

## Original Documents.

CHARTER BY MARK KER, ABBOT OR COMMENDATOR OF NEWBOTTILL, TO HELEN LESLIE AND HER SONS, OF LANDS IN THE PARISH OF TEMPLE, CO. EDINBURGH, BELONGING TO THE ABBEY, DATED 13 JUNE, 1565.

Communicated by JOSEPH BAIN, F.S.A. Scot.

Omnibus hanc Cartam visuris vel auditoris Marcus Abbas seu Commendatarius monasterij de Newbottill et eiusdem loci conventus, Sancti Andree Diocesis Superioresque terrarum et molendini subscript' Salutem in Domino sempiternam Noveritis nos unanimi consensu et assensu dedisse concessisse et hac presenti carta nostra confirmasse necnon dare concedere et hac presenti carta nostra confirmare honorabili mulieri Helene Leslie in vitali reddito pro omnibus sue vite diebus et Marco Ker eius filio, et heredibus suis masculis de corpore suo legitime procreandis, quibus deficientibus Andree Ker etiam filio dicte Helene et heredibus suis masculis de corpore suo legitime procreandis, quibus deficientibus nobis dicto Marco commendatario et heredibus nostris quibuscunque reversuris Omnes et singulas terras de Huntlawcoit cum molendino de Gledhouss vulgo nuncupato Gledhoussmylne, cum terris molendinariiscroftis domibus edificiis hortis earundem et astrictis multuris totius Baronie nostre de Morphet solitis et consuetis Necnon totam illam partem de Toksydehill quam quondam Hugo Dowglas Burgensis de Edinburgh in assedatione habuit cum omnibus suis pertinen' Jacen' in Domino nostro de Morphet infra vice-comitatum de Edinburgh. Quequidem terre cum molendino terris molendinariiscroftis domibus, edificiis et ortis earundem et astrictis multuris antedictis cum singulis suis pertinentiis fuerunt honorabilis viri Joannis Blacater de Tulliallane perprius in feudifirma hereditarie Et quas idem per fustim et baculum ut moris est in manibus nostri dicti Abbatis seu Commendatarii tanquam in manibus Domini sui superioris earundem personaliter apud Edinburgh sursum reddidit pureque et simpliciter resignavit Ac totum jus et clameum proprietatem et possessionem que in eiusdem habuit habet seu quovismodo habere poterit pro se et heredibus suis omnimodo quieteclamavit in perpetuum Tenendas et Habendas omnes et singulas pre-nominatas terras de Huntlawcoit cum molendino de Gledhouss terris molendinariiscroftis domibus edificiis et hortis earundem et astrictis multuris antedictis Necnon terras de Toksydehill predictis cum omnibus suis pertinentibus prefatis Helene Leslie In vitali reddito pro omnibus sue vite diebus et prefato Marco Ker eius filio et heredibus suis masculis de corpore suo legitime procreandis quibus deficientibus dicto Andree

Ker etiam filio dicte Helene et heredibus suis masculis de corpore suo legitime procreandis quibus deficientibus nobis dicto Marco commendatario et heredibus nostris quibuscunque reversuris de nobis et successoribus nostris dicti Monasterij Abbatibus seu Commendatariis et Conventu in feudifirma et hereditate imperpetuum. Per omnes rectas metas suas antiquas et divisas prout jacent in longitudine et latitudine. In boscis planis domibus edificiis moris maresiis viis semitis aquis stagnis lacubus rivolis pratis pascuis et pasturis aucupationibus venationibus piscationibus petariis turbariis carbonibus carbonariis cuniculis cuniculariis columbis columbariis molendinis multuris et eorum sequelis lignis lapicidiis lapide et calce fabrilibus brasinis brueriis et genestis silvis nemoribus virgultis cum curiis et earum exitibus herezeldis bludewittis et mulierum merchetis cum communi pastura libero introitu et exitu Ac cum omnibus aliis et singulis libertatibus commoditatibus proficuis asiamentis ac justis pertinentibus suis quibuscunque Tam non nominatis quam nominatis tam subttis terra quam supra terram procul et prope ad predictas terras cum molendino terras molendinarias edifica et astrictas multuras antedictas cum pertinentibus spectantibus seu juste spectare valentibus quomolibet in futurum. Libere quiete plenarie integre honorifice bene et in pace sine aliqua revocatione impedimento aut obstaculo aliquali. Reddendo inde annuatim dicta Helena durante vita sua Et deinde prefatus Marcus Ker et heredes sue predicte ac assignati Nobis et Successoribus nostris antedictis summam Viginti unius librarum sex solidorum et octo denariorum usualis monete regni Scotie ad duos anni terminos, festa viz. Penthecoste et Sancti Martini in hieme per equales portiones. Necnon heredes dicti Marci Ker predicte ac assignati duplicando dictam feudifirmam primo anno eorum introitus ad prefatas terras et molendino prout usus est feudifirme. Ac etiam prefata Helena durante vita sua et postea dictus Marcus Ker heredes sui suprascripti ac assignati prestando tres sectas curie ad tria nostra placita capitalia Baronie nostre de Newbottill annuatim apud monasterium eiusdem tenenda tantum secundum formam nostre infeodationis feudifirme dicto Joanni Blaater suis heredibus et assignatis desuper confectis Pro omni alie onere exactione questione demanda seu servitio seculari que de predictis terris cum molendino et pertinentibus per quoscunque juste exigi poterit quomolibet vel requiri. Insuper dilectis nostri Joanni Kirkpatrik et Joanni Forsyt ac vestrum cuilibet coniunctem et divisim Ballivis nostris in hac parte specialiter constitutis Salutem, vobis precipimus et mandamus quatenus visis presentibus indilate statum sasinam hereditariam pariter et possessionem corporalem actualem et realem omnium et singularum prefatarum terrarum de Huntlawcoit cum molendino antedicto terras molendinariis croftis domibus edificiis et hortis eorundem ac astrictis multuris antedictis ac terrarum de Toksydehill antedictarum et omnibus suis pertinentibus dicte Helene Leslie in vitali reddito pro omnibus sue vite diebus ac prefato Marco Ker hereditarie vel suis certis actormatis latoribus presentium secundum tenorem prescripte carte nostre que de nostris inde habent juste haberi faciatis et deliberetis. Et hoc nullo modo omittatis ad quod faciendum vobis et vestrum cuilibet coniunctem et divisim ballivis nostris antedictis nostram plenariam et irrevocabilem tenore presentium committimus potestatem. In cuius rei testimonium huic presenti carte nostre preceptum sasine in se continenti manibus nostris subscriptis Sigillum ac Capituli nostri est appensum Apud idem nostrum monas-

terium decimo tercio die mensis Junii Anno Domini Millesimo Quingentesimo Sexagesimo quinto.

MARCUS COMMENDATARIUS  
DE NEWBOTIL.

JOHANNES BANNATYNE.  
WILLIUS. HAIRLAW.  
GORGIUS RYCHARDSON.  
THOS. GULD.

This Deed is clearly written on parchment, with contractions, which have been extended. The signatures opposite that of the Abbot are probably those of the monks. The seal (in fair preservation) is still appended. It is in red wax enclosed in white, and vesica shaped. In the upper compartment the Virgin Mary crowned, and seated, under a canopy. In the lower, an ecclesiastic with a nimbus stands holding a pastoral staff in his right hand, and a book (?) in his left. On the right is a small shield with the arms of Scotland. On the left another with the Commendator's family arms, a chevron charged with three stars, and in base a unicorn's head. Below the shield the letters M.K. The legend is:—

“✠ [S. COMM]VNE + MONASTE[R]II + DE + NEVBOTTIL +”

ABSTRACT.

Mark, the Abbot or Commendator of the Monastery of Neubottill, and the Convent, Grant to an honourable woman Helen Leslie in liferent, and to Mark Ker her son, and the heirs male lawfully to be procreated of his body; whom failing to Andrew Ker, also son of the said Helene, and the heirs male lawfully to be procreated of his body; whom failing to the said Mark and his heirs whomsoever, the lands of Huntlawcoit, with the Mill of Gledhouss and the astricted miltures<sup>1</sup> of the granter's Barony of Morphet, and all that part of Toksydehill which the late Hugh Douglas burgess of Edinburgh had in lease, lying in the granter's Lordship of Morphet in the Shire of Edinburgh, which lands, mill, &c., belonged to an honorable man, John Blacattir of Tulliallan in fee farm, and were resigned by him in the granter's hands by staff and baton. To be holden by the said Helen Leslie in liferent, and Mark Ker and Andrew Ker and their respective heirs male in succession, whom failing by the said Commendator and his heirs whomsoever, of the granter and his successors Abbots or Commendators of said Monastery in fee farm for ever, Paying therefor annually to them £21 6s. 8d. Scots money at Whitsunday and Martinmas by equal portions, the heirs of the said Mark [junior] or his assigns doubling the same the first year of their entry, and making suit at the three head Courts of the Barony of Newbottill held at the monastery thereof. Signed and sealed by the granters at Neubottill on the 13 June 1565.

The above Grant is a specimen of the Scotch conveyancing of the Reformation era. Its prolix clauses and repetitions show how the elegant brevity and simplicity of the early charters, by which half a shire was often conveyed in a deed of a few lines, were being expanded into the “damnable iteration”—the disgrace of Northern conveyancing—which has been with difficulty extinguished within the present generation, by the successive efforts of enlightened Lords Advocate.

The chief interest of the Document, however, is centred in the granter

<sup>1</sup> *i.e.*, the miller's dues for grinding corn.

and grantees. Though nothing in the deed shows this, they stood in very close relationship. Abbot Mark Ker was (só far as a churchman could be) the husband of Helen Leslie, to whom he grants the lands in liferent and *her* [he does not say *his*] two sons successively in fee. The "Abbot or Commendator," as he styles himself, was a type of the Scottish Churchmen of the day, who, by accommodating themselves to the new order of things, secured the temporalities of the religious houses over which they presided for their own families. Many, as the records show, were dissolute persons, and provided for their illegitimate offspring; but Abbot Mark was of a different stamp, and founder of the distinguished House of Lothian, the present head of which has shown a noble example to his countrymen in the care and munificence with which he has restored the beautiful ruins of Jedburgh.

In Douglas' *Peerage of Scotland* (Wood's Edition) ii, p. 130, the following account is given of Mark Ker and his immediate descendants. "Mark Ker, second son of Sir Andrew Ker of Cessford, entering into Holy Orders, was promoted in 1546<sup>1</sup> to the dignity of Abbot of Newbottle, which station he possessed at the Reformation of 1560, when he renounced the profession of Popery, and held his benefice in commendam. He had the vicarage of Lintoun, co. Peebles, for life, 26th March 1564, got a Charter under the Great Seal to Mark Ker, Commendator of Newbottle, and Helen Lesly his wife, of the lands of East and West Bernis, in the Constabulary of Haddington, 13 May 1567; was appointed one of the Extraordinary Lords of Session, 20th April 1569, and died in 1584. He married Lady Helen Lesly, second daughter of George, 4th Earl of Rothes, and by her had

1. Mark [his successor].
2. Andrew, of Fentoun.
3. George, mentioned in Robertson's History as an Emissary from the Catholic Noblemen to the Court of Spain 1592.
4. William.

And a daughter Catherine, m. William, Lord Herries.

II. Mark, Master of Requests, 20 March 1577, confirmed therein in 1581. On the death of his father, the Commendatorship, to which Queen Mary had provided him in 1567, was ratified to him by Letter under the Great Seal, 24th August 1584;<sup>2</sup> was made an Extraordinary Lord of Session, *loco patris*, 12th Nov. 1584."

He was the first Earl of Lothian, so created by patent 10th February, 1606, to him and the heirs male of *his body* [according to Douglas]; but Riddell<sup>3</sup> says to his "heirs male" simply, without the limitation. He had at least two sons (1) Robert, second Earl, and (2) Sir William Ker of Blackhope.

III. Robert, second Earl of Lothian, succeeded his father under the patent, and died on 15th July, 1624, leaving two daughters *only*. The undoubted heir male, his brother Sir William, then assumed the dignities of Earl of Lothian and Lord Newbottle, retaining the title for seven

<sup>1</sup> This date is wrong. From a Deed in the Glorat Charter Chest, dated 18th January 1556-7, the then Abbot was James [Haskell], and Mark Ker, styled "Magister Marcus Ker," was only third in the order of precedence in the Convent.

<sup>2</sup> The original of this document, with about two thirds of James VI's Great Seal appended, is still in the Glorat Charter Chest.

<sup>3</sup> Peerage and Consistorial Law, vol. i, p. 73.

years. Earl Robert, however, was *said* to have resigned his honours to James VI, who made a re-grant, *said* to have been confirmed by Parliament, to Lady Ann Ker, his eldest daughter and heiress, and her husband Sir William Ker, eldest son of Robert, 1st Earl of Ancrum, through which, and some subsequent transactions, closed by a patent by Charles II. in 1678, the Lothian earldom is held by the Kers descended of Fernherst. But Mr. Riddell<sup>1</sup> shews from authorities that the second earl never resigned his *honours*; there was no re-grant of these by James VI. or any confirmation by Parliament. He did resign his *Estates*, however, in favour of the heirs male of his body, whom failing, his eldest heir female (under which destination his daughter and her husband eventually took) and these were duly granted by the King, and the grant ratified by Parliament in 1621. The subject is too technical to be discussed here; but there are some singular circumstances connected with it. Charles I. interfered directly to extinguish the claims of Sir William Ker of Blackhope, the heir male of the first patentee, as appears by a curious letter of 30th October, 1631 (Register of Secretary Alexander), much as he did in the famous Stratherne case about the same time, where he forced William Graham the heir of the lawful Stewart line and possessor of "the reddest blood of Scotland" as in an evil hour he boasted, to resign the earldom of Stratherne and Menteith and take the inferior title of Airth in a high-handed fashion that a sovereign could scarcely venture to attempt now. Thus, like the present remarkable position of the double earldom of Mar, there *may* be two earldoms of Lothian—one under the original patent of 1606, devolving on the heir male (whoever he is) of the Kers of Cessford or Roxburghe; the other under the second patent of 1631, in which Charles I. "created" Sir William Ker (of Ancrum), husband of the heiress, Earl of Lothian and Lord of Newbottle, now enjoyed by his representative the present Marquess of Lothian. This noble house has produced many scions who have distinguished themselves in the service of their country.

The site of Newbottle, chosen with that eye to the picturesque which distinguished the Cistercian monks, in a pleasant laugh or holm, half encircled by the river Esk, is very charming. It was one of the foundations of David I, and was a favourite place of resort of the Scottish kings. Such parts of the monastic buildings as remain have been incorporated with the mansion of the Lothian family, which, in its name, Newbottle Abbey, perpetuates the memory of its early owners.

The deed that has suggested these remarks is, with some others connected with the Newbottle estates, in the archives of Sir Charles E. F. Stirling, Baronet, of Glorat, who has permitted the use of it with the liberality that on other occasions has been shewn by his predecessors in regard to their family muniments.

<sup>1</sup> Peerage and Consistorial Law, vol. i, pp. 73-82.