

ART. XIX.—*Letters of John Nicolson to Chancellor Burn.*
By the Rev. J. WHITESIDE.

Communicated at Carlisle, September 12th, 1907.

THE originals of these four letters are in the Orton (Westmorland) Church chest, which, as one would expect where a chancellor has been the incumbent, is unusually full of documents. The writer is John Nicolson, Notary Public, of Carlisle. I make him out to be the registrar, grandson of the bishop's brother John, who was also registrar and chapter clerk. He died in 1795. The letters are part of what must have been a voluminous correspondence, and leave one with an unsatisfied appetite for more. Containing a few allusions which throw a little side-light on some comparatively trivial incidents of the time, I think they may just be worth the space they will occupy in our *Transactions*. References to wills, fragments of cathedral gossip, details of the movements of personal friends, difficulties arising in country parishes about the presentation—this is the sum and substance.

I give each letter at length, and then add such notes as may help to make it more clear.

I.

We have had a Court this morning and have adjourned for five weeks, when Sentence should be given touching a Legacy, the dispute being whether it is £20 or £40, being in figures, and having an appearance of being changed from one to the other. I want to send you the original will and proceedings, but am at a loss for the best way of conveying them.

Mr. Denton showed us a letter from Widow Simpson about the fees of her accounting. Mr. Mounsey said he would examine into it, but that Parson Wills and he had been very jolly the evening that the business was settled, but he knew not what was paid.

We were at Wigton a month ago—only two Wills—Mr. Clark having then lost a son, I was obliged to carry Mr. Richardson.

I do not remember that I gave my opinion about the living of Aketon—it has made a noise, but I pretend not to judge of the obligations and quarrels of others: it is now said that there was a dispute, but we know not the cause of it.

I am, Dear Sir,
Your much obliged & obedient servant,
JOHN NICOLSON,
Carlisle, 7th Dec^r 1781.

The Court is the Consistory, which dealt with local wills up to the passing of the Probate Court Act in 1858, when they were very properly removed from the ecclesiastical sphere. If the testator had property in another diocese also, the will went to the Prerogative Court at York. In ordinary cases it was proved "in common form" before the Registrar privately, but when a dispute arose as to the interpretation, or when the validity was questioned, it must be proved "in solemn form" in Court, where the chancellor in person gave his decision. Here is a small contention, whether an amount is £20 or £40, the uncertainty being probably due to an erasure or bad writing. To refer such matters in those days to Dr. Burn at a place so inaccessible as Orton must have been a serious difficulty, and in consequence of the distance the chancellor apparently did not always attend Court: some surrogate might represent him, postponing and adjourning when the matter was important. After each such Court, the registrar would write to his superior and keep him in touch with the proceedings. One rather gathers that, however conscientiously things were done, there was no particular hurry, and less precision than now prevails. Mr. Denton would appear from Letter III. (quoted below) to have been a proctor; there were many Dentons about: the Rev. Henry was vicar of Crosthwaite and Castle Sowerby, and the name is frequent in the Dalston and Sebergham registers. Mr. Mounsey was probably George, father of Robert, who was father of George Gill, a recent registrar. Parson Wills might be

Edmond Wills, incumbent of Hayton. "Jolly" need not denote an undue amount of festivity, though those were the days of many bottles.

At that period general chapters or courts were held annually by the chancellor in the four rural deaneries of the diocese, at Carlisle, Penrith, Appleby and Wigton.* On this occasion Dr. Burn was evidently absent. Possibly the registrar for the convenience of parties may have sat for small and easy cases. Clark and Richardson might be assistants in Mr. Nicolson's office.

The Aketon dispute that "made a noise," such as is heard in most parishes at intervals, was so petty that it was not intelligible when it reached Carlisle, and has passed into oblivion. The point would arise after the death of Henry Lowther, who was presented by Sir James Lowther in 1753.

The date of the second is Dec. 17th, 1781:—

II.

Our Dean and Miss Waughs have quarrelled—they were desired by the late Dean and Chapter to sit in the Prebends' Seats (for ladies.) The Dean has got an order made for another Seat for them and Miss Wilsons (to turn Miss Waughs out.) This they greatly resent. Mr. Law is not gone. We and Mr. Paley and his wife and Mr. Law talk of going to-morrow to Netherby for a night or two. Dr. Graham had an epileptic fit last Monday—alarmed his family, but was soon well. His son and wife are gone to live near Doncaster.

The dean, † Dr. Thomas Percy (1778-1782), was a bold man to dare the displeasure of the Misses Waugh. These five ladies, Judith, Isabella, Elizabeth, Mary and Margaret, resided at Tullie House in great style and state. They were daughters of John Waugh, chancellor and prebendary, who for thirty years, to his death in 1764, had been the moving spirit in the diocese. Having inherited the paternal force of character and being the

* See Chancellor Prescott's first charge: *Visitations in the Ancient Diocese.*

† Among his Chapter was Dr. Paley.

recognized leaders of local society, they desired to lead, or not to be led, in the cathedral also. The late dean (Dr. Thomas Wilson, 1764-1768) and the chapter* had assigned seats to them among the prebendal ladies: as an act of grace they were permitted to worship, or to "sit," as the saying is, where they had sat before in the days of their father's supremacy. But now, the new dean orders a new seat to "turn them out"; this is the expressive phrase. And along with them must go also the late dean's daughters, who do not appear to have minded. The quarrel and resentment can be pictured by the imagination.

Mr. Law was the canon of the second stall. Mr. Paley was vicar of Dalston (1776-1793): his wife (the second) being a Miss Dobinson of Carlisle. Of Netherby the owner at the time was the Rev. Robert Graham, rector of Arthuret and Kirkandrews-on-Esk, who became heir in 1757 through the death, without issue, of his first cousin, Catherine Lady Widdrington. Though a visit to Netherby would seem unlikely after Dr. Graham's fit, it is explained by the statement that he "was soon well."

III.

Dear Sir,

This being a Court Day, I deferred answering your queries in hopes of receiving instructions from both proctors, but Mr. Denton has not appeared. I have sent him a copy. The will, I supposed, when proved, was engrossed 20. It is registered so. There is not the least suspicion of an alteration after the will was proved. The other questions I cannot speak to.

You will be affected, I doubt not, with Mr. Yates's death: Ainstable is vacant. Mr. Fisher has got a presentation: we have some doubt as to a dispensation. Mr. Smalwood held both.

Next Court 8th, Feb.

I am, Dear Sir,
Your obliged and obedient Servant,
JOHN NICOLSON,
Carlisle 11 Jan. 1782.

* The stalls in order were occupied by John Waugh (1768), John Law (1773), Roger Baldwin (1764), Joseph Amphlett (1763).

Whereas now any solicitor may practise in the Consistory Court, at that time it was necessary to be admitted as proctor. The legacy in dispute was to or by Daniel Wilson, as is shown by a note on the back of the letter in Dr. Burn's handwriting. The number 20 refers to the folios, and there is a question of a missing sheet.

The living of Ainstable was held by Charles Smallwood from 1749 to 1771: he also had Kirkoswald, under the great seal, from 1761 to 1771. On his death Thomas Railton was presented to Ainstable, and, he having died or resigned recently, Mr. Fisher, apparently of Kirkoswald, was presented. Nicolson is uncertain whether a dispensation is necessary. Mr. Smallwood seems not to have had one.

Richard Yates had become Master of Appleby on the cession of Jonathan Banks in 1723. There is a laudatory paragraph in Nicolson and Burn, vol. i., p. 332, to the effect that he "hath executed that office for the space of 50 years, with honour, ability, assiduity and learning, who hath instructed two generations of gentlemen and others, not only in the town and neighbourhood, but from many other parts of the Kingdom, and furnished during that time near half the foundation of Queen's College aforesaid; who, together with classical precepts, hath been always solicitous, by his example and every method of instruction, to recommend the practice of virtue and religion."

This is interesting as being probably in the words of Dr. Burn, who must have known Mr. Yates well.

Also in St. Laurence's Church there may be seen a marble tablet with the following inscription, which is said to have been the composition of Dr. Paley, sometime vicar* :—"To preserve the remembrance of a long and valuable life spent in the most useful of all employments, this marble is inscribed with the name of Richard Yates, M.A., 58 years master of the Grammar School in this town, whom an accurate knowledge of Roman literature,

* I am indebted to Mr. John Nanson of Appleby for this and other notes.

a just and harmonious elocution, universal diligence and a serious attention to the moral and religious improvement of his pupils eminently qualified for the important station which he held. He died December the 31st, 1781, and in the 81st year of his age."

In *Westmorland Church Notes* there is the following under the heading "Kirkby Stephen":—"There was a stone, now in pieces, to Mr. Yates, headmaster of the Grammar School at Appleby, and with rhymes on it."

Nathan Berry, sexton there since 1860, tells me that before the restoration it was inside against the south wall. "I read it many a time, but when they commenced restoration they removed Yates' stone and it fell to pieces, and no care was taken of it after, but I gathered together the pieces with parts of the rhymes on and placed them beside a wall in the churchyard, and afterwards with some other work going on at the church they all got used," a procedure which is not so very unusual at "restorations"!

IV.

Dear Sir,

Mr. Denton has not been here since my last to you, nor has he answered your questions.

Kirkoswald only of late has been presented to — being a Crown living the expense was thought too high for a presentation. Mr. [Fisher] intends to try them without a dispensation. Mr. Paley hears nothing of Appleby School, nor does my brother say that their College wants or intends to nominate. He has taken a living in Warwickshire. We are going to dine at Dalston. Mr. Paley is tolerably well, but very low on the weather's so suddenly changing. He said he did not speak four words on Friday. Our Dean has greatly offended the Miss Waughs about sitting in the Cathedral. He says they are ordinaries there and have a right to dispose of the seats. I question that his Doctrine and yours would accord. Mr. M. says no more about the fees—puts off all things of that kind: they talk of preparing the witnesses in C. Ricardson's Will.

I am, Sir,

Your most obedient servant,

JOHN NICOLSON,

Carlisle 20 Jan. 1782.

Dr. Burn having replied about the Ainstable business, Nicolson returns to the subject. He points out that from 1668 until of late, *i.e.*, since 1714, Kirkoswald had been sequestrated and held by a succession of licensed curates, beginning with George Yeates, rector of Croglin. The fees for a Crown living, as also for a dispensation, which is sometimes a troublesome thing to obtain, had been prohibitive. Probably the curates-in-charge of Ainstable were usually the vicars of Kirkoswald: the custom had grown up of treating the two livings as one cure, and Mr. Fisher, who had succeeded John James, proposes to continue what had been recognised.

The reference to Mr. Paley's health is interesting and makes one not at all surprised that he resided very little at Great Musgrave when he was rector there, nor was he long in possession, for a more damp and unhealthy site for a residence—liable to be flooded, as the old rectory was, to a depth of several feet by the river Eden—is impossible to think of. Before it was demolished some twenty years ago I have seen the water almost knee high in the lower rooms.

Dr. Paley was appointed to Musgrave in 1775, to Dalston (1776-1793) to Appleby in 1779 (Sept. 10) to Great Salkeld with the office of archdeacon in 1782 (Aug. 5). But, though he was a fully average pluralist, he did not hold all four together. He was at Musgrave certainly till 1777 (there is a terrier there written and signed by him of that year) and probably till 1779. He resigned Appleby in 1782, but held on to Dalston, having for three years divided his time between the two parishes.

The charter of Appleby School, granted in 1573 by Queen Elizabeth, empowered the governors to "elect head master and usher." But in 1671 an indenture was executed between the governors and the provost and scholars of Queen's, whereby the college obtained the right of nomination.* This was due to a gift of £380 to the

* Nicolson and Burn, i., 331.

school from three members of the college, viz., Thomas Barlow, provost, (afterwards bishop of "Bugden"*) Thomas Smith (subsequently bishop of Carlisle) and Randal Sanderson,† rector of Wighill, Hants, all Westmorland boys who had been educated at Appleby—born respectively at Lang-gill in Orton, Whitewall in Asby, and Reagill in Crosby Ravensworth.

John Nicolson's brother was a fellow of Queen's. Mr. Paley, having resided in the neighbourhood, would be in possession of the latest news. The college, which had nominated Mr. Yates, has long ceased to exercise the right, even if it was ever a legal one, not having been confirmed by Act of Parliament. But one governor is still the nominee of the provost and fellows.

The momentous seat question is a long time in evidence: the ladies are not without friends and supporters. Nicolson seems to be not unfavourable to them. He doubts the justice of the dean's action, or at least surmises that the chancellor would be hostile. But the dean and chapter undoubtedly were, and still are, the ordinary, the dean by himself not having, nor having ever claimed, any power to assign seats or stalls. The second letter speaks of his having "got an order," probably one passed in 1781:—"We do hereby assign the cross pew under the minor canon's stalls on the right hand to the use of the surviving families of deceased members of the chapter." What Dr. Burn's "doctrine" might be one cannot say; at any rate the chancellor himself had not, nor has (unless he be one of the chapter) any authority. Dr. Prescott, to whom I owe this and other notes, reminds me of

* So nicknamed because during his tenure of the see of Lincoln, 1675-1691, he is said never to have visited the city, preferring to reside at his palace of Bugden in Huntingdonshire. Wherein he resembles Bishop Watson. Fuller speaks of him as an "especial ornament of Westmorland," but the author of *Worthies of Westmorland* (p. 113-124) thinks that, along with Lincoln and the whole Church of England, we can "afford to forget him." This judgment seems somewhat bitter; he was a type of bishop produced by the period in which he lived. If a "time-server and sycophant," he was at any rate a very learned man.

† See "Lintel Inscription at Reagill," *Transactions*, vol. xv., O.S., p. 139-141.

an amusing episode in 1668 when Bishop Rainbow gave Chancellor Roland Nicholls leave to sit in his stall. The ordinaries "barred him out." But the bishop was soon appeased, and the chapter too; for the chancellor, having written a sort of apology to the effect that he made no claim, was assigned a seat, not a stall, outside the range of the stalls.