, however, it is necessary to look at what statutes touch on the subject. Three items of legislation in particular are the subject of comment when the role and jurisdiction of the council and the session are discussed. These are acts passed in the parliament of March 1426, the general council of October 1456, and in the parliament of March 1458.

The 1426 act related that the king (with consent of the parliament) had ordained that the chancellor with "certane discret persons of the thre estatis" to be chosen by the king were to sit where the king decided to determine finally all causes and complaints which could be determined before the king's council. The times of the sittings were fixed, and some allowance was made for the expenses of those deputed. This act is generally seen as having for the first time created a body which could be styled the session.

A remarkable piece of detective work by Dr. Irene O'Brien has recently altered the way this act should be seen. She discovered that the printed version of the act did not tally with all the MSS versions which would have been used by the editors of APS. She identified a group of three MSS which she considered had texts of acts made soon after each parliament or general
Council was over. These drafts were subsequently revised (perhaps as part of provision made for inspecting old acts and preserving those of lasting value), and it was from a revised version of the acts of the 1426 parliament that the act as printed comes.

The earlier versions differ most notably from the later ones in having the chamberlain as the head of the body to be elected by the king. This is certainly a remarkable variant, as it might have been possible to claim that the Scots were contemplating having their own court of chancery, similar to that found in England. O'Brien suggested that this unexpected post for the chamberlain may have contributed to his declining role in financial affairs in the fifteenth century.  

Professor Duncan, in discussing the change of emphasis that this discovery has made, has argued that the statute resulted from pressure on the king to provide more sessions of the judicial council. The main force of this pressure came from the burghs. The chamberlain was the Crown official most linked with the burghs (via the annual chamberlain ayres), and it looks as if the burghs would be represented on this new body.  

To these suggestions could be added the fact that when the act was passed it is likely there was in fact no chancellor in Scotland. William Lauder, Bishop of Glasgow and chancellor, was almost certainly dead by the time parliament took place, and his successor both as bishop and chancellor, John Cameron, had yet to take up either post. Although he had apparently been created keeper of the great seal by 7 February 1426, he was not actually styled chancellor until the following year. Lacking a chancellor,
it would surely therefore be a reasonable probability that
the chamberlain would be appointed to head the commission
instead. If this view is accepted, it will tend to discount
Professor Duncan's argument that it was policy which dictated
that the chamberlain should be the head of the session. It
might rather be seen as accidental. Neither Duncan nor O'Brien
apparently offers an explanation for the replacement of the
chamberlain by the chancellor.

The second major statute referring to the session was enacted
at the general council of October 1456. While the act does not
specifically refer to the body being elected as the session (or
indeed as anything else), it is likely it is the same as the group
elected in 1426. On this occasion, the names of the members of the
session are given for the next three months. Three representatives
of each estate were to sit on each occasion, and their deliberations
were to begin on 8 November next. While Edinburgh was to hold the
first session, thereafter the group could pass where they thought
best. Part of their business at least would be to deal with
causes left unfinished by the auditors of complaints at the present
general council.

The third and last major statute (or set of statutes) touching
on the session dates to the parliament of March 1458. Here the
session was instructed to sit at one of three towns (Edinburgh,
Perth and Aberdeen) for forty days. Again, the persons to sit
were nominated in advance: it is noticeable that an effort was
made to elect local men to each session, no doubt to prevent delay
and bring in local knowledge and expertise. The appointment of the
clerk register as a tenth member suggests that their deliberations were to be recorded.

The causes which the session could discuss were set out. They had jurisdiction in matters of spuilzie, but could only restore possession of the ground if the underlying debate were fee and heritage. (In other words, the session could not settle the question of ownership, which was quite different from possession). The session could also decide on other civil actions including debts, obligations and contracts, although litigants could take their causes before their ordinary rather than the session.

As for procedure, the pursuer would have to obtain a brieve of summons from the chancery, which would be peremptory. The session would have the assistance of the sheriff of the shire where the session took place in the matter of summonses and any other business. No appeal to king or parliament was possible from a decree. As for expenses of the members, it was considered that, as each session would be brief and that the members would only infrequently be expected to do duty, they could bear their own costs, although they were to receive a portion of the fines of their own courts to help in this respect.

It is uncertain who was responsible for the election of the members. It is stated that at the end of the three sessions here set out the king with the council would name lords to sit where and when he wished until the next parliament. When the members to sit on the first three sessions are named, there is no definite statement as to who made the choice, other than that the king and the three estates found the article "speidfull". 9
These are the principal acts which refer to the council (and to the session), and there has been much comment on them in the past. Professor R.K. Hannay was one who devoted quite some time to work on the council. He considered that the importance of the 1426 act (which for the first time set out plans for a body sitting regularly hearing causes) was that the members would be chosen by the king. Later legislation implied that the selection of personnel was carried out by the Three Estates, and indeed in 1456 and in 1458 particular men were named who were expected to sit on these committees, which could reasonably be styled the session.

By the late 1450s, this body seems to have assumed the guise of a formal gathering. The constable of the realm had apparently been gathering fees during its sittings, as he was wont to do at times of parliament and general council. The session seemed to have been continuing the work of the three estates in its auditorial functions, and there could be no appeal from its verdicts elsewhere.

While Hannay could voice an opinion as to why the session arose ("Evidently the development of the sessions was connected closely with the growth of the action of spuilzie"), he was on the whole uncertain about its existence before 1460:

"The surviving records do not enable us to say how far the expedient of 'sessions' was designed to cope with the overflow of civil actions from Parliament and General Council, or whether the council attendant on the king came much into play".

A generation later, Professor Duncan wrote a remarkable article on the central courts before 1532 as part of a Stair Society volume, which is invariably referred to now in works on the subject.
Duncan made use of a range of sources in an effort to comment on what actually happened when the council or committees of parliament sat: his thoughts, therefore, deserve much attention. He saw the 1426 legislation as an effort to produce not a group of parliamentary auditors, but a group of councillors who would be sent out into the localities three times a year to hear causes without the king's presence. These were matters which could only be settled locally: while the council would hear complaints, examine evidence and issue decreets, it could not obtain the verdict of an assize.

The 1456 act drew up a new scheme for sessions, and he argued that the 1458 act showed the experiment to have been a success. That said, "[i]t should ... be regarded as an open question whether the sessions were as effective as statutes might imply". Generally, it was a body which could hear the same causes as could council: i.e. those civil actions which did not concern fee or heritage. This conciliar jurisdiction had been imposed on it by statute. While no statute conferred jurisdiction on the council, it could still have its competence transferred to other bodies.

The main drawback for the council was that it could not judge in matters of fee and heritage. This was mainly because it was not a fenced court, and had no dempster. It could only apply a remedy, not give a judgement. It might give guidance to parliament, but in parliament a judgement was of greater weight, as it was given by a dempster in a fenced court.

In a recent pamphlet on James I, the same author has argued that the burghs especially were the source of pressure which prompted the act of 1426. This can be gauged from the fact that the act
in its original form (quite concealed to scholars by the poor quality of APS) had the chamberlain, not the chancellor, at its head. (It was about five years later that the chancellor became the head of the body, together with other changes). There had been a demand for sittings of the council in other places than Perth or Edinburgh or near thereby, and the act aimed to plug this gap:

"The sessions began in response to burgh needs and involving burgh members were gradually eroded and never revived in this form; but they may have been important in building up expectations of royal justice which no later king could ignore". 14

Part of the previous view of the development of the council in the fifteenth century as a whole was that it indicated pressure for the creation of a supreme court in Scotland. The local courts (of the sheriff or baron, for example) were seen as no longer able to cope with the demands for justice, and as a result the administration was gradually forced to make provision at the centre to make good this lack. The Crown might be berated for being unwilling to pay to obtain a professional judiciary, but at least the pressure did pay off. Even though Robertson was critical of some of the older views (of which these are typical examples), he nevertheless agreed that the legislation of 1426 and 1458 was part of a move to a supreme court, largely prompted by the developing commercial society. 15

The most recent sustained comment on the development of the council has been from Dr. MacQueen, most notably in his Ph.D. thesis, but also in a series of related articles. MacQueen has sought to nail the old view of the gradual development to a supreme court because of the weakness of the local courts, and
instead sees the council, parliament and local courts operating in a partnership which provided litigants with a court suited to the type of plea brought. The council, far from being forced to take over from local courts, was in fact limited by their existence. Rules existed which dictated where causes might go, most especially in matters of fee and heritage. In such causes a brieve was essential to commence an action before the court of the justiciar, sheriff or burgh. MacQueen summarised his case as follows:

"The constitutional developments of the fifteenth century are to be explained as devices for the efficient administration, not of justice in general, but of parliamentary and conciliar justice, so that that business might be dealt with with the greatest despatch and not prevent the other functions of these bodies being properly carried out". 16

The exercise of judicial functions in parliament in the fourteenth century may be the start of the road to the session, as parliament was a gathering of the king's council (although afforded). In the limited time available, sub-committees had to be set up to deal with particular ranges of business, for example judicial affairs. Parliament was the occasion when any subject could come with a complaint; council, on the other hand, was accessible only to a more limited type of litigant generally (although there was little to stop the king calling in any case he particularly wished to hear).

MacQueen suggested that the act concerning bills of complaints of 1425 was an effort to set out what should happen when parliament ceased to sit and there were judicial matters left unfinished. This act laid down that bills of complaint which were left unheard when parliament ceased were to be directed instead to the ordinary.
Only if he failed should they come before the king. This statute aimed to stem the flow of bills to parliament, which had roles in providing common justice and common law. Common law could be obtained from the ordinary: the justiciar, chamberlain, sheriff, baron or provost and bailie of burgh. Common justice differed (remedies were provided where the law was lacking), and so this act could never have deflected all the business it was intended to. The result was the act concerning the session the following year. Despite the session's existence, council and parliament continued to deliberate in judicial matters: the sessions simply relieved, not replaced. The act of 1458 in effect made the session an alternative to, not a replacement for, the ordinary (by widening its jurisdiction), but the body seems all the same to have declined in the 1460s.

In an unpublished lecture last year, MacQueen reviewed the history of the judicial work of parliament, council and session, and emphasised that pressure of business in terms of petitions and complaints to parliament provoked the administration into action. A means of diversion was found (the session), but eventually even this body foundered and council was pressed to adopt the session's role and perhaps its jurisdiction. As a prompt for future progress, MacQueen also remarked that the council ought not to be seen in a vacuum. Elsewhere in Europe there were conciliar courts developing from the judicial functions of royal councils, and it may well be that the Scots simply wished to follow procedures elsewhere in judicial affairs. In England, for example, it may be that the peace-keeping role was a prominent part of
development in this respect. Apart from this, fiscal needs could also have prompted developments in Scotland. 19

Before delving further into the council, it should first be noted what bodies existed in the mid-fifteenth century which were capable of decrees in judicial matters. Apart from groups of arbiters who would be selected by the litigants, there were four which were linked to parliament or council whose decrees are occasionally encountered. Two will be the subject of some discussion here: the council and the session. Two will only be noted when there is a specific need to do so: the lords auditors of causes and complaints, and a group which may be styled the lords of the Three Estates. 20

The latter two are both linked to parliament. Parliaments and general councils were in the habit of electing lords auditors at their assemblies: there would usually be an equal number of representatives of each of the Three Estates, and they would deal with complaints (often first instance business) brought by litigants to the assembly. It has a fairly continuous record from 1466, but there are a number of extract decrees now extant before then. Dr. Chalmers gave an extended discussion of the body and its members in his thesis. 21

The lords of the Three Estates was a different body from the auditors. It was much larger and there is no evidence of it having been elected. Only occasionally are the names of those who were styled lords of the Three Estates given. While burgesses are not so normal on those occasions, they were part of the group, as indeed the name implies. Presumably it was a commission of parliament of some sort, and one which could
issue decrees. While it is only infrequently encountered, it should be regarded as a separate body from the auditors. We have evidence for both bodies making decrees at the parliament of January 1450.22

The other two bodies which can be found active in judicial business are the council and the session. The study of the legislation in parliament just given will have indicated that the two were apparently closely related. The 1426 statute particularly shows this. One would expect from the continuing references in the statutes that it would be the session whose extract decrees one would regularly find, but this is not the case. It is indeed a struggle to find decrees of the session, whereas council decrees are regularly encountered.

An important difference between them seems to have been the matter of election. The king's council would inevitably be comprised mainly of men whom the king wished particularly to hear a cause, with a core of regular councillors. The session, on the other hand, would normally have an elected membership. Members would probably come equally from the Three Estates and be elected by them. Representatives of each Estate might well appear on the council, but this was not guaranteed. The personnel will be considered at some length at the end of this chapter.

Discussion of the council and the session tends to lump them together, but it is arguable that this should not be the case. The session has apparently a greater link with parliament, and may be a body which the Three Estates specifically wished to have (the session will also be considered more fully later). The king accepted it should exist; but he also recognised that his council had
on occasion to be active judicially, so the session was likely only to supplement, not supersede, the council.

When the views of Dr. MacQueen were considered earlier, it was noted that his hypothesis also depended on the contention that the council was restricted by its inability to hear causes of fee and heritage. Since this aspect will be the main topic of the next chapter, his views on it have been held over until then. It is hoped that this summary of the arguments used in accounts of the growth of the council (and parliament) as judicial forums in the fifteenth century will serve adequately in this chapter. Here, the intention is to discuss the council in terms of its record and composition. The relationship of the session to judicial council will also be discussed, as it is a matter of some importance. While the actual operation of the council will often be noted here, the next chapter (a discussion of the prolonged Dundee v Montrose cause) will be the occasion for more sustained comment on the council at work.

(ii): The Council record

An appreciation of the various bodies active in judicial matters in the period should help in ascertaining on what occasions the judicial council acted. It is suggested that one way in which the organisation of the council as a judicial body at this stage can be approached is in studying the type of record it produced and (if possible) the official responsible for producing the record. Inevitably an approach of this sort has to be wide-
ranging, taking in evidence after 1460 as well as before. It is necessary to do this not only because of the patchiness of the record, but also because it would be unwise to expect that 1460 brought a break in the organisation of the judicial council. It might be possible for the personnel to alter, but the procedure they adopted would doubtless be that of their predecessors. In addition, the survival of a quantity of judicial records of the council for the last quarter of the fifteenth century (together with those of one of the committees of parliament, the lords auditors of causes and complaints, from 1466) might permit some comparative work. One would use as evidence decrees extracted from its record at a time when it was clearly operating routinely, to try to draw conclusions from the way in which such extracts were framed and see if links could be established with the record before 1460.

It may be fairly stated that at present the view of the continuous series of records of the judicial council and parliamentary committee is that they should be seen together, rather than as quite separate entities. Dr. Murray has noticed that a former Deputy Clerk Register, Thomas Thomson, imposed his own will excessively on the records in the early nineteenth century, to the extent that they would not be recognisable in their present form to the original compilers. Thomson seems indeed to have gone so far as to transfer individual folios from one record to another as he saw fit.

Dr. Chalmers suggested that the council was not maintaining a current record until the mid-fifteenth century: it was certainly hearing civil causes, but largely without documentation. On the subject of clerks of council, he considered that perhaps as late
as the 1470s, it was thought easier to delegate chancery scribes for particular council business, as even then not much documentation was being generated. Such clerks had as normal duties general chancery business, and were attached to particular officers for specific functions: they were not attached to a particular office. 24

Murray noted that the term clerk of council seems to appear first in 1459, and that from 1469 Alexander Scott, then clerk of the council, is also called depute of the clerk register. He suggested therefore that the clerk of the council was a subordinate of the clerk register. The clerk register had directorial functions in parliament, much as he probably did in Exchequer. He also had charge of all the records produced in chancery, exchequer and parliament. These functions are indicated in his formal title of clerk of the rolls and register. The clerk register also had a connection with the council which might give a further indication of how the clerk of the council would be only a subordinate. Not only would he be present in a clerical capacity, but he was also elected as one of the members of the session in 1458. 25

If one analyses the evidence provided by the surviving extracts of council cases particularly (and also taking into account extracts of decrees by the lords auditors), it is clear that the views outlined above can be significantly modified. While the contention that the clerk of the council was seldom more than a subordinate would appear to be true, the evidence would suggest that the actual record from which he extracted decrees had greater substance before 1460 than has been appreciated, and that (more circumspectly) it may be suggested
that this record was separate from the record in which the
decrees of the auditors were engrossed.

The earliest evidence now known for a clerk of the council
is an extract decree dated 16 October 1448. John of Airthrey,
treasurer of Dunblane and clerk of the council, extracted the
decree under his signet and sign manual on the day on which the decree
was made, so there is no problem of this being a late confirmation of
a decree and some doubt therefore arising as to the true date of the
reference to the office. That this is not a one-off occurrence
is shown by a decree of 12 February 1449 (confirmed two days later)
in which the same man using the same style extracted the decree.

Admittedly the cause in which the decrees were made was effectively the
same (a dispute over burgh bounds between Kinghorn and Inverkeithing),
but this does not invalidate the suggestion that the clerk of the
council was now in existence. He did not play any part in reaching
the decree, so his rank was simply that of clerical officer.

Regrettably, no indication is given of the record from which
Airthrey was extracting these decrees. Strangely, this lack of
reference to a formal record continues throughout the rest of the
reign for decrees which can apparently be linked with the judicial
council. On occasion, however, there can be found notes of
extraction similar to those just mentioned. A decree of 10 August
1453, for example, was extracted by Thomas Brown, clerk and writer
(scriba) of the council. A decree of 2 July 1458 was promulgated
by Thomas Vaus, the king's secretary. In the other extract
decrees, the full text of the decree is given and is then simply
topped and tailed by the king's formal confirmation. (It may be
added that the decrees which do have a note of extraction by the clerk
of the council are similarly topped and tailed. There is one
decree which stands alone with no confirmation, being simply
signed by the clerk of the council; it is also unique in being on
paper).\textsuperscript{30}

Ought it be concluded that at this stage the council had no
formal record of decisions, despite there being clear evidence for
a clerk? The first known decree for the reign of James III,
dated 6 October 1460, might seem to support this, as it appears
to stand on its own without even a subscription by the clerk.\textsuperscript{31}

The evidence of the extracted decrees of the lords auditors
might lead to a different conclusion, however. The majority of
decrees by that body are extracted \textit{de registro} by the clerk register.
This type of extraction first appears in a decree of 1 June 1441,
confirmed by the king two days later.\textsuperscript{32} It may be that this is the
first instance of such a form of wording when decrees were extracted:
two, similar decrees made by the council general in November 1438
simply record that they were given and extracted by the clerk register,
without specifying from what record they had been extracted.\textsuperscript{33} It
would be wrong to read much into this, however, as it is extremely
doubtful that a different type of record was being used in 1438
from that in 1441. A decree of 26 March 1454 (confirmed on 28
March), for example, has no note of extraction,\textsuperscript{34} but it cannot be
doubted that it would have been part of the same record from which
the other known extracts were also taken.

What register these decrees were extracted from is a little
unclear. The register itself is now lost. It is suggested here
that this register was one of the great seal \textit{acta} and of acts of
parliament and general councils. At this stage the note of
extraction simply states that it was from "the register". This could mean that it was the same register which contained the various royal documents which passed the great seal (itself of course now badly damaged). Clearly it was a register in the custody of the clerk register: frequently the note of extraction indicates that it was done so under the seal of office of (say) the officialate of Lothian which office the then clerk register held. 35 It would seem therefore that the clerk register had to authenticate extracts in some way before they could pass under the quarter seal. This does not seem to have been required of extracts from the council record. Why this should be is unclear, but it is possible that it was connected with the payment of fees for copies of some of the king's records. Private parties did not have access to the king's records as a matter of course, but as a privilege, and fees would have been levied. 36

It should not be imagined that simply because the acts of the lords auditors were in judicial matters that they would not form part of the record of parliament or general council. Their authority stemmed from the place where they were enacted; it was only natural therefore that one would expect to find them amongst the records of the Three Estates. Rait noted that anything that was passed in parliament (legislation, a judicial sentence, an executive order, etc.) was an act of parliament. There was no differentiation between statutes and other acts. Rait suggested that the reason for this was partly the result of having a single-Chamber house, and partly because of the late development of parliamentary influence and authority. 37
Dr. O'Brien apparently did not consider this point in her account of the record of parliament and general council. It is, however, surely a significant point. If the commission appointed in 1469 to review the old acts to determine what was worth preserving did in fact deliberate, they would surely have had to view the judicial acts as well as the more obvious statutes.

The Register of the Great Seal as it now is contains some acts which clearly belong to deliberations by parliament. One is the decree in the Coldingham priory case of 1424 and a second is the decree in 1430 in the matter of the lands of Leuchold in the barony of Dalmeny. Both display their parliamentary origin for all to see. The latter commences Actum parliamenti..., while the former narrates the case and ends with a doom given by the dempster. Both are stated to have been issued under the quarter seal. While these are the only two decrees made in parliament which are in the Register now, it would have been possible for some of the others to have been recorded there as well originally, but to have been lost in subsequent years as the Register suffered damage.

A case could be made for a register as implied above (that is, one containing great seal acta as well as acts of parliament and general councils in favour of specific parties) also including statutes passed during assemblies of the three estates. A statute of the parliament of March 1426 reads in part:

"Item the king with consent of the thre estatis of the realme has ordanit that all statutis and ordinance of this parliament and of the twa parliamentis precedande be registrat in the kingis register and gevin to the serreffis..." 41

The same parliament made reference to "the king's register" in instructing that all "lettres of newe infeftment confirmacioun or
proteccioun speciale undir his hail grete sele" from March 1424. up to the present were to be registered within the next four months. The parliament of November 1469 thought it was expedient to put the king's rolls and register in books. All three of these references are to "the register" (singular). This is surely significant.

If this one register contained a record of all acts and statutes and acta, it would then explain why the fourth book of the manuscript Great Seal Register today contains a version of what is quite obviously a statute of parliament. While it is accepted that this statute is the only entry on the folio in question, its very existence in the volume is odd. There is no reason to doubt that it is a contemporary copy of the statute.

The answer to this apparent impossibility of such a wide-ranging register may be that the register should not be seen as a single entity. Murray stated that the word "register" meant specifically the record in which great seal acta were enrolled (while rolls meant "all types of records for which the clerk [register] was responsible"). In the sixteenth century, however, "register" could refer to the records in general, or even the place in which they were stored, while still implying specifically the great seal record.

This definition could be amended slightly, by suggesting that "register" was an all-embracing term by which was meant the volumes in which were recorded the statutes, acts and acta. The suggestion can only be tentative. But the register was not necessarily a volume or series of volumes, some blank, some already filled. It might be better to see it as a store of (literally) reams of paper.
and parchment. It is suggested that the paper used for the various activities involved was supplied in folio, not volume form, and used as required. In due course the loose folios and parchment would be bound up into a more permanent form. With a little care, it would be possible to have folios used only for great seal acta, and folios for statutes and acts of assemblies of the estates. In this way, what might be separate records could be embraced under the one heading, with the clerk register being the official responsible for the superintendence of the end-product.  

It is likely that an effort to gather together the various items of recorded business was under way in the late 1450s. The aim was to have all the acta in one series and the acts and statutes of parliaments and general councils in a second, both of which were under the control of the clerk register. When the session is discussed later, it will be seen that it is probable that its records (as being linked to parliament) were also in the custody of the same official. The council's records, however, were probably still in the control of the clerk of the council. The acta would have been on parchment usually, whereas the other series were on paper. While as the manuscript Great Seal Register exists today, most of the acta for the mid-fifteenth century are on paper, the series generally is a parchment one. Fire damage later in the century was probably the cause of the loss of the original registers, but copies had been kept on paper. There are marginalia which suggest that the surviving record was occasionally used for accounting purposes. Such a proliferation of record brought its own problems: it was necessary to identify in some way which record an extract had been made from, and to this
end some of the records were given titles.

In the mid-1450s the clerk register is more specific in his reference to the record from which he had extracted a decree than he had been before. The first indication of this is a decree in parliament by the three estates of 18 July 1454 (confirmed three days later). The clerk register on this occasion stated that the decree was extracted from the register of the acts of parliament. There are two decrees of the lords auditors later in the reign which are similarly more specific. Both are said to have been extracted from the liber actorum by the clerk register.

The phrase liber actorum is important. While no particular effort has been made here to collect extract decrees of either the council or the auditors after 1460, those that have been traced do show a pattern. What is found is that the council appears to take over the liber actorum as its record. A decree of 16 June 1464 was extracted by the clerk of the council from the liber concilii, but thereafter the extraction was invariably from the liber actorum (as shown by decrees in 1465, 1469, 1473, 1474, 1477 and 1481). The lords auditors, on the other hand, invariably had their decrees extracted from the register of acts (as shown by decrees of 1461, 1464, 1483 and 1484). The evidence would appear to be sufficiently haphazard but also regular for this division to have been genuine.

What is certain is that in these terms the council had changed considerably since the reign of James I. At that period, council decrees were issued in a continuous narrative with a confirmation by the king: there was no preamble with the text of the council's decree complete in itself, as is found later, and no hint of
extraction from any record by any official. There is in fact surprisingly little information about the activities of the judicial council between 1424 and 1437, especially when there is taken into account the standard remark about the pressure of business persuading the king to find ways of dealing with it outside the council. (Alternatively, it could be argued that the paucity of record shows how successful this policy was, but one would still have liked more evidence of this pressure before 1425 or 1426, when legislation was passed which has been taken to indicate it). 53

It would seem that organisation of record therefore came later to council than to parliament or general council, as there is good evidence of how the decrees of the latter were issued in a regular form in the 1420s. The practice was to begin the letter notifying the decree with the words Actum parliamenti or Actum concilii generalis, and then rehearse the cause and the decree in a continuous narrative. There would then follow the confirmation under the quarter seal. This practice seems in fact to date to the period of the Albany governorships. 54

By the 1430s, however, this manner of notifying decrees seems to have been abandoned. Decrees then commence with a standard form of royal address to all his lieges, followed by a statement of the cause with the verdict (and in addition generally stating the names of auditors of causes if they had made the decree), and completed again by the quarter-seal confirmation. 55 It was a format which did not last into the reign of James II: as early as November 1438 the format found in that reign made an appearance. 56

It may be concluded then that as the reign of James II wore on the king's council was becoming increasingly more organised insofar
as a record of its activities is concerned. While definitive evidence for a formal record of its activities is lacking even in its own extracted decrees, it would be natural that the careful separating of record now under way may have occurred also in respect of the council records. As with decrees of the auditors, council decrees could already appear on paper as well as having the outright confirmation on parchment under the quarter seal. When the consistent record survives later in the century it is on paper. \(^5^7\) In addition, the fact of the existence of a clerical officer attached to it by 1448 would suggest that its activities in the judicial sphere were being recorded. \(^5^8\)

Although the council did apparently have this clerical official working with them, it must be doubted whether as yet it was a permanent post. John of Airthrey, the first clerk of the council in 1448-49, only appears twice more in this capacity (both occasions coming within a two-week period in 1459). \(^5^9\) Airthrey can certainly be linked to the royal chancery before and after his first appearances as clerk, but no fees are recorded in the Exchequer Rolls as being paid to him, whereas the clerk register certainly did obtain some fees. \(^6^0\)

Airthrey probably only held the post temporarily, as Richard Clephame endorsed a decree of the lords auditors in the January 1450 parliament: "Let there be a letter to the sheriff to execute this: Richard Clephame, clerk of the council". \(^6^1\) Clephame also wrote one of the council decrees in March 1450, and may have indicated therein that he was the clerk, but the total loss of one-sixth of the decree as it now is obscures this. \(^6^2\) Clephame (an inveterate benefice-chaser) cannot have held office long as
he was certainly dead by late January 1452.63

His successor was Thomas Brown (a notary public as were the other two), but there is only one reference to him as clerk. Like Airthrey, he stated that he had extracted a decree which the king then confirmed in the usual way, but no indication is given as to the record from which the extraction was made.64 Brown was a regular chancery clerk: he was paid for writing the rolls in 1450, and in the 1450s he frequently acted as the notary when an instrument was drawn up in the king's presence.65

Significantly, the clerk register cannot be associated with the council in its judicial proceedings in the reign of James II. An examination of the personnel of the council during its sittings shows this to be the case. Indeed, it may be suggested that if the clerk register does appear, then the body making the decree cannot be the council (a point which permits the exclusion of one apparently likely council case).66 If this is the case, then it would be a further pointer to the compiler of the council record. It would suggest again that the council record was not in the clerk register's control, thus supporting the contention earlier that there was a difference between the records of the council and of the judicial committee of the three estates.

Since the clerk of the council was only a minor official, it would be likely that another more prominent officer would act as a co-ordinator for the council. The secretary would seem to fit the bill. He was usually present when the council dealt with judicial matters. There appears to have been no secretary from mid-1448 for a period of about eighteen months 67 (the last known holder of the office, Mr. John Ralston, being one of the ambassadors to deal
with the king's marriage, the negotiations for which were then under way). Whether by chance or not, it is at this time that the clerk of the council made his first known appearance. No secretary is known for almost two years from December 1454, but there is no known reference to a clerk of the council during this period, which might have prompted thoughts about that post being a temporary expedient to cope with the absence of a secretary.

This link of the secretary with the council is certainly significant. The secretary, by being custodian of the signet, is supposed to have been the executive official for the council, in the sense that the signet was used as a means of summons before the council, or perhaps of carrying out its decrees. Hannay in particular has linked the hearings of civil causes by the council with the development of the signet in the fifteenth century, whereas before the privy seal had been its usual tool. He suggested that one reason why the signet was commonly used as a means of summons was that it was cheaper, being on paper, whereas quarter seal summonses (also competent before the council) were on parchment.

Chalmers also comments on the growing importance of the secretary to the council, although it was only in the minority of James II that the keeper of the privy seal and the secretary became officials independent of one another and responsible for only one seal. Up to 1448 Mr. William Turnbull had the custody of both the signet and the privy seal, although the office of secretary was held by a different man. Neither official, Chalmers suggested, was a regular member of the inner-council until the reign of James III. The keepers were generally career clerics, whereas the character of the secretaries changed in the 1460s, when Mr.
Archibald Whitelaw was appointed to the post: he was more of a scholar than a career cleric. 71

Teasing out the relationship of both privy seal and secretary to the judicial council is by no means easy at the period under consideration. Although it is hoped that the lists of holders of each office given later is as good as can be achieved at present, gaps are apparent. 72 Must it be concluded that this is because the source material is just too scanty? Or ought it to be thought that the lists are in fact quite realistic, and that gaps reflect the fact that there was no privy seal between late 1449 and early 1453, for example? Since in the case just mentioned the records are in fact remarkably rich for the period concerned it is not impossible that in fact there was no privy seal then. Had the secretary assumed his functions instead?

It is clear that one should not expect all the officials' posts to have been filled continuously. It looks likely that at the time of the death of James I there was neither a secretary nor a chancellor actually in Scotland. John Cameron, Bishop of Glasgow and chancellor, was absent at the Council of Basle, as he had been in fact since 1434. 73 Mr. John Methven, who has been claimed as the secretary from February 1433, probably did not in fact hold this post until July 1439. 74 The sole evidence for his tenure of office before then is a royal charter dated 24 February 1433 to which he was a witness. 75 Examination of the witness list shows a number of difficulties, however. Sir William Crichton, one of the witnesses, is styled "lord of Crichton", which is not a style used at this period (he would be so designed in the 1440s, however). Methven is also styled "Provost of Lincluden collegiate church", whereas he would not hold this post until
1437, and there is no doubting that another held the office in early 1433. This charter would in fact be the only one issued by James I which Methven witnessed if it were genuine, which again would be curious. Amongst other objections which can be laid against it is that it is dated at Linlithgow; there is a royal charter dated at Edinburgh the following day. It is accepted that the terms of the charter are quite genuine (sasine was taken thereon on 18 April 1432, another pointer to trouble with the formal charter), but that the date and the witnesses are incorrect. It was undoubtedly written close to its given date (at a guess, probably c.1439), but it cannot be taken as proof of tenure of office by any of the witnesses.

It is likely that Methven's appointment as secretary did not arise till July 1439, and that this is a change consequent on the appointment of Sir William Crichton as chancellor two months before. It is also noticeable that at precisely the time Methven first appeared as secretary Mr. William Foulis, privy seal since 1427, was apparently dispensed with. Methven held office for a little more than a year, during which time no keeper of the privy seal is known. In August 1440 a privy seal (Mr. William Turnbull) made his first appearance, and Methven was ousted. The implication of this bout of office-changing is that if one office were occupied then there was no need for the other to be. The council is not known to have been active judicially at this period.

A change of policy arose in late 1442, when Mr. John Ralston was created secretary, while the office of privy seal remained
in the hands of Turnbull. If the offices did overlap (the fact that Turnbull could be styled secretary as a witness to a royal charter in April 1441 suggests that they might have done), now they were separated and remained so until at least May 1448. Ralston was briefly in Rome in May 1446, but there is no reason to think that he was temporarily replaced.

A major change must have taken place again in mid-1448, however, and it is possible that it resulted in the effective combining of the offices again. Ralston went on the embassy appointed to seek a bride for the king, and must have been absent for a year at least. Turnbull (despite now being Bishop of Glasgow) remained privy seal, and is so described when the council made two decisions in judicial matters in October 1448 and February 1449. Ralston's return did not mean his continuing as secretary. Briefly he was treasurer, but it looks as if he were involved somehow in the Livingston overthrow, as he was removed from that office and indeed had to seek a remission of rancour from the king.

Like Turnbull, Ralston was now a bishop, and it may have been felt that both were too high in the ecclesiastical hierarchy to hold such office. Turnbull must surely have vacated office by 4 February 1450, when he obtained a privy seal letter warning the inhabitants of Renfrew and Rutherglen not to prevent those wishing to sell goods in Glasgow from doing so. It is not likely that he would have been permitted to use the seal for which he was responsible to seal a letter in his own favour.

Mr. Nicholas Otterburn had been appointed secretary by 31 October 1449 at the latest, and thereafter up to the end of the
reign there seems always to have been a secretary in office. 89
(There was a two-year vacancy, but other gaps in the list of
secretaries in Appendix C can be seen as not significant, due to the
occasional gap in the records.) With the privy seal it is a
similar story. There may well not have been a successor to
Turnbull until Mr. James Lindsay in November 1452, whereafter
the record is as continuous as is the list of secretaries. 90

Even into the 1450s, then, it looks as if the offices of
secretary and privy seal must have overlapped, but probably for
the last time. It is not possible to say whether the one of
the two officials who was in post while the other post was vacant
held both seals. It can be shown, however, that while one post
was unfilled the seal, usually the responsibility of its holder,
was actually used. For example, a signet precept was issued
on 8 March 1441 (instructing the sheriff of Peebles to
recognosce land near Peebles); and privy seal letters were issued
in February 1451 and January 1452, the former confirming the
donee's tenure of his estates and the latter granting a tack
for five years. 91 Other examples of this could be provided.

What is more important perhaps in relation to the activities
of the council is any link which might be established between
meetings of the council and letters appearing under the signet or
privy seal soon thereafter. All told, there are thirty-three letters
sealed with the signet, and forty-seven privy seal letters now extant
issued between 1437 and 1460.

It may be noted that prior to 1450 there are a number of privy
seal letters which definitely state in the text that they were
issued following a discussion of the matter by the council. For
example, the trouble in Dalkeith following the death of Sir James
Douglas of Dalkeith c.1441 brought forth a letter in September 1442 by which (with the advice of the council) the king took into his own hands the castle and lordship of Dalkeith. Similarly, three letters were issued in April 1446 concerning the destruction done at Dunbar Castle by Patrick Hepburn (son of Sir Adam Hepburn of Hailes) and his accomplices: it was to be made known that none were to accompany him in his activities.

Letters like these had more to do with politics than judicial affairs, of course. For examples of privy seal letters dealing with judicial matters, the Perth burgh archives provide two fine examples. In June 1442 Sir John Ruthven of that ilk, sheriff of Perth, was instructed to desist from troubling the burgh of Perth in respect of its Midsummer fair. No doubt this letter proceeded on a complaint to the king and his council by the burgh. Secondly, in April 1444 the same man was instructed to relax a recognition made before on the king's command of a fishing in the Tay which was disputed between the burgh of Perth and Sir John Olifant of Aberdalgie. This was a fairly standard procedure after a decision had been reached as to the last lawful possessor of a particular piece of property. As here, the dispute generally was one of a right to the fee and heritage, but the council could do no more than decide on the last lawful possessor because it was excluded from jurisdiction in fee and heritage matters.

A change in the type of letters issued can certainly be noticed in the 1450s. It is doubtful whether any were connected with judicial proceedings. Instead, a number of tacks can be found, or minor pensions levied from customs payments. It would seem
that the privy seal was no longer being used in connection with the judicial council's proceedings.  

The signet, on the other hand, can certainly be associated with the judicial council in the 1450s. Admittedly, on a number of occasions its use is connected with a lengthy dispute between the bishop of Brechin and members of the Cullace family over the bounds of their respective properties, but it is nevertheless important that it is always the signet being used over a period of years. If it had been only, say, two instances over that period then it could have been thought more coincidental than deliberate. It is more likely, however, that the signet was now being used as a matter of course by the judicial council when issuing its precepts. Minor grants of pensions can certainly be found sealed by the signet (the Exchequer Rolls show clearly that a vast quantity of miscellaneous precepts for payment were issued in this way), but this should not be allowed to disguise the change of use.  

As yet the signet summons is a rara avis, however. Hannay commented on this in particular as being part of the judicial council's procedure. The problem is partly that there are very few summonses to a hearing of a cause by the judicial council in the reign of James II, whether issued under the quarter seal or the signet. Widening the horizons a little and bringing the reign of James I into consideration does permit some more summonses to be discussed.  

There are in fact only three summonses under the signet now extant which were issued between 1437 and 1460. Two of them were
issued (in 1450 and 1457) following complaints by the citizens of Brechin laid against John and Thomas Cullace, whom they accused of preventing their use of their common and of upsetting bounds between properties which had previously been erected following a perambulation. In each case it could be said that the summons is incidental to the issue of the letters, as the recipient is charged to do much more than simply summon the party before the king: in each case the accused was to be prevented from continuing his wrongful action. The third summons is a much more straightforward affair. It is part of the long-lasting cause between Montrose and Dundee, and instructed the burgesses of Montrose to compear at Perth to hear a continuation of the matter ten days after the date of the summons (19 June 1458).

One particular dispute in the reign of James I saw a number of summonses being issued, although in fact only one was issued under the signet. The dispute was apparently about the ownership of the lands of Glassarie (Argyll), which was claimed by Duncan Campbell of Lochaw and Sir John Scrimgeour, and the lands of Edderline (Argyll) disputed between Scrimgeour and the baron MacCorquodale. By signet letters of 31 March 1427, the king commanded the recognition of the lands and the summoning of the parties before him and the council on 30 June next. Of the three known summonses in this case, this (the first) is the only one sealed with the signet. The two later ones (dated 8 December 1427 and 20 June 1428) both appeared under the quarter seal.

It would be wrong to try to read into this patchy survival of summonses in the period 1424 to 1460 any theory of the signet superseding the quarter seal as the means of summons before the
council in judicial affairs. There were certainly some statutes passed in parliament which referred to the types of summons to be issued. A sentence of 1450 indicated that summonses were to be issued under "the quhite wax" (the quarter seal), and that those summoned were to have at least fifteen days' warning of the hearing. The 1458 statute concerning the session demanded a summons on forty days' warning (again indicating a quarter seal summonses, as a signet summons would usually be for a shorter period), although it would be possible for the period of summons to be reduced to fifteen days, if the complaint to be heard concerned a matter which had arisen since the time of the proclamation of the session. It would seem therefore that the Three Estates intended the summonses to appear under the quarter seal. It is possible that this was because of the issue of fee and heritage, which is a matter to be discussed later.

(iii): The Session

Earlier in the chapter reference was made to the session, and its similarity as a body to the judicial council or to the lords auditors. Discussion of the early history of the session is usually brief and hedged about with uncertainty because of the paucity of information about it. Easily the greatest body of knowledge about it comes from statutes in parliament. While the statutes pay a lot of attention to its regulation, very little indeed is known about it in practice, which inevitably leads to thoughts of the statutes simply being further examples of legislation which was quite ineffective.
In view of this history, it was not altogether surprising that diligent searching has turned up little new information. That said, what has surfaced is not without interest, most of all perhaps in the casualness in which the session is referred to. It is as if the writer of a document which refers to it expected that any contemporary who read the document would be instantly aware of what he was referring to.

Since it was only in 1456 that the question of the composition of the session was fully regulated, it can be hard trying to determine if a body reaching a decision before then with a sufficiently important air to it ought to be reckoned the session or not. The earliest legislation (of 1426) simply spoke of the chamberlain and "certane discret personis of the thre estatis" being ordained by the king to sit thrice a year where the king wished to determine causes and complaints.\textsuperscript{106} The chamberlain was soon replaced by the chancellor as the head of the body, and in 1439 it was considered that it should sit twice a year.\textsuperscript{107}

In 1456, it was settled that the body should consist of nine lords, three from each estate (not now including the chancellor as a matter of course).\textsuperscript{108} This number was confirmed as nine in the parliament of March 1458, when it was made clear that the clerk register would provide the clerical assistance (and thus presumably have charge of its records). At this time, it was also laid down what type of causes the session could deal with.\textsuperscript{109}

It seems to this author that the session ought to be treated more as an adjunct of parliament than of council at this time. It is exceptionally difficult to close one's eyes to later developments, but it looks as if this conclusion is the proper
result of reading the legislation and interpreting it in the light of contemporary record. The grounds for so doing are partly the fact of election to the body, and partly the inference of the various casual references to it in statutes and elsewhere.

Certainly, the 1426 statute stated that the session would determine all causes which may be determined before the king's council. The increased remit of the session implied by the statute of 1458 (including now spuilzie, obligations, contracts, debts and other civil actions which do not concern fee and heritage) led Professor Duncan to conclude that council's jurisdiction was being transferred to the session. Dr. MacQueen, on the other hand, saw this as the conferring of a much wider jurisdiction than that held by the council (which could consider causes of churchmen, widows, foreigners, orphans and pupil children and complaints against royal officials, according to a statute of 1487). The suggestion then is that by the 1450s the session was less connected with the council than it might have been at the time of its inception.

The council general of October 1456 passed a statute warning the constable of the realm not to lift fees from those attending markets at times of session, general council or parliament. The statute was repeated word for word in the March 1458 parliament. There is no reference here to the constable lifting fees at times of judicial council hearings. This implies that the session was a court with fixed terms whereas council was not; the session was almost a statutory body, reinforcing its links with parliament in this way.

This statute in particular shows that the gathering of the
session was a fairly regular process, and that it was publicised enough and well enough attended for a complaint to have been made about the constable's actions at its meetings. There is a hint here of the reason for the meetings of the session. They were to be regular and frequent, and since they could evidently deal with a wide range of causes (wider probably than the council could) there might be less pressure for action on the council as a result. As yet the council's judicial hearings were irregular, although it would name a particular time and place for a hearing. Its scope was probably still limited to causes which the king wanted to hear or considered he ought to. Those apart, only if there had been a default of administration by one of his officials could a party approach the king and hope that the issue would be a council hearing.

Litigants were positively encouraged to take their complaints to the session, on the other hand. It was left up to them to decide if they wished to use their ordinary or the session at the end of the day. They would obtain good warning of the session's meetings, and would find them being held locally before auditors (usually also locals) who had been nominated during parliament or general council, just as the auditors who sat then were. Even if litigants had attended a general council or parliament hoping in vain to have a cause heard, steps were made to allow the causes to be continued to a meeting of the session held immediately thereafter. The decree given by the session was final too, and the local sheriff would be ready to give the decision effect.
The session was not out of the control of the king (he could nominate members and meeting places until the next parliament) but the impression remains that this was a body which the Three Estates had particularly wanted to have. Undoubtedly the king was not forced to agree to this. If the session could be self-financed and operate under its own steam, then it was to be welcomed. He would have been particularly happy with the intention to have as auditors as wide a selection as possible from each of the Estates (it was considered that each member might sit only once in seven years). The king's councillors had (by the late 1450s) to deal with more business than before, as the letting of Crown lands became part of their duties as well as a general oversight of patronage at court. If they were to have to deal continuously with judicial matters they would be even harder pressed to cope than they already were.

If the argument set out above is correct, it would mean that the session of 1458 would have been a different body from that apparently intended in 1426. The latter body was effectively under the king's control, and its membership was not laid down (although it would also have probably had members from all Three Estates). The intention was ultimately the same, however: to free the king's council for other work.

A result of the meagre evidence for the actual work of the session is that the above can only be a hypothesis. It is one which would seem to fit the evidence, however. In 1458 (as part of the Montrose v. Dundee cause) the commissioners of Montrose protested about a hearing of their cause by the king's council for various reasons including that, as the cause had been settled
by a decree made by lords chosen in the January 1450 parliament it could not be heard again at either session or parliament until that decree had been executed. 117 (It was a long-standing grievance of Montrose that a decision had been reached by the lords chosen in 1450 but it had been suppressed by the king and council). Since Montrose was reluctant to accept the authority of the council (the debate was a fee and heritage matter), it is interesting to see that the town seemed to accept that parliament or session could act here. Perhaps it was the length of summons to those assemblies which allowed this.

Actual decrees made by the session are few in number. There would appear to be only two which merit this description now extant before 1460. The first was made on 20 November 1456, and confirmed by the king under the quarter seal almost a month later. 118 In its format it looks almost as if it is a decree of the council, but comparison of the sederunt with the group of auditors chosen in the October 1456 general council to sit for the first month of the revitalised session is instructive. 119

Of the nine lords named there, no less than six appear on this body out of the eight in the sederunt. Two of the burgesses and one abbot were the non-attenders, and the two additional members were the chancellor and the clerk register (the latter being probably the clerical official for the session). This group can surely only be the session. A further pointer to this conclusion is shown by the decree stating that the chancellor had summoned orally a defender to comppear before the said lords auditors or others deputed by the king at Perth on 17 January next in the next session to be held there.
The second decree is dated 7 February 1457 (at Perth) and was confirmed by the king three months later. If the first decree was hard to categorise then this is all the more so, as the king describes the body making the decree as: "consules nostrós auditores causarum et querelarum pro causis et querelis audiendis et decidendis per tres regni nostri status electos"; and the lords themselves state that they were "specially elected". It is hardly surprising then that this decree was printed in APS, although no parliament is known to have been sitting then (the king's whereabouts at this point are quite unknown).

Seven lords were on the sederunt. There is very little correlation this time between those present and those named at the 1456 general council, even allowing for the fact that one cannot be certain if this is the second month of the session (or, say, the third). Once again the clerk register was present, and he extracted the decree from the liber actorum. It is suggested that this is significant, as it would tie the session's record to that of parliament (an auditors' decree confirmed by the king on 5 October 1458 was also extracted from the liber actorum).

While these are the only definite session decrees for the period up to 1460, there are records of decisions by bodies which are uncommonly like the session. One (which must surely be linked in some way to the October 1456 general council) was made on 25 October 1456. Eight men are named as "iudices" elected by two litigants to decide a dispute about whether or not a process concerning a brieve of right prosecuted by one of the litigants had been legitimately led. The eight comprised two bishops, the chancellor (then the Earl of Orkney), one lord of parliament, the
clerk register, two burgesses and one other who (for lack of any
other good name) may be called a forespeaker. 124 The judges
decided that one party should remain in possession of the lands,
while the sheriff-depute and members of the court were to be
punished by the king as they had not observed the laws of the
kingdom or the order of law in the execution of the brief. The
second part of their decision has an air of a formal judicial
body to it, and one which had some authority behind it. It
would be wrong to say categorically that it was a session decree; it
could conceivably have resulted from the lords auditors elected
at the general council. The litigants had agreed that the
judges' verdict be final: they had specifically requested that
it be so. The judges were in some respects arbiters, but they
formed a particularly powerful body.

The other decision which may be ranked amongst those of a more
settled judicial body was made on 2 March 1448. 125 The nine men
who made it are styled arbiters: they comprise the chancellor
(Crichton) and eight burgesses including (amongst those who are
studied here) Parkley of that ilk, Thomas Cranston of Airhouse
and Lancelot Abernethy. 126 The heavy burgess representation occurred
because the issue was one of right to a land in Glasgow. A
decree was issued according one party full right to the land. It
is suggested that the presence of the chancellor is significant:
it will be recalled that the legislation of 1426 in its revised
form stated that the chancellor and "certain discreet persons
of the three estates" were to sit and determine all matters which
might be determined by the council. A difficulty instantly arises
here in that the council could scarcely make a decision awarding one,
party full right in property. Otherwise, the body was certainly one of discreet persons. Some could be seen as lairds rather than simply burgesses; and two were notaries as well as being burgesses. Caution is again necessary here: there are elements which imply a settled judicial body, but others which suggest an ad hoc commission. As with the last cause, the litigants had submitted themselves to what decree might be made.

It is hard to know quite what to make of a notarial instrument of 2 May 1459 which has a reference to the session. Thomas Allardice of that ilk had apparently been found guilty at a session of spuilzie in lands in Aberdeenshire and committed to prison in Aberdeen. He appeared in the burgh court there and protested that no decree could have been made against him by a session in Edinburgh, as he could prove that no session had been held anywhere in Scotland at the time of the making of the decree. Since no other documents are available in respect of this cause, it is not clear what had happened before this hearing in May, although Allardice had apparently successfully obtained from the king a relaxation of a recognition of his lands only two months before. The notarial instrument does not say what proof Allardice might lead to show that no session had met anywhere in Scotland at the time of the alleged decree against him.

The session presents the historian of the fifteenth century with awkward problems, as has been seen. No doubt part of the trouble is that the legislation which remarked on the body is phrased in Scots, whereas it is usual to find the decrees of any judicial body at this period expressed in Latin (sometimes the decree made is in Scots, but the remainder of the document is
in Latin). This is a genuine difficulty. It has already been noted how the long title of the body which made a decree in February 1457 persuaded the editors of APS to include the decree in their volume whereas it perhaps ought not to figure there. If the decree had been in Scots, the clerk might well have simply titled the decree-making body the session. Decrees were made by a number of bodies and it can be hard attempting now to settle what the differences were amongst them. If more decrees had survived it would no doubt be possible to formulate rules.

If the evidence for the session is patchy and confusing before 1460, then it does not improve afterwards. It has not been the aim of research for this thesis to acquire information on the judicial activities of council or parliament after 1460, but a number of instruments and decrees showing such activity has been found. Not one apparently has any reference to the session, but this is not a calamitous lack, as sufficient information appears to have turned up to allow some general remarks to be made on judicial matters in the early 1460s, with special reference to the disappearance of the session.

The typical view of the session in the 1460s is that it was hardly ever active. It is mentioned in the Auchinleck Chronicle, when at the time of the February 1461 parliament it was ordained that sessions be held at Aberdeen, Perth and Edinburgh, although no dates for the sessions are provided.129 There are two later statutes decreeing that the sessions should continue, but the 1468 parliament (where one of these statutes was made)130 appears to be the last reference to them, and the sessions are considered to have disappeared shortly thereafter. Both Hannay and Chalmers appear
to see the council as taking up where the session left off. Hannay indeed sees the session as having hindered the development of what he styled the Privy Council. They show that causes were now being continued from parliament to council as standard practice, whereas previously the session might have stepped in to hear such continued causes. Duncan, however, considered that there was no break in 1468: he argued that the council and the auditors in parliament had always been more active than the session. 131

It is tentatively suggested here that the decline of the session was the result of greater activity by the council in judicial work in the 1460s. The king's council had a higher profile in that decade than it had done in the minority of James II. Basically, the intention was the same: to achieve government by agreement. It was hoped that the nobles and higher clergy would routinely appear at council meetings to contribute to the administration. Parliaments continued to be regularly summoned, no doubt to increase the involvement in politics by the tenants-in-chief. 132

Perhaps there was a greater expectation of justice from parliament or from the minority council outside parliament, or perhaps it simply occurs because records of activity were more routinely kept. Whatever the cause, it cannot be denied that it is easy to be aware of the judicial activities of council and parliament in the early 1460s. The quantity of record is the equal at least of that collected for the later 1450s, a point which has all the more force when it is borne in mind that it has not been the aim here to set about collecting information for the 1460s. A number of assemblies of the council occurred in the months after the death of James II, meetings in October and December 1460 and
and January 1461 clearly having taken place. Apart from whatever business then occurred preparations were made for the first full parliament of the new reign, which met in February/March 1461. While some meetings of the council can be related to assemblies of the Three Estates in this way, others cannot. Further examples might be the meeting at Berwick in May 1464, or that in Lanark in December 1461.

The general impression remains that the council was readily approachable for the obtaining of justice in the early 1460s, and that it was so used. The parliament of (probably) January 1464 may have recommended that the sessions continue to operate, but with the council so active (and perambulating) litigants may have felt that they could just as easily await the arrival of council as the next meeting of the session or parliament.

Earlier it was noted that the council's own record of judicial hearings was styled the liber concilij in the late 1450s, but by the mid-1460s it had become the liber actorum, which was subsequently to remain its record. The liber actorum had been used by the session in the late 1450s. The council's takeover of this record may then be fitted into a scenario which has the council gradually superseding the session in the 1460s until the stage is reached where the session is no longer required. Council and parliament had become the two forums where civil justice could be obtained (apart from the ordinaries, of course). The temporary expedient of the session had not necessarily been found lacking, but rather had been found unnecessary.
(iv): The Council's Personnel

Although there are not many extract council decrees before 1460 on which to base some remarks, it seems reasonable to comment a little on the composition of the council. For example, is there any indication yet of men with legal skills being present on the council? What was the balance of laymen against clerics? Were those present usually also witnesses to royal charters?

Dr. Chalmers did comment briefly on the situation before 1478 (when the extensive council record begins) as he saw it. He considered that in the 1450s any judicial matters were heard by the king's familiar council, who acted to supplement the work of parliament and general council. The organisation was still rudimentary, and it was really only in the 1470s that the council approached the style of a law court, in which the chancellor presided. The council became a more specialised and professional body (laymen being less predominant, as they had been in the 1460s); beforehand it had really been an omnicompetent body. 139

Dr. Chalmers's remarks do conflict with the views of Professor Brown, who attempted to review what he styled the "Scottish Establishment" in the reigns of James III and IV. 140 Brown was much less aware of a growing professionalism on the council. Rather, he saw the judicial council as tending to have a similar membership to the daily council which would deal with patronage. In his own words: "... the council sitting as a court is broadly similar to the council sitting as an administrative and political body". 141 Brown also commented on the relative paucity of the higher nobility amongst the personnel of the council. While the comments of both Brown and Chalmers are more specifically directed
to the subsequent reigns than to the one studied here, they should still be borne in mind, as they provide a context for any remarks here. One might be hoping, for example, that the findings here would dovetail with theirs for the later period.

Although the decrees of the judicial council between 1437 and 1460 certainly have some common features, one matter which is not in the least regular is the size of the sederunt. The smallest number known is five, and the largest is twenty-five (on which occasion there were also said to be "divers others"). On only two occasions are there less than ten councillors named, so it could be said that it was expected that the sederunt would be quite large. The sederunt would frequently comprise members of all Three Estates: indeed, it is the clergy which is almost the least-well represented of the Three Estates, not the burgesses, as might be thought. The baronage is always well represented.

While later in the century it was common to find the judicial council in action either shortly before or shortly after an assembly of the Three Estates, this is most certainly not the case with the causes discovered here. Only two of the sederunts seem to show that they were connected with such an assembly (indeed, on one occasion it may be unwise to regard this decree as being part of the collection of judicial council decrees for that reason). Another can probably be related to an Exchequer audit. In the other examples, one might therefore be looking to see if the sederunt were much the same as the daily council as indicated by the list of witnesses to royal charters granted about the same time.

Of the clergy named in the sederunt, almost all were in fact office-holders at the time the decree was made, which doubtless explains
the reason for their presence. Some clerics continued to be present after their term of office had finished. William Turnbull, Bishop of Glasgow is a good example. He had been privy seal in the 1440s, but about two years after his promotion to an episcopal see he seems to have surrendered his office. He was, however, still a regular witness of royal charters, and therefore a daily councillor: his presence on the judicial council is not therefore exceptional. In the case of others such as Andrew, Abbot of Melrose, or Archibald, Abbot of Holyrood, it is a little more surprising to find them present on the judicial council in 1457 and 1458. Both had been treasurers, and the abbot of Melrose had been a regular witness of royal charters and ambassador.

Their attendance at the October 1458 parliament is doubtless the reason for their presence on the council sederunt at that time. Only three sederunts include abbots: evidently they were not expected to act in this way. Sederunts of the lords auditors more frequently include abbots, however.

Perhaps the most unusual clerical member of any of the sederunts is Mr. Thomas Luthirdale. His career might well repay a more detailed study than has been possible here. By April 1458 he was the official of St. Andrews, a post he would hold until at least late 1467. Thereafter, there is evidence for his moving to Glasgow University, where he was one of the civil lawyers, in the 1470s. It would not have been so unusual perhaps if he had been on the council (or a lord auditor) in the 1460s or later, but he is found on the council in October 1449, and in January 1443 had acted as the procurator of the Earl of Angus in another sederunt.

There happens to be a Thomas Luthirdale who was a burgess of Hawick
at about the same time: whether or not this is one and the same man is hard to say. It is doubtful, however, as the burgess's first appearance known to this author is on 18 April 1432, and the graduate certainly was alive and teaching in Glasgow University over forty years later.

The clergy was the main (but not the only) source of council members who had degrees. Some had climbed to the top of the tree (in the sense of being promoted to episcopal sees), but others carried out a career in church court affairs. Mr. Nicholas Otterburn, who was secretary and clerk register, was twice recorded as present at a judicial council hearing. He was a student at St. Andrews University in 1419-20 as well as later being an auditor of accounts of the Faculty of Arts. He was official of Lothian from at least 1450-1458, so would have been well used to the conduct of business in court.

The baronage was invariably heavily represented on the judicial council. One slight problem in discussing the barons in this respect is the overlap between the lesser barons and the burgesses. A few barons who are named in the sederunts were also burgesses, and it would be very hard to say whether they were present as barons or as burgesses. Certainly, it would be more likely to be the former rather than the latter, as the king's council was in theory the king's tenants-in-chief. That said, it is suggested that it would be wrong to ignore altogether the burgess element, and the lairds who were burgesses will be noticed separately from the baronage here.

Naturally, a number of the barons were those whose careers have already been outlined; men such as Patrick lord Graham,
James lord Livingston, William lord Crichton or James lord Hamilton. These were the nobles whom one would expect to find featuring in the judicial council's sederunts. They were the nobles who were most often witnesses to royal charters, and their presence on these occasions indicates they had to turn their attention to well-nigh anything which came before the king's council.

More surprising is the number of barons who were seldom witnesses to royal charters who appear on the judicial council, in some cases more than once. It would be hard to state quite why they should ever appear if they were not of sufficient standing to be on the daily council. In one or two cases, it may be that they had been deemed to have particular qualifications which made their presence at judicial hearings helpful to the council.

Sir Patrick Hepburn of Waughton is an example. On only two occasions did he witness a royal charter in the entire reign (having witnessed none in the reign of James I). Despite this, he acted twice as a councillor in judicial matters, was once an auditor and was once on the session (following his election thereto in the October 1456 parliament). He was evidently considered to have sufficient knowledge and experience in such matters to be an obvious choice. As early as August 1432 he was acting as an arbiter in a debate between the Earl of Angus and the Earl of March concerning the lands of Cranshaws (Berwickshire): as a tenant of March he was probably a natural choice, but there is a hint already of activity in judicial affairs. In November 1439 he was proposed as a replacement should one of six "summissionaris" chosen to settle a dispute between the Earl of Angus and Sir Alexander Home drop out. (In the event he was not required). In July 1446 he was
appointed attorney (with nine others) in all actions touching Robert Ramsay of Inverleith. He did not enjoy significant royal favour (his lands were united into the free barony of Waughton in July 1452), but he did accompany the king on two of his sojourns north, in mid-1453 and in early 1456. In sum, his services seem to have been advisory; he does not appear to have played any role in the political rough and tumble of the reign.

It is necessary to be slightly cautious in estimating the value of advice rendered by men like Hepburn. In the absence of evidence of legal knowledge, it needs to be assumed that this advice would have been based more on experience of dealing with such matters than on anything else. The council did not lack legal guidance, however.

Without wishing to over-emphasise the role of a man who only once appeared in a sederunt, Mr. Alexander Guthrie may be reckoned a man of legal skills. While knowledge of his training is regrettably not known, his style shows he was a graduate. He was more than this, however, as he was a graduate laird, the importance of whom in 15th-century Scotland is becoming more widely known.

Guthrie's single appearance as a councillor in judicial matters is dated 16 October 1448. His career in other affairs of a semi-legal nature can also be picked out. His first known occurrence as a public servant is when he was named as the "king's receiver" in the account rendered by the bailies of Montrose at the Exchequer audit on 8 May 1428. From there on his career blossomed. He acted as depute of Walter, Earl of Atholl, the justiciar benorth Forth, in a perambulation carried out in October 1432. The Earl styled him clerk of the justiciary in a summons to an ayre
he issued in October 1435. In August 1449 he acted as sheriff-depute of Forfar in a cause touching the fee and heritage of the lands of Ardfork (Forfar) disputed between Patrick lord Glamis and Thomas Cossins. It was not an easy matter for Guthrie to deal with, as Glamis's procurator excepted against him as being partial, as well as attempting to have the royal letters obtained by Cossins rejected because they were not of the right type to proceed in a matter of fee and heritage. Guthrie must have been unable to conduct the hearing eventually, as in October the cause was heard before the king's council.

It would seem that Guthrie was brought to the attention of the administration by the Earls of Crawford. He was heavily involved in affairs in Angus, and his previous patrons were the Ogilvies (also major landowners in the area). In August 1428 he witnessed a charter of Sir Patrick Ogilvy, sheriff of Angus, as his secretary. In August 1432 he was present in the company of a host of Ogilvies when Graham of Morphy agreed not to alienate any of his lands and possessions to the disherison of his son and heir, who had married a daughter of John Ogilvy of Inverquharity. In September 1450 he was one of the arbiters named to deliver in the matter of the heirship goods of the late Alexander Ogilvy of Inverquharity.

The Earls of Crawford were Guthrie's later patrons. He witnessed three charters granted by various Earls: that of Earl David, dated 24 August 1438; and those of Earl Alexander, dated 26 March and 19 April 1446. Earl Alexander was present when Guthrie was attempting to deal with the contentious Ardfork dispute in 1449 noted before. The family links of the Guthries with the Earls of Crawford continued certainly for the
Dr. Kelham showed that Guthrie's successors Mr. David Guthrie of that ilk (a significant public servant in the 1460s and 1470s whose own career began in the 1450s) and Sir Alexander Guthrie of that ilk both witnessed charters of David, 5th Earl of Crawford. 180

The switch of patron from the Ogilvies to the Lindsays is most interesting when there is borne in mind the battle of Arbroath in January 1446 between the two families. The cause of the dispute between them was the justiciarship of Arbroath, to which the Master of Crawford had been elected by the monks at the Abbey, but had been ousted by Sir Alexander Ogilvy of Inverquharity. In due course the dispute became a battle, in which the Earl of Crawford was killed, but the Lindsays

"wan the feild and held it and efter that a gret tyme held the Ogilbyis at gret subiectoun and tuke thair gudis and distroyit thair placis". 181

Guthrie himself was a landowner in Forfarshire, where he possessed the lands of Kincaldrum. He is first styled Mr. Alexander Guthrie of Kincaldrum in April 1446. 182 His successor, Mr. David Guthrie, is styled "of Kincaldrum" first in August 1455, so Mr. Alexander must have died by then. 183 The family's principal estate was the barony of Guthrie from c. 1466. 184 Guthrie was only once named in a council sederunt, of course, so his influence was not necessarily of particular importance to the functioning of the council.

Since most of the barons were typical members of the king's daily council, they had had themselves experience of holding law courts, having been delegated authority for that purpose by the king as part of their service to the Crown. Nobles
such as William lord Somerville, who was styled justiciar once, and George Crichton, Earl of Caithness, also justiciar, fall into this category. Crichton's career was examined earlier: his presence on the judicial council once was just part of his wide-ranging royal service in the early 1450s. Somerville's father was also remarked on earlier: he was a significant figure in the administration of James I, although he preferred apparently to be away from court. William lord Somerville was three times on the judicial council. He clearly led the life of a courtier: he witnessed 143 royal charters between 1445 and 1455, with (as usual) most of those being dated after 1449. The justiciars were generally the more important barons, and being on the judicial council was probably quite routine for them. There were also some sheriffs, however, on the judicial council who were very seldom at court. Again, they would have experience of actually holding courts, thus adding to the range of knowledge the council could rely on.

Amongst those in this category were two sheriffs of Fife, Sir Robert Livingston of Drumry and Andrew Lundy. Livingston's career was discussed earlier, as he was one of the many who were wedged into office by the Livingstons of Callendar. He was succeeded as sheriff by Lundy in 1450. Both were active in office: it is not difficult to find each of them holding inquests, for example. Livingston was only once on the judicial council, while Lundy was present twice (one of these times being the occasion when Livingston was present). It is easy to see why they were on the sederunt: both occasions concerned disputed property in Fife, and doubtless they were able to provide the council with much-valued local knowledge of the disputes.
The burgess element on the council was easily the smallest of the three. Indeed, one might argue that only by creative thinking can one see any burgesses on the council. Since there is always an exception to every rule, the only councillor described in the record as a burgess is Lancelot Abernethy (of Edinburgh). The burden of proof certainly lies heavily on the side of one who wishes to show that burgesses could be judicial councillors. Abernethy's single appearance was in November 1453.\textsuperscript{192} His career details, however, show how important he was to the administration, and that he was respected by those outside the court for his abilities too. The details of his career are worth considering in order to put his single appearance into context.

Abernethy may have first made contact with the administration at the general council of August 1440, when he was one of the councillors deputed by the whole general council to treat with the Erskines, the claimants to the earldom of Mar.\textsuperscript{193} The June general council the following year saw his first known election as a lord auditor, a post he would fill again in 1454 and 1460.\textsuperscript{194} His abilities were recognised, clearly: he was selected by the Three Estates with eleven others at the January 1450 parliament to attempt to provide a settlement in the contentious Montrose v. Dundee cause.\textsuperscript{195} His presence at the 1460 parliament as an auditor is largely explained by his being summoned thereto (with the others still alive) in the hope of their being able to solve the affair again.\textsuperscript{196} As he had been present at a council meeting in October 1450 when the matter had been raised, he would have been well aware of the issue.\textsuperscript{197} In the next chapter the affair will be discussed, and it will be evident that he was a good choice as a member
of the committee who would settle the matter, as it was hoped. In October 1456 he was one of the judges in a brieve of right case. 198

As an Edinburgh burgess, naturally his activities within Edinburgh can be easily illustrated. It is striking how frequently he was a bailie between c.1443 and c.1458. 199 His fame must have travelled far, however, as Sir John Stewart of Darnley used him as a witness to a charter he granted at Perth in May 1450 (a general council was then proceeding in the town), and in September 1458 he was appointed by an Angus laird as a procurator to resign land to the Earl of Angus. 200

The king was no less aware of his abilities. It is doubtless he who was granted as a fee by the king for life £10 of the lands of Thomastoun (Fife) in 1451. 201 It was a measure of how much his abilities were appreciated by the king that he was prepared to have him nominated as one of the six lords who would settle the extent and avail of the lands forming the barony of Redgorton (Perthshire) and lands in Kinross-shire granted to James Crichton (son of George, Earl of Caithness). 202 If the figure they settled on were greater than the extent of the lands of Strathbrock (Linlithgowshire), then Crichton would resign to the king as much of the lands as would even up the transaction. It was a crucial matter for the king, as the resignation of the Earl of Caithness of his title and lands to the king had provoked his son into a furious reaction. The settlement involved the queen yielding some land, and it is unlikely the king would have allowed a man inimical to him to sit on a committee whose decision could be financially costly. 203

The other burgess amongst the six lords chosen for this task
was James Parkley of that ilk, a burgess of Linlithgow. The last comment applies no less to him than to Abernethy. Parkley was only twice on the judicial council, but was thrice elected an auditor, and he was also one of those deputed by the whole general council in August 1440 to treat with the Erskines.²⁰⁴ It may be reckoned he was a more important figure in the administration than Abernethy. He witnessed three royal charters, sealed the "Appoyntment" between the Livingstons and the queen mother in September 1439 and acted as sheriff-depute of Linlithgow.²⁰⁵

Parkley's administrative career preceded the death of James I. One of his occurrences as sheriff-depute of Linlithgow was in 1436.²⁰⁶ More significantly, he was appointed an auditor of causes at the January 1435 parliament.²⁰⁷ He also gave advice to the king in the matter of the lands of Dunbarney (Perthshire) c.1436, where he was styled jurisperitus.²⁰⁸ This affair was one concerning alienation of land without the consent of the superior, which (if discovered) would result in the lands escheating to the superior. The Earl of Atholl had granted the 4th Earl of Douglas the lands of Dunbarney to be held of him. Douglas then granted them to James Dundas. Atholl broke the sasine given, as he had not consented to this grant. The 5th Earl of Douglas later sought entry to the lands, unsuccessfully, and the cause was heard before a gathering of lords at Perth, with the king himself present. It was decided that Douglas would resign Dunbarney to Atholl as superior, and Atholl would thereafter resign to the king, who then regarded the lands as his property. The record of the cause does not indicate if it were the king's intention subsequently to grant the lands to Dundas, or to any other.
Even although Parkley was only an occasional member of the judicial council, his services were evidently appreciated. By 1450 he had obtained a fee of £8 p.a., which may have been reduced later to one of £6 10d., from the fermes of Gallowhills in Linlithgowshire. 209 His death soon after July 1454 may well have foreshortened a flourishing career after the fall of the Douglases. 210

The burgess representation on the judicial council was minimal, but its importance is clear from the type of burgess who is found as a councillor. Another who sat (only once) was William Cranston of Airhouse, 211 son and heir of the Thomas Cranston who was frequently provost of Edinburgh. Their careers were briefly summarised earlier. 212 The burgesses generally had also sat as auditors of causes: their experience of judicial hearings was wide, and they undoubtedly were an asset when they sat on the council.

While the judicial council was not staffed by great legal minds, its composition did reflect the experience of holding of courts elsewhere in the kingdom. A number of the members of each sederunt were those commonly at court and featuring on witness lists to Crown charters, but a significant proportion were those who were apparently rarely at court. They could provide the council with useful local knowledge, especially when the causes were heard at Edinburgh. In this way litigants could be sure that the body hearing their disputes were not entirely ignorant of what might underlie their arguments.

This may not have been quite what the king wanted. The thrust of the legislation noted earlier in this chapter was to divert cases which might have been laid before the council
elsewhere, primarily perhaps by encouraging the growth of the session. Reading this chapter in conjunction with the appendix of royal acta later should have shown that the burden on the council of judicial business was not heavy, as far as we can judge now. There were times when more causes had to be heard than at others, most notably at the parliaments of June 1445, and January 1450, but even then the causes known to us now can be counted on the fingers of one hand.

Figures obtained in this way would be misleading, however. Even if all the private collections of documents in Scotland were examined for extract decrees of the council and auditors for the period when the consistent record survives one would not approach the number of causes heard shown in that record. The evidence indicating that records were probably already being kept by the decree-making bodies in the reign of James II may be used to imply that judicial business was already booming. Amongst the personnel whose careers were discussed are men who apparently have no occupation other than being forespeakers in court. The mere fact of their existence, in conjunction with other tangential evidence, should be enough to show that the demand for justice was high. In the next chapter a particular dispute will be examined in some detail. It encompasses some legal opinions and arguments which were presented by forespeakers in court. Such opinions are rare survivals from the mid-fifteenth century; but their detail is such that they cannot be regarded as the product of an entirely haphazard system.
CHAPTER SIX: FOOTNOTES

1. App. A, no. 1107. The summons would have been of no practical value as there is a clerical error ("... quod compareant coram nobis et consulibus nobis...").

2. Ibid., no. 697.

3. APS, ii, 11 c.19.


5. A.A.M. Duncan, James I, King of Scots 1424-1437 (Glasgow, 1984), 3-4.

6. For Lauder's death see Watt, Fasti, 148, and Watt, Graduates, 333. For his and Cameron's tenure of office, see HBC, 182.

7. A statute was passed at the general council of March 1439 setting out that the sessions should be held twice a year. The members were to be the lord lieutenant (the 5th Earl of Douglas) and the king's chosen council: APS, ii, 32.

8. Ibid., 46 c.8.

9. Ibid., 47-48 cc. 1-5.


13. Ibid., 332.

14. This paragraph is based on Duncan, James I, 3-4. The quotation comes from 4.


17. APS, ii, 8 c.24.

18. Generally for the last two paragraphs see MacQueen, Ph.D. thesis, chap. 5.

19. H.L. MacQueen, 'Parliaments, Councils and Courts' (an unpublished lecture given in the U.S.A. in October 1988). I am very grateful to Dr. MacQueen for allowing me to see the text of this lecture and to cite it here. The suggestion concerning the foreign influences on the development of the council is a good one, and deserves attention. Neilson and Paton's introduction to ADC ii attempted to give a continental twist to the development of the council.

20. A fifth one could be added, a committee elected to deal with false dooms (from the ordinaries), but no decree of this body has been encountered in the period studied here. Duncan comments briefly on this committee in 'Central Courts', 328-29.

21. Chalmers, Ph.D. thesis, chap. 3. Decrees by the lords auditors in the reign of James II include App. A, nos. 98, 172, 175, 302, 345, 723, 1145. There are others of an uncertain status which might be added to this list.

22. For decrees of the lords of the Three Estates, see: ibid., nos. 301, 304, 729, 964, 1106; APS, ii, 39 s.d. 6/7/1451; ibid., 28 no. 6. The Lords of the Three Estates may represent a body instructed to continue parliament after most of those attending had left: cf. R.S. Rait, The Parliaments of Scotland (Glasgow, 1924), 349-61.


26. App. A, no. 246. Exceptionally for this thesis, Airthrey is styled "of Airthrey", as it seems a genuine case of a territorial surname. In contemporary documents the name is spelt "Atheray", which clearly has to be the Airthrey where the campus of Stirling University is now situated.

27. Ibid., no. 252.

28. Ibid., no. 705.

29. Ibid., no. 944.

30. Ibid., no. 321. The damage to this document is so great that one cannot now tell definitely if the clerk had noted the record from which it had been extracted. It is possible he had done so.

31. Ayr Burgh Chrs., no. 49. Unfortunately, this decree was not seen by the present author while it was in the SRO, and the occasion has not been found since to go or write to the Carnegie Library in Ayr (where the Ayr records are now held) since its retransmission. It is quite possible therefore that it does have additional markings which the editor did not see fit to transcribe in the printed text. From its appearance in print, it is probable that the decree is on paper.


33. Ibid., nos. 13, 14.

34. Ibid., no. 723.

35. See, e.g. ibid., nos. 98, 172, 175.


37. Rait, Parliaments, 419-21.

38. APS, ii, 97 c.20.

39. RMS, ii, nos. 2, 146.

40. Such as those conveniently given in APS, ii, 26 nos. 3, 4.

41. Ibid., 11 c.21.

42. Ibid., 9 c.4.

43. Ibid., 97 c.18.

44. SRO: C 2/4 no. 75 (4), a version of APS, ii, 36 c.7.

45. Murray, 'Clerk Register', 128.
46. Could this explain why the act of 1469 noted before (APS, ii, 97, c.18) instructed the putting of the rolls and register in book form (i.e. that before then they were still loose)? This statute can look very strange if an explanation like this is not offered.

47. J.M. Thomson (The Public Records of Scotland (Glasgow, 1922), 12) refers to fire damage to the Great Seal Register according to an incidental reference in a charter of James IV, but gives no source. Murray, 'Clerk Register', 128 comments briefly on the marginalia in the MS record. See also the same author's very helpful notes on the extant volumes of the Register for the reigns of James I and II bound in the "Chancery" records repertory in the SRO.


49. Ibid., nos. 867, 964. The first of these is more correctly described as a decree of the session (whose members were in some respects auditors); and the second may be called a decree of the lords of the three estates, although the text is very confusing (it is reproduced in Appendix F of this thesis, as it has considerable importance in the Dundee v Montrose cause, discussed in chap. 7). Both bodies had clear parliamentary links.

App. A, no. 1145 is an auditors decree with no note of extraction, but it bears no seal, simply being itself an extract on paper.

50. Montrose: M/Wl/10/2.

51. Respectively: Brechin Registrum, ii, no. lviii; SRO: GD 15/342; AUL: MS 2764 Titles Bundle 3 no. 53; SRO: GD 25/9/23A Envelope 1; SRO: GD 211/3; NLS: Acc. 4322 Box 10 bundle 7 no. 8; Peebles Chrs., no. 14. Cf. the following note, however.

52. Respectively: Montrose: M/Wl/14 ('Trading' no. 10); SRO GD 28/123; Fraser, Grant, iii, no. 233; SRA: T-CL Bundle 73 no. 46; SRO: GD 205/4/5.

There are regrettably two exceptions to this. Both Glamis Castle (Strathmore MSS) Box 4 no. 99/2 (dated 7/11/1468, confirming decree of 3/6/1468) and Blair Castle (Atholl MSS) Box 1 parcel 1 no. 21 (dated 18/7/1476) are decrees of the lords auditors extracted from the liber actorum. Nevertheless, the weight of evidence is behind the hypothesis advanced here.

53. Nicholson, Later Middle Ages, 311 for a typical view of the council being overwhelmed by business.

54. For council acta during Albany governorship, see A.A.M. Duncan, 'Councils General, 1404-1423', SHR xxxv (1956), 141-43; SRO: GD 137/3690; Floors (Roxburgh MSS) Bundle 695 (HMC 24). For acta in the reign of James I, see: Durham: D & C M.C. 646a, 666b (= RMS, ii, no. 2); APS, ii, 26 nos. 3, 4. These all begin "Actum...".

55. See e.g. SRO: GD 137/3696; StAUL: B 65/22/27, 23.

57. For extract decree of council on paper, see App. A, no. 321.

58. See above, p. 258 for John of Airthrey as clerk of council. Of course, it is possible that it was a desire to put on record its political activities which brought about clerical assistance, but that must remain a matter for speculation alone.

Professor Hannay was moving towards the idea of a separate record of decreets by the late 1450s:

"Under James II, in 1445 and 1450, the Clerk Register extracts from proceedings in 'parliament' and in 'general council', using in both cases the colourless phrase de registro, but in 1459 a decision is taken de registro actorum parliamenti, an expression which acquires significance in comparison with de libro actorum, employed in connection with extracts from what seems to be an incipient register of civil decreets, clearly not the register of parliament, as Thomas Thomson erroneously assumed". (ADCP, v-vi). The evidence cited here for the last two extracts is App. A, nos. 1106, 867. The latter decree is interpreted here as being of the session, since the clerk doing the extraction was the clerk register.

59. SRO: GD 17/3; SRO: GD 49/5.

60. For link to chancery before 1448, see SRO: GD 185/2/2/4, a notarial instrument of resignation dated 21/6/1444 which he wrote; and, later, a similar instrument dated 20/7/1459; SRO: GD 224/539/1/32. For fees of clerk register, see ER, v, Index s.v. Schevas, John, and cp. entry there for Atheran (sic); sir John of.


62. Ibid., no. 321.

63. His activities as a benefice-seeker are easily seen, e.g. in CSSR, iv, Index s.v. Clepham, and in CSSR, v (forthcoming). For date of death see Watt, Fasti, 111.

64. App. A, no. 705.

65. ER, v, 399 (for writing rolls); as notary: Dunfermline Registrum, no. 437; SRO: GD 1/661/16; SRO: RH 6/341B; NLS: Dep. 313, 2/11; APS, xii, 25-26 no. 47; SRO: GD 25/1/79 (all dated 1450 x 1460).


67. See App. C, s.v. Secretary.


69. App. C, s.v. Secretary.

70. Hannay, Scottish Signet, passim.

72. App. C, s.v. Keeper of the Privy Seal; Secretary.

73. Burns, Council of Basle, 16-17. Dunlop thought that Cameron might have been replaced as chancellor during his absence, as he is styled "then" chancellor in the Exchequer Rolls in 1435 (Dunlop, Kennedy, 13 n.4; ER, iv, 644). The reference to Cameron as "then" chancellor is, however, another example of an entry in the Rolls being not contemporary, as was found earlier in respect of James Livingston as captain of Stirling Castle at the same time; see above, p. 60.

74. HBC, 193; App. C, s.v. Secretary.

75. NLS: Acc. 6803 Box 1 bundle 1 no. 2.

76. Watt, Fasti, 364.

77. EUL: J.M. Thomson photographs no. 54.

78. NLS: Acc. 6803 Box 1 bundle 1 no. 1.

79. This statement rests on palaeographical grounds. The charter is signed by one of the known chancery clerks, "Taillefer", who was active into the early 1440s.

80. App. C, s.v. Keeper of the Privy Seal; Secretary.

81. Ibid., s.v. Secretary.

82. App. A, no. 91.

83. CSSR, iv, no. 1303.

84. The letters of appointment as ambassador are dated 6/5/1448, and the marriage settlement 1/4/1449 (App. A, nos. 237, 259). Dunlop, Kennedy, 89-101 discusses the negotiations and cites documents in foreign archives showing the embassy abroad.

85. Watt, Fasti, 148 (for provision to Glasgow); App. A, nos. 246, 252 (for council sederunts).

86. App. C, s.v. Treasurer; App. A, no. 276 (for remission). It is tempting to think that Ralston had to apply for a remission of rancour because the king was displeased with his newly-acquired wife, but doubtless there are more prosaic reasons for the issue of this document!

87. Watt, Fasti, 98 for provision to Dunkeld in late 1447.


89. App. C, s.v. Secretary.

90. Ibid., s.v. Keeper of the Privy Seal.

92. Ibid., no. 126. This was not a recognition prior to the lands being relaxed on security, as the Crown was determined to play a full part in the Dalkeith area.

93. Ibid., nos. 193-95.

94. Ibid., no. 122. It looks as if there were a gathering of the council in June 1442, to judge from the issue of other, similar letters; cf. also Durham: D & C N.C. 1021.


96. Ibid., nos. 540, 700, 753, 927, 1147. Cf. Chalmers, Ph.D. thesis, 44-45 for classes of privy seal letters (e.g. letters of gift, charge and tack), some of which were formerly the preserve of the great seal or the signet.

97. Signet letters with a council link from 1450 are App. A, nos. 346, 398, 480, 813, 880, 940, 1125.

98. Examples of pensions are: ibid., nos. 833, 843, 1129.


100. App. A, nos. 346, 880.

101. Ibid., no. 940.

102. SRO: GD 137/3692. A number of documents in this interesting cause have been printed in Highland Papers, ii, 152-84.

103. SRO: GD 137/3693, 3694. The latter summons was before the council at the next parliament or general council, so it is not surprising to find it under the quarter seal.

104. APS, ii, 37 c.18.

105. Ibid., 48 c.3.

106. Ibid., 11 c.19, taking into account Dr. O'Brien's correction of the printed version's "chancellor" for the earlier "chamberlain": see above, pp. 244-45.

107. APS, ii, 32.

108. Ibid., 46 c.8. It should be noted that there is no indication given in this statute of what body was being elected. There has simply been an assumption that it was the session (the same can be said of the 1426 statute).

109. Ibid., 47-48 cc.1-5.

110. Ibid., 11 c.19.
111. Ibid., 47 c.2.

112. Duncan, 'Central Courts', 333.

113. MacQueen, 'Parliaments, Councils and Courts', 8. A statute of 1487 set out the type of causes heard by the king's council: APS, ii, 177 c.10.

114. Ibid., 47 c.10, 50 c.22.

115. See the summons of 31/5/1453 citing parties to a hearing on 27 July next at Aberdeen: App. A, no. 697.

116. This paragraph is based on APS, ii, 46 c.8, 47-48 cc. 1-5.


118. App. A, no. 848. It is a shame that the original of this decree is at present not traceable. It should have been in the Home muniments at the Hirsel, but at its location there is a note to the effect that it was borrowed by Mr. Hope-Johnstone in the Annandale Peerage Case (in the 1870s). It could be now at Raehills (Dumfriesshire). The reason for wishing it had still existed is that it might bear a contemporary inscription on the tongue or the dorse indicating the type of body from which it had emanated.

119. APS, ii, 46 c.8.

120. App. A, no. 867.

121. APS, ii, 77-78 no. 38.


123. SRO: RH 6/345A.

124. The forespeaker (although not so described in the document) was John Borthwick. As with a very few of his contemporaries, there is reason to believe he was a career lawyer (lawyer here being a loose term). References to him in a legal capacity include: App. A, nos. 301, 302; NLS: Ch. 15, 829. There was also a John Borthwick of Crookston at the period: see e.g. SRO: GD 28/97, 99, 104, 106, 107: APS, xii, no. 46; App. A, no. 1121. There is no evidence known that they were the same man, but there seems no reason to doubt that the lawyer John was likewise descended from the family holding the peerage title.

125. Glasgow Registrum, ii, no. 351.

126. For Parkley, see above, pp. 299-300; for Cranston, above, pp. 138-40, for Abernethy, above, pp. 297-98.

127. SRO: GD 49/5.

128. SRO: GD 49/6.

129. Asloan MS, i, 231-32.
130. APS, ii, 92 cc. 2, 4-7. The other statute reference to the session is APS, xii, 31 (undated). It may be noted that neither in print nor in the MS version of the text of the 1468 statute is there any authority for the date 1468 for the parliament when the last statute reference to the session is made.


132. See list of assemblies of the Three Estates in App. B.

133. Respectively: Ayr Burgh Chr., no. 49; SRA: T-SK 3/17/8 (10/1460); SRO: GD 220/2/51 (12/1460); SRO: GD 430/20; SRO: GD 246/71/2; Montrose: M/W1/1/4 (1/1461).


136. The statute about the session is found in APS, xii, 31, where it is credited to an assembly in 1464/1465. It seems preferable to assign these statutes to a parliament before May 1464 (see the reference at ibid., 30 to a forthcoming meeting of the king and his council at Berwick in March, and recall the evidence for the known gathering of the council at Berwick in May 1464 [footnote 135 above]; in addition the references to the king's host at Peebles, bearing in mind the attack by James III and his army on Norham Castle in July 1463 [Nicholson, Later Middle Ages, 405]). Two candidates emerge as a result: October 1463 or January 1464 (App. B, s.d. 12/10/1463; 13/1/1464). Nicholson (op. cit., 405 n.60) prefers January 1464. The lack of reference to the queen mother in these minutes makes this view quite acceptable (she had died in December 1463; ibid., 406). Dunlop, Kennedy, 238-44 has a detailed account of events about now.

137. Above, p. 264.

138. Apart from the evidence cited here, there are two curious references to the session, again notable for their routine nature. 1) App. A, no. 226 is a signet letter of 27/12/1447 in which the king notes that in the last session at Perth the burgh commissioners granted the king £1,000 towards the cost of an embassy abroad, probably to do with his marriage. The document itself is at present missing, and the surviving transcript (by the Montrose antiquarian Mr. J.G. Low) is neither complete nor necessarily trustworthy. 2) SRO: GD 28/114 is a bond, 28/7/1454, by William, Earl of Erroll to Sir David Hay of Yester to keep Hay unharmed at the king's hands of all charges the king made to Hay for Lawrence Oliphant of Aberdalgie which Hay was commanded to keep until the king's "cession", together with various other points. The precise import of this is unclear.

139. Chalmers, Ph.D. thesis, esp. 212-16. Dr. Chalmers' comments on the period before 1478 (as he himself admitted) were based on scanty evidence. For example, he seems to have been aware of only three council decrees for the 1460s.

141. Ibid., 93.

142. The smallest sederunt is App. A, no. 252, and the other one with less than ten is ibid., no. 268. The largest sederunt is ibid., no. 1013.


144. The decree dated 21/1/1443 (SRA: T-SK 3/17/14) was surely related to the general council referred to in App. A, no. 129. A pointer to this link is the size of the sederunt (nineteen), and the fact that three councillors were present only in the person of procurators. The other decree related to a sitting of the Three Estates is ibid., no. 1013, a confirmation of a decree actually dated 5/10/1458.

145. Ibid., no. 944. The audit took place from 19/6-15/7/1458; ER, vi, 382-487.

146. App. C, s.v. Keeper of the Privy Seal. See Watt, Fasti, 98 for his provision to the bishopric of Dunkeld in early 1447, from which he was translated to Glasgow in the same year.

147. For presence on council see App. A, no. 716.


149. As treasurers: App. C, s.v. Treasurer. The abbot of Melrose witnessed charters steadily between 10/12/1449 and 6/1/1452 (App. A, nos. 274, 550). For him as ambassador, see e.g. ibid., nos. 262, 361, 877.

150. Those found at ibid., nos. 246, 946, 1013.

151. Watt, Fasti, 324.


154. App. A, no. 268; SRA: T-SK 3/17/14. In the printed version of this decree (Fraser, Keir, no. 20) Fraser read the surname of the procurator of the Earl of Angus as Luyndene. Examination of the original shows that the surname is more correctly Luthirdene, which can be taken to be Luthirdale.

155. See e.g. SRO: GD 224/529/1/26, 30.

156. NLS: Acc. 6803, 1/1/1.


159. Watt, Fasti, 325 (where suggested that he may not have continued in office after 1448; see App. A, no. 964 for latest known occurrence as official).

An article could be written on the graduate members of the Otterburn family in the fifteenth century; see Watt, Graduates, 436 for William Otterburn; Watt, Fasti, Index s.v. Otterburn, John for a subsequent official of Lothian to Nicholas. An Alan Otterburn was secretary of Murdoch, Duke of Albany, and was arrested with the Albanies by James I in 1425, although he was set free (Chron. Bower, viii, 243).

160. See above respectively pp. 201-02; 203-06; 125-30; 167.


162. Ibid., nos. 246, 705 (on council); StAUL: B 10/14/4 (as auditor); App. A, no. 848 (on session; election thereto APS, ii, 46 c.8).

163. The arbitration is indicated by SRO: GD 12/29. As a tenant of the Earl of March see App. A, no. 649.

164. SRO: GD 211/3/774.


166. For barony of Waughton, see ibid., no. 649; for sojourns north see ibid., nos. 705, 801.

Hepburn was clearly a close associate of John lord Lindsay of Byres, who witnessed fifty-five royal charters between 1440 and 1459 (ibid., nos. 27 [first], 1033-34 [last]). They would in fact be styled brothers, but what the basis is of this family link has not been uncovered (see Fraser, Haddington, ii, no. 296 for instance of this style). Lindsay himself is an extremely interesting man, serving as a judicial councillor, an auditor, an ambassador and justiciar (as examples of each, see App. A, nos. 705, 302, 764, 206, and cf. App. C, s.v. Justiciar). A quantity of documents show Hepburn and Lindsay associated: see e.g. SRO: GD 70/1; SRO: GD 20/1/13; SRO: GD 28/122; Hopetoun (Marquis of Linlithgow MSS) Bundle 2972. As with most barons, Lindsay's public career took off in the 1450s: it is suggested he brought Hepburn in with him to enjoy the fruits of royal patronage.

167. Quite simply, lack of time has prevented a search into his background before I am aware of his appearances in Scotland. I suspect that the answer is that he was educated at Paris: cf. Watt, Graduates, 247, s.v. Guthry, Alexander de ("[who] is to be distinguished from man of the same name who took arts degree at Paris from 1411 onwards"). In the later fifteenth century, a number of Guthries attended St. Andrews University: Dunlop, Acta Facultatis Artium, Index, s.v. Guthrie.

169. ER, iv, 464.

170. Manchester (Rylands Library: Crawford MSS) Box B, 35/1.

171. NLS: Ch. 6024.

172. Glamis Castle (Strathmore MSS) Box 4 no. 92.

173. App. A, no. 268. This cause in conjunction with another, unrelated affair in 1451 provides an insight into local politics. The later cause saw Guthrie appearing as a procurator for another against Glamis and speaking at length against Glamis's efforts at having a hearing delayed. (BL: Add. MS 33, 245 f. 168r-169r). Glamis and Guthrie did not see eye to eye.

174. He rendered the account of the bailies of Forfar between 1425 and 1435 (ER, iv, 399, 635 as first and last reference).

175. SRO: GD 121/3/47.

176. Montrose: CR1 "Package of loose writs".

177. SRO: GD 205/12/35/1.


179. Glamis Castle (Strathmore MSS) Box 4 no. 92.


For his public career in the 1450s (not touched on there) see e.g. Kinnaird Castle (Southesk MSS) Charters 1 Top right drawer bundle 8 no. 1 (as a sheriff clerk); London University Library (Fuller Collection) II/7/1; Arbroath Registrum, ii, no. 112; SRO: GD 123 Bundle 61 no. 2 (as depute of sheriff in Forfarshire).

The Guthrie-Crawford connection may also be noted in Banff, where the earls gathered a pension. Mr. Alexander Guthrie once rendered the account of the bailies of Banff on their behalf (ER, v, 353, and Index s.v. Crawford, Earls of).

181. Asloan MS, 1, 220; Dunlop, Kennedy, 78-79. It may be nothing more than a curiosity, but a contemporary endorsement on GD 26/1/4/36, a document dated at Dundee on 26/2/1446, reads: "Conflictus de Abbirbrothyok in die Sancti Marcelli pape dominica xvita die mensis Januarii". Dunlop, Kennedy, 79 n.1 notes the possibility of the obitus of Crawford being 13 January, not 23 January (the usual date given to the battle), but it was not a Sunday. 16 January was a Sunday, however; and if Crawford's obitus read "xvi" this could easily be misread as "xiii" and thus allow a discrepancy in date.

183. SRO: GD 205/4/5. The family relationship between Alexander and David is likely to have been father and son. Alexander entered as a burgess of Aberdeen, by grace of the town council, in 1449-50: ACA: CR 51, 739. David entered by reason of paternity in 1460-61: ACA: CR 51, 819. David also entered as a burgess of Montrose in 1468, with a number of other Guthries (Montrose: vol. 1/1/1, s.d. 1468 [burgesses during John Stratoun's provost-ship]). The topic of entry as burgess by important figures in local (or sometimes national) administration is well worth a study. No doubt the burghs thought currying favour like this would stand them in good stead if a difficult situation arose. This was especially the case if a legal dispute occurred; a practised forespeaker who also was a burgess was a real asset.

184. RMS, ii, no. 868.

185. For summary of Crichton's career, see above pp. 131-34. He was on the judicial council of 17/11/1453: App. A, no. 716.

186. See above, p. 44.


188. Ibid., no. 170 (first), 771 (last). As justiciar, see App. C, s.v. Justiciar. He died in 1456: sasine in favour of his son following special service is NLS: Acc. 4322 Box 1 bundle 1.

189. See above, pp. 65-67.

190. Livingston's activities: NLS: Ch. 6728; Lundy's: SRO: GD 15/670.

191. The common occurrence is App. A, no. 790; Lundy's other appearance is ibid., no. 946.

192. Ibid., no. 716.

193. Ibid., no. 65.

194. Ibid., nos. 98, 723, 1145.

195. Ibid., no. 304.

196. Ibid., nos. 1131-32.

197. Montrose: M/W1/14 "Trading" no. 5.

198. SRO: RH 6/345A.


202. SRO: GD 32/20/2/2.

204. On council: *ibid.*, nos. 268, 716; as auditor: *ibid.*, nos. 172, 175, 345, 723.

205. Charter witness: *ibid.*, nos. 18, 90, 174; "Appoyntment": APS, i, 54-55; as sheriff-depute: SRO: GD 224/920/27/1; Hirsel (Home MSS) Box 3 bundle 16 (HMC 60).

206. Hirsel (Home MSS) Box 3 bundle 16 (HMC 60).

207. APS, i, 33.

208. ER, vi, 245-46. The date c.1436 is suggested by SRO: GD 86/11, a procuratory of resignation by the Earl of Douglas to resign Dunbarney to the baron of Methven (i.e. the Earl of Atholl), dated 27/4/1436. The resignation may not have taken place, as in November 1437 Douglas appointed his own bailie in the lands: SRO: GD 75/441. Alternatively, Douglas may have decided that after the death of James I and the Earl of Atholl earlier in the year there were few checks likely on his actions, especially as he was lieutenant-general.

209. ER, v, 458, 545, 546, 587, 648-49.

210. ER, vi, 91 (his heir takes sasine 2/7/1453 x 14/7/1455; James Parkley was still alive on 5/6/1454 [SRO: GD 32/20/2/2] and probably still in mid-July 1454 [ER, v, 648-49; date of this particular account]).

Dr. Kelham suggests that Parkley may have been an associate of the Earls of Douglas, and that he had died associated in some way with the final defeat of the Douglases (Ph.D. thesis, 43-44). While I do not agree with Dr. Kelham here it is an interesting suggestion. Parkley witnessed the indenture by which the future 9th Earl of Douglas and his twin brother Archibald agreed to settle their dispute as to who was elder (App. A, no. 286). Additionally, Parkley witnessed a charter of the 8th Earl dated 2/5/1449 (*ibid.*, no. 271).

One could state a case for the Crichtons as Parkley's patrons too. He witnessed a charter of Sir George Crichton of Blackness in January 1434 and, in the same transaction, issued letters obligatory with Crichton (Floors [Roxburghe MSS] Bundle 629 [HMC 10]). It must be recalled that Crichton was sheriff of Linlithgow while, as was seen earlier, Parkley was sheriff-depute. Linlithgow was an area where the Crichtons exercised some control.

Finally, there is a faint chance that Parkley could be a graduate laird. It is quite certain that there was active while the laird was alive a notary of the same name (see e.g. SRO: GD 124/6/63; SRO: GD 12/28, 29). A brief biography of this man is given in Watt, *Graduates*, 439. *Glasgow Registrum*, ii, no. 351 appears to show that they cannot be one and the same man.


212. Above, pp. 138-40.
CHAPTER SEVEN
DUNDEE v. MONTROSE AND THE COUNCIL'S JURISDICTION
IN FEE AND HERITAGE

1) Introduction

"Jacobus dei gratia rex Scotorum universis et singulis litiis et subditis nostris ad quorum noticias presentes littere pervenerint salutem Ad extinguendas et sopiendas lites debatas controversias a longo tempore exortas et motas inter nostros burgenses burgorum nostrorum de Dunde et de Muntros et communitates eorundem burgorum pro eorumque bono et republica patrie et uberiori executione iusticie in futurum Concessimus et presentium tenore concedere facultatem et potestatem pleniam dictis burgensis burgorum predictorum tractandum concordandum et finaliter concluendum penes limites controversias et debatas tangentes indictamenta itinerum nostrorum camerarie limitum et bondarum debatabilium infra dictas partes infra vicecomitatum nostrum de Forfare Ad quam concordiam inter dictos burgenses predictorum burgorum faciendam et pro perpetuo observandam nostram licentiam per presentes plenarie importunamur Ita tamen quod appunctamenta inter dictas partes facienda non cedant nobis aut successoribus nostris in dampnum sive prejudicium in futurum Datum sub testimonio magni sigilli nostri apud Edinburgh tercio die mensis Septembris anno domini millesimo quingentesimo sexagesimo secundo et regni nostri tercio". 1

This document is one of the many dealing with the prolonged litigation between Montrose and Dundee in the mid-fifteenth century. It is also one of the more interesting ones, in that it shows that the administration had well nigh surrendered the chance of providing a settlement between the parties itself, despite (as will become clear) a history of repeated efforts on its part to do so. The dispute is central to the history of the judicial council in the reign of James II, and it may be suggested that it affected the approach of such a central court to future disputes. Its importance lies in its being a fee and heritage cause (or so would Montrose argue during
the hearings). For this reason (claimed Montrose), the king's council was debarred from any competence. It would appear that the king's council was not so convinced, as on a number of occasions such a body did conduct hearings, and indeed at least once appears to have made a settlement. Doubtless the council would argue that the dispute was one which touched the king, as the licence of 1462 would suggest. It affected policy. Where were those convicted of forestalling in the sheriffdom of Forfar to be tried: in Dundee or Montrose? For the burghs the dispute went deeper. A decision in the cause would affect their rights of trading freely in a particular area, privileges jealously guarded since the grant of their original charters. For all concerned a decision was potentially harmful. None would be contented with being fobbed off.

In the last chapter the matter of fee and heritage and the council's jurisdiction was only briefly touched on, so as to treat it more fully here in view of its significance in this particular dispute. Dr. MacQueen has made the fullest study yet of the jurisdiction of the council in relation to fee and heritage cases. Before moving on to consider the Dundee v. Montrose cause, MacQueen's views on fee and heritage will be set out.

He argued that there were two rules or precepts in operation which restricted the range of causes which council could deal with fully. These rules were: 1) no-one could be ejected from their lands without a pleadable brieve; 2) fee and heritage causes were to be heard by the ordinary, not by parliament or council. These rules do overlap substantially, but the second presumably is derived
from the first, as the briefs system was fully operative before
the possibility of bodies such as council or parliament hearing such
causes might have been mooted.

The briefs rule may have had an origin in grants of the king's
protection made before 1300: those who disrupted the possession of
a party who had the king's protection were liable to be sued for
this in the king's courts, as they had committed a wrong against
the king. Thus, while the rule concerning briefs found an
expression in acts of 1318, it did already have some history. In
1318, Robert Bruce had to seek a modus vivendi between those who had
been rewarded with land for remaining loyal to him, and those returning
to his allegiance who wished to recover their lands, and it was this which
caused his administration to try to find a reasonable method of settling
disputes which thus arose.

Briefs which could be used in the recovery of possession were
those of novel dissasine, mortancestor and right, which were led
before the justiciar, sheriff, or provost and bailies of a burgh. The existence of these briefs (whose use continued well into the
fifteenth century and later in the case of the brief of right)
marked off a category of cases which could be heard only before
such officers: it was most certainly not possible to initiate such
actions before parliament or council.

Dr. MacQueen argued that the second rule (that fee and
heritage cases could not be heard before central courts) did not really
appear before the mid-fifteenth century. Before then, it was perhaps
more the case that such courts would not make a final decision where
there was a remedy available at common law. This was the "true
origin of the fee and heritage rule"; the briefes rule was an "additional hurdle". Questions of land-ownership remained a distinct category of causes: parliament and council could settle possessory issues, but not proprietary ones. Duncan was correct to say that council could not deal with fee and heritage matters, but as he did not include parliament in this respect too his view needs modification, as it is evident that parliament was similarly restricted.

It is uncertain quite why the fee and heritage rule was formulated, but it was clearly related to the briefes rule. It is possible that the greater frequency of the king's will affecting summonses to council (there was little to prevent the king hearing any cause at council he wished) in the fifteenth century led to council and parliament hearing a wider variety of causes than had been the case a century before, but the records of those bodies in the late fifteenth century show that they were ready to pass on a cause if the common law could provide a remedy. It was important for a defender to show some proof of possession of land for this to happen, however. It looks as if by 1500 a strict application of the fee and heritage rule were no longer undertaken, although the briefes rule still did exist.

In his thesis, Macqueen gave a full examination of the fee and heritage element in relation to the council's jurisdiction. In this chapter, his views will be discussed while considering an actual cause where this was significant. It may seem unnecessary to do so, but naturally his research was limited and his conclusions had to be tentative in some respects. For example, he could not
provide a later reference to the briefs rule than c.1400. Since this and the fee and heritage rule were apparently important in the history of the central courts, there is ready justification for looking at them, the more so as evidence not known to MacQueen but supportive of his arguments has been found. The Dundee v. Montrose cause is the main source for this additional evidence but by no means the only one.

ii) Dundee v. Montrose: The Background

The grant of privileges by a king, once obtained, was not something which burghs would happily surrender. As a result, litigation was frequently conducted in an effort to prevent such privileges being eroded. In particular, the aim was to ensure that no later foundation as a royal burgh obtained privileges which would conflict with one's own. It is certainly interesting to see that when conflict arose it often occurred years after the potentially-conflicting grant of privileges had been made. It is also noticeable that once litigation began it would often drag on for years. Therefore, while the Dundee v. Montrose cause lasted for at least thirty years (and has no known rival at this period in terms of length), there were other disputes which were long-term affairs.

Of the two sides here, Montrose had greater antiquity as a royal foundation. It is likely that David I (1124-53) had granted them a major charter, but well before this particular dispute arose the charter had been lost, and all that remained was a spurious version confirmed by David II in 1352 and again by Robert II in
1385. David II's charter was also apparently missing by the fifteenth century; but there is no sign that either of the Davids' charters were thought to be invalid. Montrose frequently referred to their old charters of privilege, sometimes specifically referring to the charter of David II. The burgesses evidently thought history was on their side.

Barrow has argued that while the David I charter as it is known to us cannot be genuine it represents the gist of a valid charter in favour of Montrose probably of that period. The burgh's bounds within which it enjoyed trading privileges were carefully marked out by natural features, done in such a way as to avoid conflict with the areas within which Aberdeen and Perth could claim similar privileges. Barrow writes that: "the sphere assigned to Montrose is what we might expect for an important king's burgh and port on the Angus coast in the reign of David I".

There is nothing in the Montrose archives to suggest that before 1432 it was definitely embroiled in controversy with Dundee over the extent of its trading privileges. In 1409, however, a transumpt of the charter of confirmation of Robert II was sought, so it is certainly possible that at this stage some litigation was in prospect (transumpts were frequently made when the original MSS were to be used in court cases). It is not at all clear therefore why in 1432 there should have erupted an issue between the two burghs. Dundee's archives provide no answer to this question either.

Dundee's own privileges went back a long way too, but certainly not to the extent of Montrose's. It was a late twelfth century burgh. As a more recent foundation in proximity to an established royal burgh
its charter of privileges would have had to have due regard to
the bounds of the neighbouring burgh. Since the litigation
later was mainly concerned with this, it would seem as if the
privileges granted were not mutually exclusive, but that there
was some overlap.

Dundee was certainly involved in some litigation involving
its bounds and privileges in the fourteenth century. The adversary
was Perth, who wished in particular to protect its right of
preventing the unloading of any vessel which sailed further up the
Tay than Drumlay (Abertay Sands) until it reached Perth. The dispute
is evident in 1317, when Robert I issued a precept to his chamberlain
to protect the right of Perth in this respect; and again in 1325, when
Robert I appointed his chancellor and chamberlain to hold an inquest
into the liberties of Dundee. The inquest took place within days
of issuing of the commission, in terms which Duncan regards as
"entirely unsatisfactory" for Dundee, largely because Dundee's
rights were not clearly defined. Three years passed before the
king issued a charter in favour of Dundee resulting from this inquest,
and when he did the charter seems to have been a patchwork of
liberties culled from other burghs' charters.

Not surprisingly, perhaps, this charter gave rise to further
problems. In 1370 David II issued a charter in favour of the
bishop of Brechin protecting the rights of the citizens of Brechin to have
free entry to the Tay and the South Esk with their goods, notwith-
standing any grant to Dundee or Montrose. Further, the dispute
with Perth flared up again early in the next century. In 1402,
Robert, Duke of Albany, Earl of Fife and Menteith, as regent and
chamberlain of Scotland, made an award which went quite against Perth's claims in respect of the unloading of vessels beyond Drumlay, and imposed perpetual silence on them. 14

Studying the economic history of the two burghs in the fifteenth century may well provide an answer to the way their dispute was treated by the administration. The Crown would be particularly keen to ensure that its customs revenues were maintained, but this was not an easy task. Dr. Lynch has written, in a general review of fifteenth-century Scottish towns:

"The basic context for the study of fifteenth-century Scottish towns is, as revealed by customs records, one of a lingering economic decline which was exaggerated by periodic short-term crises. Few towns outside the four great burghs escaped the cycle of urban decay or outright decline". 15

The greatest pressure in this scenario of economic decline was on the medium-sized towns. Edinburgh was strong enough to diversify successfully once it realised how its trading in wool was falling, and indeed it was able to capitalise on the misfortunes of other burghs to some extent. In the mid-fourteenth century there were four burghs which were recognised by Bruges as being the chief ones in the realm: Edinburgh, Aberdeen, Perth and Dundee. Customs returns in the 1370s give point to this: 58% of customs revenue was paid by them, a proportion which rose to 81% by 1500. Montrose had been eighth in the 1370s, comfortably lower than Dundee, and by 1500 had slipped to ninth (in terms of share of customs revenues).

During the fifteenth century, as Edinburgh asserted its dominant role in the export of wool (albeit in a declining market), the trade in hide and skins proved to be the area where trading rivalries were played out. Again, Edinburgh asserted itself more
and more, to the detriment of many other burghs; but (according to a table printed by Dr. Lynch) it is noticeable that Dundee managed to maintain its share of the trade and by doing so moved up the league table of exporters. 16

The annual accounts of the customars of the royal burghs at the Exchequer audit provide a set of statistics which can be used to illustrate the relative importance of the two towns. The figures confirm how the level of trade was declining in each town, and how Dundee was considerably more important in respect of its receipts than Montrose. In the period 1424-60, Dundee reached a peak of £488 3s. 2d. in the year 1427-28, and a low of £121 4s. 11½d in the year 1454-55. 17 Montrose's peak year was also 1427-28, when customs receipts were £192 9s. 0½d., and its low likewise in 1454-55, when receipts were a miserly £7 5s. 1ld. 18 These figures illustrate the difference between the two. Dundee's receipts were never less than three-figure sums, while Montrose's never reached three figures after 1430-31, and in the 1450s were hard pushed to reach two figures.

Other figures gleaned from the Exchequer Rolls can be used to give further point to the impression gained from analysing the customs receipts. Fines received by the chamberlain while on ayre are occasionally found in the Rolls, and also show how Dundee was a more rewarding place. (As the cause is examined, it will be noted how one of the points at issue between the burghs was in which of the burghs those accused of forestalling in the sheriffdom of Forfar should be indicted). In the year 1421-22, fines levied at an ayre in Dundee raised £10; in Montrose, £3. 19 In the year 1425-26,
£26 13s. 4d. was levied at Dundee, and £6 13s. 4d. at Montrose. 20 In 1458-59, £20 was levied at Dundee; in 1455-56 £4 was levied at Montrose (these are the nearest comparable figures in time in this decade). 21 That these figures are simply a reflection of a long-existing difference is shown by picking out figures for much earlier in the century, before the full-scale dispute began. In the year 1406-07, £6 13s. 4d. was levied at Dundee and £2 at Montrose; in the years 1419 and 1420 (combined) £30 at Dundee and £8 at Montrose. 22

The conclusion from this is inescapable: that it would profit the Crown more if Dundee's trade were encouraged than if Montrose's were. This is surely the economic background to this lengthy dispute. Dundee was determined to maintain its position, declining certainly but still profitable, while Montrose was desperate to hang on to the vestiges of its trade. Of the two, one was more likely to receive favourable treatment, and Montrose apparently recognised this. But it would certainly have accepted that Dundee was more profitable to the Crown. A simple recognition of its status was the letters which James I issued shortly before his release from captivity in England, by which he obliged himself to keep the four burghs unharmed in respect of the sum of 50,000 merks which they undertook to pay for his release. The four burghs were Edinburgh, Perth, Dundee and Aberdeen. There was the vague hope expressed that the other burghs in the realm would help in this ransom payment. Montrose was very much one of the other burghs. 23

Since the way such disputes were dealt with at our period is important in giving the Montrose v. Dundee affair a context, it is worth looking at some of the other disputes. One such was St. Andrews v. Cupar, heard before the lords auditors in 1431 and 1432, which
(like the Dundee case) was one of disputed boundaries. At the hearing in the October 1431 parliament, little knowledge is allowed us of how the case was conducted, as in the main the lengthy document recording the affair is taken up with notes of the continuation of the proceedings from one day to the next, for various unstated causes.\textsuperscript{24} Finally, it was decreed that St. Andrews would remain in possession of its old limits. The matter was not finally settled, however, as the preamble to the next hearing at the parliament of October 1432 shows.\textsuperscript{25} St. Andrews was confirmed in the possession of its old boundaries, notwithstanding any charters to Cupar, including a new infeftment by James I.\textsuperscript{26} At the same time, a cause was heard between St. Andrews and Crail, with a similar issue.\textsuperscript{27}

The proximity of St. Andrews and Cupar meant disputes were very likely to occur, and this settlement did not rule out future trouble. In January 1434 a citizen of St. Andrews bought a sheepskin from a man standing at the Cross of Cupar, of which he was instantly despoiled by two men (presumably burgesses of Cupar).\textsuperscript{28} Within days, a chamberlain ayre at Dundee was evidently hearing details of this affair, but unfortunately there is no record of what was the issue in the hearing; it is simply known that it took place.\textsuperscript{29}

At the general council of February 1444 a dispute between Ayr and Irvine was settled, this time by means of electing all other burgess representatives present to consider the matter.\textsuperscript{30} The issue here seems to have been specifically whether or not burgesses of Irvine had the right to sell various goods in Ayr each
market day. It was decided that they could only do this on fair days, according to their old privileges.

At a gathering of the court of the Four Burghs (probably in the 1440s) procurators acting for Crail successfully upheld a doom given in their chamberlain ayre which had been falsed by procurators of Cupar. Our knowledge of this is brief, as the information on it is provided in the preamble of a grant by Crail to John Lumsden of Glegerno for his work in securing Crail's position. 31

Not all inter-burghal disputes were settled in such a formal environment. In November 1429, acting on a commission from the king, Sir John Forrester of Corstorphine (the chamberlain) summoned the representatives of Dumbarton and Renfrew to compear before him in the matter of their fishings and freedoms. 32 As assize of local lords and gentry was elected, and made a decree in favour of Renfrew in some fishings on the Clyde, and that the profit of some debatable stretch of water there was to be split between the burghs. The chamberlain appended his confirmation to the document, which was issued in his name and sealed by him and some of the lords on the assize.

The king's judicial council clearly felt able to make decrees in actions between burghs. In October 1448 the burghs of Inverkeithing and Kinghorn agreed to accept any ruling of the council in their dispute over their respective boundaries. 33 The decree made here suggests that at an unknown time in the reign of James I the matter had been considered by a similar body, as there is a mention of a "decrete or act gevin tharupon of befor undir testimonial of the
grete sele" of James I. (The testimony of the great seal, or the quarter seal, was of course the usual method of sealing decrees given by parliament or council, certainly in the reign of James II). In this instance, the council decreed that Kinghorn's boundaries were to be those of the constabulary of Kinghorn as described in "King David's" charter. If there should be uncertainty about these boundaries, then an inquest could take place locally to determine them. Clearly there was uncertainty, as in February 1449 the inquest did take place, again before the council. 34

Kinghorn featured in another boundary case heard by the council in 1457, although on this occasion its adversary was Dunfermline Abbey. 35 The dispute centred on the bounds of the land of Wester Kinghorn. A perambulation had been carried out and march stones laid down as a result, but Dunfermline claimed that some burgesses of Kinghorn had gone and broken the stones deliberately. This is not an inter-burghal dispute, of course, but it may be used as another illustration of how boundary disputes might be heard by the council. (The implication of the record of this cause is that the complaint was made to the council because the king's specially-appointed justiciars had carried out a perambulation as a result of which march stones were set up. Breaking them was contempt of royal authority).

This brief survey has sought to indicate that disputes between burghs were part and parcel of commercial life in medieval Scotland. It may be wondered why, when there was a court of the Four Burghs and a chamberlain specifically charged with responsibility for the burghs, either of those two authorities were not involved in
bringing about a settlement as a matter of course. In the Perth v. Dundee debate in the reign of Robert I the chamberlain can certainly be found to be involved, as indeed he was in 1402 when this particular debate was apparently finally settled. In the reigns of James I and II, there is evidence indicating that the chamberlain was still involved in settling disputes between burghs, and indeed that the court of the Four Burghs did meet, but there is no less evidence that such disputes were led before council or parliament who attempted in their own way to settle the matters.

iii) Dundee v. Montrose: The Dispute

In the form in which the dispute is known to us now, there are five stages, punctuated by (at times) lengthy spells when there are no extant documents. The first stage is easily the least recorded, comprising a single document dated 10 March 1432. The second stage runs from early 1447 to early 1448, and encompasses a number of documents, as does the third stage, which is confined to 1450. The fourth stage is largely confined to 1458, while the final stage (perhaps a little elongated) runs from 1460 to 1462, when a final settlement was reached. It is intended here to pick out some of the points arising from the documents in each stage before turning later to highlight some of the arguments used in respect of the jurisdiction of council.

The first document certainly bearing on the affair is a most curious one. It bears to have been issued at the time of a parliament in March 1432 (a parliament known only from this document). Twelve men, styled "deputtis to the kyng", delivered "for consele to
the kyng twyching the debattis of borowys". The twelve comprised four clergymen, five barons and three burgesses, and formed a powerful commission for this purpose (they included Sir Walter Haliburton of Dirleton and John Lumsden of those who have already been examined in this thesis, and Walter Bower, abbot of Inchcolm amongst those not noted before). As if this were not enough, they took the advice of five others who have been noted already: Thomas Somerville of Carnwath, Sir John Forrester of Corstorphine, Sir Walter Ogilvy of Lintrathen, Sir William (later lord) Crichton and James Douglas (presumably the man who was later Earl of Avandale).

Since the advice given by these deputes claims that it was made for the "commune profyt of the kyng and of the cuntre and quiete of the land" it is possible that the issue was already contentious. Both sides produced charters, Montrose evidently showing the (spurious) charter of David I. The decision was that each should continue to use the bounds and freedoms contained in their charters, while Dundee should have the privilege of indicting forestallers throughout the sheriffdom of Forfar. Since the bounds and freedoms of the two burghs were not mutually exclusive this was perhaps not a very satisfactory verdict. It may be that this verdict was not approved of by the king, since in its surviving form it is only on paper and does not look as if it is production of chancery. Be that as it may, no further outbreaks of antagonism are known for fifteen years.

Trouble surfaced again early in 1447 (apparently). The document recording this is damaged, and the date is uncertain, but
it records a hearing at a chamberlain ayre which is likely to have taken place at the beginning of the year. In July, the king issued a letter noting this particular hearing, and that the matter had been dealt with in the reign of James I; he wished the affair to be settled before a parliament or general council. It is quite possible that it was this letter which was produced at a session of the court of the Four Burghs in October that year. Evidently the court had been intending to deal with the matter, but was prevented from doing so by this letter, much to Montrose's disgust. It is not known what action the court may have contemplated taking.

Despite the king's letters, there was a flurry of activity early the following year when a general ayre took place at Dundee. The documents about this suggest that Montrose was using this as a test case: one of their inhabitants was to be tried there on a charge of forestalling, but Montrose's aim was to prevent this occurring. It tried to do so in a remarkable way: by employing a forespeaker who turned up armed with a set of instructions on how to plead. These instructions will be looked at later, as they are most interesting. The forespeaker's pleading was to include a denial of the right of Dundee to hear the case as it meant ejecting Montrose from its fee and heritage, which was bad enough on its own but much worse when it was to be accomplished without pleasurable brieveS. Various notarial instruments were drawn up on the pleading, in such a way as to suggest that the great chamberlain and his depute were quite flummoxed when confronted with this action, despite being experienced men themselves. As ever, regrettably, there is no information about
the outcome of this pleading, although the fact that the cause resurfaced two years later at parliament suggests that Dundee had not achieved a victory yet.

The next stage took up most of 1450. At the parliament in January of that year, the king and the lords of the Three Estates appointed a commission of twelve (four from each Estate) to meet to terminate the matter. If they could not do so within forty days, then the burghs were to compear before the king and his council to hear their verdict. The burghs had agreed to this treatment of their cause; but it is interesting to see how concerned the Crown was about the delay in settling it.

It appears that the twelve commissioners did in fact meet and reach an agreement, but that for some reason their decree was not emitted by chancery with the king's confirmation. The decree was favourable to Montrose, in that it permitted Montrose to indict forestallers within its bounds as outlined in its old charter, and would have imposed perpetual silence on Dundee. Close to the time limit of forty days previously noted for the twelve commissioners to reach their verdict, the king's council did meet to consider the affair. Here, the burgesses of Montrose may have requested that the verdict reached as a result of the commission be sealed, but the complete loss of one-sixth of the document leads to some obscurity. It is clear that the chancellor refused any such request, and cited the parties to appear at the next general council (at Perth in May) for further consideration.

No action is known to have taken place then, but a further council hearing took place in August 1450. The notarial instrument
recording this gives no indication that any commissioners from Dundee were present. Since the Montrose commissioners were seeking the execution of the decree of the commission of twelve, it may be that the hearing was prompted by their insistence on obtaining its promulgation. There was a very similar hearing in October, again apparently attended only by commissioners of Montrose. In this instance, however, it looks likely that more action was expected on the part of the council, because the Montrose commissioners protested that their power extended only to obtaining execution of the decree made by the commission of twelve. If the council proceeded any further in the matter, they would hold any resulting decree as invalid. This is the last known hearing of the cause for the best part of eight years. The suggestion of the documentation is that Montrose was sure that the commission of twelve had delivered a verdict favourable to it, but that for some reason the Crown was sitting on it. If it could not achieve execution of this decree, then it was quite determined that no other body could reach a verdict instead.

Even in early 1458, when the fourth stage in the hearings (as we are aware of them) is reached Montrose was still hopeful of obtaining due execution of the decree. Both burghs were summoned to the parliament of March 1458 to be present at a hearing by the king and his councillors, auditors of causes. The brieve of summons specifically comments on how a lack of settlement before meant prejudice to the liberties of the burghs and no little harm to the king because of the prevention of holding of chamberlain ayres. The issue of this brieve may have spurred the burghs into action,
as within days Montrose appointed two commissioners to see if a final concord could be reached with their counterparts from Dundee. Apparently nothing resulted from this, as in due course Montrose appointed commissioners to attend the parliament, having very full powers but still with the professed hope of reviving the decree of January 1450.

A hearing of sorts did take place in March 1458, but its only known decision was to continue (with full power) the hearing to the second day of the Perth justice ayre. From then it was subject to a series of continuations: to the Exchequer audit in June/July, then to a formal council gathering in August, when there is a fuller record of the pleas lodged. Again, Montrose's pleas were directed to obtaining execution of the 1450 decree. It wished to deny council the right to hear the case, as only to parliament could debates of bounds of burghs of fee and heritage be referred. It claimed the matter was res iudicata, and therefore could not be rehearsed elsewhere, partly because it was still under consideration by parliament. It also denied the validity of the various continuations since the March 1458 parliament. The king had assembled a powerful group of officials to hear the cause in August, so Montrose had to work hard to justify its claims.

Its efforts were in vain, as there is a notarial instrument only eight days after the hearing on 11 August 1458 by which Montrose placed itself in the king's protection and lodged a series of complaints, partly against the chancellor, and partly against the sentence which the council must have made in the matter. Some of Montrose's complaints are repetitions of what had been said
before, but others are new. It asserted that the recent
decree had been made in feriate time and, with certain exceptions,
this could not be done without consent of party. It also claimed
that perpetual silence had been imposed upon Dundee before. This
is the first time that such a claim was made, and seems to be based
on a sentence to that effect in the unexecuted decree of January 1450.
For all these various reasons, Montrose appealed to the king and the
next parliament for remedium juris.

Two months later Montrose received a bitter blow when the king
granted a charter effectively settling the matter of indicting
forestallers in favour of Dundee. The charter noted the stages
of the cause in 1458, stressing that the series of continuations
had been made with the consent of both parties. While the king
agreed that the liberty of each town in respect of buying and selling
must continue as expressed in their charters, all forestallers in
Forfarshire must be indicted in Dundee before the chamberlain. At
the same time, the king ratified a statement of the stages of the
cause in 1458 (a document unique in extract decrees for the reign
in simply noting the stages reached without a formal decree appearing
at the end). Although there is no known evidence for an assembly
of the court of the Four Burghs at this time, it is likely one was
held about now. A charter was granted in favour of Aberdeen on 9 October,
one in favour of Dumfries on 28 October, and another in favour of
Dundee on 7 November 1458. A gathering like that would be the
potential occasion for burghs to seek charters from the king. Since
the two charters particularly referred to in this paragraph both
exist in the archives of Dundee but not in the archives of Montrose,
it is clear that the charters were sought by Dundee, and indeed their tenor is more favourable to Dundee than to Montrose.

Once again, however, this apparent settlement of the affair was to prove illusory. In August 1459 Montrose sought a transumpt of the king's confirmation of the decree of the parliament of January 1450 which recommended that the affair be settled by the group of twelve men there elected. 57 Quite why this transumpt was made is a little mysterious. It may be linked to a hearing which took place at a parliament in early October 1459 (it was usual to produce evidence in support of one's case, and Montrose may rather have produced a transumpt of the decree than risk losing the original). The hearing was inconclusive, but it is interesting to see that the hearing was postponed for eleven days by the Perth parliament and was to be recommenced at Dundee. 58 This would allow an inspection of matters on the spot. Again parliament was reluctant to reach a decision, and the hearing was continued to the next parliament, to which the parties were duly summoned.

This hearing marks the beginning of the fifth and final stage, which was to end in November 1462 with an actual settlement. Montrose had at last made progress by plugging away at its line of refusing to accept that any body but the twelve elected in January 1450 could make a decree. In view of brieves of summons being issued in March 1460 of those of the twelve still alive to attend the parliament specifically to take part in another hearing before the king, 59 the reason for Montrose seeking a transumpt in August 1459 must have been to remind parliament of those selected in 1450 to decree in the matter. By the time parliament met in June 1460 only six of the
twelve were still alive. The briefs of summons expressed the hope that they would attend to deliver and determine in the cause, although if they did not the king and the councillors would proceed on their own. A decree was made during the parliament, this time by the lords auditors (it looks as if the six cannot have turned up as required). Again it was simply to postpone a decision, this time to the law days after Michaelmas next, when the burghs were to compear before the king and council wherever they happened to be. While this would be the next official action, the decree did note that the continuation was made under the hope of concord in the meantime.

Despite the death of James II at Roxburgh in August, Montrose was expecting the hearing after Michaelmas, as it duly appointed commissioners. No hearing is known to have occurred, but in early October royal briefs of summons were issued to have both sides plus the six remaining lords of January 1450 compear before the king and council on 20 January 1461. Montrose duly appointed its commissioners (as in September last with such powers as to suggest it was now looking for a settlement), and a further inconclusive hearing took place at the appointed time. The cause would now be heard at the forthcoming parliament, in Edinburgh the following month.

Whereas up until 1460 most of the evidence concerning the hearings has come from Montrose's archives, now there is a change and almost without exception the record of the hearings is found in Dundee's archives. The reason for this is straightforward. Dundee had little to fear before c.1459, to judge from the record. It was Montrose who had to make all the running. So successful was it in doing so that now Dundee was in retreat.
The hearing at parliament (in March 1461) is a good example of this. Dundee despatched four commissioners, clearly well-instructed as to procedure. They stood at the bar of parliament, and their forespeaker indicated they were there to make a protest, not to indulge in litigation. The main thrust of their protest was that the issue of the bounds of the burghs had already been settled by parliament, and Dundee had obtained a new infeftment from James II given in his full age with degeat advice of his lords of parliament and council which Dundee was not prepared to have subject to argument. This new infeftment could be shown for information, however, and Dundee sought a perpetual silence to be placed on Montrose in the matter. Despite Dundee's protest, a hearing took place before the lords auditors nine days later (11 March 1461). The record of this is in extremely poor condition, unfortunately, and only a vague idea of what happened can be obtained. Dundee showed a decree of 11 August 1458, one of the documents from the hearing of council then already noted, but the auditors seem to have decreed that this was not a decree of parliament and not valid. Another hearing was arranged.

This extraordinary run of documentation is the background to the issue of the licence by James III to settle the affair out of court, which was printed at the start of this chapter. The licence becomes readily comprehensible in view of this background. Nevertheless, two months passed before Dundee appointed procurators to meet Montrose's representatives at Arbroath on 9 November 1462 (perhaps because they awaited the reaction of the court of the Four Burghs to events?). This meeting duly took place.

The settlement took two forms. One document prescribed the
boundaries within which each burgh had the right to indict forestallers (Forfarshire was effectively split in half between them). A second document laid down rules for indicting forestallers in particular parishes in Forfarshire as exceptions to the general settlement sealed separately. In particular, the burghs considered they could rule on the rights of citizens of Brechin to load or unload vessels within their bounds: such citizens were to be prevented from doing so unless they dwelt within either of the two burghs. In case of complaint of infringement in this respect the plaintiff could pursue the accused before the king and council.

The settlement noted that it was made for the common profit of the king and of the burghs, and to produce full friendship and tenderness between the burghs. Relations had been very strained at times between them in the previous thirty years, so such a statement has a ring of truth about it. To judge by lack of further documentation in the archives of either burgh indicating continuing trouble, it must have achieved this aim (although the settlement was not issued with a Crown confirmation). In the 1580s the affair needed to be renegotiated, but if that were the length of time before discord surfaced again then the long wait for a settlement was well worth it.69

iv) The Council and Jurisdiction in Fee and Heritage

In the introductory remarks summarising the main documents in the cause, it was noted more than once that a significant plank of Montrose's case was that it should not be required to answer for its fee and heritage without a pleadable brieve. A related matter was that such a matter should be settled only in parliament. Clearly,
Montrose regarded parliament as being its ordinary in a fee and heritage matter. This view is stated firmly in one of its protests:

"... we refer us to the parliament quhar debatis off bondis off burowis off fee and heritage aucht off law to be determyt". 70

In particular it wished the body of twelve chosen at the parliament of January 1450 to continue to be the body which decided its cause. This body, it argued, had in fact reached a verdict, and it could not understand why this had not been executed. It was aware of its verdict, as a transumpt thereof made at its request in 1459 shows. 71 Evidently it suspected that there were political reasons for this verdict not being executed, as protests made later in 1458 would suggest.

The first expression of the rule (as Montrose saw it) that there should be no ejection from fee and heritage without a pleadable brieve arises in this cause early in 1448. In 1447, there had been rumblings of discontent from Montrose already, but no document of a type which now survives for 1448. It is a set of instructions drawn up by the burgh for its forespeaker to follow when one of their inhabitants, one Patrick Myll, was indicted at Dundee for forestalling.

The document bears no date, but must have been compiled shortly before the hearing at a general ayre held at Dundee on 27 February 1448. Three steps in particular were recommended to the forespeaker (David Reid). The first is a lengthy argument concerning pleadable brieves, suggesting that Montrose saw it as the most important matter. The forespeaker was to point out that Montrose had been infeft in its privileges for years, which included having forestallers in its burgh indicted there. If the chamberlain declined
to accept this argument, and said he had other letters thereanent from the king,

"you shall say he is not holding of his office to suffer any uncoursable letters that are against the common law nor in prejudice of party as the king's statutes bears witness in the book of the king's majesty where he sees this statuit dominus rex quod nullus iusticiarius vicecomes nec aliquis alius minister euis faciet petitione alicuius mandati sibi directi sub quocunque sigillo magno secreto vel parvo aut signeto in prejudicium partis vel contra communem formam iuris sed si quod tali sibi directi fuerint indorse et indorsate remitte scribendo indorso rationabilem causam quare dictus iudex adimplere non possit etc". 72

While the statute claimed to be in Regiam Majestatem does not in fact occur in the printed editions, it is found amongst the acts of David II in a slightly different form. 73 Indeed, one need not look so far back for a citation of this statute, as Dickinson has shown that in 1430 the statute was referred to when a similar, new statute was compiled. 74 Dickinson suggested that this new statute arose because James I was being considered to be intervening personally too often in legal affairs, and that it was time to issue a reminder that no royal letters should be allowed to interfere with the normal course of law while it was under way.

There are no royal letters extant which show that the king was so interfering in the course of law in this matter, but it is evident that at the time there were. David Reid, the forespeaker, followed the instructions carefully. He complained that the chamberlain on the ayre had executed such letters, even though the cause was still undecided elsewhere. The letters he was aware of were under the privy seal, which could not lawfully transfer to Dundee the privileges of Montrose. It would need pleadable briefes to eject Montrose from its heritage, and privy seal letters could not do this, so they should be endorsed by the chamberlain and returned
unexecuted to the king. In an effort to allay the chamberlain’s spoken fear of not obeying the king’s mandate, Reid indicated that Montrose would offer pledges that the chamberlain would not be harmed by the king in parliament, council or elsewhere.  

Reid repeated this line when Myll was indicted at the ayre, indicating that by permitting this the chamberlain was in effect ejecting Montrose from its fee and heritage. The chamberlain stood firm on the grounds that he dared not reject the king’s express mandate; a remedy could be obtained at the king and council. He argued that a prior decree by James I and his council showed that all those indicted to a chamberlain ayre in Forfarshire must undergo judgement on forestalling in Dundee. Reid’s only solution was to continue to protest for his client’s views to be taken into consideration.

The summary of the cause earlier discussed the batch of hearings in 1450. There was no attempt then by Montrose to argue that it was wrongly summoned in respect of its fee and heritage. In fact, the next such statement comes in 1458, when the cause recommenced. This was the year when Montrose was well aware that it had a battle on its hands, and it had to pull out all the stops to justify its case. Again, an important plank was the argument that wrongful summons had been issued to cause them compear before the king and council.

During hearings in August 1458, Montrose made two lengthy protests about treatment of its cause. On 11 August, it complained to the lords of council that it had been summoned to the continued hearing by the king’s letters under the red wax, which was not the lawful means of summons for deciding a burgh’s fee and heritage.
A transumpt had earlier been made at Montrose's request of letters under the signet temporarily delaying one of the hearings of the cause in June, but it is unlikely that these were the letters which Montrose was complaining about, as they simply declared a temporary hiatus. These signet letters show that a day had already been assigned for a hearing, to which Montrose would have earlier been summoned.

A further protest on 19 August suggests, however, that the original summons might also have been under the signet. The earlier protest had not availed Montrose evidently, despite it having been at some length and not confined simply to the fee and heritage matter. This second protest has the air of being a last gasp effort to stall a decision in favour of Dundee. Effectively, Montrose was throwing itself at the king's mercy. This would not have been a step taken lightly. It shows just how important the cause was to the burgh.

The matter of the summons, now relegated to fourth in the reasons set out why the cause should not be decided in favour of Dundee, was still significant. As the following shows, in the burgh's opinion because the summons was unlawful the entire subsequent hearing must fall:

"Tam quarto cum omnem sententiam ymoverus vindicatam habet precedere summunitio iuridicii vel citatio sed in causa predicta iuridica non fuit citatio emanata sed quedam littere papireo scripte rubeaque cera sub signeto domini nostri regis roborata que de iure non potest nec debet convenire aut trahere aliquem ad peremptore respondendum super feodo et hereditate et sic citatio nulla et pro consequens totius processus invalidus quia ordo iuris deficit in parte lex deficit in toto". 79

Our sources do not now show what happened as a result of this plea, but it looks as if again the hoped-for result did not arise. Nevertheless, the cause did continue, despite the king granting a new charter in favour of Dundee in October 1458. There must have been
some recognition that Montrose had a case.

The documents quoted above will have shown that contemporaries were well aware that a case would be made for rejecting summonses in fee and heritage matters if they had not been issued under the quarter seal. It is possible to provide other instances of the same argument being used in unrelated causes.

One such was Patrick lord Glamis v. Thomas Cossins in 1449, concerning the lands of Ardfork (Forfarshire). Three documents survive which inform us about the affair. The first two dated 18 and 28 August 1449 are notarial instruments on protests laid by Alexander Graham, procurator of lord Glamis, against the actions by Mr. Alexander Guthrie, sheriff-depute of Forfar (probably acting under an in hac parte commission). Glamis claimed the lands were part of his fee and heritage, but Cossins had evidently obtained royal letters in an effort to have the lands adjudged to him. Graham protested that Glamis's fee and heritage was at risk, and that the king's letters were "informes, indirecte et extra cursum legalem ad procedendum super suo feodo et hereditate et possessione". In addition, he declined to accept the jurisdiction of Guthrie, claiming he was partial. No immediate issue of these protests is known, but in October both sides agreed to accept the verdict of the king's council in the affair. Glamis was awarded possession of the lands, and a previous recognition of the lands was relaxed in his favour.

Another example of a statement confirming that pleadable briefs were necessary to eject a party from fee and heritage is, curiously, provided by Montrose's own burgh court book. During a chamberlain ayre held in the town in February 1456, Janet Inchmedan complained that a man (surname illegible) had detained a tenement unjustly from
her. He asserted he had held it in fee and heritage for a certain (unstated) time, and that he did not have to answer for it without a pleadable brief. The parties withdrew from the court while it was advised on the matter. On their return, the court delivered its verdict that the man's plea was valid, and that a pleadable brief was necessary if he were to be ejected from the tenement.

Thus while there is not an abundance of evidence supporting the contention that a pleadable brief was recognised as necessary in fifteenth-century Scotland to eject a person from property held in fee and heritage, enough survives to show that it was an argument which could be pleaded (successfully) in court. The extant records tend not to elaborate the pleading used by procurators, so it would have been surprising if a massive body of evidence had turned up which proved the point. It is really only recent work which has tended to highlight this rule; if it had been well-recorded then earlier writers would have discussed it. It would seem, then, that this part of Dr. MacQueen's thesis can be sustained satisfactorily.

The second part of that thesis was that the council was excluded from dealing with fee and heritage cases because there existed a remedy before the ordinary. This is a point which it is more difficult to substantiate by direct quotation from the Dundee cause. As both sides in the dispute themselves enjoyed an ordinary jurisdiction (in their burgh court) it is not too surprising. That said, evidence from the cause can be gathered to show that Montrose regarded parliament as the forum where its dispute should be aired. If its view was right that a pleadable brief was necessary to have it summoned competently, it would seem that the necessary brief was one of summons before parliament. It ran the risk of losing the debate,
but it clearly regarded parliament as its ordinary.

It might be thought that the natural forum for discussion of issues affecting burgh boundaries was the court of the Four Burghs. This body was discussed earlier, although it was also noted that there is evidence that the king's council was content to have disputes over burgh boundaries raised before it. On at least one occasion, the court of the Four Burghs did intend to discuss the Dundee cause, but was prevented from doing so by royal signet letters. Montrose protested that its liberties should not be harmed by this inhibition, but this was of course a conventional protest. There is no other record of the court of the Four Burghs taking an interest in the matter later. The king's letters which brought this bar on the hearing survive, and proclaim that the affair is still pending before the Three Estates.

The next known parliament did duly consider the matter. The king with the lords of the Three Estates ordained that the cause be submitted to a committee of twelve (agreed to by the litigants), and that it would be prorogued for forty days when they all should appear before the king and his privy council to hear the decree of the committee, if in the meantime no concord had been reached. At this point, Montrose could only be content with the way the cause was being handled.

By the time of the next hearing, however, something had happened which completely overthrew Montrose's hopes. The king and council must have reconsidered their actions, and were not now prepared to have executed any decree of the committee. It cannot now be told whether or not Dundee had been lobbying behind the scenes: it was apparently no less happy to have published the
committee's decree, as the record of a council hearing on 16 March 1450 shows. The chancellor, however, simply postponed the hearing until the Perth general council in May, without stating why. There is no record of any hearing during that general council.

Thereafter, Montrose had to fight tooth and nail to prevent the king's council giving a verdict instead of parliament or the committee it had selected. The first instance of this is on 22 August 1450, when five commissaries of the burgh complained before the council and protested that they simply wanted the verdict of the committee to be promulgated, and that for this reason they would not enter a plea then. A similar protest was entered two months later, when the council again tried to conduct a hearing, only for Montrose to declare that it would hold anything decreed there as invalid as the councillors were not elected with their consent.

Even when parliament gathered in March 1458 Montrose was plugging away at its former line. It was over seven years since the matter had been aired anywhere, but Montrose's commission to its seven procurators to conduct its case during the parliament shows it had not forgotten that the implementation of the committee's decree was its prime aim. Unfortunately, again we do not know what parliament thought about the hearing, although we do know that one did take place, but that it was postponed (with the consent of the burghs) to the second day of the next justice ayre at Perth. It would then proceed as if the case were being heard in parliament.

So far this would have been acceptable to Montrose. What was not was that when the day stated duly arrived it was the king's council with "other temporal lords" who continued the cause to the Exchequer audit. Two brief hearings must have taken place, on 23 June and 5 July, before the Exchequer auditors continued the
cause (apparently with consent) to 7 August before the king, and certain lords were chosen to arrive at a final verdict. 90

That a critical point had arrived for Montrose is clear. In the discussion of how it argued strongly for pleadable briefes it was noted that it made two major protests in August 1458 which referred to that part of the issue. Both also referred to the desire for a parliamentary body to hear the cause, not the council. The protest of 11 August argued that the body which sat during the justice ayre hearing might not continue the hearing with the force of parliament; and the later continuation was by yet another body. In addition, the protest asserted that until the committee's decision was executed there could be no other verdict at either a session or parliament. 91

The protest of 19 August, which has already been quoted in part, has the hallmark of an educated mind behind it, whereas that of 11 August may well have been an ad hoc argument. A new element is introduced: that the chancellor (the Bishop of Brechin) on the sinister information of certain lords of council in a certain privy council meeting on 11 August brought out a pretended sentence against Montrose. Various reasons were propounded for the reduction of this sentence. First, there is the statement again that the continuations of the hearing that year had not been with their consent. Second, the sentence had been issued in feriate time. Third, the issue was a res iudicata as a result of the committee's verdict. Fourth, the pleadable briefes matter was raised. For these reasons, the burgh sought the mercy of the king and his next parliament. 92

Although two months later Dundee received a new charter from the king as a result of the council's consideration, the worm
was beginning to turn. A parliament in October 1459 discussed the affair, and stipulated that no person was to be arrested or brought before a chamberlain ayre for forestalling until parliament finally delivered. More significantly, brieves of summons went out next March to ensure the presence at the July 1460 parliament of the surviving members of the committee of twelve selected in January 1450. They were to deliver their verdict on the matter. As it turned out, the parliament simply adjourned the debate yet again.

The parliament of February-March 1461 was the scene for the last heated debate between the burghs. Now it was Dundee who had to make a good case. Its commissioners delivered a lengthy protest (in Scots) on 2 March, stating that as the matter had been fully determined before parliament, and it had obtained a new charter thereafter, it had no reason to conduct any litigation. It did not want to open its new charter to debate. In effect, it argued that a matter settled in the highest court could not be raised again, even in that same court. It even protested "for our costis of the mony wragwys [sic] vexations don til us be the saide party as we understand agane the law".

This plea notwithstanding, the lords auditors convened on 11 March, and proceeded to consider the affair again. Unfortunately the document recording this is in poor condition, and most of the contents can only be guessed at. It seems, however, that they accepted Montrose's point that the gathering of 11 August 1458 could not be a session of parliament, and a decree made then was annulled. A further hearing was to take place. As has already been seen, all that is later known to have happened is that in September 1462 the king issued a licence encouraging the
burghs to settle out of court, and this they did in November that year.

When the point about the need for a pleadable briefe to eject a party from fee and heritage was discussed earlier, it was found that supporting evidence could be shown from matters other than the Dundee cause. With this line of argument now considered, the same can be said.

Some of the statements in other causes about the ordinary and the council's position are quite unambiguous. A good example is the plea of Robert lord Fleming in an action raised against him by Patrick lord Glamis before the king and the Three Estates in a general council in March 1453.97 The subject of the dispute was an excambion of land in Perthshire. Fleming agreed that he had been legitimately summoned, but alleged that he ought not to be called in the action before that tribunal but before his ordinary, according to the acts and statutes of parliament used and approved in the whole realm. He sought that the action be remitted to the ordinary, and declined from the king and council in the matter, protesting that anything they might do would not harm his fee and heritage. On the other hand, Glamis argued that the king was the ordinary in the matter, because Fleming had assented by letter to resign the lands to the king to permit the excambion. He produced letters in proof of this. After considering the matter, the king declared that the debate ought to be terminated before him. Typically, no final decision is known to exist.

A second example of how the king and council were not considered to have an ordinary jurisdiction is provided by an appeal to the pope in 1443 by Alexander Douglas, brother of Sir Henry Douglas of
Lochleven, and his procurator in the matter. Douglas had (he claimed) been harmed in his fee and heritage in a fishing he had held time beyond mind in Lochleven by the Bishop of St. Andrews. Douglas offered to stand by the judgement of the king and council although it touched him in his fee and heritage, but the bishop refused this offer, and was apparently proceeding in his own court against Douglas, as the procurator complained that the bishop was acting as party and judge. It is certainly remarkable that Douglas should feel his only solution was to seek a remedy from the pope; but the reason for this may be that the bishop was threatening to excommunicate Douglas because of his conduct.

A third example (although not clear-cut) arises from a notarial instrument of 1457, in which William Grierson offered to comppear before the king or his council for a declaration to be made in a debate moved by Archibald Stewart on behalf of his father over a claim to a lease of the lands of Cargen. Grierson agreed that whatever the council would declare he would accept, but his offer was refused. There is no statement that the offer was rejected because the council was not considered to be a competent tribunal, but in the light of the evidence already submitted it may be suggested that such a consideration lay behind the refusal.

Although it is outside our period, an example from 1471 is worth citing. Thomas Allardice of that ilk protested before the king and council that a dispute between him and John Dempstar ought not to be heard before them for a number of reasons. These included that as the cause touched the fee and heritage of both parties it should be referred to the ordinary. Such a plea would become a commonplace in causes heard by the lords of council, as the printed
record shows for the period from 1478; when its series of records now begins.

The evidence just reviewed shows that the second part of Dr. MacQueen's contention, that the council was prevented from hearing fee and heritage cases, can be substantiated too. Again, the pleadings in the Dundee cause were not unique for the period. Accepting this part of the argument would be much easier for scholars of earlier generations, as the records of the council clearly show a reluctance to entertain fee and heritage causes. It was only after 1532 that the reconstituted Session began to take on such causes and give a final decree. The examples cited here do, however, show that while these "rules" did exist and contemporaries were aware of them, it did not necessarily follow that all agreed with them.

The king evidently wished his council to play a significant part in the determining of the Dundee cause. The long gap between hearings after 1450 may well have been forced on the king as his attention was focussed elsewhere, but it did not mean that he had lost all interest in it. It can only be speculated why the two burghs did not maintain their interest in the dispute in the following years; they had been encouraged to settle privately already, but it may have been Montrose's hope to have a settlement forced on Dundee by a powerful monarch. Dundee could certainly show the decree of parliament of 1432 before any judges, few of whom would be inclined to ignore such a document. Dundee may well have been content to let sleeping dogs lie. Feeling that it had the upper hand, there was little need to pursue the affair. When the affair was re-opened in 1458, each side was probably openly relieved, but aware of nagging doubts. The king was a different man in 1458 from what he had been
in 1450. Entirely freed from the shackles imposed by dominant councillors, he was more used to interference in others' business and he proceeded to show he was capable of this again. Knowing this, the burghs may well have given only two cheers when the cause recommenced. A settlement was now more likely, but there would be little point in attempting to overturn it now if either did not like it, as the king was unlikely to pay heed to their murmurings. The king's interference in the cause dated back a few years already. It was hardly exceptional, either.

v) The King's Will

The account of the Dundee cause given earlier will have made it clear how much the king was keen to interfere in the matter, and apparently to dictate his own solution if he could not be persuaded that the burghs would find one themselves. There was a degree of self-interest in this: more than once there is a complaint that the chamberlain ayres were not taking place while the dispute remained unresolved. The king could not let it drag on for years (although, of course, this is precisely what did happen).

From other sources one can readily build up a picture of the king interfering in a wide range of disputes, showing that the Dundee cause was not exceptional. Frequently one can show that the king's interference was prompted by a request from one of his lieges. Not surprisingly, the surviving evidence for this suggests that men prominent at court often tried to swing justice their way by doing this. Evidently the king did not feel particularly bound by the statute of the March 1430 parliament, which forbade the issue of
privy seal or signet letters against the course of common law or in prejudice of party where there was an action at common law, and which also stated that such letters could not override lawfully-purchased great seal letters. 102

As Dickinson noted, this high-minded statute suffers in comparison with Bower's comment on James I, that

"He established firm peace within the kingdom, and he did not allow magnates or freeholders who were quarrelling among themselves to vent their wrath in open disturbances in their usual way. But wherever he heard that disorder had arisen, even in distant parts of the kingdom, it was immediately quelled by a short letter sent under his signet, for his subjects were so fearful of offending him that no-one was ever so high-spirited and masterful as to dare to flout or defy the king's written order or even his oral message". 103

This comment has wider relevance than simply the question of issuing letters under the small seals which then disrupted the course of law, but it may be taken in part as a comment thereon.

In terms of extant letters, there is little evidence from the reign of James I which actually shows such an interference in the affairs of another jurisdiction. Indeed, the only letter which might reflect this is a very curious one in the Aberdeen Council Register. It is a signet letter of 16 March 1434, by which the king instructed the provost and bailies of Aberdeen to cease taking down the house of one John Black until there were further instructions from the king. 104 While this is not too important on the face of it, if one sees it as an example of how far down the king was prepared to go in respect of interfering with affairs elsewhere it assumes greater significance.

There is a greater body of evidence for such a claim in the reign of James II, beyond the instances in the Dundee cause. Simply as a reminder, perhaps the most obvious example in that affair was the
signet letter in July 1447 instructing that no court was to hold a hearing as the cause was pending elsewhere. The king clearly expected that this might happen, and for his own reasons he did not want this to happen. When the court of the Four Burghs met, it accepted this command, despite Montrose's protests. 105

A good example of the king interfering in the course of law is a signet letter of 3 April 1456 addressed to provost and bailies of Dundee. A burgess had complained to the king that James, son and heir apparent of Sir John Scrimgeour (Constable of Dundee) had despoiled him of certain victuals and was likely to do so again in "grete contempt of iustice and law". The plaintiff had had Scrimgeour summoned before the king and council, and in the meantime the king charged Dundee that:

"ye haff na dayl nor intermettyng with the said caus befor you na in na thyng belonging that accioun quhil it be declaryt and decidyt befor us undir al payn and charge that eftyr may folow". 106

A notarial instrument about a perambulation of 31 July 1451 has an example not only of an effort by a litigant to use signet letters to overturn the law but also a reply by the other side's forespeaker to this move. Regrettably, the text of the letters is not given, but their import is quite clear from the instrument. 107 The perambulation was over lands held by the abbot of Arbroath and by Patrick lord Glamis. It had been delayed from 10 May, and the abbot's forespeaker (Mr. Alexander Guthrie) sought the final determination of the perambulation. Glamis's procurators then stepped in, producing signet letters revoking the authority previously committed to the two justiciars in hac parte and inhibiting them from proceeding further.
Guthrie's response to this is preserved in the instrument. He argued that the justiciars had been appointed with consent by letters patent, but the revocation was under the red wax (the signet), and under common or civil law the signet must not override the great seal. He also gave other reasons why the perambulation should proceed. The one justiciar actually present was evidently in quandary. He took counsel with some of the barons present, and decided to disburden himself from office until he could consult with the other justiciar and with the king and council. It seems in fact that the assize present was prepared to proceed with the perambulation, notwithstanding this development.

In June 1448 the king addressed signet letters to the provost and bailies of Aberdeen following a complaint by William lord Hay. His chaplain, Nicholas Blair, had been accused of slaughter and tried in Aberdeen. The king instructed that the town inquire who was the bearer of the complaint against Blair, and inform Hay of their names. This letter has an almost sinister air to it, but an inquest was duly carried out and four men were named as the pursuers.

Examples such as these indicate that it was not uncommon for the king (on petition) to issue letters under a small seal which would interfere with the process of law. Even though there might be protests laid against these letters, the fact that they continued to be issued implies that the king expected them to be obeyed. No less is it clear that the king's officials felt they must obey such commands despite what learned procurators might argue.

The Dundee cause provides an example of this attitude. During the hearing at the general ayre of February 1448, the Montrose fore-speaker delivered a number of protests about the potential actions
of the chamberlain. One course the forespeaker suggested was
to return the king's letters endorsed to the effect that they
ought not be executed as they were against the common form of law.
The chamberlain replied that he did not want to and indeed dared
not so endorse the letters. Not even an offer by Montrose to
indemnify him at the hands of the king was enough to change his
mind. He also said that if the parties wished they could have
recourse to the king and council. 109

Again, further examples of this can be readily produced. The
justiciar in the 1451 perambulation just noticed is one. Another
occurred when Thomas Allardice of that ilk complained about a
pretended session decree against him and his subsequent arrest.
He sought a copy of signet letters instructing the execution of the
decree, but the sheriff refused to do this until he had been advised
by the council. 110 A sheriff-depute in a cause heard in the
Aberdeen burgh court in March 1460 made a similar statement. 111

It was probably more sensible for the officials to do this.
If they were negligent in administering their office, they were
liable to be punished by the king if they were the subject of
complaints. Statutes of 1450 and 1458 reveal that if an official
who held his office in fee and heritage were negligent he would lose
office for a year and a day. If it was not a fee and heritage
office, then he would lose the office for whatever period it had
been committed to him for. 112

This fear of punishment undoubtedly led officials to be unduly
cautious at times as they feared for their continued holding of office
if they acted decisively. This would in turn be bad for the
administration, as things might well only happen if the king approved,
and if he delayed acting then abuses would go unchecked. An example of this is the continued statement in the account of the custumars of North Berwick in the late 1450s that a sum was pending unpaid, but that the Earl of Angus had taken the sum into his own hands and imprisoned the accountants. The king was to be consulted, but apparently never remedied the wrong. Doubtless the king was favouring one of his confidantes by doing so, but it was not an ideal solution.113

Angus's actions are by no means the only example of magnates acting with impunity despite their activities being recorded in the Exchequer Rolls. In their account of July 1454, the Aberdeen custumars lamented that the late Earl of Crawford had taken 100 merks from the burgh customs, although James I had been granted all the customs and burgh fermes at the time of his coronation to remain in perpetuity with the Crown. The custumars did not dare refuse the Earl his payment.114 Indeed, the late 1430s and early 1440s seem to have been a time when accountants during the Exchequer audit had frequent cause to complain of seizure of some of the payments due to the king by magnates who had presumably decided to see to their own profit on the death of the powerful James I. The Earls of Angus and Crawford, and Sir William Crichton and Sir Alexander Seton, lord of Gordon may be cited as examples of this. Their actions apparently were largely unchecked, although they were known about.115 Chalmers comments critically on how the Exchequer auditors apparently had no means of obtaining action once such complaints had been raised, to the extent that some abuses got quite out of hand. He remarks that it was really only in the reign of James IV that the auditors began to deal with matters independently
of the king and council. 116

There are certainly examples of complaints being laid against officials for maladministration. Sometimes one suspects that for political reasons the maladministration was never likely to be righted. As has already been seen in this chapter, the Bishop of Brechin (as chancellor) was the subject of a lengthy protest by Montrose when it threw itself on the king's mercy in August 1458. 117 It complained that the chancellor had inordinately and unjustly brought out a sentence in the cause days before on the harmful information of certain lords of the king's council. On another occasion, the same official was alleged to have favoured one of his own friends in letting land to borgh, instead of granting it to the rightful possessor. 118

One of the Bishop's predecessors, lord Crichton, had also been accused of maladministration. The accusations came as part of the equally contentious Mar peerage case, with particular reference to Garioch. In March 1441, Sir Robert Erskine's procurator sought of Crichton the restoration of Erskine's service to Garioch, or a precept of sasine therein. Crichton claimed at first he did not have the service, and did not know where it was. He later claimed he had no memory of having received the service. In May the following year, because Crichton was still stalling, Erskine obtained a council decree against him instructing him to return the service or issue a precept of sasine. 119

A related theme is that of bad counsel in general causing monarchs to favour the wrong side. This is, of course, a common-
place in medieval political thought. Advice books were written for princes so that when they ascended the throne they might know how to avoid such excesses. A student of medieval Europe would turn up examples of the genre in every country: Scotland is no exception. The poem entitled "The Harp" at the end of the Liber Pluscardensis is an obvious example, roughly contemporary with the reign of James II. Since it would be quite possible to write a thesis about this alone, we will only refer briefly to the topic here.

There are instances of complaints occurring outside works of literature of bad counsel causing James II to be unduly favourable to parties. Montrose's protest in August 1458, specifically relating to the chancellor but also referring to certain lords of council, is one. Its anger at the non-execution of the decree made by the committee elected in January 1450 to consider the affair could be reckoned another. Its complaint in this case may have had some foundation in fact, as we have seen.

Elsewhere, Dundee also levied a complaint about bad counsel. In September 1451, the king had granted to Brechin a market cross and rights in respect of buying and selling merchandise. Dundee was up in arms against this, and in January 1452 delivered itself of a protest to the chamberlain on ayre. It complained that the "pretendit infeftment" was "purchest of fals suggestioun be informacioun of parciale personys" against their own charter and also to the prejudice of the king's fee and heritage. It reserved to itself the right to seek a remedy at law.
The king himself apparently was also aware of false counsel which had been given him. His acts of revocation on his twenty-fifth birthday on 16 October 1455 refer to this theme. There is a claim that wicked and false suggestions, not only by the importunity of those seeking rewards but also by the lust of those counselling him, had caused him make alienations, infeftments and other grants to the prejudice of him and the royal majesty. Such grants were now annulled. There is more than a hint of special pleading here, of course (the royal interests demanded such a revocation), but it is not necessarily the worse for that.

It would be wrong to take as the only conclusion from the previous pages that the Scots were none too happy with a meddlesome king, and that they would be better off running their lives in their own way. While it was possible to settle a dispute by means of arbitration, which the Crown certainly encouraged in some cases, it is clear that the king and council were seen as the only forum for settling contentious issues at times. Indeed, it may be reckoned that as time passed in the century the demands on the council were on the increase rather than on the decrease.

Much of the evidence for this increasing use of the king and council to settle debates comes from the Aberdeen Council Register for this period. It is certainly unwise to rely on one source alone, but the evidence contained in it is of sufficient weight to merit examination.

The Aberdeen Council Register is the only sustained burgh court book surviving for the fifteenth century. The records of other burghs are by no means inconsiderable; simply as a statistic, it is worth
listing them. Court books of some sort survive for the following burghs for at least a part of the mid-fifteenth century: Aberdeen, Ayr, Edinburgh, Haddington, Peebles, Prestwick, Dunfermline, Perth, Montrose, Newburgh and Stirling. Many of these are unfortunately only fragmentary, but it is easy to forget that Aberdeen is not the only burgh in Scotland for which fifteenth century court books survive.

The evidence of the Aberdeen volumes is of expectations that the king and council will choose to act when the burgh felt itself unable to do so, for whatever reason. Some causes were transferred to the king almost as a matter of course; in particular, this would occur if persons had been found guilty by the court of disobeying the orders of the town officials. Frequent examples of this can be found. Sometimes in these cases the court ordered that the persons convicted could either be sent to the king and council or await the arrival of the chamberlain on his next ayre. The inference of these entries is that the council must have had some machinery available for the punishment of such transgressors.

Other cases where the town hoped the king would act were one-off actions, where the burgh probably had no idea what course of action to take. In March 1443, it was reported that an English ship had been captured. It was decided to bring it into port until the word of the king and council could be had. In September 1451, a court of admiralty was held in the burgh to settle a dispute between two foreign parties, both masters of vessels. The vessel of one had been captured by the other. Although a local assize was chosen,
it was decided that since the matter belonged to the king in part it would be wisest to allow him to settle it. The admirals depute holding the court (both former provosts of Aberdeen) complained they had seldom, or indeed ever, heard such matters; they were not competent to settle it. 127

Sometimes the king was asked to step in when the problem was really one of public order. Things were evidently boiling up seriously in early 1453. Two of the bailies were instructed to hold each other in friendship in the future; two of their associates were thrown out of town; and two relatives of one of the bailies were to watch their behaviour in the future or the whole town would write to the king and complain of their misrule and oppression in the town. 128 In 1457, two men swore on oath to accept the verdict of the provost and council for disobeying the officials, which was that if they committed the same offence again they would be sent to the king as common rebels. 129 In December 1444, the town was very afraid of trespassers and rebels. All indwellers were to assist in uncovering them (those refusing to help would themselves be held as rebels). The "good men" of the town would write to the king for him to instruct punishment. 130

Interference by the king was only to be expected, and indeed would be expected. His officials were technically responsible to him: if they abused their authority, the king had to act to protect his image as the protector of his people. Bower's view of Scotland in the minority of James II is that this was what the country lacked. There was no king who would step in to correct abuses, and the council was apparently unwilling to assume this role instead. The evidence
of surviving letters under the small seals issued during the minority suggests this was not entirely true, but the king's will was much more obvious when he himself held the reins of power. The majority of the people would have welcomed this; what was less wanted was arbitrary interference, but it was difficult to prevent that.

vi) Conclusion

Conclusions about the work and jurisdiction of the council before the extant series of consistent record must necessarily be tentative. There is a certain amount of evidence about its activities, but it does not always point to definite conclusions. That in itself may be important: the council did what the king wished it to do, and he may have had a particular desire to hear some causes which otherwise might have had a normal conclusion elsewhere. As a result, the council had to tackle some intractable causes, not simply the long-running Dundee affair.

A fine example of this is the Menzies v. Tulloch dispute, which in one form or another lasted almost fifty years. The passage of time meant that the original parties to the dispute were long dead by the time that the final settlement was reached, but it was still basically the same dispute which was settled.131

The original cause was a debt of £160 owed by John Tulloch of that ilk to Gilbert Menzies, burgess of Aberdeen. Menzies had to pursue Tulloch by royal brieves of distress to obtain satisfaction; but in due course the only way he could obtain redress was to have as his own proper lands Tulloch's lands of Portarstoun.
and Orchardfield (Kincardineshire), valued at £8 p.a., until the debt was extinguished. This was in 1444. 132

Both the original parties died before the debt was settled, Menzies probably in early 1452 and Tulloch probably in 1453. The heirs of each then proceeded to have themselves served heir to the lands. 133 Andrew, the heir of Gilbert Menzies, was not best pleased with this turn of events, and proceeded to raise a summons of error from chancery against the inquest which served Walter Tulloch as heir to his father. The council heard the cause in August 1453 in Aberdeen. 134 It quashed the service of Tulloch; found Andrew Menzies true and legitimate possessor of the lands, and that he ought to remain in possession of them in the future; and instructed the erring jurors to enter themselves in ward in Dunottar Castle within fifteen days.

Menzies may well have imagined this was the end of the affair, but Tulloch reopened it before the lords auditors at parliament in March 1454. 135 Tulloch's procurator took the line of trying to have a summons of error against the inquest which served Menzies heir. It was a difficult thing to do. Evidently the auditors were uncertain if they could proceed to review the council's decision of only seven months before. Tulloch therefore had to raise a technical point, on which parliament (via the auditors) could decide, as it was a point of law. He claimed that the brieve of inquest had not been served on proclamation and warning of fifteen days (thus breaking an act of the king and council there- anent); and that the warning of the inquest had been made in one place and the serving in another. The auditors nevertheless
decreed that Menzies was to remain in possession of Portarstoun and Orchardfield, and that the 1453 council decree was valid. This decision, they also said, was not to counter the need for the correct proclamation of brieves of inquest, as stated in the act of council.

In this way a relatively straightforward dispute could mushroom into something much more complicated, needing the attention of a more skilled tribunal. Even now, the cause was not finished: in 1469 the lords of council were in action again, by which time the question was now more clearly one of ownership, and the cause was remitted to the ordinary. Nothing more is known of any court hearing, but twenty years later the affair was still the subject of dispute, as a series of documents were issued in an effort to cancel conflicting claims. In January 1488 the lands were granted by the king to Robert Arbuthnott of that ilk.

In one of the curious twists which are likely in communities where intermarriage is common, he was related to both of the original disputants. Gilbert Menzies was the father-in-law of Arbuthnott's grandfather's sister; John Tulloch was his grandfather's wife's first cousin's once-removed husband.

A second complicated cause heard ultimately by the council concerned the lands of Spott. Henry Wardlaw (son of Henry Wardlaw, Bishop of St. Andrews) had married Marion Reklinton, and had had at least one surviving daughter before his death in the mid-1430s. His widow proceeded to marry William Cockburn of Skirling, but this marriage was quashed in May 1449, on the grounds that Marion had carnally known a man related to Cockburn in the third degree.
The daughter of the first marriage, Janet, had been leased Spott by her mother. At another point, Marion had also granted a lease to Alexander Cockburn, who had also been leased the land by Marion's second husband William Cockburn. A dispute then arose between Janet Wardlaw and Alexander Cockburn about the rightful lessee.

The council was the tribunal which heard the cause, and while it took place during the October 1458 parliament the king evidently considered it a more than usually difficult dispute. The sederunt comprised two bishops, two abbots, three earls, nine lords of parliament, six barons and three lesser clergy: the largest council sederunt for the reign, and an exceptionally powerful tribunal. Since the cause involved a woman, the king was bound to intervene to protect her rights, and this may explain why the council heard it, but it cannot have been easy to settle, taking into account what we know about the background. The council annulled the leases to Alexander Cockburn, because of the divorce, and asserted Marion was forced into making the leases. Her lease to her daughter was acceptable, however. Although no other hearings are known, notarial transumpts continued to be made of related documents into the 1460s.

All three of these causes (including the Dundee one) illustrate that when litigants were before the king and council they were not necessarily expecting their cause to be finally determined. It was very likely that the issue would be a further hearing elsewhere, with further expense of time and money. While the litigants might hope that it would be possible to obtain a quicker hearing (one not subject
to delays which seem to have bedevilled local courts), the council might well only bring the cause to a point where a decree could be made in another court on a particular issue. If the council had regularly been hearing causes and delivering final decrees much quicker than local courts then those courts would surely have ceased to exist. It was precisely because the council might get involved only where other courts were quite uncertain how to proceed that this did not happen. The king would hear the complaints of those who could get his ear, and of those who were earmarked for special treatment, but the more routine affairs would bypass him altogether.

Other causes heard by council show this tendency for that hearing not to be the final one. The Dundee cause was on one occasion simply continued. In October 1448 a hearing about the boundaries of Inverkeithing and Kinghorn did reach a verdict, but decreed that if there were any uncertainty about the old boundaries of Kinghorn then a local assize should be selected to consider and decree. (This in fact did happen). In January 1456 the council confirmed the sasine of a tenant in land in Kinross, but there was a dispute about the superior of the lands which would only be settled later.

Decrees by the lords' auditors also illustrate this point. On three occasions the Dundee cause was simply continued. In other matters, twice possession was awarded to one party, but the other was allowed to pursue the matter at law if he felt he had a right to the subjects. On another occasion an assize would be elected to determine the true possessor of a fishing,
Knowing that the council frequently did not make a final
decree allows us to put its inability to make a decree in fee
and heritage causes into context. That said, in other causes
the council might not reach a final verdict but this was not
necessarily because it was restricted by policy or statute, as
was the case with fee and heritage issues. No examples are known
of pleading against a council hearing in non-fee and heritage
matters.

The evidence reviewed here indicates a rather tentative approach
by both council and auditors to fee and heritage matters. Although
Montrose clearly regarded parliament as a competent body to settle
its dispute, the auditors were extraordinarily reluctant to issue
a verdict when they considered the affair. Yet as they were
elected in parliament one could only imagine that they would have
been a competent tribunal in what was undoubtedly a fee and heritage
matter. It is strange, then, to find later in the century that
the auditors were inclined to reject fee and heritage causes in
favour of the ordinary. Dr. MacQueen certainly considered
that it was only in the mid-fifteenth century that the rule
surfaced forbidding parliament or council determining in fee and
heritage matters. The rule arose as it was reckoned that when
common law could provide a remedy then litigants ought to pursue
the matter there. The variety of evidence adduced here cannot
be stated to prove positively that this was the case, but that
forespeakers were unhappy with the king interfering in such affairs
is clear. The solution to this may be that the king's actions were
frequently determined by expediency still. His council was more frequently having to consider causes brought to it quite apart from those the king felt it necessary that council should hear. Inevitably these causes included some touching on fee and heritage; but to counter the king's increasing interference there was a growing number of legally-aware men acting as fore-speakers whose aim may well have been as much to delay the issue of a decree as to erect a theory of limitation by constitution. For such men, precedent was more important than the natural merits of the cause. 149
CHAPTER SEVEN: FOOTNOTES


4. MacQueen, Ph.D. thesis, 280. No footnote is given here to indicate what he was referring to, but it seems to be the petition of the Grahams (HMC, Var. Coll. v, 77), on which he commented at 14-16. There is no discussion in secondary literature in print known to me of the Dundee cause. This might seem strange, in view of the extensive documentation; but is entirely explained by the relative inaccessibility of almost all the documents until the last few years. The H.M.C. report on the Montrose burgh archives hinted at their richness, but is handicapped by some eccentric dating of documents apparently examined for the report (HMC, ii, 205-06).

5. RRS, i, no. 19.

6. Ibid., 95, and see generally 92-95 for comment on the charter.

7. When last seen by this author the 1409 transumpt was loosely inserted in volume 1/10/7 (Charter Chest Inventory) in Montrose.


9. RRS, v, no. 117.

10. Ibid., no. 278.

11. Ibid., 30.

12. Ibid., no. 336; and see also for comment on this especially 27-31.

13. RRS, vi, no. 464.


16. Ibid., 176; and for much of this see the article generally.

17. ER, iv, 432-34; ER, vi, 16.
18. ER, iv, 448-49; ER, vi, 18.

19. ER, iv, 375.

20. Ibid., 429.

21. ER, vi, 505, 137.

22. ER, iv, 35-36, 354.

23. Examples of the king's letters, dated 26/3/1424, are PKDA: B 59/25/1/1; DDA: TC/CC 1/26. The matter is discussed in Balfour-Melville, James I, 94-105. A remarkable survivor in the Montrose archives are letters of receipt for 1,000 marks issued by Henry VI on 14/2/1425 by Richard Bookland, treasurer of Calais: M/WD/1. On the dorse are letters by Henry assigning Bookland 8,000 marks of the ransom to pay the soldiers and captains of the garrison. Henry's letters are calendared from an English source in CDS, iv, no. 971.


26. Apparently what is now StAUL: B 13/22/3 (28/2/1429).

27. StAUL: B 65/22/23. The same document serves to record the decision in St. Andrews v. Cupar as in St. Andrews v. Crail, which may serve to confirm the suspicion that as yet no fixed means of issuing decrees of the lords auditors had been found. No doubt it was also cheaper to have one document serve the purpose of two.

28. SRO: GD 1/349/5.

29. EUL: Laing Charters no. 111.


31. StAUL: B 10/14/3. For court of the Four Burghs generally, see Aberdeen Burgh Recs., cxlii-cxliv.

32. ECA: Charter Chest Inventory vol. 1 p. 440 (1/24/22). There are various texts of this document known to me. The text that I have used occurs in a transumpt of 1483. A poor version is Fraser, Colquhoun, ii, no. 20; another is at Descriptions of the Sheriffdoms of Lanark and Renfrew (Maitland Club vol. xii; Glasgow, 1831), 283-84. I am aware that Dumbarton had its own MS version when the SRO surveyed local authority archives before 1975, but I have not checked on the current location of this document, as the version in Edinburgh seems quite reasonable.
34. Ibid., no. 252.
35. Ibid., no. 946.
36. DDA: TC/CC 1/27.
38. See above, p. 44 (for Somerville); 78-79 (for Forrester); 44-45 (for Ogilvy); 125-30 (for Lord Crichton); 45-46 (for Douglas).
42. The instructions are Montrose: M/WD/1. The three notarial instruments on the ayre are Montrose: M/W1/14 "Trading" no. 2; M/W1/15; CR2/11(4).
44. Montrose: M/WC/7/1.
46. The original MS of this instrument is now lost, but a summary is available in the papers of the nineteenth-century antiquarian Patrick Chalmers of Auldbar: NLS: MS 15,471 f.95.
47. Montrose: M/W1/4 "Trading" no. 5.
49. Montrose: M/W1/14 "Trading" no. 3.
50. Montrose: M/W1/14 "Trading" no. 4.
53. Montrose: M/W1/14 "Trading" no. 7. The text of this protest has been transcribed in Appendix E of this thesis.
55. Ibid., no. 964.

56. Ibid., nos. 969, 978, 987.

57. Montrose: M/W1/14 "Trading" no. 6. The instrument is dated 5/8/1458, but the papal year is given as 1st year of Pius II. Since Calixtus III died on 6/8/1458 and Pius II was not elected until 19/8/1458 it should not be possible for a clerk to have dated the instrument to the next papal year so early. Subject to a further check on the date of this instrument, which is not well preserved, I have taken it to be written in 1459. It would fit well into the course of events in 1458, of course.


59. Ibid., nos. 1132, 1133.

60. The six still alive were: Andrew lord Gray; Mr. Patrick Young; Mr. Laurence Piot; John Mar; Lancelot Abernethy and John Darrow. The six who were now dead were: John Ralston, Bishop of Dunkeld; John Winchester, Bishop of Moray; Patrick lord Glamis; Alexander Nairn of Sandfurd; John Lumsden of Glegerno; and Thomas Berwick.


63. Montrose: M/W1/15.

64. Montrose: M/W1/14 "Trading" no. 9 (procuratory); Montrose: M/W1/1/4 (hearing by council).

65. DDA: TC/CC 1/39.


67. Montrose: M/W1/14 "Trading" no. 13. The reason for this commission being in the Montrose archives is quite straightforward. The settlement of 9/11/1462 included the interchanging of the respective commissions by the burghs to their procurators to draw up the settlement.

68. One of the settlements is at DDA: TC/CC 1/40; the other, matching half of this indenture is SRO: GD 1/176/1, part of a small collection of writs in Auldbar House (now demolished). It is endorsed "Indentour betuyx us and Dunde" (not contemporay). These writs were passed to the SRO on the understanding that should a rightful owner of any appear then it or they would be would be returned. A prima facie case could therefore be made for the return of this document to Montrose to the custody of Angus District Council. The other half of the settlement is available only in one text: Montrose: M/W1/1/5.

Brechin was not impressed by the settlement presuming to dictate its rights in the future. In June 1464 it obtained a council decree against Montrose, permitting it to enjoy its old privileges of load and unloading in the haven of Montrose. Remarkably, the provost and bailies of Montrose were to enter the king's ward when charged to remain there to be punished at the king's will for the harm done to Brechin (Montrose: M/W1/10/2).
69. In March 1587 there was a need to consider the matter again and the 1462 settlement was ratified; Dundee Chrs., Appendix: Inventory of Charters, Writs, and Public Documents of the Burgh of Dundee ... 1879: Box 1 nos. 67-69.

70. Montrose: CR 2/10.

71. Montrose: M/WI/14 "Trading" no. 6.

72. Montrose: M/WD/1. The original instructions are in Scots (with the exception of two Latin paraphrases), but the document is not so well preserved as has yet allowed a full transcript. The version here thus rewrites the sections in Scots into English, but done in a manner which still preserves some of the form and order of the Scots. Uncertainty must surround some of the transcript because of the damage. It is largely for these reasons that it was decided not to provide a full transcript in an Appendix.

The instructions quote next after the Regiam Majestatem text part of the Canon Law, tit. De rescriptis, which it is claimed bolsters the argument just presented from native law.

73. APS, i, 498, 509, 535.

74. W.C. Dickinson, 'The Acts of Parliament at Perth, 6 March 1429/30', SHR xxix (1950), 3. The text as cited by Dickinson leaves it unclear whether or not after the words "Statuit dominus rex" the MS then actually cites a statute of David II. A check on the MS (SRO: RH 4/150, a microfilm of the original burgh court book now held in the Carnegie Library in Ayr) shows that Dickinson has printed all of the MS for this particular statute.

75. Montrose: M/WI/14 "Trading" no. 2.

76. Montrose: M/WI/15; CR 2/11(4).


79. Montrose: M/WI/14 "Trading" no. 7. This protest is reproduced in full in Appendix E of this thesis.

80. Glamis Castle (Strathmore MSS) Box 4 no. 92. The careers of both Graham and Guthrie were discussed earlier: for Graham, see above p. 238 n.137 and for Guthrie, pp. 293-95.


82. SRO: B 51/10/1 p.5.

A further fifteenth-century example of this type of plea is provided by HNC, Var. Coll. v, 77. It is an answer by three men surnamed Graham to a citation by the king's letters to compear to answer to him for the lands of Hutton. They complain that the lands have long been their fee and heritage, and they they cannot be ejected without a pleadable brieve; they also claim that they need not answer for their heritage before the king's council /
council. Dr. MacQueen discussed this plea in his Ph.D. thesis, 14-16. There is no date applied to it, but names of witnesses to it are listed. It will take some careful searching to establish time limits for the document, but I am fairly confident that it can be tied to the reign of James II.

The original MS was formerly in the SRO within GD 97/3, but was withdrawn and offered for sale at Sotheby's in November 1980. It did not sell then, and was re-offered successfully on 20 July 1981. Through the kind offices of Mr. R.L. Davids of Sotheby's, I was able to attempt to track down the buyer of the document, but without success. Fortunately a microfilm copy is available in the SRO at RH 4/24/1.

83. See above, pp. 327-28; cf. p. 331.
86. Ibid., no. 321.
87. NLS: MS 15,471 f. 95.
88. Montrose: M/W1/14 "Trading" no. 5.
89. Montrose: M/W1/14 "Trading" no. 4.
92. Montrose: M/W1/14 "Trading" no. 7. This protest is reproduced in full in Appendix E of this thesis.
94. Ibid., nos. 1132, 1133, 1145.
95. DDA: TC/CC 1/39.
96. Montrose: M/W1/14 "Trading" no. 10.
97. There are two documents bearing on this cause: App. A, no. 692 (very poorly preserved); NLS: Ch. 16,060.
98. SRO: GD 150/14(k). The relevant section of this notarial instrument runs: "... quamvis super cognitione huiusmodi piscarie idem dominus de Lochleven se stare obtulerit iudicio domini nostri regis et sui consilii cum eundem tangat in feodo et hereditate ipse tamen dominus episcopus hoc facere recusavit...".
100. SRO: GD 49/7.
101. MacQueen, 'Jurisdiction in Heritage', passim; Sellar, 'Common Law of Scotland', 94.
104. ACA: CR 4 p.5.
107. BL: Add. MS 33, 245 f. 168r-169r.
109. Three notarial instruments cover these protests; Montrose: M/W1/14 "Trading" no. 2; M/W1/15; CR 2/11(4).
110. SRO: GD 49/6.
111. ACA: CR 51 p.393.
112. APS ii, 35 c.5, 50 c.23.
113. ER, vi, 125, 494, 588.
114. ER, v, 630.
115. For Crichton's intromissions, see e.g. ibid., 63, 72; for Angus, ibid., 127, 177; for Crawford, ibid., 131, 133-34, 153-54; for Seton, ibid., 70, 106.
117. Montrose: M/W1/14 "Trading" no. 7 (reproduced in Appendix E).
118. SRO: GD 49/7.
119. SRO: GD 124/1/149, 151.
120. The poem "The Harp" is printed in Chron. Pluscarden, i, 392-400. The question of its date has been frequently considered. Professor Lyall prefers a date of c.1449; see his 'Politics and Poetry in Fifteenth and Sixteenth Century Scotland', Scottish Literary Journal iii (1976), 19-20; 'The Court as a Cultural Centre', History Today xxxiv (Sep. 1984), 29. Professor MacQueen has considered that the poem may be by Robert Henryson, and therefore would ascribe a later date to its composition (at least late 1450s): 'The Literature of Fifteenth-Century Scotland', in Brown, Scottish Society, 203-04. The traditional date for the chronicle itself is c.1461: Chron. Pluscarden, i, ix-xxiii. Generally on political literature, see R. Mason, 'Kingship, Tyranny and the Right to Resist in Fifteenth Century Scotland', SHR lxvi (1987), 125-51; and the same author's 'Kingship and Commonweal: Political Thought and Ideology in Reformation Scotland' (Edinburgh, 1983, Ph.D. thesis; not read by this author).
121. See above, pp. 332-33.

122. DDA: TC/CC 1/32.


124. A helpful recent summary of medieval burgh records is I. Flett and J. Cripps, 'Documentary Sources', in M. Lynch et. al. (edd.), The Scottish Medieval Town (Edinburgh, 1988), 18-61. A potential addition to this list of burgh archives is a few entries for Dumfries for 1454 contained in a notarial instrument of 5/5/1509 (Dumfries (Nithsdale District Archives) Box G 2/1), not noticed in the article just cited. The authors do not make it clear that Montrose does in fact have two burgh court books for the fifteenth century: SRO: B 51/10/1 and Montrose volume 1/1/1. The SRO volume is largely general court material, while the volume in Montrose is largely concerned with the admission of burgesses, but has other, general entries too. The Haddington record is really an embryonic protocol book.

125. See e.g. ACA: CR 4 pp. 314, 408, 473; 51 pp. 152, 155, 157, 165, 372 etc.

126. ACA: CR 4 p. 305.

127. ACA: CR 51 p. 127. Both the former provosts (Gilbert Menzies and John Fife) must have been men of some intelligence. Both acted as lords auditors (App. A, nos. 98, 302, 345). Menzies was chosen by the January 1450 parliament to consider the usefulness of old acts of parliament (APS, ii, 36 c.10). Fife (if it is the same man) was chosen by the March 1458 parliament to consider the money (APS, ii, 48 c.7).

128. ACA: CR 51 p. 175.

129. ACA: CR 511 p. 802.


132. AUL: MS 2764 Titles bundle 2 no. 27.

133. Andrew Menzies obtained sasine after the death of his father on 27/5/1452: AUL: MS 2764 bundle 3 no. 36. Tulloch's son Walter had sasine in 1453: ER, ix, 662.


136. AUL: MS 2764 Titles bundle 3 no. 53.
137. AUL: MS 2764 Titles bundle 3 nos. 86-88, 91-93.


139. Floors (Roxburghe MSS) Bundle 1120.

140. App. A, no. 1013 (for council decree). See generally SRO: GD 298/227 for a number of documents touching this cause.

141. SRO: GD 298/227.


143. Ibid., nos. 246, 252.

144. Ibid., no. 790.

145. Ibid., nos. 304, 1108, 1145. The first two of these are not strictly speaking decrees of the auditors but of another committee of parliament.

146. Ibid., nos. 172, 302.

147. Ibid., no. 138.

148. See ADA, Index of Matters, s.v. Fee and Heritage.

CHAPTER EIGHT

CONCLUSION

An essential part of this thesis was the illumination of the lives of some of the politically-interested baronage in Scotland. It will have been clear how for many life as a courtier was a career; and how it could be a financially-rewarding one at best. Sometimes the evidence just does not exist to show how much an astute baron could gather in the way of fees in any one year from the Crown; but the example of lord Crichton and the fees he was able to exact for being keeper of Edinburgh Castle may be used as a pointer. The example of the 8th Earl of Douglas at the time of the Jubilee in Rome, who bore himself "nobly in clothes, expenses and other deeds ... for which reason he was commended by the Supreme Pontiff above all pilgrims" is well known. It must not be thought, however, that Douglas was alone in being able to display great wealth.

An indicator of disposable wealth might be taken to be the erection of collegiate churches, which was in full swing in the fifteenth century. Few could ever approach the exquisite beauty of Roslin, founded by William lord Sinclair, Earl of Orkney and later of Caithness. To step inside there today is to step into a different world, more as if one is entering a building like King's College Chapel in Cambridge. Roslin is all the more remarkable when it is recalled that only the choir was ever constructed. Such a fact is a double-edged sword. On the one hand, there is the colossal expense needed to create what is now standing; on the other, the very fact that the building was never completed, suggesting that its cost had been grossly under-estimated.
The list of collegiate foundations in the reigns of James I and II is worth considering. It comprises: Carnwath; Corstorphine; Crichton; Dirleton; Dumbarton; Dunglass; Fowlis (Easter); Hamilton; Kilmun; Methven; and Roslin. Further foundations were intended at Douglas; Falkirk; Linlithgow; and St. Andrews (Holy Trinity). Barons whose careers have been considered here and who instigated such foundations are Thomas Somerville of Carnwath; William lord Crichton; Sir Walter Haliburton of Dirleton; James lord Hamilton; the 8th Earl of Douglas; Sir Alexander Livingstone of Callendar (for Falkirk); and John lord Lindsay of Byres (for St. Andrews). Such foundations, sometimes on the basis of existing churches rather than demanding a fresh building, were in part the product of a pious community, but no less of a moneyed one.

Patronage was an essential part of income at all levels; but it would be wrong to think that palms were greased in only one way. Frequent examples can be found of how people considered that a future favour might be assisted by a gift in the present to someone else. The account of the dean of guild of Aberdeen for 1452-53 presents some telling examples. No less than £5 was paid to the comptroller "for his favor and supple in all thingis"; and 10/- was paid to unnamed king's officers during the king's visit that year. The comptroller did very well, in fact, as he was paid another 30/- to help the town during the Exchequer audit. During the year the town received a Crown charter granting freedom from customs payments on salt and skins, in common with other burghs. This was not a free gift. The town paid the king £50 for the privilege, as well as £5 for the great seal and 12/- for the privy seal as part of the related costs. Seldom does one find such revealing insights into
the wheels of patronage at this period, but when the evidence is there it cannot be considered surprising.

Services rendered to the burghs can also be found well-rewarded. John Lumsden of Glegerno obtained a grant of part of the burgh muir from Crail for his work in falsing a doom in the court of the Four Burghs made by Cupar. In January 1460 Aberdeen rewarded Alexander Douglas, sheriff-depute of Aberdeenshire, with £3 6s 8d for his work on the burgh liberty and the conservation of their markets. In April 1447, Sir Andrew Ogilvy of Inchmartin and the burgh of Perth made an agreement in respect of a cause between Perth and the lord of Aberdalgie (Sir John Oliphant). Sir Andrew agreed to do his best to uphold an inquest to be made as to fishing rights on the Tay. If Oliphant were found to have no right to the fishing, then Perth would give Ogilvy £20 for his good will and favour and would also lend him 20 merks, to be repaid by Martinmas. Rewards such as these were probably not unexpected. They may indeed have been the fee for the job.

The king was the major source of patronage in the realm, but at a local level lairds and others would seek to attach themselves to barons like the earls of Douglas, or to the new political heavyweights such as the Crichtons or the Livingstons. If they wished to play the strutting peacock at court, it was essential that they could provide for their allies, and it has been seen how they managed to do this, successfully in many cases. No less in Scotland than in England could clerks hope that, by attaching themselves to a baron, they might in due course be brought to the king's attention and be employed in his chancery. For some of the clerks like Mr. George Schoriswood and Mr. James Lindsay, their early attachments brought
them into court in due course and they rapidly grew strong enough to cast off the shackles of former patronage ties. Others, such as Mr. Alexander Guthrie, decided to concentrate their attention elsewhere. No less did they manage to carve out a niche.

The rejection of patrons (which certainly seems to have occurred) was a problem for some of the baronage, especially when they were driven into a corner like the earls of Douglas. Although the Douglases may not have felt a particular loss when their former clerks deserted their side, it was certainly more significant when the lairds did the same. Such a loss of support was crucial to both the Douglases and to the king. A man such as Sir Simon Glendinning, who actually participated in the murder of the 8th Earl, clearly considered he had more to lose by siding with the Earl than with the king. It would seem that the Douglases were a declining force as the reign wore on. They undoubtedly contributed to the continuation of power of the Livingstons, and perhaps to their eventual fall. That said, their role as kingmaker was non-existent. Other forces were at work, and they had to fight to retain a foothold. The desertion from their side of the lairds meant it was considerably easier for the king than he might have imagined to defeat them. He was careful to reward those who wished to place their loyalty with him; but, as Mark Haliburton found to his cost, one could not double-cross the king.

One wonders if the crucial event in the history of the Douglases in the reigns of James I and II was not the Black Dinner of November 1440. There, the father-to-son succession was broken, and there stepped in a substantial baron in his own right, recently elevated
to an honorific earldom. He had his own allies, and it may have been those men his son adopted when he succeeded in 1443 rather than the traditional Douglas supporters. It is a topic which would need a careful study of its own, but there is a strong suggestion that the earls were no longer able to assume that they had the friendship of most of the baronage. Reid may have been wrong to regard the greater barons as necessarily natural Douglas allies, but it does look as if such men were happy to be associated with the earls early in the century. A generation later, it was a different story.

The king still had to tread warily when he came to deal with the former Douglas territories. He had managed to attract the loyalties of some of the local lairds, who frequently retained what office they had held under the earls. But the exploitation of the new Crown lands proved something of a handful. Commissioners were appointed to lease the lands, mainly men loyal to the king who had to be detached from duties at court to do so. The short-term loss of their services at court was not a major drawback in comparison with an effort to raise much-needed revenue from extensive and widely-scattered estates.

The exploitation also took the form of driving the justice ayres. On the face of it, this was a successful policy, as the fines levied show. But the king seems to have found that he had to be prepared to grant remissions of fines. The actual amount the Exchequer received was very much lower than had been expected. This was a sensible step. The king may well have been exploiting a system that Douglas had barely bothered with, and an effort to milk the new Crown lands for every penny might well have served to alienate any potential support. The policy of appeasement must
have worked quite well. The March 1458 parliament was minded to congratulate the king on the removal of all rebels and "brekaris of his Justice" so that there was "na maisterfull party remanande that may caus ony breking in his Realme". As a result parliament expressed the hope that justice could be enjoyed throughout the realm. 10

It is doubtful parliament would have expressed the same sentiments within two years of the death of James I. Both kings tended to prompt some of their own misfortunes by unpremeditated action, but James I may have caused more upset than his son did. James I was certainly unfortunate that his reign ended soon after a disastrous expedition against Roxburgh, but Bower's comments suggest that at court there were as many who disliked the king's actions as were happy to fall in line with them. 11 James II was not always the recipient of popular support, but found that his enemies were inclined to make mistakes. The king may have been surprised at how quickly the Douglases fell in 1455, but he acted decisively, and had on his side a significant weapon: the very fact that he was king.

The general lack of opposition to James II was not caused by a lack of interest in politics. The reign saw a considerable number of barons and clergy prepared to devote their time to residence at court and to work for the Crown: more than can be identified in the previous reign. In itself this would suggest James II must have had the means to reward his loyal servants: some certainly made sure they would be financially rewarded even if the king did little to help them, but others such as lords Glamis or Graham must have laboured hours in Crown service with little obvious now in the way of recompense.
The broader political base makes the reign harder to discuss. At least 175 different men witnessed a royal charter between 1437 and 1460.12 A good many witnessed only a few, and such occurrences were during an assembly of the Three Estates. Many such minor witnesses crop up in the minority years, because it was the hope that as many as possible would participate in the machinery of government. Since barely a tenth of those witnesses have been discussed at any length in this thesis, it could be suggested that we have given only cursory treatment to the topic. Yet a good many of these witnesses did occur only once or twice. Their influence on policy is not discernible, and it is often hard to establish anything more about them, even with a widespread use of primary sources.

The attendances at some assemblies of the Three Estates were earlier noticed, in an effort to comment on the level of political awareness. Since we cannot be sure how true the figures are, they can only be used as guidelines, but they do indicate that barons, burgesses and the clergy were prepared to travel frequently to court for such assemblies, even though no taxation was involved. Roskell is the main authority for attendance at English parliaments during the reign of Henry VI.13 He commented at length about how poor the attendance was there, even during the lengthy minority when as in Scotland a representative attendance was desired. In that period, generally less than half of the lay lairds summoned actually attended, and most of those who did were councillors. In February 1454 fines were even levied in an effort to build up the attendance, but only 45 of 105 lords actually appeared. This was a significant parliament because of the madness afflicting the king at the time. Roskell considered the fines were not necessarily levied because attendance
had reached a nadir, but more because of the importance of the occasion. Parliamentary attendance in Scotland does not compare too badly with the rather sorry figures produced by Roskell.

The interest in national politics can be picked up in other ways. National and local politics were not entirely divorced: the remarkable upheaval consequent on the downfall of the Livingstons is testimony to that. The officials replaced then were not just figures more at court like the comptroller. They were also sheriffs, whom the Crown's tenants-in-chief would frequently meet at sheriff courts, who in the sheriffdom generally may well have been the most obvious representative of the king. Since some of the barons were also forfeited, if barony courts were being held then again a change would be readily apparent.

This thesis has begun to study the effect of national politics on local events, and has highlighted some of the national changes which would be apparent locally. Only a careful study of some of the barons whose careers have been only briefly examined here would prove the point. One would like to know how much the lines of patronage in the localities were disrupted by the forfeiture of a leading magnate. Since in some cases (especially the Livingstons) the forfeitures were only temporary, any dislocation may only have been temporary too. A change in subject-superior may have been effected, and when the forfeiture was annulled competing claims to superiority may well have resulted, with a dispute which barely touched the lives of their vassals. But Oswald Abernethy clearly did not know who his superior was in 1447, when the tenure of the Douglas estates was in some confusion, and his ignorance can hardly have been untypical. The vassals of the earls of Mar were at a loss
how to proceed in the 1440s and 1450s. No confirmations of tenure were being issued by the Erskine claimants: it must have been well known that the king entertained hopes of claiming the lands. When a decision was reached the tenants rushed to obtain confirmation of tenure: they were only too aware how national and local politics were intertwined and how their interests might be harmed if they did not act rapidly.

The course of patronage was bound to alter in the first half of the fifteenth century largely as a result of the actions of James I and II. The forfeitures of many of the established nobles had created a major vacuum amongst the political elite. By 1439 this vacuum was such that the Livingstons (and Crichtons) could step in and proceed to infiltrate supporters into a number of significant posts. Those who wished to obtain pensions, benefices or offices now had to seek the ear of people whom before they might have ignored. In the 1440s the new, important barons began to adopt peerage titles, or in some cases have them awarded by the crown. In the 1450s the king was happy to elevate some barons to the honorific title of earl. Only a generation earlier many of these new nobles had had themselves to use patrons if they wished to attract the king's ear; now the boot was on the other foot. Wormald has argued that in this lies the origins of bond of manrent, by which the new nobles hoped to ensure the loyalty of the lairds in their particular locality. 14

Even after the fall of one of the new families in 1449, there was little prospect of a return to domination by the traditional nobility, who were still very weak. The 8th Earl of Douglas certainly witnessed Crown charters steadily, but he cannot be said to have dictated the
awarding of office. The new courtiers were slowly becoming built in with the bricks. The deaths of the most significant members of the Crichton family in 1454 brought no major changes, with one exception, which must surely have been startling at the time.

This was the appointment as chancellor of William lord Sinclair, Earl of Orkney. On only a very few occasions before his appointment in April 1454 had he witnessed Crown charters, or been associated in some other way with the administration. One can only think that it was the king's personal choice, largely as it was with the return of James Livingston as chamberlain about the same time. The courtiers reasserted themselves within two years, and Orkney was replaced by another favourite, the Bishop of Brechin, but one who was more in tune with the administration. The remaining years of the reign saw greater stability in terms of office-holding, and it was only the sudden death of the king which produced great change.

Such a brief period is too short to gauge whether this stability was reflected in local politics, but again an exhaustive analysis might be fruitful. It would be an analysis very much reliant on the modern-day descendants of the fifteenth-century landed families: some prefer to retain their own family papers rather than depositing them with either a local or a national record office, and a researcher is quickly used to finding papers relating to one area hidden in the accumulations of a family largely represented elsewhere. This would be a study worth considering. The court was certainly far away for a Gallovidian or an Aberdonian, but developments at court had a habit of being reflected elsewhere.
The course of the great Dundee dispute is an excellent example of how even judicial business could be affected by political troubles. Since the dispute was so frequently aired in 1450 without reaching a definite conclusion, and only resurfaced at a time when the Douglas affair was over and the realm was stable, it is hard to avoid the conclusion that politics had interfered with the hearing. Crown policy seems also to have interfered. The king and council evidently wanted a settlement in favour of Dundee, even if in fact it was only a minor privilege which would fall to Dundee (that of indicting forestallers throughout Forfarshire at chamberlain ayres in Dundee). If we could have shown that a magnate with a Dundee link had been prominent at court and could therefore have pushed the council towards adopting a pro-Dundee policy, then the point would have been proven. Regrettably, it seems impossible to do this.

A baron with an obvious link with Dundee was Sir John Scrymgeour, hereditary constable of Dundee. Although he was a witness of Crown charters, this he did only twice. He was not the recipient of pensions from the king. His position in the burgh was recognised by an annuity, but nothing else fell his way.\(^\text{17}\) He did act once as a justiciar in hac parte, was once an auditor and once on the session, but the evidence does not justify regarding him as a confidante of the king.\(^\text{18}\) That he did take an interest in the cause is clear, but it must be doubted that he influenced Crown policy towards it. Since neither the earls of Angus nor of Crawford apparently took any interest in the matter, it looks as if the Crown's policy were dictated by commercial interests, and Dundee's important trading position must have played a part in deciding that policy.
Despite the administration's desire to rule in favour of Dundee, it was nevertheless prepared to stomach a private settlement between the burghs. This readiness suggests that the Crown would be content if the dispute could be settled without further troubling the council, a judicial forum which was expected to act in causes where the ordinaries were not competent, but which was not yet fully organised. The Crown realised that it would be hard to enforce an award which largely involved a judicial privilege. Simply permitting Dundee to control all indictments of forestallers would not prevent Montrose protesting in future at great length during chamberlain ayres, and perhaps clogging up the system further. The experience of 1448 showed that a clever forespeaker could make mincemeat of an unprepared chamberlain. Encouraging an arbitration while being prepared to impose a settlement probably seemed the best way out for the Crown.

Although the subject of arbitration was barely touched on in this thesis, arbitrated awards were frequently encountered during research, and a full study would be possible. Such a study could also throw light on the matter of interplay of local and national politics. Frequently one encounters as arbiters barons or clergy who were usually present at court. Often they were present as local worthies, but it ought not be discounted that they could also have been selected as arbiter because of their abilities. Those who were effectively engaged full-time in duties at court would be seldom found as arbiters unless the cause had a particular interest for the Crown. The arbiters would tend to come from those who often performed tasks for the Crown, as in hac parte officials, and who might also witness Crown charters, if
infrequently. In this manner the Crown did not necessarily control arbitration, but could have a finger on the pulse of its workings. Arbitration as a means to social peace was much to be encouraged. The poor survival of court records would make it hard to determine to what extent arbitration and litigation in court were complementary in Scotland (in England, research has suggested that court cases were often just one way of attempting to settle a dispute: arbitration was sometimes contemplated at the same time as litigation was initiated). 19

A satisfactory answer may in fact never be made to the question why court records survive so much better for the mid-fifteenth century onwards. Some records are already so full that it seems improbable that there had not been earlier volumes; yet an impression on reading the Aberdeen court records is that they do steadily increase in extent of recording as the years pass, but earlier records here survive, so one cannot argue that the records here show growing maturity as their value to the burgh became more apparent. While the council was already organised adequately for the production of extracts of its decisions, there must remain a suspicion that it was not yet hearing regularly the full range of causes that it did when its records survive. Since it was suggested that up at least to the early 1460s the session was intended to be the body which could deal with many causes brought to the king's notice, the lack of council decrees may be thus explained. An effort had been made to deal with what must have been increasing litigation, and a solution had been found. The solution was one which was tripped up by the king's death. The council began deliberately to increase its involvement in judicial
affairs, and by doing so attracted litigation. The session fell victim to what might today be called "market forces".

Since the amount of litigation probably did in fact increase during the fifteenth century, there would be a greater prospect of employment for professional forespeakers. During this thesis efforts were made to outline the careers of men like Lancelot Abernethy, Mr. Alexander Guthrie and Alexander Graham. Perhaps the surprising thing about such men is that they are generally laymen. Even Guthrie was a laird in his own right. There are not many more of them who can be identified with certainty; but again it would be possible to set out with this aim in mind and pore through the burgh court records especially, as one will frequently find nominations of procurators there. Having done this, one could then go back to the estate records to try to establish their work elsewhere. It certainly should be expected that we could find evidence of the burgeoning legal profession. Parliament in August 1455 enacted some sumptuary legislation, which included that:

".. all men of lawe that ar forspekaris for the cost halff habitis of grene of the fasson of ane tunykill and the sleves to be opyn as a tabart...". 20

If this was to be a meaningful statute for contemporaries, then there must have been at least a good number of "men of lawe". While some barons still seem content to have been represented by their peers in judicial matters (William Hay, Earl of Errol may have been more than usually accomplished in this respect), 21 once a clever forespeaker had successfully won a cause against such a baron it would be inevitable that forespeakers would in future have greater patronage.
In neither the political nor the judicial sphere was the history of the council in the reign of James II one of progress. In the political sphere the council would always be dependent on the personality of the monarch and his age. James I had been a powerful monarch and little dependent on his advisers. To some extent therefore it was a surprise that on his murder the potential councillors were prepared to come forward and contribute to the minority administration, only to be pushed aside by a clique. Not entirely bowed by this, they would return in the 1450s prepared to serve under the son of the monarch who had felt little need for advice. They would encounter a king who was no less powerful, but who wished strong advisers who could prepare schemes for the better administration of the new Crown estates. James II would often take a personal interest in routine administration, and was prepared to perambulate his realm. The king also needed his council for some judicial business, but was prepared to entertain other forums as places where litigation could be conducted where the ordinaries were unable to provide a solution. The judicial council was not dissimilar to the regular, daily council. Certainly one would often find in judicial business barons or (occasionally) burgesses who must have been brought in to provide specialised knowledge which the council needed to solve a cause. The sudden death of the king at the siege of Roxburgh on 3 August 1460 was undoubtedly the most tragic event of fifteenth-century Scotland; but it did not mark the death of a great, reforming monarch. Change was in the air, but reform was carried out only if it could not be avoided. The remarkable Dundee cause was surely a prime mover when reform came.
CHAPTER EIGHT: FOOTNOTES

1. See Law's Chronicle, quoted in ER, v, lxxxv n.2. Generally in this chapter footnotes are used only when material which has not been quoted and discussed before is introduced. There are no cross-references for this reason.

2. For Roslin, see e.g. C. McWilliam, The Buildings of Scotland: Lothian (Harmondsworth, 1978), 409-17), naturally a more sober account of this extraordinary structure than a historian might give.


4. ACA: Guildry Accounts 1452-1453, f. 1r-4r.

5. App. A, no. 680. Identical charters were granted in favour of Linlithgow, Stirling, Dundee, Haddington, Perth and Montrose the same year: ibid., nos. 556, 558-60, 581, 678.


7. PKDA: B 59/36/1/6. There was bad blood between the town and the Oliphants. One of the most remarkable documents of the reign of James II is a remission of rancour in favour of the provost and 417 other inhabitants (all named) of Perth for burning Oliphant's house at Dupplin: App. A, no. 719.


10. APS, ii, 52.


12. This is a deliberately vague number, as uncertainty surrounds the identity of a few witnesses. A certain date of death of men whose heir bore the same Christian name as they did might increase or decrease this number. Conversely, the names of three men probably making their only recorded appearance as witness during the reign are largely lost in a damaged charter and are thus not included in this total (App. A, no. 90).

14. Wormald, Lords and Men, esp. chap. 3; see also the same author's 'Lords and Lairds in Fifteenth-Century Scotland: Nobles and Gentry', in M. Jones (ed.), Gentry and Lesser Nobility in Late Medieval Europe [spine says "..England"] (Gloucester, 1986), esp. 187-96.


17. As charter witness: App. A, nos. 156, 244. For annuity, see ER, v, vi: Index s.v. Scrymgeour, Sir John.

18. As justiciar: App. A, no. 895; as auditor: ibid., nos. 172, 175; on session: ibid., no. 867 (election thereto: APS, ii, 46 c.8). App. A, no. 1108 is an example of him appearing in the Dundee cause: curiously, he was chosen here as one of the lords to deliver on the matter. He cannot have been altogether impartial.


20. APS, ii, 43 c.12.

21. Although William Hay, Earl of Erroll, witnessed only 34 royal charters during the reign of James II, he did lead quite an active life at court and elsewhere. On two occasions, he acted as a councillor in judicial business (App. A, nos. 321, 705); and other instances of him being at court (for example, during parliament) can readily be found. Elsewhere, he acted as procurator for lord Glamis in July 1451 in a perambulation dispute, which Glamis wished to have delayed. He had the misfortune to be opposed by Mr. Alexander Guthrie on this occasion (BL: Add. MS 33,245 f. 168r-169r). He was involved in litigation with the king concerning the right of patronage of Erroll church, which was not something to be taken up lightly (see App. A, nos. 353, 809; SRO: RH 1/6/54; SRO: GD 1/589/1; CSSR, iii, 108, 113). Indeed, further work may show that, despite being elevated to an earldom in July 1452, Hay was not too inclined to be a supporter of the king. Since he had married a daughter of the 7th Earl of Douglas (SP, iii, 564), this would not be surprising.