

DUNCAN FORBES
Fifth of Culloden, Lord President

THE LIFE AND LETTERS OF

DUNCAN FORBES
OF CULLODEN

LORD PRESIDENT
OF THE COURT OF SESSION
1685–1747

GEORGE MENARY
M.C., M.A.

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PREFACE

Early in the nineteenth century Hill Burton was engaged on a Life of Simon Fraser, Lord Lovat. On its completion, he set himself to write a brief biography of Fraser's contemporary, Duncan Forbes of Culloden, calling upon his readers to 'look here, upon this picture, and on this'. The main biography is that of Lovat, and Forbes is used really as a foil. This is the only existing Life of the Lord President. The account is, therefore, brief, and many important themes are merely touched upon. It appeared in 1847, the year marking the centenary of Forbes's death. Hill Burton's *Life* was based chiefly on the volume of *Culloden Papers* edited by Duff in 1815. Almost another century has elapsed since Hill Burton's work was written, and the recent publication of five volumes of *More Culloden Papers*, edited with skill, insight, and care, by Major Warrand has made it possible not only to verify the earlier assessment of Forbes's work and worth, but also to supplement at many important points the account of his career. This is notably true of the part he played in the punishment of the delinquents in the Glasgow Malt Riots, and in the suppression of the 'Forty-five rebellion.

In 1932 a vast number of the actual Culloden MSS., many of which are contained in Duff's volume and Warrand's volumes (1923-30), came into the possession of the National Library of Scotland. This large collection of Culloden manuscripts was still uncatalogued and unindexed, but through the kindness of Dr. Meikle, I was informed of the purchase immediately the documents passed under his care. I was, therefore, enabled to go through the whole collection of manuscripts, to examine many already published in the six volumes, and, by this complete search of the Culloden chest, to discover much new material.

In my footnotes, I have adopted the following plan :

(*a*) Where the printed letter has been corroborated by me from the MS. sources, the footnote reads (e.g.) :

C.P. 257, or Uncat. MS. in Nat. Liby.

(*b*) Where the reference is to one letter (printed), and to a *different* one (in MS. only), the footnote reads (e.g.) :

M.C.P., iii, 207, and Uncat. MS. in Nat. Liby.

The material thus obtained was supplemented by that collected in the British Museum and the Public Record Office, London.

The following topics have been enlarged upon : The Glasgow Malt Riots ; the Porteous Riot ; Forbes's work in connection with the law-courts, the Records, the manufactures, the revenues, and the Heritable Jurisdiction Act ; his management of the Argyll estates ; and his agricultural improvements. In particular, Forbes's activities during the 'Forty-five are dealt with in considerable detail, and regard is had to his part in the formation of the Independent Companies. The Forbes *milieu* is fully considered, and he himself is seen in his relations with the prominent men of his time—in the Highlands, in Edinburgh, and in London.

The narrative is unfolded, largely, in the actual words of Forbes and his numerous correspondents. The epistolary nature of the original sources employed has enabled minute attention to be paid to chronology.

I wish here to express my indebtedness to the following persons through whose kindness I have benefited, either by their advice, or by the facilities they have granted me, during my research ; the late Sir Robert Rait, and Professor J. D. Mackie, of the University of Glasgow ; Major Warrand, Dr. Barron, and Mrs. Esdaile (all of whom also generously lent me illustration blocks) ; Dr. Meikle, Librarian of the National Library of Scotland ; Wm. Angus, Esq., Curator, H.M. General Register House ; Dr. Malcolm, late of the Solicitors' Library ; Miss Dowden, and Dr. Wood, City Archivist, Edinburgh ; the Librarians of Glasgow and Edinburgh Universities, the Mitchell, Baillie, and District Libraries of Glasgow, and the Lanarkshire County Library.

GEORGE MENARY.

FORRES, *October*, 1936.

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CHIEF EVENTS IN FORBES'S LIFE

1685. 10th November. Birth of Forbes.
1702. Forbes begins legal studies in Edinburgh.
1704. Death of his father.
1705. Trial of Captain Green.
1706. At Leyden continuing his studies.
1707. Union of the Scottish and English Parliaments.
1708. Married Mary Rose of Kilravock.
1709. Admitted Member Faculty of Advocates.
1714. Sheriff-Depute of Edinburgh.
1715. Jacobite Rebellion.
Defence of Culloden House against rebels.
1716. Appointed a Depute to Lord Advocate.
Anonymous letter to Sir Robert Walpole.
Death of his mother.
1718. Burgess and Guild brother of Glasgow.
1722. M.P. for Inverness District of Burghs.
1725. Lord Advocate.
Glasgow Malt Riots.
Difference with Edinburgh brewers.
1734. Death of his brother John.
1735. Spinning School established on his estate.
1736. Porteous Riot.
1737. Lord President of Court of Session.
1745. Jacobite Rebellion : Forbes's work with the Independent Companies.
1746. His flight to Skye. Battle of Culloden.
1746-7. His work concerning the Heritable Jurisdiction Act.
1747. 10th December. Death of Forbes.

CHAPTER I

THE EARLY YEARS (1685–1714)

In both France and Germany the year 1685 is a memorable one,—in Germany, as the birth-year of her great sons Bach and Handel; in France, for the Revocation of the Edict of Nantes. To Scotsmen, 1685 has been only the 'black year' of Argyll's unfortunate rising, and yet it witnessed the birth of one who was to prove the greatest Scotsman of his time.

Duncan Forbes was born at Bunchrew, three miles north-west of Inverness on 10th November, 1685.[1] He was barely three years old, therefore, when the Glorious Revolution took place. His childhood years, uneventful in themselves, witnessed many stirring events in his country's history. Before he reached his thirteenth year, Dundee had perished on the field of Killiecrankie, Glencoe had seen its bloody massacre,[2] and the far-distant Darien isthmus had attracted its first band of daring Scots adventurers. While still a youth, he saw the passing of the Act of Settlement (1701), and heard the counterblast of the Scottish Parliament three years later in the Act of Security (1704). He had just come of age when the Parliaments of England and Scotland were united (May, 1707), and was a student at Leyden University while Marlborough was winning his victories in the Netherlands.

Although this list of events contemporaneous with Forbes is known to every Scottish schoolboy, in greater or less degree, it is not too much to say that scarce one has heard the name of Forbes himself. Indeed, this statement can safely be ex-

[1] *Culloden Papers*, Introduction, p. viii.

[2] The boy's uncle, Colonel John Forbes of Pitnacrieff, was the unwitting bearer of the despatch which gave orders for the massacre (Watson: *From a Northern Window*, p. 251).

tended to include adults too. And yet the career of Duncan Forbes means infinitely more in his country's history and indeed in that of the United Kingdom, than do some of these better known men and incidents.

Duncan Forbes belonged to an old and honourable family, which was initially of French origin. The progenitor of the chief of the clan would appear to have been one John de Forbes whose name occurs in a charter dated 1236, as holder of the lands of Forbes in Aberdeenshire, and the Culloden branch of the family was descended from Sir John Forbes of Forbes who lived under Robert II and Robert III.[1] Leaving Tolquhoun, they had been for a long time settled in the region of Inverness and had earned for themselves a reputation for ability and integrity. As early as 1625 Duncan Forbes, known in his day as 'Grey Duncan', great-grandfather of the future Lord President, was Provost of Inverness and Member of Parliament and is found petitioning Charles I in respect of certain grievances under which the citizens laboured.[2] He was praised[3] for his fidelity, diligence and care in 'these your affairs of the town of Inverness'; and again, in January, 1646, a correspondent of the Marquis of Argyll's praises the Provost highly for the part he has taken against the rebels. He had, at his own expense,[4] strongly garrisoned his house, and as a result, his lands and crops had been badly laid waste and he himself left almost penniless. So seriously were his fortunes affected 'that unless his loss be taken to consideration, he cannot subsist'.[5] This was a situation which was to arise more than once in the subsequent history of his descendants, and particularly in the career of the subject of our study.

From an account written by his grandson—later, father of the Lord President—we learn that 'Grey Duncan' in 1625 had bought Culloden from the Laird of Mackintosh. By 1667, family fortunes permitted the purchase from Inveralochy, son of Lovat, of the estates of Ferintosh, (a part of the

[1] *Memoir of the Life of the Late Rt. Hon. Duncan Forbes*, and *The Clans, Septs and Regiments of the Scottish Highlands*, p. 50.

[2] *C.P.*, 5. [3] *C.P.*, 2. [4] *C.P.*, 6. [5] *C.P.*, 6.

ancient thanedom of Cawdor) and Bunchrew.[1] The family were strongly Presbyterian, and after the Restoration their estates of Culloden and Ferintosh were devastated by Royalist troops in revenge for their loyalty to Cromwell, and after the Revolution (1688-9) by the troops of Cannon[2] (the successor of Claverhouse). Compensation was subsequently made in the grant to make whisky on their estate of Ferintosh, unrestricted by the usual Excise regulations. In the Scottish Parliament in Edinburgh was passed on 22nd July, 1690, an Act 'in favour of Duncan Forbes of Culloden anent the Excise and Valuation of the lands of Ferintosh'.

> Our Sovereign Lord and Lady the King and Queen's Majesties, and the three Estates of Parliament: Considering that the lands of Ferintosh were an ancient Brewery of aqua-vitae: And were still in use to pay a considerable Excise to the Treasury, while of late, that they were laid waste by the King's enemies: And it being just, to give such as have suffered all possible encouragement, And also necessary to use all lawful endeavours, for upholding the King's Reverence, Therefore Their Majesties etc. for encouragement to the possessors of the said lands, to set up again . . . do hereby, Ferm for the time to come, the yearly excise of the said lands of Ferintosh to the present Heritor, Duncan Forbes of Culloden and his successors . . . for the sum of 400 merks Scots; which sum is declared to be the yearly proportion of that annuity of 40,000 pound sterling payable for the excise to H.M. Exchequer. . . . [The lands have also been burdened] with a heavy and grievous valuation beyond any other lands adjacent; and that upon that consideration in the year 1670, there was an Act of Parliament passed for a revaluation of the shire of Nairn to which these lands belonged to the effect they might be eased. And also considering that the present heritor, notwithstanding of the loss of his rent has freely offered termly payment of the

[1] Political Pamphlets (1819) in the Nat. Library, containing *Genealogy of the Family of Forbes*, by Matthew Lumsden of Tulliekerne, written in 1580, to which a note on the subsequent history of the family is appended.

[2] 'We have an account that the Earl of Dunfermline, Cannon and Buchan at the head of some horse, have rambled through Murray. . . . They endeavoured to take or surprise Mr. Forbes of Culloden's house about two miles from Inverness; but they were disappointed, the house being well manned' (*Highland Papers*, vol. iv, No. 138).

supplies now granted to H.M. upon condition, that he be rectified in his valuation and joined in payment to the shire of Inverness where the rest of his Estate lies.[1]

(Extracted forth of the Records of Parliament by me, Thos. Burnet, Cls. Reg.)

The Act of Parliament of 1695 altered nothing in that of 1690

Excepting only that the said lands are liable to their just proportion, conform to the foresaid sett, of what additional excise is or shall be imposed by Law upon the Kingdom.[2]

A document [3] dated 1785, in the family archives, restates the position. The concession thus granted proved a rich one, for the liquor distilled there became famous.

Of Duncan Forbes, the third Laird of Culloden, and the father of our Duncan Forbes, we know little beyond the fact that in 1656 he attended the Arts Course in Marischal College,[4] Aberdeen, for at least a year, and later while on a tour on the continent, visited Paris. He [5] was Member of Parliament for Inverness-shire (1689-1702) and then for Nairnshire, from 1702 till the date of his death on 24th June, 1704.

Of Duncan's mother, *née* Mary Innes, we can form a much more definite picture. A daughter of Sir Harry Innes of Innes, she and one of her sisters married neighbouring lairds, Culloden and Kilravock. Several of her letters are still extant,[6] and in these she reveals herself as a woman of an anxious but affectionate turn of mind and of deep religious principles. She invariably signs herself, 'Your sorrowful but most affectionate mother.' What appears her last letter to her son Duncan was written on 27th April, 1716, from Bunchrew.

[1] Bught MSS. in H.M. General Register House include a printed copy of Acts of 1690 and 1695.

[2] *Ibidem.*

[3] Uncat. MS. in the Nat. Liby., 'A Memorial (1785) by Arthur Forbes of Culloden, grandson of the Lord President.'

[4] See Matriculation Roll, Aberdeen University.

[5] *C.P.*, 16.

[6] Uncat. MS. in Nat. Liby., and *M.C.P.*, ii, pp. 28-33 and p. 105.

Duncan Forbes had one brother some twelve years his senior, later for his drinking propensities known as Bumper John. He had received part of his education on the continent and had visited Utrecht (1692), Rotterdam, and Brussels in the course of his travels. Having seven sisters, all of whom subsequently married, and many uncles and aunts, the two brothers found themselves connected with many of the best known families in the north. The numerous progeny and the numerous matrimonial alliances of the members of the family were not without their bearing upon national policy, when the Lord President came later to direct affairs in the upheaval of 1745.

We have only slight knowledge of the early years of our Duncan Forbes, fifth laird of Culloden. Authorities seem agreed that he attended the Inverness Grammar School,[1] where he made particular progress in the Latin language. While yet a boy of twelve young Forbes may have heard something of the daring and notorious action of Simon Fraser, who after defeating Lord Saltoun and Lord Mungo Murray and their party at the wood of Bunchrew, carried off Murray's sister, the dowager lady, from Castle Dounie to the island of Aigas. Such an action might well form the subject of common talk even in these rude times. The laird of Culloden, the boy's father, was one of those who visited the unfortunate woman in her distress on Aigas.[2]

Tradition speaks of Duncan Forbes as having attended the College of Aberdeen, and this is stated as a fact in the biographical sketch prefixed to his *Works* (1810 edition,[3] p. 4). The evidence is hardly convincing. The compiler of the Aberdeen University records identifies the Duncan Forbes who attended the Arts classes at Marischal College, between 1699 and 1703, as the future Lord President. The entry

[1] *Memoirs of the Life of Duncan Forbes* (1748) and 'Memoir' (p. v), prefixed to *The Whole Works of D. Forbes*. McGown, Glasgow, 1788; Ramsay repeats this.

[2] *Somers Tracts*, 12; pp. 443-4.

[3] The 'Memoir' prefixed to Forbes's *Works* (1788) merely says 'he was sent to the university', but no particular university is specified. The 1788 edition in the Mitchell Library, Glasgow, bears the inscription 'El. Rose, 1798, Kilravock Castle' on the fly-leaf.

merely gives the name of the student without mention of his place of origin. That the President's father attended Aberdeen University is indisputable. Of this the entry, ' 1656 Dun fforbes, Culloden ' is proof, and perhaps gives colour to the surmise of his son's attendance. The name, however, was not uncommon, even amongst their own family connections.[1]

Hume, the Scots philosopher, a contemporary of Forbes, tells us in one of his letters, ' Our College education in Scotland . . . ends commonly when we are about fourteen or fifteen years of age ', and so it may be that the gap between his early schooldays and his arrival in Edinburgh to pursue his legal studies was spent in cultural browsing in the fields of learning in Marischal College. Be that as it may, that he did go to Edinburgh in 1702 at the age of seventeen is certain, and there he appears to have given further promise of his ability and diligence, far outstripping his class-mates by his high, rapid achievement in all subjects.[2] A letter to his brother John, now laird,[3] makes clear that he studied, apparently rather reluctantly, under a Mr. John Spottiswood at his college of law for which the fee was five guineas, another 100 merks also being necessary for the Latran.[4] His residence in the capital was brief, possibly owing to the lack of expert teachers, particularly in the branch of Roman Jurisprudence.[5]

Forbes seems to have been a very dutiful correspondent even at this early stage of his career, for in answer to Culloden's remonstrance that he had not received a letter for six weeks, Duncan writing from Edinburgh (2nd April, 1705) could confidently ' conclude that several of my letters to you

[1] For the verification of my surmise of insufficient evidence I am indebted to Dr. W. Douglas Simpson, who, however, in a private letter considers it ' beyond reasonable doubt that the second Duncan Forbes in our records was the future Lord President '.

[2] ' Memoirs of Life of Forbes ', prefixed to his works.

[3] Uncat. MS. in Nat. Liby., or *M.C.P.*, ii, pp. 1-2.

[4] Latran = writing-desk = (here) writer's chambers, referred to earlier in the letter. Hill Burton in his *Life of Forbes* erroneously reads the word as ' Latin '.

[5] Brunton and Haig, *An Historical Account of the Senators of the College of Justice*, p. 508.

have miscarried. I have not been a fortnight at once since I came here unwritten to you '.[1] But this letter shows more than his dutifulness as a correspondent. It illuminates several points in his character. He has tried to follow out his brother's advice as to spending. If he is careful ' to spend as little as I can here ' (Edinburgh) it is not from excessive parsimony, but only that he may be able to spend freely on books ; indeed, ' I have bought £6 or £7 worth of books here and am resolved to buy more.' And even this is not from a weakness for books, but merely because ' I have them here by the half cheaper than they are bought in Holland ', an early proof of the Scotch thrift and foresight.

Prominent in Forbes's letters at this time are references to the case of Captain Green who was imprisoned and finally executed on the sands of Leith (Wednesday, 4th April, 1705) for alleged piracy and murder on the high seas.[2] ' So has Captain Green's affair taken up people's mind that they can speak of nothing else,' wrote Forbes to Culloden on 20th April of this year.[3] We need not here go into the story in detail. Briefly the position was this. *The Speedy Return*, a boat belonging to the ' Company of Scotland ', set off on a trading expedition for the African coast, and near Madagascar fell into the hands of pirates infesting these waters. (The crew was latterly transferred in safety to a larger vessel.)[4] Exaggerated tales of this exploit reached Scotland and, owing to the fierce jealousy existing between their own and the East India Company, feeling in Scotland reached fever heat. Just then, an Englishman, Captain Green of the *Worcester*, arrived at Fraserburgh, 19th July, 1704,[5] and later berthed in the Forth. Soon the rumour reached London that his vessel had been seized by the Scots in reprisal for the forfeiture of one of theirs. Shortly afterwards, the Captain and his crew were arrested, imprisoned, tried and condemned for piracy, their alleged victim being *The Speedy Return*. No one dared speak a

[1] Uncat. MS. in Nat. Liby., or *M.C.P.*, ii, p. 3. The actual MS. is dated 1704 by the writer, but this is an obvious error.

[2] *M.C.P.*, ii, pp. 2-5.

[3] Uncat. MS. in Nat. Liby.

[4] Insh, *The Company of Scotland*, p. 262.

[5] *Ibidem*, p. 284.

word in favour of the ill-starred crew. Dr. Insh goes so far as to say, 'Captain Green was being sacrificed by the Scottish Privy Council to the intimidation of the Scottish mob'.[1]

The part played by young Forbes in the whole transaction reflects the utmost credit upon his sense of justice, his penetration and personal courage.[2] After sentence had been delivered against Captain Green, one George Haines who declared himself to have been a member of Green's crew at the time of the alleged crimes, turned King's evidence, hoping to secure a remission of his own sentence. When his account of events failed to obtain the desired award, he made further 'confessions' contradictory and supplementary to his first narrative.

> This story (thinks Forbes) would tell well enough if he had told it all at first or if he had done it without hope of remission, but now he's got his remission for this fine story.[3]

This rascally conduct having achieved its aim, another member of the crew made an 'ample confession'.[4] Such treatment as Green had received at the hands of the Scottish Courts, despite the intervention of the Duke of Argyll who was then paramount in the administration of Scottish affairs, did not help the Government in Scotland. Forbes was no showman; from the letters of this period we learn nothing of his further action in the Green episode. Some thirty-one years later when he was speaking in the House of Commons in defence of the city of Edinburgh after the Porteous Riot, he had occasion to refer to his part at the execution of Captain Green:

> I was so struck with the horror of the fact that I put myself in deep mourning and with the danger of my life attended the innocent but unfortunate men to the scaffold where they died with the most affecting protestations of their innocence. I did not stop here for I carried the head of Captain Green to the

[1] Insh, *The Company of Scotland*, p. 311.

[2] No doubt Duncan Forbes was particularly interested in the trial of Captain Green as his tutor, John Spottiswood (1666-1728), was one of the counsel for the defence (Temple, *The Tragedy of the 'Worcester'*, p. 65).

[3] *M.C.P.*, ii, p. 4. [4] *Ibidem.*

grave ; and in a few months after, letters came from the captain for whose murder, and from the very ship for whose capture, the unfortunate persons suffered, informing their friends that they were all safe.[1]

When we consider that a well-wisher of Green's was 'like to have been stabbed, for speaking his sentiments too freely'[2] in the autumn of that year, in the Scottish capital, where Captain Green, Darien, or the Succession were subjects taboo in conversation,[3] we can the more appreciate the courage and nerve displayed at the event by the young student.

The question of his future was one requiring earnest consideration. Duncan no doubt wavered somewhat in his youthful mind before taking the final decision to follow the law. As some of his near relatives were in the army, tradition has it that he entertained the notion to adopt a military life.[4] There is no reliable evidence, however, to support this, but, while he chose otherwise, he was on more than one occasion in his subsequent career to have something to do with the direction and ordering of troops. It has been asserted, too, that Forbes engaged in business before taking up his lifework in the legal profession, but here again the evidence seems slight in the extreme. The 'Memoir' (1788) declares that Forbes was recommended to adventure his small inheritance of £550 in merchandise. The unknown writer affirms that, this being done, despite Duncan's real penchant for business affairs, no success came his way in his first venture.[5] Whatever truth there may be in these traditions, it is certain that he now looked to the law definitely as his profession, fired perhaps by the success at the bar which had attended his uncle, Sir David Forbes of Newhall.[6]

Accordingly, soon after the Captain Green incident, Duncan Forbes proceeded to Holland, in this simply acting as his

[1] *M.C.P.*, ii, p. 5, and *Scots Mag.*

[2] Taylor, *A Journey to Edenborough in Scotland*, p. 125.

[3] *Ibidem*, p. 122.

[4] *C.P.*, Introduction, p. viii.

[5] Also Ramsay, *Scotland and Scotsmen in the 18th century*, i, p. 41.

[6] Duncan (third laird of Culloden, and the father of Bumper John and of the Lord President), and Sir David Forbes of Newhall were two of the six sons of John, second laird, by his wife, Anna Dunbar, daughter of the laird of Grange.

elder brother had done thirteen years before and after the manner of the Scots lawyers of the time. His object was not travel only, but the study of law at the University of Leyden.[1] The Netherlands had for long received Scots in the times of religious oppression (Oxford and Cambridge were open for degrees to Church of England men only), and the young Scots student going there, at once found himself in the midst of fellow countrymen,[2] whether at the Scots Church or at the Scots coffee-house.[3] Young Forbes shared his lodging with a certain Sir Harry Stirling.[4] It is probable that his *modus vivendi* was much the same as that described by Carlyle,[5] speaking of the year 1745 :

> . . . but in the evenings about a dozen of us met at one another's rooms in turn three times a week, and drank coffee and smoked tobacco and chatted about politics and drank claret and supped on bukkam (=Dutch red herrings) and eggs and salad, and never sat later than 12 o'clock.

Life was quiet and uneventful. In the sleepy old Dutch town of learning, nothing exciting occurred to provide a theme on which a matter-of-fact Scottish student could dilate. And so Duncan's letters home were disappointing—perhaps as colourful as the Service postcards of our own days when we followed a formula 'I am quite well.—Letter follows at first opportunity'. He found himself, therefore, 'quarrelled with for writing short in all my letters'. In self-defence he reminded his family that he had written his mother twice and John thrice between 5th February and 12th March, 1706, not too bad an average. He continues :

> Whatever defects be in my style, I can not answer for, but for the main charges I have a very good excuse, viz. that I have little to say, for, there is nothing that I can write to you about

[1] Gorton's *General Biogl. Dicty.*, vol. i, says Forbes was educated at Paris and Utrecht, but quotes no authority for this statement.

[2] Some 2,000 Scots and English attended Leyden in the eighteenth century. When Dr. Alex. Carlyle was there in 1745 there were twenty-two young Scots or Englishmen.

[3] John Erskine of Carnock's *Journal*, 1685.

[4] Uncat. MS. in Nat. Liby.

[5] Dr. Carlyle of Inveresk, *Autobiography*, p. 175.

but news or something that regards myself particularly for news (it having been winter time) there happened nothing remarkable but what you might have had as there is no alteration upon me, I have nothing to say nor can I guess what particularities you desire to know, and if I am to inform you about, I would gladly do it.[1]

Lord Chesterfield had not yet given his famous letter-writing hints to his son and to the world, nor had Duncan Forbes yet learned the value of trivialities as material in the art of writing letters. The folks at home did find it interesting to know that he was judiciously adding to his library, spending his 'money so cleverly' particularly in the purchase of books.[2] His Scots canniness, nevertheless, while it did not prevent him from standing surety for sixty guelders in the interests of one Jonathan Thomson at Rotterdam,[3] told him such an item of news was best left unrelated.

Duncan Forbes came of age during his Dutch visit. This period of about two years in Leyden was not limited to his legal studies, for he seems to have made some acquaintance with the Eastern languages as well.[4] Here would appear to be the beginning of his adventures in theology, the study of which interested him so much at a later stage in his career, when he became a devoted exponent of Hutchinsonism. During his sojourn, he visited the Hague [5] and also Utrecht,[6] and appears to have won for himself golden opinions. John, writing to his wife, says :

I have seen several, that are come over with the last fleet who left him in very good health and gives him as ample a commendation as my heart can desire for which I desire to bless God.[7]

And when we remember how deep and lasting was the affection between the brothers, we may realise how Duncan's

[1] Uncat. MS. in Nat. Liby. This letter is omitted from *More Culloden Papers* ed. by Warrand, who, however, does quote some half-dozen lines from it on p. 6 of *M.C.P.*, ii.

[2] Uncat. MS. in Nat Liby., or *M.C.P.*, ii, p. 6.

[3] Uncat. MS. in Nat. Liby.

[4] Brunton and Haig, p. 508, *c.*

[5] *M.C.P.*, ii, pp. 9-10.

[6] Ramsay, vol. i, p. 43.

[7] *M.C.P.*, ii, p. 10.

success was a joy to his older brother, now somewhat in the rôle of a parent since their father's death a few years earlier.[1]

Meanwhile at the old home at Culloden Bumper John was finding the very liquor of which he was so fond the cause of no little worry and anxiety. When a Commissioner of Excise was sent to survey Sutherland and Ross in respect of the brewing carried on in these parts, John Forbes pleaded the special privileges granted his Barony of Ferintosh after the ravaging suffered in Charles II's time to the value of £3,000 sterling.[2] His father had had as recently as 1703, the backing of the Scottish Parliament, for, when some gentlemen of property in Inverness had raised objection to this privilege as being hurtful to them, the Scottish Parliament had refused to rescind the Act conferring the right.[3] The question had again cropped up, and so in 1707 John found himself once more engaged (14th August, 1707–3rd June, 1708) in an appeal whereby he

> pretended [=claimed] to be exempt from duty on exciseable liquor arising from his lands of Ferintosh, otherwise than the yearly sum of 400 merks,[4]

which was that set originally. The Commissioners of Excise and the Crown lawyers having declared that the valuable Ferintosh Right of Exemption from Excise was taken away by the Act of Union, the Court of Exchequer in Scotland in

[1] Evidence as to his Dutch residence is not plentiful. As late as 1739, however, we find the Rev. Jas. Lawrie, minister at Kirkmichael, an old fellow-student of Forbes's in 1707, and frequently in his company, writing a letter which now bears in the President's handwriting the superscription 'A curiosity'. The letter is long and garrulous. The minister at Kirkmichael, both in his misfortunes and simplicity of character, recalls the Vicar of Wakefield. He begs, for the sake of old times, that the Lord President should use his influence on behalf of certain members of his family. Shrewdly enough and yet apparently in all sincerity, he expresses his peculiar satisfaction at Forbes's success in the courts, and at his wise counsels in church affairs. He states, too, how great a joy it had been to some of his old fellow-students to 'observe your high character and advancement and peculiarly your brave and bold and learned appearance'. (Uncat. MS. in the Nat. Liby.) No doubt the concluding phrases explain the modest Forbes's endorsement—'A curiosity'.

[2] MS. in Nat. Liby. of Scotland, Bundle XIX.

[3] Uncat. MS. in Nat. Liby., Bundle XIX.

[4] Cal. of State Papers, Treasury Papers, vol. xv, Redington, 1702-7.

1711 gave a decision favourable to the Forbeses.[1] We know that with the increase in the Excise, this sum of 400 merks was in time increased in proportion. As the Forbes fortunes were largely dependent on this peculiar privilege, it is clear why the decision was so anxiously regarded by both brothers. The younger, with his newly acquired knowledge of the law, was now well qualified to defend the rights of his house, should this be necessary, on his return to Scotland.

By September 1707 Duncan Forbes was contemplating his return homeward, and on the 16th he wrote John that he would likely be in Scotland again within a month. The fact is Marlborough was returning to London then and he hoped for a safe and economical passage by the Duke's convoy.

On his return, Forbes resumed his studies, devoting himself especially to the Municipal laws of Scotland.[2]

Among the collected letters there is nothing bearing the date 1708, but the year was not uneventful, for on the 21st October he married Mary Rose,[3] the second daughter and third child of Hugh Rose of Kilravock by his first wife Margaret.[4] Of Mary Rose we know but little, and references to her are rare.[5] The two had known each other for many years, Bunchrew, Culloden House, and Kilravock Castle being only a few miles apart. The present writer has seen in the Kilravock estate a 'grey rock in the wood' which tradition holds as the trysting place of the lovers.[6]

[1] Uncat. MS. in Nat. Liby., Bundle XIX.

[2] Brunton and Haig, p. 509.

[3] Hill Burton, p. 282 of the *Life*, by an obvious slip, says he married Mary Innes.

[4] On the back of a letter written by Duncan's mother to one of her daughters appears this editorial note : 'She was a daughter of Innes, Bart., of Innes. A sister of hers was married to Rose of Kilravock, hence the President and his wife Mary Rose were cousins' (Uncat. MS. in the Nat. Liby.). The editor—presumably Duff—had, of course, failed to notice that Mary Rose was Kilravock's child by his *first* wife, Margaret Campbell.

[5] Uncat. MS. in the Nat. Liby., or *M.C.P.*, ii, p. 21.

[6] A personal letter from the laird of Kilravock, Colonel Rose, confirms this tradition.

Duff, in *Culloden Papers*, Introduction, p. ii, attributes to young Forbes a lyric addressed to his sweetheart, but Burton (*Life*, p. 348) shows that the poem was written by Sir Charles Sedley, and printed in 1675—ten years before the birth of Forbes.

Meantime Forbes was completing his more serious training as a lawyer, and at the age of twenty-three he was admitted a member of the Faculty of Advocates, on 26th July, 1709.[1]

Of Forbes himself at this time we hear little, but his brother John, and Hugh Rose of Kilravock were closely concerned with the political situation in Nairn- and Inverness-shires after the first British Parliament terminated in 1708. John Forbes, who had represented Nairnshire from 1704 (when his father died) till the Union of 1707, was now planning to re-enter the political arena. Accordingly, his letters to his brother in Edinburgh towards the end of 1709 are upon this subject of local politics and on the elections in particular.[2] Mrs. Duncan Forbes was at this time resident in the north while her husband attended to his duties in the capital. She and her husband's mother towards the middle of December 1709 set off on a visit to Innes House, Morayshire,[3] the old home of the Dowager Mrs. Forbes. There they remained over the New Year, for the Laird of Culloden could write (5th January, 1710) : 'Your Mother and wife are at Innes, and I hope well as all your other friends here are.'[4] It must have been shortly after this that the news reached the young advocate of his wife's serious illness. This was followed by her untimely death from some painful abdominal malady. The exact date is unknown. That Forbes succeeded in posting home in time to see her, we gather from an undated prescription addressed to him.[5] The prescription reads :

> Sir,—This night apply the treacle. Spread a thick linen to your lady's stomach and give her the eight drops of laudanum in a spoonful of claret. Boil the calcined hartshorn in 3 chopins of spring water to a pint, sweeten it with a little sugar for her drink if she can bear it. Send for the plaster and infusion to-morrow morning and I'll see you in the afternoon.

Their infant son John, thus early bereft of a mother's care, found in his grandmother a wise and devoted guardian. In

[1] Books of Sederunt, quoted by Brunton and Haig in *History of College of Justice*. Omond in *The Lord Advocates of Scotland* (p. 320) says 'He passed Advocate on 10th July, 1709'.

[2] *M.C.P.*, ii, p. 21.

[3] Uncat. MS. in Nat. Liby., or *M.C.P.*, ii, p. 21.

[4] Uncat. MS. in Nat. Liby.

[5] Uncat. MS. in Nat. Liby.

more than one of her letters we find her referring to him. 'The chaild is blest bee his name werie weil and my best compenie.'[1] Duncan Forbes never re-married.

The information available for the years immediately preceding the outbreak of the 'Fifteen rebellion is concerned chiefly with small family matters of little importance, but, nevertheless, valuable as illumination of private characteristics. Thus, on 17th November, 1710, Duncan was requested by Culloden to carry out in haste a weighty commission in Edinburgh for the latter's wife, nothing less than the purchase of a velvet hood, two hats, half-a-dozen pairs of 'gloves of a good large size, for all I ever bought her yet were useless as to her because of their littleness',[2] a commission likely to embarrass any man, and, we hope, executed with discretion.

A small but interesting series of letters for this period shows the attitude existing between the Dowager Mrs. Forbes and her younger son, who wrote 'frequently' to his mother, to her no small pleasure.[3] A constant anxiety for his welfare appears to have been one of her characteristics. To him she writes on 16th October, 1711,—and which of us has not received a similar home-thrust?—

> If you be in health you must be fervently much taken up with business else in a month or five weeks you might spare one quarter of an hour to tell me it is so; it has been and is my sin to this day—anxiety about you.[4]

Writing (16th November, 1711) from Bunchrew, now the property of Duncan, she 'was much surprised as well as grieved to find that you journeyed from Inverness upon the Sabbath', and regretting that he puts not the same value upon that day as he once did, she exhorts him 'therefore to take a look back and consider that the end of sin must be sorrow'.[5] This reveals the domestic atmosphere in which

[1] *M.C.P.*, ii, p. 31.
[2] Uncat. MS. in Nat. Liby., or *M.C.P.*, ii, p. 27.
[3] Uncat. MS. in Nat. Liby., or *M.C.P.*, ii, p. 31.
[4] Uncat. MS. in Nat. Liby.
[5] Uncat. MS. in Nat. Liby., or *M.C.P.*, ii, p. 28.

the Forbes boys had been reared—an atmosphere far from being quite dissipated in parts of the Highlands even to-day. But not all her thoughts are for his soul's welfare. Having concluded her epistle, with maternal solicitude she enjoins him in a postscript : 'Let me know if you have changed your wear, your red waistcoat I mean, and what you have got on in its stead. You knew my thoughts anent your changing.'[1] [Letter torn.] About a month later (7th December, 1711) she evinces her great interest in her son's friends and acquaintances and in their character. On hearing of Duncan's association with one who is a 'man of parts, but badly principled'[2] she asks her son to inform her

> particularly both what he is and who recommended him, together with your opinion of him, and his fitness for that trust (wh.) is put upon him, but positively let me know what he professes as to principles.[3]

Her son's spiritual well-being was ever before the good lady, and accordingly we find her on 25th January, 1712, reminding him of the snares and temptations of the world and exhorting him to prayer and watchfulness, as formerly.[4] Alongside these intimate revelations of family affairs, come pieces of news of more public import. Something of unsettledness seems evident when she records

> Our neusis here ar as bad as needs be, but there is grat joy and much uplifting amongst the generalitie, our Highland clans hes hade frequent metting all this winter and both far and near met.[5]

The Jacobites were not inactive. The letter concluded, she adds a postscript :

> Forget not to send by Clarke sins the post that gos out now to caus by a welvet cape for the chaild as anie frend chus it for a chaild of two years old.[6]

Like most mothers, the Dowager Mrs. Forbes was always hungry for news of her sons, or, as her elder put it, 'curious

[1] Uncat. MS. in Nat. Liby., or *M.C.P.*, ii, p. 29.
[2] *Ibidem*, p. 30. [3] *Ibidem*. [4] *Ibidem*, p. 31.
[5] *Ibidem*, p. 32. [6] *Ibidem*, p. 33.



MARY INNES
Mother of Duncan Forbes

as ever.'[1] Like many sons, Duncan did not always satisfy her keen appetite for detail or write as often as her love craved. We smile at her directness and skill in dismissing a disagreeable topic.

> Our friend Peter did me injustice in saying I complend of your seldom writing I did it not I might perhaps have said you was werie gennerall but I could not be ansurabill to lod you unreasonable however I tell you now the chaild is well blest bee his name.[2]

Little has been said so far of Forbes's professional life, and the truth is that little definite knowledge is available. Opinions vary as to his early success. One [3] has it that he was popular but had little practice at first ; another,[4] that 'he soon rose to high distinction as a judicious and eloquent pleader '.[5]

Early in their career, the advice of Forbes and Robert Dundas was sought in a legal case in which their client required delay that his just plea might be suitably prepared. They recommended that appeal be made to Sir James Naismith. With his mature experience the latter was able to devise the necessary procedure to ensure a favourable outcome for their client. If they did not possess the requisite knowledge to secure the desired result, these two young men at least had the skill to select the right consultant and so win a decision.[6]

The incident of the Jacobite medal offered to the Faculty of Advocates by the Duchess of Gordon [7] gives early evidence of the outspokenness and independence of judgment which

[1] Uncat. MS. in Nat. Liby.

[2] Uncat. MS. in Nat. Liby., dated from Bunchrew, 15th February, 1712.

[3] Omond, *The Lord Advocates of Scotland*, vol. i, p. 320.

[4] Patrick Fraser, *Sketch of the Career of Duncan Forbes of Culloden*, p. 4.

[5] Brunton and Haig (*History of College of Senators of Justice*) affirm that Forbes was Sheriff of Midlothian in 1709. Surely twenty-four was an abnormally early age for one so lacking in experience to be appointed to so important a post. We know definitely that he was appointed Sheriff-Depute of Edinburgh in 1714 (*M.C.P.*, ii, p. 48), but Hill Burton makes no mention of this.

[6] Ramsay, *Scotland and Scotsmen*, vol. i, p. 41.

[7] Omond, p. 291, *The Lord Advocates of Scotland*, says 1711, while Ramsay, p. 44, says 1713 (erroneously).

characterised Forbes throughout his life. When the Faculty met in the ordinary way on 30th June to examine a candidate for the bar, Mr. James Dundas of Arniston recommended the acceptance of this medal of the Pretender. In the ensuing debate Forbes, then only a junior, took a prominent part, eloquently declaring it as an insult to the Queen and the Protestant succession and approaching almost to high treason. When it had been suggested that the medal should be put in the 'Repository of Rarities' one member inquired: 'Why not receive it?' Vigorously came young Forbes's retort: 'It will be time enough to receive the medal when the Pretender is hanged.'[1] The proffered medal was eventually rejected at a later meeting on 17th July.

In 1713 Culloden, who had been a member of the Scottish Parliament (1704-1707), became M.P. for Nairnshire in the United Parliament on 29th September, 1713.[2] This took him frequently to London during the Parliamentary session, and therefore many of John's letters are written from the capital and deal with political events at first hand. But the substance of their correspondence was not all mere political news, for the shuttlecock of story and anecdote passed gaily between the brothers, as a letter from the younger of 3rd December, 1713, makes clear:

> I cannot help refusing to obey you in burning the journal which you sent me, the Battle was an action d'éclat and very well painted, as it has contributed to my health in making me escort my lungs in a very vehement manner, so I must likewise give you thanks for giving yourself the trouble to transmit a joke of that kind to your humble servant which has enabled him to discover the whitest tooth in the Parliament House this morning.[3]

His brother's presence in London in the Argyll Party would be a point in favour of the rising young advocate in Edinburgh, but this in itself would have counted for little if Duncan Forbes had not shown himself possessed of special

[1] *The Scotch Medal decipher'd* (1711), p. 4.
[2] *Members of Parliament*, Part II, Newspaper Room, British Museum.
[3] Uncat. MS. in Nat. Liby.

parts and displayed particular skill in his profession. He therefore early came under the notice of the Duke of Argyll,[1] then the most powerful person in London so far as Scottish affairs were concerned.

Meantime Forbes with his cheerful disposition and his love of good fellowship found ample scope for his conviviality among his many intimate friends, both in the Scottish capital while practising his profession and in the north when on vacation. The brothers seem at this time to have earned for themselves even in this age of hard-drinking the reputation of being seasoned topers. When it is remembered that their family's fortunes were so mixed with the special product of Ferintosh, and when regard is had to the social habits of the period, it follows as an almost inevitable result that the Forbeses both drank heavily. It is only fair to say that this was the sole weakness which criticism or scandal could ever level at Duncan Forbes with any truthfulness and then, only in his younger days. Illustration of this fondness for the family wares distilled in the north is found in a letter to Culloden, dated 9th December, 1714 :

> Mrs Munro and some of your friends express great desire for some of your Ferintosh, of the edition which used to be dedicated to Sir David, therefore it would be kind if you did order 4 or 5 gallons of it to be made and sent to me to be distributed as you will.[2]

With this quantity ordered, we may conclude that several households were suitably and plentifully prepared for the New Year celebrations. Again, in a letter to Culloden, dated 10th February, 1715, Duncan unblushingly writes :

> This day General Ross is gone North in order to his Elections. You know how he stands ; upon what account it was I do not know but he did me the honour (tho. unknown) to invite me to a bout of drunkenness where you was a toast.[3]

[1] Uncat. MS. (*passim*) in Nat. Liby. ; *C.P.*, 179, and *M.C.P.*, iii, pp. 134 and 143 ; *C.P.*, 61 ; *C.P.*, 70.

[2] Uncat. MS. in Nat. Liby., or *M.C.P.*, ii, p. 52. [3] *M.C.P.*, ii, p. 62.

There are numerous references in the letters about this time to the movements of the Jacobites. At the beginning of September, Forbes received a letter, headed Culloden, dated 28th August, 1714, and beginning 'Dear Cousin'. The conclusion of the letter shows that he was aware of the writer's identity, and was on terms of intimacy with him.[1] The anonymous correspondent refers to rumours of a rebellion and of the positive coming of the Pretender 'tho. the French shd. give him no assistance'.[2] There is also about the document something of authority.

> Therefore, how soon this comes to hand you are to advise it with the Justices, that Forces may be immediately ordered for this Country . . . the advice in this letter is not to be slighted, for I assure you the Highlanders have had very frequent meetings, and have been rendezvousing their men this last week.[3]

It was towards the end of this year that Duncan Forbes was made a Justice of the Peace and Sheriff-Depute of Edinburgh, a sure and early recognition of the reliance put on him.[4] Forbes's biographers, as Major Warrand points out, do not notice this appointment.[5]

Rumours of war with France and of the expected appearance of the Chevalier 'in the spring'[6] still persisted. Despite them, with all the optimism that Hogmanay betokened, Forbes (31st December, 1714) was of opinion that the situation in London itself, and throughout England as well, was much improved as regards the attitude to the Hanoverian succession, for they held 'much juster sentiments of our King than these they formerly entertained'.[7] But, however much the situation might be easier in Edinburgh or in London or indeed throughout England generally, the Highlands were still the storm centre, and the movements there, a much more accurate pointer as to the depression moving northwards.

[1] The actual words are: 'I hopes your diligence in this affair and assure you that I am ever yours. You know the hand.'

[2] *C.P.*, 40. [3] *Ibidem*.

[4] Uncat. MS. in Nat. Liby., Bundle IV, and *M.C.P.*, ii, p. 48.

[5] *M.C.P.*, ii, p. 49. [6] *C.P.*, 43. [7] *C.P.*, 44.

The copy of a letter by Robert Munro laid before the Lords Justices describes the manner of proclaiming the King at Inverness.[1] This clearly demonstrates how strongly Jacobite in their leanings were some of the magistrates of the northern capital. On the proclamation being read at the town cross by the clerk at the behest of the Sheriff-Depute, some of the magistrates present mocked the Sheriff—

> and when the Clerk ended the reading, and cried 'God save the King' the magistrates and some they had present for that purpose, cried 'God damn them and their King'.

Later in the evening when the Whigs were lighting their bonfires, illuminating their windows, and ringing their bells to celebrate the accession of the new monarch and dynasty, the magistrates thought fit to stir up a mob and rabble them.

> And as (if) this were not enough, they themselves went with some of the custom-house officers, such as collectors and surveyors and drunk avowedly King James's health; and, as some say, confusion to King George and all his adherents.[2]

NOTE

The name 'Forbes' was in eighteenth-century Scotland pronounced as a di-syllable, with the accent on the first syllable, and in the home of the name—in the north-east of that country—this pronunciation is still retained. So great has been English influence on the speech of Scotsmen, that to-day this very old Scottish family name is commonly pronounced as a mono-syllable, viz., Forbz.

The divers spellings of the name in early documents, and in Scottish literature generally, give ample proof of its di-syllabic nature; indeed, in the Culloden documents themselves are found variant forms.

An interesting article entitled, 'An Ancient Scottish Name,' by the Rev. Dr. Lauchlan MacLean Watt, appears in *The Glasgow Herald* of 8th August, 1936. This should convince even those who may have grown accustomed to the erroneous modern style of pronouncing the name.

[1] *C.P.*, 369. [2] *Ibidem.*

CHAPTER II

THE 'FIFTEEN (1715–1716)

On Tuesday the 6th September, 1715, Mar raised the standard of revolt at Kirkmichael on the braes of Mar, and the Old Pretender was proclaimed as James VIII in several of the chief towns of the North. The rebellion did not, however, come without warning. As early as 28th August in the preceding year, Forbes had received letters hinting at the likelihood of a Jacobite rising, and he was well aware of the far from loyal attitude of the magistrates of his own town of Inverness.[1] The Jacobites were 'very uppish both in Edinburgh and in England' in the opinion of Mr. Munro of Foulis, the uncle of the Laird of Culloden, whom he duly advised (17th February, 1715) 'to recommend to some trusty faithful friend to take care of your House of Culloden', for a sudden invasion or insurrection was expected.[2] Despite his resolve to treat the rumours with indifference, as the statesmen seemed to do in London,[3] John instructed Duncan (30th April, 1715) to order things so 'that my house be not surprised' in the case of a Jacobite rising.[4] But this is merely a coda to a letter discussing no less a domestic matter than a possible match for his niece Marie.

The outbreak, then, did not come as a bolt from the blue. Although the standard of revolt was not raised till 6th September, the Laird of Culloden wrote to his wife from London on the 3rd confirming that

> the Highlanders are actually encamped within ten or twelve miles of Perth. My Lord Mar is said to be the Principal man.[5]

[1] *C.P.*, Nos. 40, 43, and 369.
[2] *C.P.*, 46.
[3] *C.P.*, 47.
[4] *C.P.*, 48.
[5] *C.P.*, 50.

The inhabitants of Inverness who were well affected, knew by the 8th September of the intended rebellion and met in the Royal Coffee House to consult as to the steps to be taken in defence.[1] Their preparations were by no means premature, for on the 13th, 'the laird of MacIntosh and Borlum came into this town with about 400 of the best of their men', bareheaded, proclaimed the Pretender King, and thereafter marched to Culloden. Jean Gordon, the laird's wife, with the help of tenants and servants boldly resisted. She declared 'if they would dare to approach within gunshot of her house, (though she was but a woman) she would soon let them know that she had both arms and ammunition to assert H.M. King George's right and title'.[2] The rebels then laid siege to the house. Meantime the brave Jean had been joined by her young brother-in-law. Forsaking his personal interests as a rising young lawyer, he had come north by sea, travelling in the ship that brought the Earl of Sutherland.[3] It was to him that Seaforth now sent his command to surrender. In true story-book fashion, this Duncan refused to do, and with him his 200 men, as Wade affirms. Not only so, but he 'trysted with my Lord Duffus next day within a mile of the town and repeated his refusal'.[4] The attack was ordered, but after several days' contemplation of the situation, the besiegers began to realise that the house was too strong to be taken by assault.

John Forbes had by this time set forth in some anxiety from London on his journey north and at Stirling was joined by that notorious reprobate, Simon Fraser. The latter had come over from France, at heart an apostle of the Jacobite cause, but finding it expedient to adopt the tactics of the Vicar of Bray, *en route* he became an easy convert to the side of the Hanoverians. What more natural than that as near neighbours, and both (now) loyal subjects of King George,

[1] Uncat. MS. in Nat. Liby., or *M.C.P.*, ii, p. 153.

[2] Quoted in *The Sutherland Book*, vol. ii, p. 53.

[3] Contemporary account by Peter Ray (1718) quoted by Terry, *The Jacobites and the Union*, p. 173.

[4] Quoted in *The Sutherland Book*, vol. ii, p. 53.

the two old acquaintances should travel together? Sailing between Leith and Aberdeen they had a not uneventful journey. They left Leith at 10 p.m. and were pursued by several large Fife boats in the rebels' possession for eight or ten miles, fire being exchanged for a couple of hours.[1] About the beginning of November, on their way to Culloden, they had of necessity to pass through the bounds of the Presbytery of Strathbogie and were 'obliged to travel by night for shunning the parties of the rebels who laid wait for them'.[2] Two days after leaving Aberdeen their party reached Culloden House where Duncan, as we have seen, was in charge of the garrison recruited from his brother's tenants. With the aid of their new ally, Simon Fraser, all-powerful with his Stratherick clansmen, the siege was raised, the rebels marching south to join Mar at Perth.

Forbes well understood the importance of keeping the authorities informed as to the true situation in the north. Land communication being interrupted, while he was yet besieged in Culloden House, he instructed an Edinburgh merchant, William Sutherland, who happened to be in the road with his ship, to remain there several days so that he might convey the latest intelligence to the Provost of Edinburgh. By a strange irony, the honest seaman's obedience and loyalty cost him dearly, The other ships which sailed got safely to harbour, but Sutherland, through stress of weather, lost ship and cargo at Fraserburgh, whereby he suffered damage to the extent of £500.[3]

Inverness had meanwhile fallen into the hands of the rebels, the town being taken by MacIntosh of Borlum [4] (13th September, 1715). We have already noticed that the loyalty of the Provost and Council was not above reproach, and with

[1] Lovat to Ilay, 27th May, 1737 : quoted in *Chiefs of Grant*, ii, p. 354.

[2] So runs the Testimony of the Presbytery of Strathbogie which met at Keith, 10th to 21st April, 1717. Vol. iv, p. 205, Hist. MSS. Comm. Reports, Cal. of Stuart Papers, belonging to H.M. the King, preserved at Windsor Castle (1902).

[3] Later Sutherland petitioned the Lords of Treasury for relief and on the case being brought to his notice, Forbes signed two certificates in his favour, one of which is dated 9th May, 1716 (Cal. State Papers. Treas. Papers, P.R.O.).

[4] *M.C.P.*, ii, p. 155.

this in mind, one finds their letter (written in self-defence) with its air of injured innocence, not without its amusing side. It is addressed to Hugh Rose of Kilravock, and the two Forbeses, then Deputy-Lieutenants of the Shire ōf Inverness, and remonstrates at the harsh views held of them owing to 'false reports' spread by 'malicious persons'.[1] They requested the waiving of the severities threatened against them, and further affirmed, not only that all ammunition having been taken from them, they were unable to defend themselves against hostile attacks, but that their city might have been reduced to ashes had they resisted. 'All that know it can testify it is not fortified and so must be a paved road to all parties requiring passage.'[2]

Some six days later, the siege of Culloden House being raised, the composite loyalist forces of Kilravock, his brother Arthur Rose, just home from a long captivity in Turkey, the two Forbeses and Simon Fraser, retaliated by attacking Inverness and securing it for the Government. Duncan Forbes's part in the operation on the south side involved 'passing the river with a party' while Arthur Rose covered the crossing; the latter was killed in the subsequent attack.[3]

It is not our purpose here to follow the fortunes of the rebels, but merely to study the part played by Forbes in these momentous movements in his country's history. There are few letters in the collection between the outbreak (6th September, 1715) and the Chevalier's departure for France in February 1716. Such as do exist give little information about local happenings. We know however, that Inverness fell to the attacking loyalists on 13th November, and this victory compensated for the doubtful result of Sheriffmuir fought on the same day, and made more certain the final issue for the Hanoverian cause.

Ramsay in his *Scotland and Scotsmen in the Eighteenth Century* (p. 44) attributes to Duncan Forbes the credit for keeping Lovat out of the rebellion and so explains his rising favour in the mind of Argyll, then Lieutenant-General of His Majesty's Forces in Scotland. There is little, however, to justify this

[1] *C.P.*, 51. [2] *Ibidem.* [3] Terry, *The Jacobites and the Union*, p. 178.

point of view, for Lovat seems already to have made his decision when he proceeded north with John Forbes. If anyone was instrumental in winning over Lovat, then, surely it was John and not his brother. But whether[1] the praise be due to Duncan or to Culloden, it is certain that the brothers played no mean part in this alone, in helping to secure so powerful an ally.

Duncan Forbes's worth is shown not only by his purposeful activity, zeal, and courage in these military affairs, but also by his courageous attitude after the fighting was over. In addition to his activities in defending Culloden House and in helping to seize Inverness for the Government, Forbes did his utmost to keep some from joining the rebellion, or, if they had already committed themselves, to persuade them to renew their allegiance. Among the latter was Seaforth, who was a pronounced Jacobite. To attempt to win him back, the Earl of Sutherland had offered Government terms, and along with him went Duncan Forbes and Lovat who ' in vain pressed him (Seaforth) to prolong the cessation '.[2]

The 'Fifteen rebellion suppressed, there remained the unpleasant duty of punishing those who had been guilty of taking up arms against the Government. Equally there was the question of rewards. No word ever passed Forbes's lips as to his services. With his strange friend Lovat, however, it was otherwise. Simon Fraser was never slow to sound his own praises. Having declared to Duncan in a letter dated 5th March, 1716,[3] his own success in keeping the Macleods at home, he admitted that the authorities ' would have got nothing in the North without my dear General and me '.[4]

On the 19th March,[5] Forbes was appointed Depute Lord

[1] See ' Memoir ' prefixed to Forbes's *Works* (1788), and Ramsay, *Scotland and Scotsmen*.

[2] Letter, 13th November, 1717, Seaforth to Earl of Mar, enclosure *re* ' Seaforth's performance in the late attempt '—Hist. MSS. Comm. Reports, Cal. of Stuart Papers, vol. v, p. 203, 1912.

[3] *C.P.*, 53.

[4] Lovat's playful name by which he addressed Duncan in their intimate correspondence.

[5] Brunton and Haig's *Histy. of Coll. of Justice* (p. 510) says he entered upon the new duties 12th March, 1716.

Advocate.[1] He was then only thirty years of age. If his official duties were increased, so too were the demands made upon him, and now, as later after the 'Forty-five, he found himself approached by unfortunates who had come to grief in the late disturbances. As an example of this we have the case of John Macintosh, advocate, who, having been 'out' in the 'Fifteen, was now a prisoner in 'The Fleet', London. Forbes was asked to use his influence with some of his political friends.

> Your brother my dear Culloden, with Foulis have done much for me, but the more the merrier, and I shall have need of all:

writes the unhappy man on 23th March, 1716.[2] The outcome of this case we do not know.

Just at this time Forbes was chosen by the Presbytery of Inverness as 'ruling elder' and as one of the two commissioners for the General Assembly (3rd May),[3] and there his 'management' later called forth the approbation of both the Duke of Argyll and his brother.[4] The honour was duly reported (6th April, 1716) by his friend in Inverness, Rev. Robert Baillie, one of his two chief correspondents at this period so far as affairs in the north are concerned. Such an appointment to an ecclesiastical post was naturally bound to evoke the dutiful congratulations of Simon Fraser whose letter of the 13th April wishing his 'dearest General joy of that new and grave dignity'[5] is a good example of his humorously trilingual style of composition :

> Sat est, I am till death yours contra omnes mortales, the King, Royal Family, and that of Argyll excepted. Adieu. Je vous embrasse mille fois.[6]

It was not, however, public reward alone that came the way of the newly appointed Assembly Commissioner, for the Duke of Argyll himself seems to have looked with favour upon

[1] *C.P.*, 54 (2).

[2] Uncat. MS. in Nat. Liby., or *M.C.P.*, ii, p. 107.

[3] Uncat. MS. in Nat. Liby., or *M.C.P.*, ii, p. 104, and *C.P.*, 60.

[4] Uncat. MS. in Nat. Liby., or *M.C.P.*, ii, p. 119.

[5] *M.C.P.*, ii, p. 101.

[6] *M.C.P.*, *loc. cit.*

the man who had lately shown so much administrative ability as well as courage and sense of duty. Offered the stewardship of Argyll's estates in Scotland, Forbes accepted, but he refused any salary for the task involved 'although he might have made £600 yearly by it'.[1]

It is amusing to us to find traducers ascribing the name of Jacobite to so loyal a servant of the Crown as Forbes had proved himself, and it would have been natural if he had been much annoyed at the slander. Writing to his brother in some trepidation on the 17th April, Culloden declared that Duncan had been represented to the Duke of Argyll as a Jacobite, because he did not approve of the Triennial Act being made Septennial.[2] The author of these malicious rumours seems to have been the Justice-Clerk, Adam Cockburn of Ormiston. This was the man of whom Forbes wrote (20th March, 1716), 'He shows a grim sort of civility towards me, because he finds me plaguy stubborn.'[3]

Had Jacobite opinions been actually held by Forbes, they would naturally have rendered him unfit to hold the post of Advocate Depute. But his credit was unshaken. Sir David Dalrymple, the Lord Advocate, was furious when the story was reported to him, declaring that he would 'lay down before they should have their will'.[4] Meanwhile Forbes himself took all in good part, treating the story as a jest rather than as a serious accusation against his integrity and loyalty. In a letter, on 25th April, Lovat writes :

> I laugh as much at my enemies as my dear General does at being called a Jacobite ; their stories of me being as false as that of him.[5]

[1] *Works* of Duncan Forbes (1788), 'Memoir', p. 7.

[2] Uncat. MS. in Nat. Liby., or *M.C.P.*, ii, p. 112, and p. 114.

[3] *M.C.P.*, ii, p. 113, and *C.P.*, 54 (2).
On 19th March, 1716, in his capacity as Advocate-Depute, Forbes had waited upon the Lord Justice-Clerk and the other Lords (*C.P.*, 54 (2)) that a diet might be fixed for the trial of the Episcopal Clergy. The Lord Justice-Clerk did not appear to favour the prosecution, 'because it is not his own contrivance' (*Ibidem*), and argued that the 1st June was the earliest possible date for the trial. Forbes, in a letter to the Lord Advocate, Sir David Dalrymple, demurred and insisted that an earlier date was necessary, especially as there was talk of Parliament suspending the May circuit that year.

[4] *C.P.*, 61.

[5] *C.P.*, 67.

John Forbes, now that the Highlands were again restored to a state of comparative peace, had returned to his Parliamentary duties in London, and on 5th May wrote a long letter to his brother, its tone one of mingled pride and annoyance. He was justly gratified to know that at the recommendation of Brigadier Grant, Duncan's two memorials recounting the recent events in the north had been handed to the Prince who wished to compare them with some of the other versions of the rebellion then circulating.[1] The Government, however, had apparently a short memory for benefits rendered, and the younger Forbes, a praiseworthy reluctance in recalling these. Not so his brother John.

> I wonder much you do not send me the accounts of the money was raised for, and laid out on the public account by us at Inverness. I wish also that you would think of the proper way of stating my expenses, from the first time my wife was besieged, till the forces came to Inverness.[2]

Doubtless as a result of the prosecutions and overwork,[3] Forbes was experiencing trouble with his eyes. But there is no doubt that his efforts were meeting with the approval of those who counted in Government circles. Writing from London, 15th May, 1716, Culloden reports,

> He (Lord Ilay) expressed himself very kindly about you and I believe he has a just sense of your friendship,[4]

and these sentiments were repeated in a letter from the Duke himself a few days later (24th May, 1716).[5] The threatening clouds of royal disfavour were meanwhile already darkening the sky over MacCallummore. In spite of the affirmation made by an unknown correspondent (14th June, 1716) to Duncan Forbes that the King himself

> this day gave the Squadrone a positive answer that he would do nothing to shock the Duke of Argyll and would make no Secretary for Scotland at this time,[6]

[1] *C.P.*, 69. [2] *C.P.*, 69. [3] *M.C.P.*, ii, p. 117.
[4] *M.C.P.*, ii, p. 117. [5] *C.P.*, 70. [6] *C.P.*, 73.

a fortnight later the storm burst. His Grace and Ilay were both dismissed from office, civil and military (28th June, 1716).[1] The reason for the dismissal is not very clear. Culloden ascribed it to the ill-advice alleged to have been given by the Duke to the Prince, adding that

> the Duke had the Prince so much at his command . . . that if the King were once gone for Hanover the Prince would do nothing but as the Duke directed.[2]

Argyll, however, seems to have borne his maltreatment very easily.[3]

One thing is certain that an attempt was being made to curb the power of the Great Duke. According to Grant of Grant, Scotland was

> to have no Commander-in-Chief . . . for the future though the Duke of Argyll is to be Lieutenant General on the Establishment which is the same as to the money part but it falls short of the power.[4]

The Argyll party, known as the Argathelians, and indeed Scotland as a whole, felt the blow as almost a personal one. Among the letters alluding to the events just narrated occur some by George Drummond, for many years Lord Provost of Edinburgh. All his letters—and their penmanship would shame most of us moderns—are unsigned, and the various persons mentioned are frequently referred to by a number cipher, such were the precautions taken to ensure secrecy. A short example will suffice to show the method.

LONDON, *20th June, 1716.*

MY DEAR FORBES,

I told you in my last to my Lord that the regency was settled Tuesday morning—that night before and till 12 o'clock that day never was such a bustle at court. 31 after a great deal of pains was allowed by the Prince . . . 36 stood by . . . I don't go often to St. James's. I happened, however, to be in the Prince's side yesterday when 109 came to kiss his hand as a peer.[5]

[1] Uncat. MS. in Nat. Liby., 234/149, and *M.C.P.*, ii, pp. 124-5.
[2] *Ibidem.*
[3] *M.C.P.*, ii, pp. 129-130.
[4] Uncat. MS. in Nat. Liby., 234/149.
[5] Uncat. MS. in Nat. Liby.

Now that Scotland was without a Secretary of State, Forbes found that, of necessity, the volume of routine work of administration had greatly increased. In addition, an unpleasant task had to be performed now that the cases had been prepared against the prisoners taken after the insurrection of the previous year. As one of the Lord Advocate's Deputes, Forbes was liable to be required to conduct the prosecution of the poor wretches. He well knew, as he informed Ilay (7th July, 1716), that a kind of intimation had been made to him to that effect.[1] The task was far from a congenial one. He pleaded he was an utter stranger to the English forms of procedure, and there were 'several other reasons which your Lordship will easily comprehend'. He was resolved to refuse the employment :

> nor can any motive whatsoever induce me to accept that place, as things now stand, unless your Lordship commands me. Your opinion on this subject I expect either directly, or by communicating it to my brother.[2]

There can be no doubt as to why he did not desire this unpleasant duty, especially in view of his expressed opinion that justice should be tempered with mercy.

That Forbes's attitude of non-participation in the trial was the common one in Scotland at the time is perfectly clear from a letter (13th October, 1716) of Bishop Nicolson of Carlisle to Archbishop Wake on the preparations for trying the prisoners.[3] The witnesses, writes the bishop,

> were followed yesterday morning by a new Detachment of Advocates and Writers ; a generation of learned men who are commonly so obliging as to make directly for my house. I have been honoured with a visit by one of these already ; and I despair not of the like favours from the rest.
>
> This gentleman seems to be pretty positive, that we shall have no Judges nor Advocates on His Majesty's side of the question, from Edinburgh ; and that, because the whole Nation is adverse to trials of Scotch criminals in our English Forms.

[1] *C.P.*, 78. [2] *Ibidem.*

[3] *Original Letters illustrative of English History*, by Henry Ellis (1824), iii, p. 374, being MS. Donat. Brit. Mus., 6116, p. 75.

The Scottish Counsel, it appears from another letter (dated 17th December, 1616), in the same collection, had taken south many 'large volumes of Records for the ascertaining of the legal privileges and immunities of the Ancient Kingdom'. The most obstreperous was one Mr. Graham, a person of great learning and eminence.

> He is the King's judge of the Admiralty in Edinburgh, and in the warmth of his zeal has procured leave to be of Counsel for the Prisoners, on purpose to dispute this point; which he declares he'll maintain to the hazard of his very life, as well as his fortunes.[1]

Forbes's general work, too, grew heavier. Memorials from the Whigs of Inverness, 'whom I modelled into a regiment of Militia;'[2] addresses from the Convention of Burghs; remonstrances from the General Assembly, setting forth grievances to be remitted to London; and numerous personal requests made to him on behalf of unfortunate prisoners are only a few examples showing the variety of his correspondence. And in the midst of this came all the petty worries attendant upon the holding of local elections—Inverness, Elgin, Fortrose and others—and the issuing of the necessary orders of Council.[3] Mr. Baillie's cry of distress, we can be sure, did not go unanswered: 'I hope to hear of your coming North, for we are still afraid something or other shall be mismanaged if you come not.'[4]

In the midst of these important affairs in which his own convictions were involved, Forbes found time to interest himself in one of his friends, John MacFarlane, W.S. Through his brother John and Brigadier Grant, Forbes sought the aid of Walpole himself on his friend's behalf. It is possible, as Warrand suggests,[5] that the post sought for MacFarlane was one in connection with the Customs where much was being lost to the King's Revenue owing to defalcations on the part of present holders of these offices. This is the subject of a

[1] *Original Letters* (Ellis), iii, p. 390.
[2] *M.C.P.*, ii, pp. 121, 122, 123.
[3] *C.P.*, 54.
[4] *C.P.*, 76.
[5] *M.C.P.*, ii, p. 133.

confidential and anonymous letter signed T——s, to Forbes at Edinburgh dated 20th July, 1716.[1]

> Last week near Duffus . . . one William Binnie, a tidesman seized a parcel of goods to the value of £500 sterling. . . . I can tell you there's not a greater villain to King and Government and to his office this day in Britain than he is, for I'm very well assured he has wronged the revenue some thousands of pounds since he has been in office here and if your friend was in the office proposed, will bring those matters to more light.

But, in the early autumn, a tragedy befell the family, and MacFarlane found himself caught in a mesh of unforeseen difficulties that made the losses to the King's Revenue a subject for him, of minor importance. This dramatic episode in the MacFarlane ménage is worth relating as it sheds light on the Forbes circle.

One of Duncan's boon companions in the Scottish capital, MacFarlane, along with the Depute-Advocate and his friend Dr. Clark, belonged to the strange club[2] whose members bore the enigmatical name of the 'Phizes', e.g. Phiz Clark. Mrs. MacFarlane, a noted beauty and a popular toast among her husband's friends, and 'justly esteemed for an unaffected good-nature joined with innocence'[3] was known among the elect as 'Phyzza'[4] and became evidently a favourite with the brothers Forbes.[5] About a couple of months after Forbes's tireless efforts to promote MacFarlane's interests, the following tragical incident occurred.

[1] Uncat. MS. in Nat. Liby., or *M.C.P.*, ii, p. 134.

[2] The frequent occurrence of the word 'physical' (Uncat. MS. in Nat. Liby., or *M.C.P.*, ii, pp. 72-76) appears to Burton (*Life*, p. 295) to suggest the existence of a society bearing the name. Warrand thinks that the group constituted 'probably a very select and philosophical wine-club' (*M.C.P.*, ii, p. 71).

[3] Uncat. MS. in Nat. Liby., and *M.C.P.*, ii, p. 113. Also MacPhail MSS.

[4] Uncat. MS. in Nat. Liby., or *M.C.P.*, ii, pp. 75 and 140.

[5] 'She often minds you,' wrote her husband to Duncan. 'You have now Sinclair's place with her' (*M.C.P.*, ii, p. 75). And wrote John to his brother four days earlier: 'I shall not forget what you write of Mr. MacFarlane, and if Mr. Innes sends me any wine, shall not fail to drink the beautiful Mrs. MacFarlane's health and I tell you that she has been my beloved toast since my coming to this place which pleasure I hope none that admire her will refuse' (*M.C.P.*, ii, p. 113).

A frequent visitor at MacFarlane's house was a certain Mr. Cayley. A handsome young man of somewhat reserved disposition, he preferred 'in the way of living, the lady's conversation to the tavern or any other amusement with his friends '.[1] On his coming to Scotland as a Commissioner of the Customs, he took two lodgings, one in the country at a pretty little place called the Inch, about a mile from town, and another in town where he lodged with a Mrs. Murray, an intimate friend of Mrs. MacFarlane's. Indeed, there was easy access between the houses. In order to get to know Mrs. MacFarlane, he made friends with her husband, even visiting him once, and sometimes twice a day during his illness arising from a fever which kept him an invalid for a full month. In consequence of his visits Cayley was on terms of complete intimacy with the family.

The tongues began to wag in town, and, the censures coming to Mrs. MacFarlane's ears, she resolved not to go with her husband on his visits to Mr. Cayley at his country house, and at the same time she ordered her servants to deny him admittance.

> On Saturday, the 29th September, before dinner, Mrs. Murray came to Mrs. MacFarlane's house, and having waited till her husband went abroad, chid her for being unwilling to visit her and prayed her to come and see her in the afternoon.[2]

Although she refused at first, Mrs. MacFarlane finally agreed to go as Mr. Cayley was always at his country house at Inch on a Saturday. Mrs. Murray led her guest into the room usually occupied by Mr. Cayley and then excused herself to attend to another matter. She withdrew, closing the door after her. Meantime, Mrs. MacFarlane went over to the back window, and leaned out, 'humming a song for some minutes.' A sudden tap on the shoulder made her jump round. There to her no small surprise and annoyance, stood Cayley.[3] Assuming an unconcern which she did not feel, Mrs. MacFarlane apologised for having been brought into his apartment by his landlady, and crossed to the door.

[1] Uncat. MS. in Nat. Liby. [2] *Ibidem.* [3] *Ibidem.*

It was locked. On Cayley's making clear the purpose of this strange meeting, a struggle ensued in which the lady succeeded in resisting his unworthy overtures, at the same time assuring him that her husband 'would not suffer him to live after the affront'.[1] Then he begged a thousand pardons.

On her return home Mrs. MacFarlane informed her husband, who was determined to be avenged on Cayley before the latter left for York in a few days. He instructed her to say nothing of the matter. Accordingly, when Cayley sent a hare as a present, MacFarlane treated the servant courteously and so deceived the culprit into thinking the lady had told nothing of the affair. Still greatly daring, Cayley paid a second visit with dishonourable intentions. In self-defence the lady seized Cayley's sword, but it was wrenched from her. She rushed out and returned with her husband's pistols which

> hung over the chimney, and, having locked them both in the closet, she re-entered the room . . . and offering him one of the pistols, which he refused, she reproached his villainy,[2]

and thereupon shot him.

Grant of Grant, writing Forbes at Inverness from Bath on 17th October, says :

> Sure you'll be equally surprised and concerned to hear of the tragical accident happened in Mr. MacFarlane's family. I doubt not but all our friends will contribute to procure a pardon for the poor lady.[3]

Forbes's sympathy with the unfortunate woman was not limited to mere words, for he tried to assist in a very active way. He wrote to Ilay seeking his advice and help. The latter was of opinion that the

> properest method is to let the affair lie over for some time. You may be sure I cannot but wish well to any that you espouse so much, but in these sort of cases, time often is the only remedy. . . . I have shewed some of your letters about our Northern

[1] Uncat. MS. in Nat. Liby. [2] *Ibidem*.

[3] Sir Walter Scott alludes to this incident in *Peveril of the Peak*, Notes to chap. v. Also *M.C.P.*, ii, p. 141.

affairs to W.P.7 and I assure you they are mightily pleased with you. (George Drummond will explain the cipher.) [1]

In the midst of all these different pieces of official business and friendly interest, Forbes was being importuned by the redoubtable Lovat in his best style. Fearful that the ultimate outcome of his claim to the Lovat (or Fraserdale) Estates would not be favourable to him, he wrote his 'dear General' on 28th July, 1716 : [2]

My dear General,

I must say that your neglect of me was as surprising to me as the glorious fall of the great Argyll. . . . It has been a damned ungrateful and unconstant constellation that has dominal (*sic*) in this month. But in spite of these malignant influences of the stars I bless God I am still the same to my General and to the heroic Duke of Argyll. . . . Am I not an unlucky dog, if my business has come too late to the Exchequer, my dear General I trust that you will do impossibilities in that case for if my business be delayed to November I may bid farewell to it pour le reste de mes jours so I hope you will employ all your male and female friends in Edinburgh to engage the barons to do my business even out of term time. You know I have enemies and delays might ruin me. I refer all to yourself, Dear General, sure I know you love your Corporal though (you) neglect him and I love my General more than any man alive does.

Something must now be said of an extraordinary letter which was at this time addressed to Walpole in connection with the methods pursued in effecting a settlement in Scotland after the rebellion. Undated and signed 'Y. Z.', the extant copy of the letter is in Forbes's handwriting and is generally acknowledged to be his work. It is assigned by the original editor of the *Culloden Papers* to August of this year. He has hitherto, the writer declares, regarded Mr. Walpole as an honest man, and despite strong evidence to the contrary he would like to continue in that opinion. However,

[1] See pp. 351 and 357 *re* letters using cipher. Uncat. MS. in Nat. Liby., Ilay to Forbes, 30th October. No year is given, but clearly 1716.

[2] Uncat. MS. in Nat. Liby., or *M.C.P.*, ii, p. 135.

his final decision must wait till he sees how the present letter is received. His zealous friendship and services towards the Hanoverian cause, despite the absence of rewards, may be safely affirmed by himself, for his anonymity saves his modesty. So loyal is he that he will not publish the document, lest its publication strengthen the cause of the King's enemies. At the same time he is determined to prevent suppression of the letter and so will take careful steps to ensure its proper delivery. (It will be observed, therefore, that its authorship was not completely unknown among his friends.) While England is the more valuable part of the King's dominions, yet

> it is by no means prudent to disoblige Scotland by open injuries which may create general dissatisfactions, not to be ended but with the ruin of that part of the United Kingdom.[1]

As the ministry is pursuing ' measures unnecessarily disobliging to the King's friends, exasperating the disaffected, and in a particular manner ruinous to Scotland ', he, a Scotsman, must state his country's grievances :

> resolved to assert no fact, and to give the character of no person that I will not answer at the peril of my head, if by clearing it I may do my King and Country service.

No doubt the Pretender's followers deserved death and such punishment as the Law decreed, but ' Humanity and prudence forbade it '. A suitable course would have been

> to have punished only as many as was necessary for terror, and for weakening the strength of the rebels for the future ; and to extend mercy to as many as it could conveniently be indulged to with the security of the Government.

But the severe measures adopted instead, viz., trying all the criminals in England ; detaining in prison in Scotland all those who had no powerful influence to secure a pardon ; attainting many Scots noblemen and gentlemen ; preventing His Majesty from granting any part of the forfeited estates ; appointing a Commission for enquiry and levying the rebels'

[1] Uncat. MS. in Nat. Liby., or *C.P.*, 82 (the MS. is now incomplete).

goods and chattels, rendered the rebels desperate for ever. Many of the relations and friends of the rebels would be alienated by the severity adopted.

The writer wastes no time in urging upon his correspondent the improprieties and inconveniences of the Forfeiture Bill, as it affects creditors. That has been amply discussed in Parliament. He is sure, too, there are not one hundred persons in Scotland who do not hope the King will overturn the Bill. If the present policy is pursued, a standing army will be made necessary, and the King's enemies declare that is the ministry's intention. The forfeitures will hardly defray the expenses of the Commission of Enquiry that is being set up. If a dozen gentlemen are excepted, the rebels can produce but little surplus money, once their debts are paid. Indeed, it is clear to any competent observer

> that the men of estates, however disaffected in their principles, kept themselves within the Law ; when at the same time, men supposed loyal, in hopes of bettering their own fortunes, broke loose.[1]

In any case, the forfeited estates are not large and are of use to none other than their owners. It would be imprudent, therefore, to cause strife in the nation for the small sum that would be raised. Even if £10,000 or £20,000 were brought in, that would not balance the loss of the affections of the people, 'especially when that event will bring on £100,000 charge for maintaining an army to keep the nation orderly.'[2]

Of course, he does not think that the guilty should go unpunished, but it ought to be according to some sound principles, 'that is, no farther than is necessary for the security of the Government and for the terror of others who might attempt the like afterwards.'[3]

(1) He considers the most powerful and the most malicious among the rebels should be punished by execution, if in custody, and by forfeiture of estates, if not yet arrested. About 20 would cover this number.

[1] Uncat. MS. in Nat. Liby., or *C.P.*, 82. [2] *Ibidem.* [3] *Ibidem*, p. 63.

(2) An indemnity by Act of Parliament might be granted to all who might surrender by a certain day.

(3) While allowed their lives and estates, these men should be compelled to find bail for their good behaviour and undertake to participate in no elections or other public business.

This important topic disposed of, he laments the fate of his entirely neglected country which at this critical juncture is left to the management of a band of self-seekers who are most odious to the people, the Squadrone to wit. And among them is General Cadogan who lately made such a dishonourable treaty with the rebel Glengarry. And yet Argyll himself to whom so much is due as the bulwark against Popery and tyranny, is disgraced !

With asperity he concludes :

> By what I have said in the outset, Sir, you may guess I will not rest satisfied singly with having transmitted this to you. I must know something of your sentiments about it. I'm resolved to wait till the 20th September, and if in the *London Gazette*, before that date, I see nothing advertised concerning a letter dated and signed as this is, you may trust to it, I shall complain of it in such a manner, as you shall have no reason to be satisfied.[1]

Having remarked upon the peculiar conclusion of the letter, Hill Burton drops the subject. The view expressed above that the writer had not kept his authorship completely secret is borne out by evidence now brought to light in an uncatalogued manuscript in the National Library, or *More Culloden Papers*, volume ii, p. 140, and a new letter from the MacPhail MSS. Under the date 20th September, 1716—the date mentioned in the letter itself—appears a letter from John MacFarlane, Edinburgh, to Duncan Forbes, c/o Postmaster, Inverness, containing this paragraph :

> Now this is the 20th of the month and nothing has yet appeared in the *London Gazette*. If you have any further to do with respect to that paper, pray direct me and I shall execute it with all the care and zeal that the purpose of that affair and serving you can inspire me.

[1] Uncat. MS. in Nat. Liby., or *C.P.*, 82, p. 65.

Forbes himself was quite out of touch with London gossip. He had gone north at the end of August, his visit partly one of duty to his dying mother, and partly an effort to get away from company and claret. His letter to MacFarlane dated 7th September, 1716, shows him ' so plunged in politics and distresses of a more cruel kind ',[1] that he felt unable to give his friend a complete account of his travels. Weary and worried as he was, he had still time to daff with his dear Phyzza, who was so soon to be the central figure in her tragic drama. According to his frequent custom, Forbes appended a few words in lighter vein to Mrs. MacFarlane, not written on a separate sheet of paper but merely tagged on to the serious business-like epistle written to her husband. There was no need for MacFarlane to be jealous. All was fun and frolic and above board.

> And now, my dear Phyzza, Let us speak two words to thee whereof the first shall be to thank thee for thy kind concern about my government of myself. Thou seemest apprehensive that by drink I abuse thy property, but know that I never said more than that I was as much thine as I was my own, thus thou canst not pretend to more than one half of me, and I do assure you that as I have been no more than half drunk since I saw thee, I took a special care that my own half of myself should be drunk whilst yours remained in perfect sobriety. . . . My aged mother, whom you know I justly honoured, lies repining. Two days I do believe or fewer will end that good woman which, as it will shorten my stay in this country will for hereafter increase the number of your Saturdays. . . .
>
> I am to both of you a very faithful and humble servant,
>
> DUNCAN FORBES.

MacFarlane's letter of the 20th showed that in the earlier *Gazettes* of the month there was still no sign of a reply from Walpole. When Forbes next wrote (26th September) he took pains to point out to MacFarlane that

> though the 20th Sept. be past, we must wait until we hear from London of that date. Acquaint me whether you hear anything

[1] MacPhail MSS. in Nat. Library.

by the *Gazette* of the 20th because that paper comes not this length.

To Phyzza, he could tell his personal, not political worries.

For my own part, I am almost wearied of this wicked world. One wish and but one I had when I left you, concerning myself, that I might enjoy eight days free of company and claret. How I have succeeded you may guess by this that though to-day it be just a month since I saw you, I have not yet buckled a shoe, that is, I have not been one day out of my boots.

To-morrow my aged mother will be buried. If you saw my little destitute brat, you'd at once love and pity him.

But to return,

Dear John and you, my dear Phyzza,

Farewell,

DUNCAN FORBES.[1]

With the passing of the dowager Mrs. Forbes, the family lost a loving mother, and the poor a valued friend.[2] Even the rascally Lovat remembers her as 'one of the best of women. . . . I had a very great respect for her and I always found her my passionate friend'.[3] A story which Forbes himself is said to have frequently related 'with so jocose an air, so much affability and sweetness, as to procure respect and veneration from these who did not approve the action',[4] has been handed down by tradition. This refers to the last rites attending the obsequies. According to the customs of the period, generous hospitality was extended to the large concourse who flocked to Culloden House on the day of the funeral. To Duncan as the younger son fell the duty of catering for the material comforts of his guests, and he appears to have played his part in this direction only too well. Let the rest of the story be told in the words of the *Memoirs*, published just after the death of Duncan Forbes himself.

[1] MacPhail MSS. in Nat. Library.
[2] *C.P.*, 83.
[3] *Ibidem.*
[4] *Memoirs of Duncan Forbes*, p. 11.

> At last it was moved to proceed to the place of interment; they quickly rose up and rode from the house to the churchyard but unluckily for them, they had neglected to give orders for the lifting of the corpse, that is the phrase used in Scotland for carrying them off. When at the grave, the main thing is wanting; and while all the friends are crowding to perform the last duties to the deceased, behold the subject is no nearer than the place in which she died. A messenger is instantly sent off to hasten up the corpse, which was done with all imaginable speed, and the lady was laid in the grave with all the decorum and decency that could be expected from gentlemen who had fared so sumptuously, and drank so plenteously at her house.[1]

Can we be surprised that nothing more is heard of the famous Walpole letter?

The modern reader may doubt the truth of this story, but the account paid to John Bremner in February 1717, in respect of the funeral itself, gives adequate proof of the lavish scale on which the arrangements were made. The account reads:

For two coffins to your Lady Mother -	£60	0	0
To 6 iron handles with ropes and bands of iron - - - - - - - -	16	0	0
To 4 timber mounts - - - -	6	0	0
To blacking the gates and door - -	0	18	0
To timber and workmanship of Scutcheon	2	0	0
To ropes and black cloth thereto - -	3	0	0[2]
	£87	18	0

In this autumn of 1716, the municipal elections were being held throughout Scotland, and these, though local affairs, appear to have been largely political and to have aroused general attention. September saw the new Council of Inverness elected under the superintendence of a Royal Commission, which contained the two brothers Forbes. In it the anti-Jacobite influence was prominent.[3] John was

[1] *Memoirs*, p. 12. [2] *M.C.P.*, ii, p. 141. [3] *M.C.P.*, ii, p. 149.

elected a member,[1] and later chosen as Provost,[2] but his success did not meet with universal approval. Lovat on the 29th September writes, 'Your election has made as great a noise here as at Inverness and made people very busy on both sides.'[3] Similarly on the 6th October he entreats Mr. Baillie to

> acquaint both Duncan and John Forbes, that their Inverness business cost trouble to me and to their other friends, and that I admire why John Forbes suffers himself to be calumniate by these people and by open Memorials to the Cabinet Council, without John Forbes writing to any of the Secretaries. If I had not spoke so opportunely to my Lord Chancellor and to my Lord Townshend, I believe the affair would have gone wrong. It has keeped the great brothers and me in hot water these ten days.[4]

The Burgh of Inverness delighted to honour the younger brother as well. On the 8th October, 1716, it

> being well versed in, and knowing the qualifications of Mr. Duncan Forbes, Advocate,—as also considering how active he was in suppressing the late rebellion against H.M. King George,—

appointed Mr. Duncan Forbes advocate for the Burgh,

> to act in all public affairs and debates wherein the Burgh in general may be concerned.[5]

For this his salary was 20 merks per annum.

One of the tasks of the newly appointed Provost was to put into operation the (First) Disarming Act (1716). Even before 1st November, a large number of weapons—guns, pistols, swords—had been handed over in the north, and these John Forbes transmitted to General Carpenter at Edinburgh. A list of the consignment despatched from Inverness was acknowledged by the General on 31st December, 1716.[6] Among the names of those handing in their weapons

[1] K. Macdonald's edition of *Antiquarian Notes*, p. 79 note, quoted *M.C.P.*, ii, p. 145.
[2] *C.P.*, 86. [3] *C.P.*, 83. [4] *C.P.*, 84. [5] *C.P.*, 86.
[6] *M.C.P.*, ii, p. 156.

is that of the Provost himself whose arms were valued at £106 7s. 6d.[1]

[1] Uncat. MS. in Nat. Liby., or *M.C.P.*, ii, p. 160.*

* An interesting reference to a notable Scottish character of the period occurs in a letter of 1st December, 1716, from Grant of Grant to Forbes himself:

'I had yesterday yours of the 24th with the account of Rob Roy's exploit. I really take him to be capable of any villainy and consequently do believe that Killearn is in a good deal of danger. I find the Duke has sent an account of it to the Secretary of State' (Uncat. MS. in the Nat. Liby.). This same incident, viz., 'the arrest of Mr. Grahame of Killearn by that daring freebooter while levying the Duke of Montrose's rents,' is referred to by Scott in a postscript to his *Rob Roy*.

CHAPTER III

RELATIONS WITH LOVAT—POLITICS (1717–1724)

During the seven years (1717-1724) dealt with in this chapter, little of any real historical interest or significance happened. We must be content to recount trifling incidents and dull, commonplace facts. Occupied, now with routine business, now with personal affairs, Forbes pursued the even tenor of his way. He was digging himself in. Slowly and surely, men were recognising his worth, and when promotion came his way in 1725, it was with universal approval.

In *More Culloden Papers*,[1] Major Warrand makes an error in assigning to the year 1717, a long letter (dated 21st January) really belonging to the year 1747. The result of this simple mis-reading is to narrate events in Inverness as happening in 1717, whereas these actually occurred thirty years later. Properly placed, Forbes's letter answers that of the magistrates of the northern capital who on 9th January, 1747, had sought his advice on some of their difficulties. The subject is dealt with in chronological order in Chapter XVI, p. 290.

Forbes had many calls upon him apart from his official duties. January 1717, for example, found him in communication with Simon Fraser regarding his estates. Lovat had married Margaret Grant and was now (10th January, 1717) resident at Castle Grant. Addressing Forbes in his usual bantering way, as 'My dear General', Lovat continues :

> My wife bids me tell you that she has the same wishes towards you, and that since little Sandie married you and her in Ballindalloch you must provide for her in everything that

[1] *M.C.P.*, ii, pp. 170-173.

> I fail in, mais raillerie à part je suis étonné que le duc et son frère et le Brigadier ont negligé l'affaire sur laquelle l'établissement de ma maison, et tribus (=clan) semblait dependre. Si j'étais libre sans femme, je serais (tout à) fait indifférent de tout ce que mes ennemies pouvaient faire contre moi, mais étant engagé avec cette jeune femme,[1] j'aimerais mieux avoir la tête tranchée que d'être obligé de quitter la possession des mes terres à Frazerdale ou au public.[2]

The purport of the letter was that Forbes should take up his case, as he was claiming the estate of his cousin, the late Lord Lovat.

> So, my dear General, since you know I do not understand a word of law I refer this to your self.[3]

It is diverting through this epistle to see the stress which Lovat puts upon his marriage. ('If my marriage had not keeped me here, I had . . .', and again, 'I would go to the stake to serve him [=the Duke] to-morrow without regret . . ., and I am ready to hazard my life as well as my posts for him. But I own that my being married does much disturb me on that head.') Forbes was no doubt appropriately moved, for Lovat returns to the charge on the 28th January, but this time from Beaufort :

> But, my dear General, I never found that any friend would do for me what I would for him, except my dear General who is generous and great in his soul above all the Dukes and Earls in Britain.[4]

At this period Lovat shows himself a constant letter-writer, and when his wife cannot be put forward as an excuse to win his correspondent, there is always flattery. Thus, to Forbes from Inverness, 20th February, 1717,

> I am sorry my adversaries have employed the best lawyers, except my General, whom I look on as the best of all.[5]

[1] He had been married only the previous month, December 1716.

[2] *M.C.P.*, ii, p. 162. [3] *Ibidem*, p. 163. [4] *C.P.*, 92.

[5] Uncat. MS. in Nat. Liby., or *C.P.*, 94.
In May 1723 Lovat's appeal was heard in the House of Lords in his case against Hugh, the eldest son of Alexander Mackenzie of Fraserdale. Forbes was successful in having the decision of the lower court reversed (Parliament Book '40' recently acquired by the National Library).

A number of letters passed between the two Forbeses at this period (February to March 1717), and again Lovat figures as one of the topics at a time when Culloden is forced to exclaim,

> You are angry that I do not write news, but by G—d, I write you all I know, and when you are here [=London] yourself you'll perhaps labour of the same want of intelligence that I do.[1]

The loyalty of the Forbeses to Lovat is reflected in a letter written by John to his brother on 16th March, 1717, at nine at night although he had already despatched a letter on the previous day. It was whispered that orders had been sent to Scotland for Lovat's arrest

> to prevent his coming here to tell truths. We give you this intimation that you may put him on his guard, so as he may pass incognito and come up hither with all possible haste.

This Lovat immediately did and so was able to save himself.[2]

The letters written to Forbes by his London correspondents in June and July of this year are mainly political and include accounts of the trial of the Earl of Oxford,[3] but an interesting document is the letter (13th July, 1717) from Culloden, recently bereaved of his wife, to Duncan in which he advises him about a subject of personal concern to both :

> I had almost to thank you for the kindly way of living you propose to us. I like it extremely well, but I should like it much better if you could think of providing yourself with an honest lass that would be a comfort to you, and also take care a little of me. This would determine me to keep home and with pleasure, which in any other event cannot be but pretty melancholy to me when alone. And I assure you that your coming to some speedy and solid resolution in this thing, which perhaps you may take as a joke, is the greatest obligation you can do
>
> Your affectionate brother,
>
> JOHN FORBES.[4]

[1] Uncat. MS. in Nat. Liby., or *M.C.P.*, ii, p. 169.
[2] Uncat. MS. in Nat. Liby., or *M.C.P.*, ii, p. 170.
[3] Uncat. MSS. in Nat. Liby., and *M.C.P.*, ii, pp. 173-184.
[4] *C.P.*, 96.

This matrimonial solace, however, Forbes was unable to provide for his widowed and thirteen-years-older brother, for Duncan did not marry a second time, and in spite of the 'pretty melancholy', Culloden himself lived on for other seventeen years, comforted by another—euphemistic—'wife' of his own.[1]

On 29th March, 1718, Forbes became a Burgess and Guild Brother of the city of Glasgow.[2] This apart, there is no event of any moment to be recorded in the life of Forbes about this time, the year 1718 being particularly poor in material for Forbes's career. A few letters, of course, appear from the 'poor slave' to his 'dear General'.[3] The sole letter extant from the pen of Forbes himself is written (27th December, 1718) from Edinburgh to the Lord Advocate concerning a Bill he was known to be promoting 'for removing these offences at which so many of our well-meaning clergymen stumble'.[4] This is obviously a reference to the change intended to modify the abjuration oath. The letter shows something of Forbes's shrewdness, for he suggests that, if a draft of the Bill were sent him privately, he would have it

> prudently communicated to some of them to the end that their approbation obtained might tie them down to promote the qualifying and to answer their brethren's difficulties, and also that their observations upon it might enable you to offer further satisfaction than seems at present necessary, without knowing their particular objections.[5]

We do not know whether Forbes's suggestion was followed or not.

On the political situation and on affairs in London generally Culloden continues dutifully as his brother's best informant.[6] During this year [7] the Duke of Argyll, who had

[1] *M.C.P.*, iii, p. 50.

[2] Sco. Record Socy., *The Burgesses and Guild Brethren of Glasgow* (1573-1750), edited by J. R. Anderson (Edinburgh, 1925).

[3] 17th and 26th April, *M.C.P.*, ii, pp. 188-189.

[4] *M.C.P.*, ii, p. 190. [5] *Ibidem.*

[6] *M.C.P.*, ii, pp. 185-188.

[7] Part II, p. 10 of Beatson's *Political Index*, corrects Lockhart (11-34), who says he was Lord Chamberlain.

been in opposition for a little, was again restored, at least in some measure, to his old political pre-eminence ; he became Lord Steward of the Household and so shared the management of Scots affairs with the Squadrone.[1]

More stirring events were soon to occupy Forbes's attention. A force incited by Alberoni sailed from Spain, but only two frigates and another small vessel carrying Scottish refugees from France reached Lewis, whence the Spanish-Irish-Highland contingent crossed to the mainland and were further reinforced by the accession of 1,600 Highlanders. Forbes had, early in May, received from Lovat some intimation of the reported movements of a hostile fleet. The letter is dated London, 2nd May, 1719.[2] Certainly in May the authorities in Inverness were taking steps to maintain the peace. Thus, on 5th May, by order of Lord Strathnaver, Sheriff Principal of Inverness, a number of persons suspected of disaffection towards the Government were summoned and charged. Later in the month (15th May), an anonymous writer despatched to The Much Honoured Mr. Duncan Forbes, an account of the situation so far as he had been able to gather news.[3] But Forbes's part was not merely to collect intelligence, but to settle punctilios and issue instructions, to exhort, and to placate, in the interests of law and order and of national safety. On the 18th he is found writing to Colonel William Grant, acknowledging a letter (dated 13th May) received at nine o'clock that morning. He discreetly sympathises with Grant in his annoyance at Lord Strathnaver, a Deputy Lieutenant, for imagining

> that he has power to command private gentlemen with their Tenants and Servants to serve as pioneers or any other capacity.[4]

But then, the tactful legalist and patriot goes on,

[1] Early in 1719 we find Forbes being applied to by his friend Rev. Mr. Baillie of Inverness on behalf of the Rev. Thomas MacCulloch, who sought the vacancy at Petty. MacCulloch, however, was unsuccessful (*M.C.P.*, ii, p. 191).

[2] *M.C.P.*, ii, pp. 193-194.

[3] *M.C.P.*, ii, pp. 195-196.

[4] *M.C.P.*, ii, p. 197.

> dear William, when the cause of our King and our Constitution comes to be at stake, the above mentioned zeal, will, I hope revive and push Grant's kinsmen to do whatever he will expect from them.[1]

Therefore, Grant should serve his King and country and save his pride, by putting himself under the orders of Colonel Clayton, Officer Commanding regular troops at present, and of General Wightman when he arrives. To ensure that all will be well, Forbes says he has already written Clayton in these terms and will likewise inform Wightman. And, he gently suggests, ' I believe you'll think time should not be lost in doing what you can,' and ' Pray dispose the Frasers to do what I here recommend to you '.[2] So shrewd a man as Forbes was not the one to make the mistake of telling Grant that he had that same morning received a message (dated 14th May) from Clayton ' concerning the behaviour of Brigadier Grant's people in this season of public danger '.[3] On the 18th, then, Forbes also acknowledged Clayton's letter requesting that the arrangement he had put before Grant might be adopted by the Commander-in-Chief. ' I doubt not that you'll allow them to be called Volunteers and reckon them only subject to your own and the General's command.' [4] Apart from their value as examples of Forbes's wisdom in handling an awkward situation at a time of national danger, these letters show his keen insight into the Highland character and his awareness of its pride and touchiness. These two letters—unsigned—are endorsed ' Copie missives Duncan Forbes to Col. Wm. Grant and to Col. Clayton.'

In the midst of all this worldly worry, Forbes found time to interest himself in religious matters. He enrolled himself on the side of orthodoxy by appending his signature a few days later (21st May, 1719) to the Confession of Faith.[5]

On the 10th June, some two months after their arrival on the mainland, the Spanish and Irish invaders and their Highland associates were attacked by General Wightman at

[1] *M.C.P.*, ii, p. 197.
[2] *M.C.P.*, ii, p. 198.
[3] *M.C.P.*, ii, p. 199.
[4] *Ibidem.*
[5] This can be seen in the Church of Scotland Library, Edinburgh.

Glenshiel and defeated. An account of the battle was duly transmitted to Forbes on 26th June, 1719, by 'Your own T.', most likely Jonathan Thomson, an Inverness merchant, who had himself received a first-hand narrative from Clayton, dated 11th June, the day after the battle.

A month later Forbes was once more in communication (10th July) with the Rev. Robert Baillie of Inverness, this time about the settlement of a church vacancy. Thereafter we lose trace of him till the very end of the following year, when he exhorts (8th December, 1720) Culloden to proceed to London as 'disputes . . . are likely to arise about supporting the public credit'. He wishes John 'were by, at least to see the sport', when 'Walpole bids fair to force his way to the head of the Treasury'.[1] By 13th January it was evident that John had no intention of travelling south. The younger brother could not conceal his astonishment at John's resolution not to be present at that session of Parliament, especially as such momentous affairs were to be discussed as the settlement of the South Sea Company. And he adds pointedly :

> I acknowledge I thought that since your circumstances were altered to the better, your duty tied you to attendance, and I persuade myself if things go wrong by a narrow majority you'll find it difficult to forgive yourself.[2]

It is about this time that Forbes's name first appears in cases appealed from the Court of Session to the House of Lords. The first decision in a reported case in which he is named is dated 8th June, 1717.[3] Out of eighteen appeals decided during 1720, in ten he is definitely mentioned. Whether the gap in his legal practice from 21st May to 21st December, 1722, is due to illness, or merely to the documents being lost, it is not possible to say. Between 15th December, 1722, and 17th April, 1727, at which date Robertson's *Reports of Appeal Cases* terminates, forty-three cases are reported, and Forbes is involved in all but seven. His name appears regularly in the appeal cases

[1] *M.C.P.*, ii, p. 204.

[2] *M.C.P.*, ii, p. 205.

[3] Robertson's *Reports of Appeal Cases*, p. 191. In error Hill Burton, p. 304, gives 19th February, 1720, as the date of first mention ; and states that out of twelve appeals decided during 1720 in only three is he not mentioned ; and also that Forbes appeared in all but seven of forty-two cases within the years stated.

decided by the House of Lords during the period 1728-1737 and in the great majority of cases he is successful.[1]

Forbes was now on the point of entering the political arena. Argyll offered him the Ayr District of Burghs in July 1721, and apparently excused him from attending when business should tie him to Edinburgh. With misgivings Forbes allowed himself to 'submit to your Grace's resolutions'.[2] This did not materialise, and Warrand surmises it may well have been that he was under negotiation for the Inverness District of Burghs.[3] Several letters between Argyll and Forbes exist for the period July 1721 to February 1722,[4] but probably many have been destroyed.

On the first day of the year 1722, Forbes wrote Argyll on the subject of party politics and tactics, venturing to make some suggestions which certain peers among the Duke's friends wished to have laid before him.

> Whether this notion which I take the liberty of giving your Grace shall be construed to proceed from forwardness in me or folly, does not much disturb me, because I am conscious it proceeds from affection which no neglect has hitherto been able to subdue.[5]

A month later he again urges the Duke to counter his enemies and to exercise his own power; otherwise the patience of his hitherto supporters will wear out. He wants Argyll to use some method of preventing the Laird of Kilmahew (George Napier) now in financial difficulties, from deserting his party in favour of the Squadrone.

By reason of his home connections, and especially since his brother was a participant in the local burgh elections, Forbes was much interested in these proceedings. Accordingly, on 11th October, 1721, we find him writing at great length from Inverness to the Duke of Argyll recounting some of the irregularities and intrigues resorted to by the candidates and their friends, particularly in Nairn and Dingwall.

[1] Craigie, Stewart and Paton, *Reports of Cases decided in the House of Lords upon Appeal from Scotland* (1726-1757).

[2] *C.P.*, 99.

[3] *M.C.P.*, ii, p. 205.

[4] *C.P.*, 99, and *M.C.P.*, ii, pp. 206-213.

[5] *M.C.P.*, ii, pp. 206-207.

In the former, the rival parties were headed, on the one side by Alexander Gordon of Ardoch, and on the other by Rose of Kilravock. Gordon with intent to make an impression, rode into Nairn with thirty-six followers, all armed.

> Their money and promises joined with the appearance of some force, which they had of their side, gained 7 of 17 councillors, which compose the common Council of the burgh. But as their seven were of the lowest form of the people they did not think fit to hazard them abroad, but chose rather to keep them close shut up, constantly drunk, in a garret of that house where the Muster Master (Alexander Gordon) and his associates took up their quarters.[1]

The news of this coup d'état was not long in reaching the ears of Kilravock in his house, ten miles from the town. The majority of the Council was still faithful to his interest, and so with some fifty or sixty gentlemen of whom Duncan Forbes was one, he too, made for Nairn. Forbes graphically describes the episode with playful irony.

> Upon our arrival . . . the Muster Master and his troops were seized with a panic fear. They quit the streets and retired to close quarters, where they kept themselves exceeding snug, till we were gone to dinner, and then finding the streets clear, most resolutely they mounted their steeds, and galloped away with some precipitation from a danger which, God knows, had existence nowhere but in their imaginations.
>
> But it seems they had some prescience that they were to be frightened, for the morning of their retreat long before we entered the town they had caused their 7 councillors without the assistance of the other ten, without Provost, Clerk, or Council Books make a sham election of Magistrates and common Councillors in their garret aforesaid, by which election it's easy to guess Muster Master would be Provost.
>
> When these heroes had walked off, we left the town, and the next day Kilravock with his ten Councillors made their election in the regular manner.[2]

But the affair was of wider appeal than seems apparent at first glance, for part of Forbes's complaint was against the

[1] *M.C.P.*, ii, p. 210.

[2] *M.C.P.*, ii, p. 210.

unjust action of the Squadrone Lord Advocate Robert Dundas, in seeking to influence the elections at Nairn and at Dingwall.[1] This, however, was only one side of the question, for later, John Forbes and twenty-seven others were accused of having unlawfully convocated hundreds of men in arms and carried off to prison three councillors of the Burgh of Dingwall on the annual election day, at 'Michaelmas last . . . with intent to overawe and influence the election of the Burgh'.[2]

On the 26th September, 1721, Culloden himself was again elected Provost of Inverness Burgh, and when the action at the instance of John, Earl of Sutherland, Alexander Gordon of Ardloch and others, was threatened against the Provost and Magistrates for illegal practices, the Council in the absence of their provost in London (23rd November, 1721) instructed the Treasurer to forward copies of the summons to Duncan Forbes and to the Convention of Burghs. Forbes seems to have taken the necessary steps,[3] for the Council on the 8th December, 1721, recorded its thanks to him and to Alexander Baillie their clerk, for the good services rendered.

The possible outcome of the action was a source of considerable disquietude to the mind of Duncan Forbes. Just at this time occurred a vacancy in the Court of Session. His own words best explain the situation. From Edinburgh he writes to his brother on 19th December, 1721 :

> We are frightened out of our wits here that Peter Haldane will be made Lord of Session in place of Fountainhall who has demitted. If this happen, we have no more to say in the Session, and, for aught I know, the ridiculous process against you and your magistrates may be determined against you, at a season when there can be no appeal. I am hopeful the Duke will look to his own interest in this particular ; which will be mortally wounded, if not killed quite dead, by such a judge ; and I cannot help thinking, that if the ministers put

[1] *M.C.P.*, ii, pp. 210-213.

[2] British Museum, Stowe MSS. No. 158. Papers relating to Scotland. This document is dated 3rd March, 1722.

[3] *M.C.P.*, ii, pp. 216-7.

such a judge upon him, he has very little to look to from their promises.[1]

Haldane was particularly distasteful to both the Jacobites and the friends of the Government by reason of his extreme severity towards the rebels when he was one of the Commissioners of Inquiry after the 'Fifteen rebellion.[2] Forbes took up a strong position against him and was one of the two counsel representing the Dean and Faculty of Advocates as Respondents in Haldane's appeal to the House of Lords [3] (24th January, 1723).

Some interesting legal points appear in the question of this appointment, for the Crown claimed the right to fill the vacancy in the Court of Session in spite of the Court's objection to the nominee. The House of Lords gave judgment for the Crown, but the Government of the day did not press for Haldane's appointment.[4] Subsequently a law ruled that the Court of Session was without the power to reject judges appointed by the Crown, but allowed remonstrance against unsuitable persons.[5] Forbes had much correspondence on this topic in February 1723.[6]

But before all these technicalities could be finally settled, Forbes himself had been elected M.P. for the Inverness District of Burghs (13th April, 1722), which John had represented from 1715-1722 ; and Culloden himself was elected for Nairnshire. The Inverness District of Burghs included Inverness, Fortrose, Nairn and Forres. In the actual election Forbes had been defeated by Alexander Gordon, but on appeal the indenture by which the latter was returned was removed off the file by order of the House [7] (19th October, 1722).

[1] *C.P.*, 103. [2] Ramsay, ii, p. 480.

[3] Parliament Book '40' newly acquired by National Library.

[4] *Ibidem*, or *M.C.P.*, ii, pp. 224-5.

[5] Ramsay, *Scotland, etc., in the Eighteenth Century*, ii, p. 482, and *M.C.P.*, ii, pp. 223-4.

[6] Uncat. MSS. in Nat. Liby., or *M.C.P.*, ii, p. 224.

[7] John Forbes, already an experienced Parliamentarian, had been defeated by Grant of Grant for Inverness-shire at this election, but was a few days later elected for Cromarty and Nairnshire as stated. This led to strained relations

Forbes sat in Parliament from 10th May 1722, till 17th July 1727. He was re-elected 30th June, 1725,[1] after his appointment (29th May, 1725) as King's Advocate for Scotland in succession to Robert Dundas of the Squadrone Party. He was also a member of the House of Commons from 28th November 1727, till 17th April 1734,[2] and again from 13th June, 1734-1737, in which year he became Lord President of the Court of Session.

In deciding to venture upon a political career Forbes was sacrificing a lucrative position at the bar, for he was then one of the foremost men of his profession. No doubt the Lord Advocacy, the duties of which he took up in 1725 (29th May) would compensate him somewhat for his financial loss, the post carrying with it a salary [3] of between £500 and £600 per annum.

The terms of friendship between Forbes and the Earl of Ilay seem to have been particularly cordial once Forbes entered Parliament. This should be noted, for there is later a distinct cooling off in the ardour of the Earl towards Forbes, an adequate explanation for which it is not easy to find. Meanwhile, it is sufficient to observe that Ilay when he writes to 'Dear Duncan' on 18th July, 1723, subscribes himself 'Your slave'.

between the brothers and their old friend Lovat. John continued to represent Nairnshire till 1727 (*Parliamentary Hist.*, vol. 8, pp. 19-20, and *Members of Parl.*, Part II, p. 60).

[1] *Members of Parl.*, p. 60. [2] *Ibidem*, p. 71. [3] Brunton and Haig, p. 511.

CHAPTER IV

THE GLASGOW MALT RIOTS (1725)

In 1725 Forbes was in his fortieth year, and may now be said to have started on his real career of greatness. He had entered Parliament three years earlier and had, therefore, been introduced to the social life of London. His contemporaries, Pope and Hogarth, in their respective media, were whipping the follies and vices of the age ; Addison and Steele had begun the new era in literary journalism some years before and the latter was still writing ; death had just terminated the careers of Marlborough and Wren, and two years later Newton was to follow them to the Elysian fields ; and, already fifteen years in London, Handel was on the point of becoming a naturalised British subject. The influence of the Treaty of Utrecht was beginning to bear fruit in colonial trade, to show the way for Scotland to follow, and to engender commercial jealousies.

This year 1725 was to prove an eventful one for Duncan Forbes and for the City of Glasgow. On the resignation of Robert Dundas, who was a supporter of the other political party, Forbes was, as we have seen, promoted to the important position of Lord Advocate. Barely had he assumed his new post when he found himself involved in legal and administrative difficulties, particularly in Glasgow and Edinburgh.

In 1714 the Malt Tax Act[1] had been passed, but it had never become operative in Scotland. Now Walpole's Government decided to put the act into force, and by it an imposition equal to half the English tax of sixpence a bushel would be laid in Scotland. It was anticipated that the revenue

[1] 2 Geo. I. c. 7.

accruing from this virtually new measure would amount to some £20,000 per annum, a sum in itself too small to justify the risk of the series of awkward situations which now arose. But it is possible that Walpole's idea was based on other than mere financial considerations ; he was determined to assert his authority in the Northern half of the United Kingdom and there to vanquish the political faction opposed to him. There were immediate murmurings in the north. The opposition that at once manifested itself was due more to what seemed a breach of the Act of Union than to the fiscal imposition itself.

Prominent among Scottish Members of Parliament who had supported Walpole's policy of extending the Malt Tax to Scotland was Daniel Campbell of Shawfield, the M.P. for the Glasgow District of Burghs, and upon him fell the wrath of the citizens of Glasgow. The Squadrone, indeed, accused him of being the author of the tax. With its 14,000 inhabitants Glasgow was naturally a place whose action would be closely regarded by the other towns. That this was so was soon shown by the incidents of a similar nature occurring in Edinburgh, Dundee, Stirling, Hamilton, Paisley, Ayr, and other towns, almost immediately after. The authorities of the Scottish Office in Edinburgh had been not unaware of the possibility of trouble among the Clydesiders, and in anticipation of this, two companies of Lord Deloraine's regiment of foot under Captain Bushell had been stationed in the city to ' assist the magistrates and obey their orders in suppressing any tumults or riots '.[1]

The 23rd June was the day on which the Act became operative, but the maltsters of Glasgow did not give access to the excisemen to survey their stock in hand. In sympathy with their attitude, ' a parcel of loose disorderly people infested the streets which made it unsafe for the officers to demand access until they could be supported.'[2] The same state of affairs existed on the following day, but no untoward incident took place till the evening when the mob conceived the idea of wreaking their vengeance on the local Member of

[1] *C.P.*, 109. [2] *C.P.*, 110. Lord Advocate, probably to Mr. Scrope.

Parliament. Campbell's house of Shawfield (situated where Glassford Street now is) was their objective. Reinforced as they now were by Bushell's two companies of infantry which had just arrived from Dumbarton Castle at seven o'clock that evening, the Provost and magistrates might have been regarded as capable of controlling the situation. Having allotted billets to the troops and made ready the guard-room at the south-west corner of the Candlerigg Street for their occupation, the Provost considered he had played his part. While the troops were yet on parade and ready to enter the guard-room, the keys were seized by the mob who locked the doors, and made off. Unless these doors were broken down, as Bushell suggested to the Provost, it was impossible for the soldiers to enter. It must be remembered that the Provost of the town was in complete charge of the situation, and the military were present merely to execute his commands. Declaring that such a show of violence on the part of the troops would only have an irritating effect on the rioters, he advised Captain Bushell to send his men to their billets, as they were wet and weary after their long march. Thereafter, 'the Town Guard was advertised to meet at the ordinary time which is betwixt 10 and 11 at night.'[1] Such action, or rather inaction, was hardly likely to quiet a mob bent upon mischief. Once the troops were indoors and separated in their respective billets, the fury of the mob increased and at 10 p.m. directed itself

> against Daniel Campbell's house, which they gutted and destroyed pulling down everything that their power could reach to. His gardens they defaced, and broke down everything except the walls, which it seems they had not leisure to demolish in form.[2]

Worse than all this 'they . . . got hold of his writings, and have left him neither Bond, Bill, Book or accompt'.[3] The damages were estimated at over £6,000.

At 11 o'clock while the mob were yet in the midst of their work of destruction, Captain Bushell sent a sergeant to the

[1] *C.P.*, 119. [2] *C.P.*, 110. [3] *Ibidem.*

Provost with the message ' that he was at his service, and ready to obey his commands, if he thought fit to employ the troops in quelling that mob '.[1] The chief magistrate, however, expressed his opinion that the soldiers were too few for such a task, and that they should do nothing but remain within their quarters.[2] Having interceded with the rioters to desist from their illegal action, the Provost did nothing more, and made no attempt to read the Proclamation.

By the following morning, the 25th, the violence of the mob had somewhat spent itself, although there was still a number of disorderly persons, drunk overnight from the spoil of Mr. Campbell's cellar, running riotously about the streets. Now that the mischief was done, the Provost seems to have become more active for the maintenance of law and order. At 10 a.m. he caused the doors of the guard-room to be forced, and by 11 o'clock the troops were installed. He had some of the rioters seized and committed to gaol, but this served only to infuriate the mob afresh.[3] Summoned in great numbers by a drum beaten by a woman or a man in woman's clothing, the rioters rescued the prisoners and about three in the afternoon attacked the troops in the guard-room with stones and brickbats and with such violence that they had ' either to deliver up their arms or to use them '.[4]

Captain Bushell in command of the troops formed up his men in the streets in a hollow square around the guard-room and ordered them to fire. At first only powder was used to terrify the mob, but when this only incensed them the more, the soldiers had to fire shot ' whereby several people were knocked down and diverse more were wounded, which had the effect to beat off the mob '. The people were now in a fury. Thoroughly roused, they rang the alarm bell, seized the town's magazines, and equipped themselves with such old fire-arms as they could find there. Again the Provost

[1] *C.P.*, 110.

[2] *London Gazette*, Tuesday, 13th July–Saturday, 17th July. Headed, Edinburgh, 26th June.

[3] *London Gazette*, 13th July–17th July. Headed Edinburgh, 26th June.

[4] *C.P.*, 110.

acted, but it was to inform O.C. troops of the threatened attack by the mob, and to advise him, for his own safety, and for the tranquillity of the town, to leave 'it as soon as he could, and to march out of it, where he might be safe'.

Accordingly, Captain Bushell in obedience to the orders of the Provost under whom he had been commanded to place himself, marched his men out of the town, followed for six miles by the rioters whose harassing of his rear compelled him frequently to wheel about and fire. The troops arrived safely at Dumbarton Castle that night.

The casualties resulting from these exchanges between the soldiery and the disorderly Glasgovians were 'variously reported; some making them to amount to 10 or 12, another to no more than 5 or 6'. Two of the soldiers fell into the hands of the mob and 'one is said to have been so inhumanely used, that his life is despaired of'.

It was at once clear to Forbes that such a state of lawlessness could not be allowed to continue in so important a city as Glasgow without similar outbreaks resulting elsewhere. Indeed, Hamilton, Paisley, Ayr, and some other towns which had already refused access to the Excise officers and maltreated them, declared that they would follow the example of Glasgow and not that of Edinburgh. It was imperative, therefore, in Forbes's opinion that the misdoers should be immediately brought to condign punishment, and that a stronger force be concentrated to support the civil magistrates in Glasgow. Accordingly, he wrote at once to the magistrates (25th June) requiring them to 'make most exact inquiry and search possible after all' concerned in the riot and to 'commit them to gaol', a guarantee being given that in this, they should have the necessary assistance.[1] This letter was not answered by the Provost. Immediately after the riot, 'being threatened with his life by the mob and his house to be pillaged', he had left the town and when the Lord Advocate's letter arrived, 'none of the magistrates were upon the place to send an answer.'[2] This reply was sent a few days later by one of the bailies.

[1] *C.P.*, 109. [2] *M.C.P.*, ii, p. 249.

In the Lord Advocate's appreciation of the situation despatched on the 26th June to Mr. Scrope, Secretary to the Treasury, for the information of the Government in London, there is set forth an account of the reinforcements already ordered to proceed to Glasgow on Friday the 9th July. Meanwhile Forbes was not idle. Besides his account to Mr. Scrope, he had also been in communication with Charles Delafaye, Secretary to the Lords-Justices in London, and several letters had passed between them. The replies of both Scrope and Delafaye show the trust that was reposed in Forbes, and the high opinion held of his zeal and diligence in handling the situation.

The Lords-Justices (through Delafaye on 1st July, 1725) exhorted the Lord Advocate to do his utmost to bring the offenders to justice, especially the principal actors in the riot, those guilty of murder, and those who had demolished Shawfield. Though the guilt of the rioters might amount to High Treason, their Excellencies considered that the case should be disposed of with all possible expedition and effectually, and that they need not, therefore, be tried on a charge of High Treason. They should be tried under these three heads : of Murder ; of Felony, upon the Statute 1st Georgii, in demolishing or beginning to demolish Mr. Campbell's House ; and of Riot. The Lord Advocate was also instructed to inquire into the behaviour of the magistrates, especially of the Provost for ' omitting to read the proclamation appointed by the aforesaid act ; and proceed against him by securing, examining and committing him according to law '.[1]

Because of the slur cast upon their course of action the Glasgow Magistrates and Town Council were so displeased with the narrative of events that appeared in the Edinburgh *Caledonia Mercury* that they circulated a ' true ' account. The Provost was empowered to take the necessary counsel with the most skilful lawyers. A memorial was forwarded to London on 7th July. Meanwhile the Lord Advocate was expected to appear in Glasgow in a few days to hold an inquiry. For this the Provost and his lawyers were instructed to return.

[1] *C.P.*, 112.

The contemporary press accounts of the whole outbreak show the same uncertainty. The magistrates attempted to vindicate themselves and blamed the officers for rashness in ordering the firing which exasperated the mob. Others—the gaugers and Excise officers chiefly—spoke less favourably of the magistrates but commended the conduct of the officer and soldiers who showed great patience during the riot.[1]

On or before the 8th July, Forbes sent to Glasgow

> secretly two young fellows, who were acquainted pretty well with the townspeople ; and who, under pretence of other business, are to pick up all the private information they can, to the end that I may follow it out, when I go thither, with a regular enquiry.[2]

He had meanwhile discovered that the refusal to submit to the malt tax was general throughout Scotland and the result of a concerted plan. Messengers bearing the fiery cross of disaffection had been deliberately sent to the northern townships with the news that the greater southern Royal burghs had agreed to refuse access to the excisemen. As a natural consequence, these smaller burghs only too readily fell in with a resolution which obviously suited their own inclinations. All Scotland, therefore, watched Glasgow, and the trial of the rioters and magistrates was regarded as a test case.

Wise as the serpent, Forbes laid his plans with the utmost care. Having shrewdly sent out in advance his two spies to glean all the information they could in Glasgow, he himself attended the Convention of Royal Burghs at that very time assembled in Edinburgh.[3] There he ' thought it not at all improper to bring the Convention to a general resolution ' condemning the recent ' disobedience to the law ' (the metaphor is surely apt in the circumstances when he reports this disobedience as being ' fermented ' by these false reports). The resolution was carried by a ' vast majority ',[4] and was to be circulated throughout the country.[5] This in itself was a

[1] *The Daily Journal*, London, 10th July, 1725, Burney Collection, vol. iv,—British Museum.

[2] *C.P.*, 113.

[3] *M.C.P.*, ii, p. 258.

[4] *M.C.P.*, ii, p. 258.

[5] *C.P.*, 113.

masterstroke. But such 'prudent and seasonable' action [1] in the safety zone of Edinburgh was not the sole part played by the Lord Advocate. Forbes was determined to be at the scene of the misdemeanours. On Friday the 9th July, 1725, he accompanied General Wade on his expedition to the West. The force arrived at two o'clock in the afternoon and consisted of Lord Deloraine's regiment of Foot, six troops of Colonel Campbell's Royal Scots Dragoons, one troop of Lord Stair's regiment of Dragoons, an independent company of Highlanders under Captain Duncan Campbell of Lochiel (Cameron) and a battery of artillery. On the same day Captain Bushell and his two companies returned to the city from Dumbarton.

Forbes's duties were at this time twofold—those of the chief legal officer of the Crown in Scotland and largely those of an administrator. In his opinion, the magistrates themselves were liable to be charged with gross malversation in their offices, the consequences of which would be deprivation and incapacity. As Lord Advocate he must hold, as we have seen, a court of inquiry or 'precognition' which forms the preliminary to a criminal trial in Scotland, and in this case it lasted for five days, commencing Saturday, 10th July. On Sunday afternoon Forbes with Wade attended divine service. Wodrow was no lover of the Lord Advocate and his report must not be taken as unprejudiced. According to him 'the Advocate gave great offence by his open and profane cursing and swearing . . . and his taking the right hand of the General and talking in time of sermon when in the afternoon in the Church and mocking Major Gardiner for his strictness'.[2]

Present at the inquiry when the magistrates were examined on the 15th July, were General Wade, Colonel Spottiswood and Colonel Guest. The six magistrates were :

Charles Miller, *Provost*.
John Stirling,
James Johnston, } *Bailies*.
James Mitchell,

[1] *C.P.*, 114.

[2] Wodrow, *Analecta*, iii, p. 217.

John Stark, *Dean of Guild.*
John Armour, *Deacon Convener.*[1]

The questions of the Lord Advocate and the answers of all the magistrates occupy seven quarto pages and remind one of the Scriptural Parable where they all severally began to make excuses. The evidence of Bailies Stirling and Johnston is summed up in their answers to the second interrogation : 'Knew nothing of the matter, having been out of town.' Bailie Mitchell, himself a maltster and the then trades bailie, when interrogated as to whether the 'mobbish assemblies' of the 24th June were meant to hinder the levying of the Malt Tax, stated that he 'saw no riotous assemblies that day, having withdrawn to his house a little after ten in the morning where he stayed without hearing of any disturbance all that day and night'[2] till five in the morning. At that hour he went to his malt kiln and only then saw the ruin of Shawfield's house, and the same morning about nine o'clock he journeyed down to Port Glasgow to be married.

The Dean of Guild pleaded ignorance as to the delivery of the guard-room to the soldiers on the 24th June, 'having been abroad in the fields taking a walk, from four o'clock till the troops were in quarters.'

It was clear from the answers recorded that Forbes had no easy task in investigating the case and in trying to find the real culprits. While the inquiry was still in progress, he wrote to his friend Scrope twice (on 12th July and again on the 14th). In both letters he makes reference to the fact of his failing health and utter weariness. Was it possible for him to feel otherwise? He tells us that he had made 'the troublesome examination of upwards of 100 witnesses' and naively adds:

> Consciences in this good country are so moulded that I can scarce find proof against any, but such as are fled and whom the poor deluded creatures fancy they cannot hurt; I had a notion that an oath hereabouts would have bore some weight

[1] MS. in National Library, Bundle IX, or *C.P.*, 375.
[2] *C.P.*, 375.

> and therefore I examined all . . . upon oath. But I find the tobacco trade has got the better much of the religion of the place.[1]

Little was discovered to shed light upon the statement as already sent to Mr. Scrope on the 26th June. On first hearing of the attack on Shawfield's house, the Provost had ordered the attendance of the Town Clerk and Town Officers and had tried to disperse the rioters. A town guard composed of the burgesses he did order to mount after the troops had gone to their quarters, but they neglected to perform this duty. He further answered that it had been impossible for him to have the help of the troops when the sergeant came with the offer of help, for the men were abed in separate quarters and would have been knocked on the head by the mob before they could be paraded. The Dean of Guild affirmed that he and the Deacon Convener mounted the Burgher Guard (of 50-60) in order to protect the town from pillage at the hands of the mob on the Friday night when they pursued the soldiers outwith the town.

The Provost and the other magistrates agreed that they took no steps to arrest any of the offenders in the riots once the tumult was over, nor did they search for any of the stolen goods, because they were terrified at the threats of the rioters, and because the Provost was compelled to quit the town and abscond for his safety.

Despite the instructions of the Lord Advocate to the Magistracy delivered through Dean of Guild Stark that all diligence should be employed in discovering the chief ringleaders and collecting the proper evidence against them, the sole names given to him on his arrival in Glasgow on the 9th July were those of three men and four women ; nor was any name or information added later, as they feared the anger of the people, now thoroughly roused.

To the query ' Why was not the Proclamation read for dissipating the mob ? ' the Provost made answer that he

> had copies of the Proclamation ready written in his pocket, with an intent to read it ; but when he was about to read it,

[1] *M.C.P.*, ii, p. 275.

he was dissuaded because of the danger from the mob when he had no sufficient force to support him ; beside that, he saw 3 of his officers knocked down by the mob.

The Dean of Guild answered that he ' did not think of the proclamation at the time '.

The whole statement of the evidence at the inquiry was signed by Wade, Spottiswood and Guest in the presence of the Lord Advocate.

Following upon the precognition held by the Lord Advocate, an account was drawn up of the conduct of the Glasgow magistrates during the riots ' from whence those Acts of Malversation in office were deduced, for which they are committed, and may be tried '.[1] This is evidently in the calligraphy of Forbes himself, although it is unsigned. The Provost is charged with not effectively handing over the main guard to the troops, by which act the riot could have been prevented, with not billeting the troops together as a unit but separating them, with not reading, or attempting to read the proclamation as the law demands ; and with refusing the help of the troops when this was offered. It is admitted that his character and the fear inspired by the unruly populace, may be part reason for his conduct of the proceedings on that occasion. This, however, cannot exonerate him from the legal penalties. It is contended that Bailies Stirling and Johnston were ' industriously out of Town, at and for some time before the riots '. Furthermore, on 30th June, instead of conducting an inquiry concerning the rioters, they made a partial examination against the alleged abuses of the Officer Commanding troops. Bailie Mitchell, a maltster by trade, whose duty was in particular to look after the tradesmen and artificers involved in the riots, deserted his duty by going off privily to Port Glasgow, without helping to preserve the peace and without leave of absence from the chief magistrates. ' This, it is humbly conceived, is a gross Malversation in office.'

The Dean of Guild, who was an eye-witness to the riots on Thursday morning, neglected his duty by absenting himself

[1] *C.P.*, 115.

till the troops were in separate billets. Although he later joined the Provost to get the mob to disperse, he also failed to read the Proclamation. The following morning in a meeting of merchants who were deliberating upon the mounting of a Burgess Guard, he insisted that staves and not swords should be carried by the guard and won his point.

The Deacon Convener is charged with withdrawing himself from his duty and from attendance upon the Provost once the troops entered the town and while the mob was around the guard-room. Moreover, he made no attempt to disturb the rioters by aid of the guard either on Friday night or on Saturday morning.

All the magistrates failed to answer the Lord Advocate's letters dated 25th June, requesting an account of the irregular happenings and instructing them ' to search for, seize, and commit such offenders, when they should discover them'. They allowed the most notorious of the rioters to remain openly in town till the 9th July when His Majesty's troops approached Glasgow, and then allowed them to escape.

Again, despite the request of the Lord Advocate to the magistrates delivered through the Dean of Guild and ex-Bailie Ramsay, that a list of at least the chief rioters should be drawn up that he himself might commit them on his arrival, they followed their own course. Though they pretended on his arrival on the 9th of July that they had prepared such lists, yet on the 10th, only seven names, as we have seen, were handed to him. One man was a tinker of unknown residence; another was not an inhabitant of Glasgow ; and the third was a mean labourer resident in the suburbs, who had fled.

As a result of the evidence outlined above the Provost and five magistrates were arrested on Friday the 16th July, between twelve and one o'clock in the afternoon and committed to the Tolbooth of Glasgow upon warrants signed by Duncan Forbes, His Majesty's Advocate and himself one of the Justices of the Peace for the Shire of Lanark. On Saturday the 17th July, they were transferred to Edinburgh by way of Falkirk where they rested *en route*. The same evening Forbes, ' thoroughly tired ' and with Wade ' half

dead', arrived in the capital and yet weariness did not prevent him writing Scrope a letter that covers five and a half pages of close print.[1] The magistrates reached Edinburgh two days later and were imprisoned in the Castle, but were about 5 p.m. that same Monday afternoon transferred to the Tolbooth. The Provost and his colleagues had a number of supporters. The then Secretary of State for Scotland, the Duke of Roxburghe, frowned on the action taken by the Lord Advocate and was shortly afterwards relieved of his office on that account. Robert Dundas, the ex-Lord Advocate, also naturally took the side of the delinquents.

Apart from the questions whether the prisoners were abettors of the mob or negligent in their duty, as they were charged, a new problem arises in the case. The commitment of all the magistrates of a burgh like Glasgow, by the Lord Advocate, was a very new and extraordinary proceeding, but more extraordinary was it that a J.P. of Lanarkshire should so act and deprive this important town of its civil government and leave it in the hands of the military. This point of view was at once set forth by the magistrates of Glasgow in their petition [2] (dated 17th July, 1725, at Edinburgh) to the Lords Justice-General and Justice-Clerk, and the Commissioners of Justiciary. In taking these steps they were aided by Robert Dundas, who was one of the two signatories of the Petition on their behalf. He argued their case before the Court of Justiciary besides drawing up their petition, and contended that the Lord Advocate's power of commitment was obsolete. He held that his being a Justice of the Peace in the shire of Lanark

> gave him no power over other Justices of Peace, and that the Provost of Glasgow had better right to imprison the Advocate, till convicted of a crime, in his own jurisdiction, than he, as a Justice of Peace, had to imprison *him* ![3]

After stating the legal argument against the Lord Advocate's action, the petition requests a warrant from their

[1] *M.C.P.*, ii, p. 277. [2] *C.P.*, 117.

[3] Wodrow's *Analecta*, iii, p. 221. Hill-Burton, *Life*, p. 322, erroneously says iv.

Lordships for setting the magistrates at liberty either with or without bail, as their Lordships may decree.

That Forbes himself was fully aware of the difficulties of his position is clear from a letter dated 6th July, 1725, to Scrope.

> It had been a point contested, I mean extra-judicially with the Advocates my predecessors, since the abolition of the Privy Council in Scotland, whether they as such had a power of granting warrants of commitment. The Advocate's plea was, that for some hundreds of years past, they acted regularly as being possessed of such a power ; the objection was that the foundation of their power was their having been privy councillors ; but on the contrary that the warrants of commitments were signed by them eo nomine as advocates, they have thought fit to continue the practice down to this hour, nor were their commitments ever judicially called in question.
>
> The use of this piece of story is to let you know that I shall find myself under some difficulty to act with that dispatch and vigour which the present juncture seems to require, if I do not continue this practice of my predecessors ; for though the adding me to the Commission of the Peace in every county gives me a power of committing, when I am within that county and have qualified regularly yet I doubt a warrant signed by me locally in one county could not regularly have any effect in another, and therefore as I take it, it may prove expedient, that I continue the former practice and issue warrants for commitment, to have effect indefinitely over all the country wherever the offender can be found, since it is very possible some of the offenders may escape from Glasgow and thereby bring us under a necessity of hunting for them wherever they may be found. This I thought fit to acquaint you with beforehand, lest my proceedings may be misrepresented as arbitrary or illegal.[1]

To illustrate the right of the Lord Advocate to issue warrants for arrest since the Union, Omond in *The Lord Advocates of Scotland* (p. 334) instances the warrant granted by Sir James Stewart, 23rd October, 1712, for the arrest of the notorious Rob Roy.[2]

[1] *M.C.P.*, ii, pp. 256-257.
[2] Hist. MSS. Commission, 3rd Report, app. 381.

The Lord Justice-Clerk and the Commissioner of Justiciary ordered the petition to be seen and answered by the Lord Advocate on the following Monday at ten o'clock in the morning. It was refused at first owing to the non-compliance with certain rules of procedure by the petitioners. The machinery of the law was certainly not working with all desirable smoothness. On the 20th July, however, the Glasgow magistrates were set at liberty on bail at 6 p.m. and were received with acclamation by the crowds in the Edinburgh streets. On the evening of the following day (Wednesday, 21st July) two of them arrived in Glasgow and were given a great welcome, more than two hundred of the townspeople meeting them six miles beyond the city.

Although the magistrates were released, the question of their trial still continued as the subject of correspondence between the Lord Advocate and Delafaye. Writing from Whitehall on the 29th July, Delafaye acknowledges Forbes's letter of the 20th (the day of the liberation on bail of the prisoners) and assures him of the complete approbation of the Lords Justices in the course he has pursued in relation to the Glasgow delinquents. He is to prosecute with vigour both the rioters and the magistrates who according to the examination taken by the Lord Advocate seem to have been guilty of gross malversation in not taking due care to prevent or suppress the riot. Their Excellencies withdraw their former limitations upon him as to the charge to be framed against those who pursued the King's troops and instruct that the charge of High Treason be laid against those who so acted.

On the 31st July, 1725, the Common Council sent to the King an address signed by their Provost assuring His Majesty of the sincerity of their intentions, and protesting the innocence of the magistrates in the recent unhappy proceedings in the town of Glasgow. They expressed amazement at the treatment meted out to them in that they were committed to the 'nauseous common prison of Edinburgh'. Accompanying this was a true and faithful account of the Riots and tumults from their point of view.[1] By that time Forbes had

[1] MS. in Nat. Liby., Bundle IX, or *C.P.*, 119.

in his hands a copy of the magistrates' papers, sent on to him by Delafaye. To him he expressed (31st July, 1725) his own confidence in the justice of his action throughout.

> Their trial, when I am allowed to go on with it, will convince the world whether I have been in the wrong to them as they would willingly have you, it seems, believe I was.[1]

He, nevertheless, saw the pitfalls in his way. When next (3rd August, 1725) communicating with the Secretary to the Lords Justices, he pointed out that while the crime of the mob ringleaders might amount to high treason in certain instances and that the most exemplary punishment was necessary in the present circumstances, yet the difficulties were so great, that to attempt a trial for high treason would certainly be fruitless. It would, he declared, be almost impossible to find a grand jury that would find bills against the rioters. Moreover, there were other legal difficulties in the way which made it desirable that a prosecution for felony, or any lesser crime, should be attempted. It was Forbes's intention to have the trial of the rioters precede that of the magistrates by two or three days, because the extravagance of the mob's actions and of their outrages would make the more clear the criminal inaction and neglect of duty of the magistrates.

Delafaye on 10th August, 1725, again assured the Lord Advocate of the Lords Justices' approval of his conduct of the case and also of H.M. the King's approbation.

> I am persuaded you need make no manner of difficulty of going on, in that method even before you receive their Excellencies' particular orders for it; which I doubt not but I shall be commended to send you next Thursday; services of this nature being sometimes hurt by delays. But of this your lordship is the best judge.[2]

As we have seen, Duncan Forbes's health was not at all good after the excitement and labour of the last two months,[3] and we find him making a resolution to give up overdrinking.

[1] *C.P.*, 122. [2] *C.P.*, 379. [3] *M.C.P.*, ii, p. 309.

By the middle of August (16th), the Justice General (Lord Ilay) arrived, and although Forbes was now sharing the responsibility with his superior, he soon found his actions hampered and his decisions called in question. Again he finds an understanding friend in Scrope into whose sympathetic ear he pours his story, apprehensive as he is that

> his Lordship (the Justice General) will find some difficulties as to the prosecution of the magistrates of Glasgow whose guilt he does not seem to think so plain as I do.[1]

Ilay, in what appears to be a somewhat high-handed manner, sent expresses to London without consulting with the man who till his arrival had guided the ship of state in Scotland at this crisis. Forbes was obviously hurt although there is no bitter note in his letter.[2] To Scrope he confides the fact that

> my friend here goes on in the same manner as formerly, keeping every thing a secret from me in so much that though I understand he received last night an answer to what he wrote by express, concerning the magistrates of Glasgow, and though I desired he would be so good as to give me directions in that respect, he waived the discourse and put off the talking to me on that subject for some time.[3]

It must have been a salve to his wound to read Sir Robert Walpole's letter of 4th September, 1725, in which he wished to

> express the great satisfaction I had in your vigilance and ability, in struggling with the greatest difficulties [=the Glasgow Malt Riots] that a man could possibly be engaged in.[4]

The Glasgow magistrates were never brought to trial. While this may be regarded as a 'rebuff to administrative zeal' on Forbes's part,[5] yet the boldness and decision with which he acted did more to master the situation than any pedantic adherence to the letter of the law. Whether the

[1] *M.C.P.*, ii, p. 309.
[2] *M.C.P.*, ii, pp. 312 and 322.
[3] *M.C.P.*, ii, p. 322.
[4] *C.P.*, 124.
[5] Mathieson, *Scotland and the Union*, p. 329.

Lord Advocate would have been justified at law, had the case gone for trial, was of little moment compared with the peace and good order which his vigorous action brought about.

According to Omond,[1] some of the Glasgow rioters were tried and sentenced to be whipped by the common hangman and transported to the plantations. State Papers (Domestic), vol. 58 (Nos. 1 and 40) at the Public Record Office, London, are printed documents (dated 23rd September, 1725) containing information for H.M.'s Advocate and stating the charges laid against eleven citizens of Glasgow for their complicity in the Malt Riots in that city on the 24th and 25th June, 1725. Many of the answers made in defence are stated together with the arguments for and against.

The counter-stroke came a few months later when a bold and extraordinary attempt was made against the Government by bringing an indictment against Captain Bushell and the other officers who had commanded the King's troops during the riot. When this step was duly intimated to Delafaye by a flying packet dated 24th November, 1725, he brought the business before the Lords Justices at their next meeting. Acknowledging this letter on the 29th November, he enclosed their Lordships'

> orders to the Court of Justiciary not to suffer anything to be done or to the putting in execution the sentence of transportation against the Glasgow rioters, till they receive their Excellencies' further directions, which I hope will prevent any attempt for rendering that sentence ineffectual.[2]

It is clear from Delafaye's letter to Newcastle dated 1st December, 1725, that a line of action was already foreseen in the event of the prosecution against the military carrying their point. 'The officers,' he says, 'considering the temper of the people out of whom juries may be chosen, will no doubt be found guilty and a pardon must be granted for them.'[3]

[1] Omond, I, p. 334.
[2] S.P. (Dom.) Geo. I, Bundle 59, No. 54.
[3] S.P. (Dom.) Geo. I, Bundle 60, No. 1.

This was eventually done, as Delafaye wrote to his friend Tilson on 31st December, 1725.

That a number of the rioters were transported for complicity is shown by the letter dated 1st December, 1725, written to the Lords Commissioners of H.M. Treasury, by Captain Simons, commanding Greenwich *Princess Mary* sloop. He reported his arrival at Greenwich with his ship.

> Having on board 5 of the Glasgow rioters, a corporal and 5 men of the Rt. Hon. My Lord Deloraine's Regt. to guard and, believing Greenwich to be the safest place to lie for their security I shall do it till further orders.

A list of the five names appears under the date 23rd December in the same document.[1]

The Edinburgh brewers began to capitulate about 20th August, 1725, and although they demanded high and unreasonable conditions, they at last continued their brewing. By the 3rd September Wade could inform the Earl of Findlater and Seafield, on Forbes's authority, ' that there is now plenty of ale in Edinburgh.' Well might he call it ' a great piece of news '.[2]

The following year (22nd April, 1726) the Town Council of Glasgow sent an address to the King observing that

> Your Commons of Gt. Britain in Parliament assembled have passed a resolution to enable Your Majesty to grant a sum of £6,080 out of the supplies of this current year to Daniel Campbell of Shawfield, Esq. in consideration of his damages sustained by the riots . . . upon the 24th and 25th of June last, and that it has been moved that such sum shall be replaced out of the fund that arises to this city from their grant of imposition of 2 pennies upon the Scotch pint of ale and beer vended within the town.

In compliance with these decisions the Town Council decided on 26th May, 1726, to pay the £6,080 to Campbell of

[1] S.P. (Dom.) Bundle 60.
[2] Hist. MSS. Com. Report XIV, p. 228, and XIV, app. 3.

Shawfield,[1] but the sum was borrowed by the city on bonds to sundries and the 2d. on the pint relieved.[2]

It was just at the time when the Edinburgh brewers and the Glasgow magistrates were being subdued, that a change was effected in the method of governing Scotland. Writing on 24th August, 1725, Scrope and Delafaye each declared that the Duke of Roxburghe had been removed from the office of Secretary of State for Scotland and that these duties would now be performed by the other two Secretaries of State.[3] Forbes learnt the news again from Newcastle's letter of the same date. It runs:

> As in my Lord Townshend's absence, that must lie singly upon me, I must beg your Lop. will be pleased to send me, from time to time, such accounts as you shall judge to be for H.M.'s service.[4]

Forbes's animadversions upon this administrative change are contained in his letter to Scrope which he wrote on the 31st of the same month, evidently immediately on receipt of Newcastle's letter.[5]

> I am perfectly well pleased with what Mr. Delafaye writes about the method into which Scots buisness is to be flung, because it yields a prospect that for some time at least, we shall not be troubled with that niusance, which we so long have complained of, a Scots Secretary, either at full length, or in miniature ; if any one Scotsman has absolute power, we are in the same slavery as ever, whether that person be a fair man or a black man, a Peer or Commoner, 6 foot or 5 foot high, and the dependence of the country will be on that man, and not on those that made him.[6]

[1] Renwick, *Extracts from Records of the Burgh of Glasgow*, 1718-38, with Charters and other documents, 1708-38 ; and *Memorabilia of the city of Glasgow selected from the Minute Book of the Burgh* (1588-1750), p. 347.

Also, *Records of the Trades House of Glasgow*, 1713-1777, ed. H. Lumsden (1934), Appendix v.

[2] The Woodhouselee MS.

[3] *M.C.P.*, ii, pp. 321 and 322.

[4] *C.P.*, 121.

[5] Hill-Burton, *Life*, p. 333, erroneously says the letter was written on the 7th September.

[6] *M.C.P.*, ii, p. 322.

The Secretaryship of State for Scotland remained in abeyance for six years. As Newcastle expected to be kept *au courant*, the duties of the Lord Advocate were considerably increased. In addition to legal affairs, the general work of administration required to be directed, and we consequently find him dealing with matters of business touching the revenue and the encouragement of the manufactures. Nor was his interest solely civil ; he kept himself in close touch with the military chiefs, and as a conscientious Member of Parliament, spent long periods in the metropolis, broadening his outlook and mixing with the social lions of his time.

CHAPTER V

FORBES, LORD ADVOCATE

The Years 1726–1735

There is little of special moment or interest in the years 1726-1735, and it is not possible to secure unity of theme, for the facts are often unrelated events following haphazard in time sequence.

Early in 1726 the Forbes brothers lost one of their staunchest friends and supporters in the north, the Revd. Robert Baillie, minister of the second charge at Inverness. Lovat's comment to Culloden in the letter (7th February, 1726) in which he reported the sad news was :

> You and your brother have lost your most steady friend on earth, for to my knowledge Duncan's dangerous sickness was the first occasion of his.[1]

Meanwhile Forbes was in constant touch with the Duke of Newcastle who was then responsible for the Government of Scotland, and many of his letters are to Delafaye in London. Scotland was now quiet and peaceful, thanks largely to the efforts of the Lord Advocate. This gave great pleasure in the south, even to the King himself as Delafaye declared on 13th June, 1726.[2] The chiefs recognised his power among them (1725-1726) when they dubbed him ' King Duncan '.

An interesting incident which sheds light on Forbes's character occurred in May of this year. A certain Margaret Nisbet was accused of causing her servant, Household, to personate an Edinburgh merchant called Henderson. The Lord Advocate was of the opinion that Henderson was the guilty one and expressed himself to this effect in no uncertain way.

[1] *M.C.P.*, iii, p. 1. [2] *C.P.*, 380.

> Mr. Henderson, don't think to shift me by your mercurial chicane, for I am convinced you are the forger. Depend upon it you shall hang or else I shall.

The guilty servant, having confessed his part in the crime, asked to be taken before the Lord Advocate. The latter then made clear in court by this new evidence where the guilt lay, and as a result Mrs. Macleod (*née* Nisbet) was hanged for the misdeed, and the innocent Mr. Henderson assoilzied from the bar.

> Yet before his departure,[1] Mr. Forbes went to him, took him by the hand, and even acknowledged his fault in being sanguine in the pursuit, and desired to be excused. Mr. Henderson answered, perhaps with warmth, which the sprightliness of his temper and the hardships which he had groaned upon, could only atone for ; but Mr. Forbes put up with his resentment with a coolness that became so great a man.

By the summer he had earned a much needed rest. As his health was none too good, he betook himself north to his native air. Even here, however, the professional eye was appreciating the situation, and accordingly he was able to announce in his letter of the 2nd September, 1726, that ' last year's madness is altogether cooled '.[2] Excessive work—and, doubtless, too, his old drinking habits—had contributed in reducing his customary vitality. Here he was again at home with a brother called ' Bumper John ' and among convivial and admiring friends, not quite the best regimen for him, and he knew it. By the end of October he was back in Edinburgh, the bad roads and worse weather proving ' both very good physic for my distemper '.[3]

The spring of 1727 found him with his brother in London. There a slight accident befell Culloden. The brothers rode out one April day to pay a visit to their literary friend, Mr. Strahan, who now lived in Hampstead. Here John was thrown from his horse and broke his collar bone. The injury

[1] *Memoirs* (p. 31) in 1748.
[2] Uncat. MS. in Nat. Liby., or *M.C.P.*, iii, pp. 8-12.
[3] Uncat. MS. in Nat. Liby., or *M.C.P.*, iii, p. 12.

proved a slight one, however ; he was not confined to bed, and was able to walk a little and, of course, drink a little, as he himself reported to his old crony Bailie Gilbert Gordon, merchant in Inverness.[1] Politics and the elections were soon once more to engross the minds of both brothers. Following on the death of the King, George I, on 11th June, Parliament was dissolved on 7th August. By 27th July Duncan Forbes had his address ready for the magistrates, for he again sought the suffrages of the Inverness District of Burghs. His letter succinctly states his point of view.

> My chief temptation to desire to be in Parliament is to be in the capacity of doing some service to my country and to my friends. If you, Gentlemen, to whom I have the honour to be known pretty well, believe this to be true, you certainly will honour me with your choice in this ensuing election, and if it is not true, I surely have no title to represent you.[2]

In this election Culloden was again defeated by Grant of Grant in Inverness-shire. His brother Duncan appears to have had some doubts as to the arrangements made by the Earl of Ilay for his party's candidates in the elections ; Ilay, he thinks, had either framed no plan for them, or the directions made by him through his correspondents were

> not much regarded . . . but this I am sure of, that for the want of proper advice and direction, matters are like to go at sixes and sevens.[3]

Later on we know that relations between Ilay and Forbes were distinctly strained. If this avowal of the latter's sentiments, so frankly expressed to Scrope, ever came to the Earl's ears, we may well have here a contributory cause of the estrangement, the seeds of which were in all probability already sown during the settlement of the Malt Riots. Having given a few instances in point, Forbes continues to Scrope :

> The case is pretty much the same over almost the whole country, and if the director of these matters do not act with

[1] Bught MSS. in H.M. General Register House.
[2] *M.C.P.*, iii, p. 24.
[3] *M.C.P.*, iii, p. 25.

some greater vigour than he does, chance and not forecast will return your Parliament from hence.[1]

Only one or two facts of a commercial nature occur for remark in 1727. Early in the year (21st April, 1727, and 19th May, 1727) we find the Lord Advocate and the Solicitor-General reporting to the Lords of the Treasury on several papers laid before their Lordships by the York Buildings Company relating to certain forfeited estates purchased by them in Scotland.[2] In 1727 too, was incorporated the Royal Bank, and the Board of Trustees for Manufactures were much indebted to Forbes for surmounting difficulties arising from the controversy between the Royal Bank and the Bank of Scotland.[3] The multitudinous variety of duties that fell to his lot by reason of his office is apparent at this time. From criticism of the organisation of the political party machine in an election, he had a month later to pass to the recounting of the form of procedure and the wording of the oath to be taken by anyone assuming a new office in Scotland.[4]

Hitherto Forbes's letters from the capital have borne only the word 'Edinburgh', but now the address 'Stoney Hill' appears in 1728.[5] This was the Edinburgh house of Francis Charteris, a notorious man of more than doubtful character, but another of the strange circle with whom Forbes was on friendly terms.[6] When he wrote to his brother on 24th October, and 1st November, 1728, Forbes was evidently then in occupation of Stoney Hill, possibly during the absence of Charteris in London. The former letter contains the names

[1] *M.C.P.*, iii, p. 25.

[2] Calendar of Treasury Books and Papers, vol. 259. This York Buildings Company were the purchasers at a good price of the valuable lead mines at Strontian at the head of Loch Sunart. Their work was conducted in a very businesslike manner and they employed 'about 5000 hands, besides horses for leading their ore' (*Narrative of the Mines of Strontian*, by Alex. Bruce; quoted by Salmond, *Wade in Scotland*, pp. 86-89).

[3] Quoted by Rogers, *Banks*, p. 416; and *M.C.P.*, iii, p. 30.

[4] State Papers (Scotland), Bundle No. 3, Folio 4.

[5] On 19th April, 1728, we find him writing Culloden from London that he was 'just now going out to the Duke of Argyll's to enjoy a few days the recess that the Easter holidays give us' (*C.P.*, 385)—a proof of his growing intimacy with the Duke.

[6] *M.C.P.*, iii, p. 31.

of numerous families of quality from whom he had received hospitality and lodging on his way south,[1] and in the second occurs an unexpected remark :

> This day, after a very hard pull I got the better of my son at the gouf in Musselburgh links ; if he was as good at any other thing as he is at that, there might be some hope for him.[2] .

So speaks the father of all time. Of Forbes's prowess on the golf links we shall have more to say later. Opportunities for such friendly tussles were soon to be few and far between, for young John was on the eve of setting off on the Grand Tour. It is characteristic of his breadth of outlook and tolerance, that the Presbyterian Forbes appointed as tutor for his son an Episcopalian clergyman, the Rev. Patrick Murdoch, although none knew better than he the influence which a tutor might exercise, especially when the two were to be absent together on the continent for a long period.[3]

At the end of 1728 (12th December), Forbes had occasion to write to the Attorney General about the charter of the Mining Company in Scotland. He modestly asks that, as he had no previous experience in a task of this kind, he may be regarded with charity if he commits any errors in the form of the document.[4] In this same year he was engaged as Lord Advocate in the prosecution of one James Carnegie of Finhaven who was charged with murdering Lord Strathmore.[5] Insulted by someone at a convivial funeral party, Carnegie had accidentally killed Strathmore in the scuffle to stab his insulter. During the subsequent trial, in which the accused was acquitted, counsel made frequent references to the Mosaic law and to the Jewish Cities of Refuge. It is possible, therefore, the discussions in the trial and the arguments employed caused Forbes to become further interested in Hebraic studies.

July 1729 found the Lord Advocate in Inveraray, combining business with pleasure. Even here, worries and

[1] *M.C.P.*, iii, pp. 31-32. [2] *M.C.P.*, iii, p. 34. [3] *C.P.*, 147.
[4] British Museum, Hardwicke Papers, vol. 789, Folio 113, Addtl. MSS., 36, 137.
[5] Howell, *State Trials*, xvii, pp. 75-154.

queries followed him. Newcastle—than he was ever a more subtle flatterer?—knew how to coat his pill with sugar. Rumours, he said, were again rife of some project afoot in Scotland, in favour of the Pretender. His short despatch, he knew, would involve some labour and probably a long reply, and so he begins :

> Knowing so well your zeal for the King's service, and your dexterity, . . . Her Majesty does not doubt but if anything of this kind should be in agitation . . . your Lordship will be able to discover it, and take the proper means to prevent it.[1]

Forbes received the letter on the 5th August. The same day he despatched a lengthy reply. He promised most careful inquiry and 'to enable me the better so to do, I shall make the very middle of the Highlands my way from hence to Inverness'.[2] He was able also to discuss the movements of a number of persons reputed to be adherents of the Pretender. The same subject is dealt with in several letters that passed between the Lord Advocate and both Wade and Newcastle.[3] Even Walpole himself wrote him on the subject (9th September), and he received the letter before leaving Inveraray for Inverness from which town he despatched his reply (26th September, 1729).[4]

The year 1730 brings us to the final settlement of Lovat's long-standing case in the Court of Session whereby he sought the reversion of the previous decree of 1702 in favour of Amelia, Baroness Lovat. The pleadings which lasted twelve days ended on 2nd January. The arguments in the case are of little concern here and need not detain us. Suffice it to say that the favourable trend events were taking was enough to justify a number of glowing epistles from the pen of Lovat to the brothers Forbes with whom he had been at variance since his action in the 1722 Parliamentary Election. On 3rd January he recounts to Culloden

> how gloriously your brother, my Lord Advocate, behaved in my cause. In short, he never made so long a speech, so elo-

[1] *C.P.*, 140.
[2] *C.P.*, 141.
[3] *C.P.*, 142, 143, 144, 146.
[4] *C.P.*, 145.

> quent and so nervous a speech, with so much warmth and keenness as if the estate of Culloden depended upon it ; and as he put my cause into such a clear and strong light as that I can hardly lose it, so he has to the conviction of a most numerous and learned auditory, added a great lustre to his former reputation, as a great lawyer and a great speaker. . . . Duncan has acted such a generous part for me.[1]

Although MacShimei had expected the proceedings to terminate early in February, the law's delays were such that he did not get a decision till 2nd July, when he was adjudged the rightful holder of the title 'Lord Lovat'. The complicated question of the estates still remained to be settled. The same afternoon he wrote Culloden informing him of the result.

> I cannot tell you how much I owe to Duncan ; but I can freely tell you, that he was full as sanguine in it as if it had been your cause ; so that since he was His Majesty's Advocate, he never took so much pains in any cause every manner of way. I hope he has now established a family that will be forever faithful to the roof-tree of Culloden.[2]

The year 1745 was to show Lovat's way of realising this hope.

Fortunately Forbes's reputation was not dependent on the word of the slippery Simon who protested his friendship overmuch. In his Edinburgh circle were reliable men like George Drummond and Dr. Clark, and they at this very time were in need of his help for the humanitarian scheme they had in hand. In 1725 Drummond, newly appointed Lord Provost, had suggested the raising of a fund to provide a small infirmary for the indigent sick of Edinburgh. In four years £2,000 had been collected but apparently there were other difficulties in the way besides the mere smallness of the sum.[3] A scheme such as this was just the sort of thing to appeal to a man of Duncan Forbes's generous sensibilities. His friend Dr. John Clark, to whom we have been already introduced under his appellation of 'Phiz Clark', wrote from Edinburgh on 10th March, 1730.

[1] *M.C.P.*, iii, p. 36. [2] *C.P.*, 148. [3] See *Dicty. of Nat. Biogy.*

> You could certainly not do a more charitable thing than to put us on a way or method to obtain the premises and to use your interest for that purpose. . . . The Crown has been in use to incorporate such charitable societies by Charter gratis, as particularly Queen Anne did the Society for Propagation of Christian Knowledge. These two favours if they could be done, would establish the most charitable work that was ever projected in this country.[1]

An example of Forbes's working day, no doubt exceptional, but yet interesting, is shown by his having sat all day in the House of Commons from 10 a.m. till 9 p.m. at the end of April 1730 upon an accusation brought against Lord Chief-Justice Eyres for alleged illegal practices.[2] To this he attributed his being ' very much out of order ' when he wrote John a few days later on the 2nd May.

Duncan's fraternal affection was matched only by his paternal love for young John, on tour on the continent as we saw, under the care of Patrick Murdoch. The latter, writing on the 24th June, informed the anxious father that

> the apprehension your Lordship has been under, that his [=young John's] head might suffer by some civilities he met with on the road will be over, when I assure you that any vanity of that sort is not his foible.[3]

Apparently the youth's interest in study was not equal to his prowess ' at the gouf', but he was not beyond reform, for, as Murdoch ingenuously adds,

> he is ever ready, in very good earnest, to own the necessity of redeeming the time he has lost, and to enter into resolutions and schemes for that purpose.[4]

But the lad was not without spirit. If he lacked the power for studious application, he was determined, Murdoch relates, should war be declared and the British forces sent to the continent, to join them before they returned to Britain.

[1] *M.C.P.*, iii, pp. 37-38. Drummond was not content with the small premises secured. Known as ' father of the infirmary ', he saw to it that Edinburgh was provided in 1738 with a new building to become famous as the Royal Infirmary.

[2] *M.C.P.*, iii, p. 39. [3] *C.P.*, 147. [4] *Ibidem*

As he betook himself northward in the summer of this year, Forbes snatched time at Perth (11th August) to send to Delafaye a satisfactory report on things in general. He was able to report that 'the linen trade is mightily improved in this neighbourhood'; that he had visited General Wade[1] at his new roads which were going on with all the dispatch and success imaginable; and that the Highlanders were beginning to turn their heads to labour, 'which in little time, must produce a great change upon the face as well as on the politics of this country.' Thus, even the journey in his midsummer vacation is regarded by this shrewd and observant mind as another opportunity of gathering further intelligence. On the same date and from the same town, he also wrote to Scrope and to Sir Robert Walpole. His letter to Scrope is of very great length and deals with numerous important topics —the Customs, the Excise, and the Convention of Royal Burghs. These, however, are not the main reasons for his letter. His aim is to secure attention for the claim of the Duchess of Gordon to a pension. On the death of her husband, second Duke of Gordon, she had found herself, in straitened circumstances, faced with the problem of rearing and educating a young family of eleven. Her determination to bring them up in the Protestant faith, while it alienated some of her richer relatives, seemed to Forbes an added reason why a Protestant and anti-Jacobite Government, even from motives of policy, should lend her a helping hand. The promises of definite aid, made a year before by both the Queen and Walpole, had failed to materialise. Forbes pointed out that he himself would lose credit in the district and so be prevented from doing aught for the public service, if a decision was not arrived at soon. To Walpole, he went further, giving us a glimpse of the keenly sensitive side of his character. 'As I go now into that country, I shall look very simple not being able to say anything certain about it.'[2] So, too, in the affair of Seaforth's pension, he wished an early

[1] The previous year Forbes 'was so damnably tired of the Highlands, that I durst not venture on your (Wade's) mines' (*C.P.*, 143).

[2] *C.P.*, 151.

settlement. And then, again, there was the case of some clerks of Delegates who had received no salary although their work was almost completed.[1] The wisdom of writing to both the Prime Minister and the Permanent Secretary at the Treasury on the same points of business is worthy of Forbes.

There is a certain dry humour in the reply sent by Scrope (15th August, 1732) in which he reiterated the fact that the all-powerful Walpole was hopeful of carrying through the granting of the pension

> but at present he is so much engaged with making a fine gallery of pictures to entertain the Queen etc. that there is no saying anything to him of any other business.[2]

Two years later we shall find the Lord Advocate still hammering at the same points to secure a decision. Pertinacity was, surely, one of his attributes.

A week short of Christmas, Lovat informed Culloden that the Lord Advocate was still working hard in his interests to secure the estates as well as the title.

> Duncan does all he can to secure the standing of my family, and I have given him carte blanche to offer or give what he thinks proper to those people for their pretensions, and he is not resolved to spare my purse and I am resolved to be well pleased, for he acts for me as for himself.[3]

Indeed Forbes (characteristically) offered £2,000 out of his own pocket to Fraserdale's family in addition to the £6,000 being offered by Lovat himself, if they would accept his conditions of settlement.[4] This was only the final resolution come to by the Lord Advocate after his hard winter's work for Lovat.

An interest in the classics, Latin in particular, outlived his student days. Among the manuscripts in the National Library is, for instance, a translation into passable verse of one of

[1] *C.P.*, 150.

[2] *M.C.P.*, iii, p. 58. Warrand (*M.C.P.*, iii, p. 58) says that apparently a pension of £1,000 a year was settled on the Duchess in 1735.

[3] Uncat. MS. in Nat. Liby., or *M.C.P.*, iii, pp. 42-43.

[4] *C.P.*, 154.

Horace's odes, in the President's handwriting, and presumably his own work. This interest he shared with his crony Dr. Clark. Early in 1731 the latter was engaged in composing a Latin inscription for a monument to Sir Isaac Newton and sent it to Forbes for perusal. The major part of this letter is devoted to an account of the papers on classical authors left by Mr. Cunningham, a commentator of some reputation. 'I wrote to Mr. Logan, of Dunbar, as I told you I would do, both in your name and mine about his uncle Mr. Cunningham's papers.'[1] The sentence 'I congratulate you on your successful sobriety' is very revealing. These two letters are dated 20th January, and 2nd February, 1731.[2]

In this same year the post of Secretary of State for Scotland was assumed by the Earl of Selkirk, after the office had been in abeyance for a short time, but this did not keep the Lord Advocate from continuing 'to take, so far as without authority I can, a view of the state of our revenues'.[3] It was in this strain that he wrote at great length to his friend Scrope on 6th November, 1731, developing his ideas on the need for revision of the customs and excise regulations. In the summer he had observed the remissness of the boards of customs and excise in Edinburgh in operating the laws against uncustomed brandy. Accordingly, 'I called both boards together and rattled them up as well as I could.'[4] The result was that troops were despatched from Leith in the night time and seized about 1,100 gallons of brandy in St. Andrews. So much were the commissioners moved by Forbes's speech, that they proceeded to hold regular meetings once a fortnight, although the Lord Advocate had no knowledge of their decisions there. He continues, illuminatingly:

[1] *C.P.*, 156.

[2] Here may be noted the error into which Duff, the original editor of the *Culloden Papers*, fell in attributing these two letters to Sir Thomas Pringle, the Physician. Hill-Burton points out (*Life of Forbes*, pp. 307-8, footnotes) that the excessively ornamental style of initials made by Clark (viz. J. C.) was misread by Duff as T. P. and ascribed to Sir Thomas Pringle, who was in 1731 only a young medico recently entered upon practice.

[3] *M.C.P.*, iii, pp. 44-45.

[4] *M.C.P.*, iii, p. 45.

> This was done before Lord Ilay arrived, and I took so much pains not to be seen in any part of the transaction that his Lordship was pleased as I am told to approve of everything that was done.[1]

The leather duty and the candle duty he also considered capable of improvement. Can we wonder that 'he had no time to himself' so hurried was he 'with multiplicity of business'? [2]

A determinedly persistent correspondence for information about the pension promised to the Duchess of Gordon ; [3] requests for his support for candidates for the chair of Roman Law in the University of Edinburgh ; complaints by Macleod of Macleod of ill-treatment of his tenants by reason of the barracks erected on his territory,[4] did not keep Forbes from his paternal and family duties. Thus, on 8th October, 1732, from Bunchrew, he wrote to Patrick Murdoch inquiring searchingly about his son's progress,[5] at a time, too, when he was worried regarding the exploits of a spirited young nephew, John Munro of Newmore. The incident is of particular interest for the side-lights it throws upon Ilay's attitude to Forbes. Briefly, the position was this. Young Munro desired to stand as a candidate for Ross-shire and found as rival a brother of Sir Robert Munro of Foulis. Sir Robert apparently did most of the canvassing. Both men acquainted the Lord Advocate with their design. The worldly-wise uncle thought that

> living in London might draw the young fellow into a course of complications and expense, that do not suit his purpose or his fortune,

and therefore did his best to dissuade the youth and notified Foulis accordingly. Young Munro, however, adhered to his original plan and merely begged Forbes not to oppose him, 'which it would have been very hard to deny.' His next

[1] *M.C.P.*, iii, p. 46.
[2] *M.C.P.*, iii, p. 48 (7th January, 1732).
[3] Uncat. MS. in Nat. Liby., and *C.P.*, 161, and *M.C.P.*, iii, p. 56.
[4] Uncat. MS. in Nat. Liby., and *M.C.P.*, iii, pp. 54 and 61.
[5] *C.P.*, 165.

course of action is worthy of a tale of romance. As he knew that Munro of Foulis had written the Tory Lord Seaforth, then an exile in France, for his interest with the MacKenzies, the bold youth requested his uncle to write similarly on his behalf,—but in vain. Nothing daunted, he

> mounted his steed, rode post to Paris, where Lord Seaforth then was, outran Sir Robert's letter upon the road, and had a favourable answer from my Lord, before Sir Robert's letter reached him.[1]

Duncan Forbes was secretly proud of his mettlesome young relative but shrewdly refrained from interfering in any way, 'being unwilling to enter into any gangle with Sir Robert Munro or to give jealousy to anyone.' The shot, however, had been fired and the repercussions were surprising for now the Lord Advocate found, in spite of himself, that he was

> drawn into the scrape in a very odd manner. Hints and false suggestions have drawn the weight of the Scots Ministry upon the boy, . . . and hurt him elsewhere in a manner not to be endured. Sir Robert Munro, you might know, believed himself no favourite of Earl Ilay's, and with reason, the way to come at him then was, to describe his antagonist as my nephew, which was true, and to describe his purpose of standing as a plot of mine, to raise my power, which was false. This effect, however, it had, that my Lord had been pleased to write letters in behalf of Munro's brother, whom he regards, I fear more for the sake of his adversary than for his own.

Sir Robert next endeavoured to poison the mind of Walpole against the lad, insinuating that a Whig who was so largely dependent on the Tory interest, could hardly be a reliable follower of the Ministry. Forbes, once more established at Stoney Hill, instantly advised his faithful 'physician' Scrope of his trouble, knowing well he would set the matter right with the great Sir Robert himself (28th October, 1732).

The dispute between the rival candidates for the seat of Ross-shire was not the only one in the north. The forth-

[1] Uncat. MS. in Nat. Liby., and *M.C.P.*, iii, p. 62.

coming elections were exercising the minds of all the men of position, and the history of Highland politics is one of plots and counter-plots ; indeed, no man dared trust his neighbour. John Forbes, anxious to be returned for Inverness, again found a strong opponent in Grant of Grant. He kept his brother closely informed of all the local gossip. Relations between the brothers Forbes and Grant of Grant, and between Duncan and Lovat grew strained, but by the end of 1732, the wily Simon wrote flatteringly to the older brother as peace-maker. 'Duncan and I are now as we were in 1715 ; that is, without reserve to each other.'[1] The reconciliation was so complete that sometime between 3rd April and 9th July of the following year, we find Forbes so far countenancing the matrimonial adventures of MacShimei as to appear as a witness at his marriage with Primrose Campbell.

But Lovat's political quarrels were not yet at an end. The beginning of 1733 saw 'a political war that had very near ended in a bloody one', between Lovat and Brodie of Brodie (the Lord Lyon), and out of this came one or two points that seem to shed light on the Earl of Ilay's position[2] and also on his feelings towards Forbes. The situation is best explained by the anonymous correspondent who wrote the Lord Advocate from Edinburgh on 25th January, 1733, describing how 'the Squire' [=Brodie, Lord Lyon] thought fit

> to fall upon the peer [=Lovat] as if he [Brodie] had really been a Lyon ; he upbraided him with ingratitude for deserting his friends the Grants, railed at him for disobeying My Lord Ilay's orders which he said he had for directing affairs in the North and which he could produce, and threatened to blow him up with Ilay.[3]

Lovat, wroth at the treatment he had received, 'in the height of his passion, wrote a long letter to the Earl of Ilay in his defence.'[4] That the reply was a favourable one is clear.

[1] *C.P.*, 167, and see *M.C.P.*, iii, p. 81.
[2] Uncat. MS. in Nat. Liby., or *M.C.P.*, iii, p. 82.
[3] Uncat. MS. in Nat. Liby., or *M.C.P.*, iii, p. 83.
[4] *Ibidem.*

> I believe Duncan by this time has let you know how the impertinent King of Beasts has burnt his own fingers, by telling that he had orders to keep you and your brothers out of Parliament. The Earl of Ilay denies ever giving any such orders by word or writ, as I am assured ; and I truly believe he is too prudent to give such orders.[1]

Still, even if Ilay had given no such instructions, as Brodie averred, for the exclusion of the Forbeses from Parliament, the fact that the Earl could have been credited with this attitude, seems to show that he was not on quite friendly terms with the Forbes brothers, whether from jealousy of the Lord Advocate's power, or from other reason.[2]

Although these petty struggles amongst his friends and relatives in the north interested the Lord Advocate and forcibly appealed to his fighting spirit, his deeper nature sought satisfaction in other spheres of thought; indeed, it was in 1732, so far as has been ascertained, that Forbes's religious opinions underwent a distinct change. In this year letters passed between Forbes and Hutchinson, the originator of the doctrine [3] [4] [5] called by his name.[6] Forbes's *A Letter to a Bishop concerning some important discoveries in Philosophy and Theology* was printed in 1732 and sold at 8d. His bookseller having just sent him a number of recently published books and tracts on religious subjects, Forbes

> perceived that the author proposed to prove that the Hebrew Scriptures had never been and are not now truly translated ;

[1] Lovat to Culloden, 9th February (*C.P.*, 169).

[2] Uncat. MS. in Nat. Liby., or *C.P.*, iii, pp. 64 and 74 ; and *Chiefs of Grant*, i, p. 377.

[3] A highly interesting, but uncompleted note (dated 1817) by Coleridge on the fly-leaf of vol. i of Forbes's *Works* reads : ' In the 2nd volume (the Sketch of the Hutchinsonian System) [in] which is a model of its kind, in clearness and candour, in sobriety of Judgment and . . .' (British Museum).

[4] Forbes is said to have read the Bible in Hebrew eight times (quoted by R. Carruthers, *The Highland Note-Book, or Sketches and Anecdotes*, p. 76).

[5] Out of Forbes's interest in Hebrew grew his friendship with the Rev. Thos. Boston, Minister of Ettrick, and with the Rev. Principal Smith. Forbes ' sent for him (=Mr. Boston) every year, and treated him with the greatest affability and sweetness and freely conversed with him upon the niceties of that masculine tongue ' (*Memoirs of Life of Forbes* (1748), p. 62).

[6] Uncat. MS. in National Library.

> or perfectly understood by those who pretend to be learned ; that rightly translated and understood they comprise a perfect body of Theology and Religion.

He found the author's 'proofs depended so much on the true construction of the Hebrew language, to which I was very much a stranger' that he resorted to some learned friends whose consideration of the problem did not please him. Accordingly 'I rubbed up the little Hebrew I had, and addressed myself to a more careful perusal of the books'. This was merely to 'collect the general drift'. Forbes wished, therefore, to have the opinion of the Bishop who was a scholar 'of great proficiency in the Eastern learning', and from whom he expected

> a solution of my doubts ; an account of these things that have made the greatest impression on me, in the order in which I have been able to comprehend them.[1]

This work passed through three editions at least and contains Forbes's exposition of the system then being promulgated by the Rev. John Hutchinson. Into the intricacies of Hutchinsonism there is no need to enter here. Suffice it to say that Forbes was a warm admirer of the New Theology which contended that all Christian teaching was contained in the original Hebrew of the Old Testament, where, too, were to be found 'the elements of all natural science'.[2] The doctrine here referred to appears to have won the support of not a few able men, and to have been adopted particularly by those who were skilled in the Hebrew tongue. Reference has already been made to Forbes's interest in Oriental languages. Whether his attention was first directed to these during his early sojourn in Leyden, or at the time of the Carnegie prosecution mentioned earlier in this chapter, it is not now possible to say, but it is certain that he soon set himself to master Hebrew that he might the more readily pursue his study of the Scriptures as his new theological interests demanded. His championship of the Hutchinsonian

[1] 'Letter to a Bishop'—copy preserved in Nat. Liby. of Scotland.

[2] Burton, *Life*, p. 346.

Theology led to the issue of other theological works to which Clark seems to refer, for example, in his letter of 9th October, 1735.[1] Some of these were later read by Coleridge whose marginalia are of much interest.

London was meanwhile occupied with politics on the grand scale and the spring of 1733 saw Forbes once more at Westminster. A matter of prime importance appeared before the House of Commons for consideration, viz., Walpole's Excise Bill concerning the tobacco trade and smuggling. The great debate took place on 14th March, and lasted till 2 a.m. on the following morning, when the motion was carried by 266 against 205. Among those in favour of the Bill was Duncan Forbes.[2] Owing to the force of public opinion against the measure, it was relinquished on 12th April, 1733, after an appeal against it by the City of London, and after some members who voted for it had been insulted by the populace, and Walpole himself more than threatened.[3] A committee of 21 members, was, however, appointed on 25th April, 1733, to enquire into frauds of the Customs, and of these members Forbes was one. The Committee submitted its interesting report on 7th June, dealing with the abuses affecting the operation of the laws governing the importation of tobacco. The findings of the Committee were in the main similar to views frequently expressed by the Lord Advocate himself on earlier occasions.[4]

An example of the approachableness of Forbes's disposition is shown by the request made to him (20th October, 1733) by Mr. Hamilton, of Lincoln's Inn Fields, for a recommendation to Mr. Talbot, the present Solicitor-General who was on the point of being promoted to the Lord Chancellorship. Hamilton's object was to be appointed one of the Commissioners of Bankruptcy.[5] With the request Forbes readily complied, but

[1] Uncat. MS. in Nat. Liby., Bundle No. XI ; or *M.C.P.*, iii, pp. 111-112 ; and *C.P.*, 173.

[2] *Parly. Hist.*, vol. 8, p. 1268. [3] *Parly. Hist.*, vol. 9, p. 10.

[4] On 18th June, 1733, we find Forbes remonstrating against the changes proposed in the post-road from Berwick to Haddington, by bringing it round by Dunbar (*M.C.P.*, iii, p. 98.)

[5] *C.P.*, 386.

the result of his action we do not know. A letter written a week later illustrates another trait in Forbes's character, that of independence. It is addressed to Scrope from Stoney Hill, 27th October, 1733. The subject is the elections in the north and the positions of the various candidates.

> I have strictly kept the resolution I acquainted you with in my last, of not meddling directly or indirectly, to oppose or thwart the views of L. I. [=Lord Ilay] or any of his friends, in any place whatever, except the counties of Inverness and Ross, and the Burghs for which I serve. That I have endeavoured to secure my burghs will not (I presume) be complained of, because no man will own the having meddled with me there; and yet nothing is more certain, than that there have been attempts against me in every one of them, though the undertaking made no great noise, because it met with no great encouragement.[1]

Forbes was aware of the unfriendly attitude of Ilay, but was independent and courageous enough to take his own line of action for his own interests even against him, and yet was sufficiently tactful and pacific not to thwart his Lordship gratuitously. The same letter describes the irregularities attendant upon the conduct of the elections in the north. With Lovat as Sheriff, Sir James Grant of Grant was alleged to have 'managed' the compilation of the election roll. Thoroughly riled at this gerrymandering, the free-holders in support of Culloden appealed to the Court of Session. With the death of Culloden, to which we shall make further reference, no more is heard about the case. The remark at the end of the above letter—

> As you know I had some jealousy before I left London, and as I have no doubt fresh hints will be given to Sir Robert to my disadvantage, I entreat you will be so good to me as to enter with him a little on my subject.[2]

—probably refers to the attitude of the Ilay contingent towards him.

After the debate in the House of Commons (13th March,

[1] *C.P.*, 170. [2] *C.P.*, 170.

1734), on the motion for repealing the Septennial Act, Forbes voted against the repeal.[1]

In March 1734 a communication from the Directors of the Royal Bank of Scotland regarding some changes to be effected in the Bank Charter is the occasion for their remark that they are hopeful of making satisfactory arrangements to assist in the development of the manufactures by 'laying out the Public money . . . at interest in the most beneficial manner'.[2] Indeed, if they can just guarantee the Bank against loss, they will be ready to insist on no benefit,

> other than the pleasure of doing service to this country in general, and the satisfaction of doing what we know will be very agreeable to your Lordship.[3]

The spring of 1734 brought John Forbes in search of health, to join his brother at Stoney Hill.[4] Culloden was evidently suffering from an incurable malady and was in great pain. He hoped, in the capital, to secure better medical skill; 'but to no purpose'.[5] By the autumn, he needed the help of a 'borrowed hand' in dealing with his correspondence. Himself a dying man, he kept his interest in his friends actively alive, and assured (26th September, 1734) Bailie Gilbert Gordon, an Inverness merchant, his 'dear Gibbie', that Duncan would make his son heartily welcome and take some care of him, a raw lad from the Highlands, in London.[6] There is something pathetic in the stoical dutifulness, which is yet compelled by brotherly affection in Duncan's request that he may be excused from his Parliamentary labours even a little. If he is absent, the Solicitor-General will be in attendance and so able to discharge any legal tasks requiring attention.

> You can recollect that since first I had the honour to serve the Crown, I never was one day absent from Parliament, I

[1] *Parly. Hist.*, vol. 9, p. 394.
[2] Uncat. MS. in Nat. Liby., or *M.C.P.*, iii, p. 101.
[3] *Ibidem.*
[4] Uncat. MS. in Nat. Liby., or *M.C.P.*, iii, p. 103.
[5] *Ibidem.*
[6] MacPhail MSS. in Nat. Liby.



JOHN FORBES
("Bumper John")
Fourth of Culloden

attended the first and last, and every intermediate day of every session, whatever calls I had from my private affairs to be here,

while the Solicitor-General had been excused attendance in order to transact his legal duties. The letter continues :

You know the friendship I bear my brother and can easily guess how painful it must be to me to part with him, in the extremity of his distress, and how desirous I must be to remain here to attend him, but such is my sincere respect for Sir Robert Walpole and my concern for H.M.'s affairs in his hands, at this juncture, which for aught I know may be virtual, though I hope it is not, that if he upon considering my case, shall think my attendance the first day of the session necessary, I shall, waiving other consideration, get a horseback, and do my best to wait on him at that time, carrying alongst with me the same dispositions towards him and towards his enemies as ever, but if the situation of his affairs shall enable him to indulge me, in my request of leave to stay here, you can easily guess, the news will be very acceptable to me. . . . I know if his affairs permit it he will have indulgence for me, and if they do not I desire none.[1]

This was written on 23rd November, 1734. Shortly after this letter was written Culloden died.

Political rivals frequently become political foes and personal enemies. The Forbes brothers had proved this before death claimed the elder. The summer election (on 4th June, 1734) by which Duncan Forbes had been returned to Parliament for the Inverness burghs had aroused much bitterness against both. Brodie of Brodie's letter to Lord Lovat dated 16th July, 1734, discussing the northern elections, voices his annoyance at the ungrateful and hostile attitude of his cousin Lethen and again alludes to Ilay's attitude to the Forbeses.

I proposed him [i.e. his cousin Brodie of Lethen] to Grant rather than John Forbes in obedience to my Lord Ilay's directions and my concert with your Lordship.[2]

Again, ' My Lord Ilay has wrote to me very pressing in Lethen's favours '. The whole tone of these letters with their

[1] Uncat. MS. in Nat. Liby., Bundle XI, or *M.C.P.*, iii, pp. 104-105.
[2] Uncat. MS. in Nat. Liby., or *M.C.P.*, iii, pp. 91-92.

disparaging references to the Forbeses and to Duncan's 'Jacobite Popish friends' is one of disgruntlement. 'If my Lord Ilay will but allow me to fight my own battle', Brodie goes on, 'I will be able to carry my point and baffle his enemy and his Jacobite Popish adherents.'[1] Brodie also speaks of Lethen 'with his Jacobite friends John and Duncan'. Duncan Forbes would have been other than human if he had continued on friendly terms with the Lyon after hearing remarks such as these.[2]

The following is an example of the literary efforts which formed a part of the parliamentary election in Inverness in 1734. Lovat, who was at this time intimate with Grant, wrote him on 20th June, 1734 :

> As they are pelting us with rime in Inverness, a friend of mine put the enclosed in my hand this morning. It will make you laugh at a bottle.[3]

Here are the verses :

The Peer and his Clan were there to a man
  His Lordship looked big, like Hector ;
No doubt he will vaunt, in the *Evening Courant*,
With a hey, 'Sine Sanguine Victor.'[4]

The Answer

(1)

Though the Brothers did brag, yet at last they did fag,
  Notwithstanding two clans was their shield ;
For the sight of a Grant made all their hearts pant,
  That they durst not appear in the field.

(2)

Though our story does boast of the Frasers and host
  Before Forbes from Adam came out ;
Yet the fourt(h) of that Race, with his impudent face,
  Said, the Grants and the Frasers he'd rout.

[1] Uncat. MS. in Nat. Liby., or *M.C.P.*, iii, pp. 91-96.
[2] *C.P.*, 171 and 172.
[3] Original letter at Castle Grant, quoted by Fraser, *Chiefs of Grant*, i, p. 380.
[4] This was one of Lovat's mottoes.

(3)

But now he does feel, with his brass and his steel,
When he thought he had all the North rug ;
Notwithstanding his lies and the flames of his eyes,
He had the wrong sow by the lug.

(4)

Though his office of State made him always look great,
And gives places and posts to his creatures ;
Though Macleod be his Hector, who ne'er will be victor,
The brave Grants made a change in his features.

The relations between Forbes and Lovat were not, as we can see, of a very friendly nature at this time. Fraser in a letter to Sir James Grant of Grant (7th February, 1735) complains vehemently against the Lyon, the Laird of MacLeod, and the Lord Advocate. Let Lovat speak for himself :

> You know that the false villain Duncan Forbes, by his daring lies, lost me the favour and countenance of the Duke of Argyll, which by the living God, I am now very easy about, since he was so weak and ungrateful as to believe the lies of a little scoundrel upstart against the most faithful and useful partisan that he had these twenty years past in Scotland and England.[1]

So writes the ' faithful slave ' of his ' dear General ' !

It speaks volumes for Forbes's character and reputation that Mrs. Brodie of Brodie wrote (29th September, 1735) to him in such frank terms trying to mend the breach that had occurred in the friendship of the Forbes and Brodie families.

> 'Tis now a great many years since I told your Lordship of what consequence your friendship was to my daughter and me . . . and be pleased to believe, that nobody has a greater respect for your merit nor a truer gratitude for your favours, than etc.——[2]

To read Forbes's reply thereto [3] dated 2nd October, 1735, is to get an insight into the innermost reaches of his soul.

[1] Fraser, *The Chiefs of Grant*, ii, p. 339.
[2] *C.P.*, 171.
[3] *C.P.*, 172.

His answer could not but gratify the lady, even though he could not grant her request for his complete reconciliation with her husband. It is expressed with dignity, but with perfect friendliness to her, and so far does he understand her position that he speaks of

> the usage I apprehend I have met with. I say the usage I apprehend, only, I have met with because I would not, if it might be had for a wish, desire that either you or Mrs [=Miss] Brodie were convinced of the injustice of it.

Not less noble was his attitude towards his brother's old rival, Grant of Grant. When the autumn of 1739 found the latter, not entirely from disinterested motives, expressing his sorrow 'for any misunderstanding . . . between us of late years', Duncan Forbes was not the man to reject a friendly overture. The dignity and honesty of his reply commands our respect.[1] Here is Forbes's letter, written from Culloden, 25th September, 1739.

> I have your very obliging letter of the 24th. I was as much concerned for the unhappy differences you mention as any one could be, but now that they subsist no more, I am determined to lock them out from my thoughts, and to suffer them to have no manner of influence on my actions. My present situation makes it highly improper for me to meddle in elections as a manager. Your purpose of standing candidate for this county when this Parliament ends I have no objection to, nor have I yet heard of any opposition intended you. I do assure you I will raise none, and should (which I verily think will not be the case) any other candidate appear whose friendly conduct to me has recently laid me under obligations of honour to give him my voice, I am convinced you will approve of my conduct, and believe that what I do flows from gratitude for good offices, which a good man never ought to forget, and not from the least degree of resentment which I sincerely declare I have utterly dismissed, being resolved to maintain the old good will that was between us.

The letter concludes with the usual compliments to the family of Grant.

[1] Fraser, *The Chiefs of Grant*, vol. i, p. 431.

With the death of John Forbes at the end of 1734, Duncan succeeded to the family estates of Culloden and Ferintosh and might naturally be regarded as a man of some account in the Highlands. By his own character, skill, and ability, he was one whose friendship counted. Was he not now a landed proprietor in a family of long standing in the north and, in addition, Lord Advocate and Member of Parliament? He appears not to have contented himself with being merely the Lord of the Manor, for he set about effecting a number of improvements on the estate of Culloden, as he had formerly done at Bunchrew, which was declared to have been his favourite retreat in the summer and autumn months.[1] On his estates [2] extending to some 3,000 or 4,000 acres of arable land, it was natural that an enterprising proprietor like Forbes should at this time try to put into force some of the ideas which he had so often talked about. He set up now as an experiment 'a manufacturing village of 20 families and was at the expense of the machinery of each family'.[3] The village, it is said, continued to flourish till after his death.

Early in 1735 collision again occurred between Forbes and his old-time rival, Robert Dundas. In the debate in the House of Commons on 14th February, 1735, on the number of the Land Forces of the Crown Dundas spoke against augmentation, and of the evil uses to which these forces were put. He instanced the drawing up of the regiment in the Abbey Close at Edinburgh to overawe the election of the Scottish peers or of the commoners. The Lord Advocate replied that the parade in question was an ordinary routine muster or exercise of arms in the usual place. He further added

> that there was great need of armed force in Scotland, without which the notorious inclination there to smuggling and cheating the revenue, and to mutiny, and to resist the execution of

[1] *The Highland Note-Book, or Sketches and Anecdotes*, possibly from Burt (?), by R. Carruthers (Black, Edinburgh, 1843), (quoted by Duff, Introd. to *C.P.*).

[2] See Chapter XXI, headed 'Forbes as Laird'.

[3] Quoted by Duff, Introd., *C.P.*, p. xxiii, footnote 37.

> legal process could not be quelled, and concluded with disapproving the proposal for hiring foreign troops.[1]

It is about this time that we first discover the poet Allan Ramsay figuring among those who were acquainted with Forbes. He writes :

> My dear and valuable patron the [Lord] Advocate has honoured me often with his approbation and beneficence.[2]

Although the Jacobites had not been active for some time past, the Government seems to have anticipated by a few months the nomination by the Jacobite Court at Rome of Alexander Smith as coadjutor for southern Scotland. Word was accordingly despatched to the Lord Advocate by Ilay (?) on 12th June, 1735, on receipt of inquiry from Newcastle, to learn all possible news about Smith on his arrival in Aberdeen. Forbes received Ilay's (?) letter and the Newcastle enclosure on the 17th. It is characteristic of him that he immediately took action, and indeed informed his enquirer of the steps taken that very day. The thoroughness of his procedure, his careful preparation, and the secrecy enjoined are all in character and bespeak the trained and highly competent administrator. He wrote, in the first place, to Mr. Forbes, the Sheriff of Aberdeen, a man well known for his zeal for the present dynasty, to seize and detain Smith, and to search his papers. He also summoned from Burntisland Captain Tucker of one of the Customs House sloops to cruise off Aberdeen, examine all ships from France and seize his man. This method Forbes thinks would be more naturally done and lead to less suspicion.

> Though I have lost no time in doing what to me appears most feasible, for coming at this person, I confess I have some doubt the intelligence is not altogether to be relied on.[3]

And, as if this were not enough, he had that very morning, knowing Provost Cruickshanks of Aberdeen was in Edinburgh,

[1] *Parly. Hist.*, vol. 9, p. 819.
[2] Eaglescairnie Papers, Hist. MSS. Reports, VIII, p. 312.
[3] *M.C.P.*, iii. p. 107.

taken occasion ' to meet with him, and without letting him know why, to ask some questions '[1] in his efforts to solve the mystery. The prudence which Forbes enjoined upon Captain Tucker and Sheriff Forbes in his written instructions was certainly a quality he himself possessed *in excelsis*.

It was almost a year since the death of his brother for whom he had always had a great affection, and possibly the anniversary of this sad loss, the pressure of his heavy official duties, and the interest in religious matters, all tended to give him a rather melancholy outlook upon life in general. For whatever reason, certain it is that Forbes at this time was not his usual self. To Scrope from Edinburgh he wrote on 18th November, 1735, in despondent mood. He thanks his friend cordially for the kindness shown to his nephew, which he hopes, sometime, to repay ; then he refers to ' the neglect I have for some time past met with, from those whom I have always served with great affection and fidelity '.[2] He continues :

> As for me, my situation is such as you may guess ; disabled to do good, unwilling to do harm, I live as much as I can the life of a philosopher ; hopeful from the lucky turn the News-papers say our Foreign affairs have taken, that faction and virulent opposition will be so far quelled at home, that I, who am incapable of leaving my friends in times of difficulty, may have leave, without imputation or reproach, to enjoy a little quiet at home, and to retire from a situation for which it seems I am not fit, and in which I never enjoyed much comfort.[3]

In a few months, strangely enough, he was to be shouldering greater burdens than ever. The Porteous Riot and the consequent trial were to lay heavier duties upon him, both in the work of administration and in the House of Commons; his appointment to the Presidency of the Court of Session, vacant on the death (1st February, 1736) of Sir Hugh Dalrymple after forty years in the post, was to increase the demands made upon him ; and later, the organisation of his country's resources against the Jacobites in 1745 was to be his moment

[1] *M.C.P.*, iii. p. 107. [2] *C.P.*, 173. [3] *Ibidem.*

of supreme trial, to prove his worth, and to cause his death. It is safe to say, then, that this feeling of depression was only momentary, and arose from the extreme sensitiveness of his nature contending with the cruder political world in which he was set.[1]

[1] Early in 1736 (18th March), we find a question asked as to the opinion of Duncan Forbes, H.M.'s Advocate General, Scotland, on a point raised by the Commissioners of Salt Duties, Scotland (Calendar of Treasury Books and Papers, 'North Britain', Book XI, pp. 445-7).

CHAPTER VI

THE PORTEOUS RIOT, 1736

The Porteous Mob did its fell work on 7th September, 1736. So far as Forbes's career touches upon this topic, three main points may be noted. In the first place, it must be recognised that one who had been so strenuous an upholder of the law, and especially of the acts which sought to foster the country's revenues, was in some degree indirectly responsible for the punishment of the two smugglers, Wilson and Robertson. Then, in the investigations conducted into the Porteous case itself Forbes played an important part, as he did—and this is the third point,—when measures were more than threatened against the city of Edinburgh and its Provost.

The details concerning the initial imprisonment of Wilson and Robertson need not detain us long here, nor need the happenings attendant upon the Riot itself. A few main facts will suffice. The attempts made, after the Parliamentary Union, to unify the revenue systems of England and Scotland met with much opposition from the latter country. Wilson and Robertson, two notorious smugglers, had been imprisoned for breaking into the Customs House at Pittenweem and stealing £200. Sentenced to be executed, they were imprisoned in the Tolbooth, Edinburgh, but they plotted an escape. Trying to effect this, Wilson, who was of large proportions, stuck in the small window, and so prevented the escape of his fellow prisoner, who would certainly have succeeded. Angry with himself for having thus thwarted his friend, Wilson determined to make amends. On the Sunday before their execution, they were taken to attend divine service, as was the custom of the time. Allan Ramsay, the poet, wrote to Forbes a vivid account of the drama enacted

within the walls of St. Giles's. The men with their four guards

> were but a few minutes in their station in the Kirk when Wilson who was a very strong fellow took Robertson by the head band of his breeks and threw him out of the seat, held a soger fast in each hand and one of them with his teeth, while Robertson got over and through the pews, pushed o'er the elder and plate at the door, made his way through the Parliament close, down the back stair, got out of the Poteraw Port before it was shut, the mob making way and assisting him, got friends, money and a swift horse and fairly got off, nae mair to be heard of or seen.[1]

Scotland had not yet taken kindly to the new system of revenue collection and regarded smuggling with a friendly eye, in spite of what the law might decree upon the subject. The sympathies of the mob, therefore, were very much on the side of the remaining delinquent who was due to ascend the scaffold on 14th April. So great was the concourse of people attending the execution of the condemned man, that the city guard, commanded by Captain Porteous, was required to maintain order. After the death of the prisoner,

> some unlucky boys threw a stone or two at the hangman, which is very common, on which the brutal Porteous (who it seems had ordered his party to load their guns with ball) let drive first himself amongst the innocent mob and commanded his men to follow his example which quickly cleansed the street but left three men, a boy, and a woman dead upon the spot, besides several others wounded; some of them are dead since. After this first fire he took it in his head when half way up the Bow to order another volley and killed a tailor in a window three storeys high, a young gentleman and a son of Mr Matheson the minister's, and several more were dangerously wounded and all this from no more provocation than what I have told you before, the throwing of a stone or two that hurt nobody. Believe this to be true, for I was ane eye witness and within a yard or two of being shot as I sat with some gentlemen in a stabler's window opposite to the gallows.[2]

[1] MS. in the Nat. Liby., or *M.C.P.*, iii, p. 113. [2] *Ibidem.*

Evidently eight or nine were killed and some sixteen or eighteen wounded.

Now all the pent-up excitement was let loose, and all the sympathy which had formerly been expressed for Wilson, was transformed into hatred of Porteous. The populace were furious and the magistrates themselves uncertain as to the proper line of action to be pursued.

Meantime Forbes was residing at his home in the north and was unaware of these happenings in the capital. The other law officers of importance, Erskine (Solicitor-General), Ilay (Lord Justice-General) and Milton (Lord Justice-Clerk), were likewise out of town.

The upholders of Porteous affirmed that his course in giving orders to fire had been necessary for the safety of the lieges. On the other hand, the populace proclaimed that there had been no need for the use of force. Porteous was imprisoned, but what was to be done next? The Eaglescairnie Papers [1] furnish evidence as to the correspondence that passed between Alexander Wilson, Lord Provost of Edinburgh, Mr. Patrick Lindsay, M.P., and Mr. George Irving, an Edinburgh advocate. Clearly there was doubt as to the procedure to be adopted. Wrote Irving to Lindsay on 19th April, 1736—that is, five days after the unfortunate occurrence—

> Some are for advising Mr Dundas, who came home last week. Others are for sending up a state of the matter to advise the Advocate and Solicitor. I own I am of opinion with the latter, and that no trial should be begun till they return. However, I am apprehensive it will be difficult to get them into it, because of the loud cries of the people for speedy justice.

A letter from Wilson to Lindsay, dated 23rd April, 1736, makes the position clearer. A resolution was passed by the magistrates to have an opinion from the Lord Advocate and the Solicitor-General as to the competency of the city's jurisdiction over capital offences of soldiers and officers in the

[1] The Eaglescairnie Papers (printed in the Hist. MSS. Comm. Report No. 8, App., p. 310 ff.).

discharge of their duty. 'If the magistrates are incompetent', Wilson continues, 'the trial before the Justiciary cannot be brought on till 1st June.'[1][2]

The indictment[3] against Porteous was duly drawn up before 16th July, 1736, by Forbes in his capacity of Lord Advocate. The prisoner was condemned and the day of execution fixed for the 8th September. A petition was, however, submitted on his behalf, (25th August, 1736), and through the good graces of Queen Caroline he was respited for six weeks.

Porteous had heard of this mark of clemency, and on the eve of the day of execution was celebrating his good fortune in the Tolbooth with some of his friends who had visited him. But the mob seem to have heard the news too and were determined not to be balked. Accordingly, a tumult arose in the Scottish capital about ten in the evening of Tuesday, 7th September, 1736. A few boys seized the drum of the suburb of the West Port and beat it in the Grass Market within the city. About six minutes before ten, the magistrates sent to the Captain of the City Guard to have his men in readiness,

[1] The Eaglescairnie Papers (printed in the Hist. MSS. Comm. Report No. 8, App., p. 310 ff.).

[2] The following waggish letter now indecipherable in parts, must have brought a broad smile to the face of Forbes in the midst of his worries. It is from the hand of Lady Forbes of Castle Forbes and is dated 13th July, 1736. Learned, witty, shrewd and broad-minded, the writer says :

> Your Lordship knows that great A is the first letter of the alphabet and that one must learn it before B or Berith, E or Elohim . . . so in all languages since . . . Babel ; what was the rule before, your Lop. knows best . . . it's absolutely necessary . . . address you before anything be signed . . . between Lord Forbes and your humble servant. I hear . . . scrolls have been laid before you but I fear you have not time to run them through even as the young gentleman did Coke upon Littleton—with a sword . . . intreat you . . . peruse . . . I do not propose it as a thing that will give . . . much light into the Hebrew or as diversion to you, but as a friendly action. You know Law is a bottomless pit, and since neither Lord F. nor I care to fall into it, I hope your Lop. will consider whether our agents have drawn . . . according to the minute. On looking over this epistle, it appears very like a Whig minister's prayer, they generally spend half their time in telling God Almighty what he knows . . . the truth is, they know so little themselves that they are right not to be too hasty in acquainting their hearers with it. I shall leave your Lop. to make the application . . . only tell you one thing you know—that I am—your Lordship's much obliged and most humble servant,
>
> D. Forbes.
>
> Castle Forbes, July 13, 1736.

(MacGill, *Old Ross-shire and Balnagown Documents*, No. 818.)

[3] S. Papers of Scotland, ii, 1737-44, Bundle No. 23, No. 4.

but a few minutes before the hour, the mob suddenly rushed in upon the Guard. Surprised by the suddenness of the onslaught, the guards were driven from the guard-room by the rioters, who got possession of the Gates of the city. They secured the prison gates, effected an entrance, captured the ill-starred prisoner, and hanged him about a quarter of an hour before midnight.[1]

The day after the murder, Fletcher wrote to the Duke of Newcastle telling what steps he had taken to avoid a recurrence of such disorderly happenings. The Canongate Guard was to be doubled ; fifty men were to be stationed in the castle of Edinburgh and relieved daily ; and the magistrates had been instructed to chain back the gates of the Netherbow to prevent their being shut. The object was to secure for the military, open communication from both ends of the city.[2] This letter of the Lord Justice-Clerk's must have been sent express, for Newcastle's extant reply is dated Whitehall, 12th September, 1736. Regretting the ' cruel and barbarous murder and outrage committed by the mob', Newcastle expressed,

> Her Majesty's pleasure that you should write to the Lord Advocate or H.M's Solicitor-General for Scotland to come immediately to Edinburgh to attend and assist with their advice and counsel upon this great and important occasion.[3]

With these instructions Fletcher duly complied, at the same time informing Newcastle that he had sent an express for the Lord Advocate who was at Culloden as already mentioned. About this same time—to be precise, on the 17th September—Newcastle himself wrote the Lord Advocate from Whitehall, conveying Her Majesty's instructions. He was to do his utmost to discover and arrest the culprits—' ringleaders and abettors of these wicked and audacious proceedings ', and to prosecute with the utmost severity of the law all who seemed to have been concerned in the crime. A speedy

[1] P.R.O. State Papers, Scotland, ii, Bundle No. 23, No. 4.

[2] P.R.O. S.P. 36, Bundle No. 23, Copy of letter from Edinburgh about murder of Captain Porteous.

[3] *Ibidem.*

and exemplary punishment, he averred, would deter others from similar wicked attempts and would

> for the future secure a due reverence and obedience to the laws of the King and to His Majesty's authority which have been so openly and notoriously violated.

A letter similarly worded was despatched to Erskine, the Solicitor-General for Scotland. These letters were received by Fletcher on Tuesday, the 21st September and acknowledged on the 23rd from Edinburgh. The letter for the Solicitor was delivered that night, but the one for Duncan Forbes had still a long journey to cover to reach him in the north. Fletcher promised to state the case to him immediately he came south and also to the Solicitor-General, in order that their opinions might be transmitted to his Grace and that disputes might be avoided at the trial.[1]

By the end of the month (30th September) Erskine was able to inform the Duke that both Ilay and the Lord Advocate were expected in town and that he himself would communicate to them all he had been able to learn and would take their advice as to the best measures to be pursued for executing the Queen's orders.[2]

We know that Forbes was resting at Culloden when the riot took place. On the 11th September he had written to Mr. Lindsay, the M.P. already mentioned :

> Porteous's reprieve is owing, I perceive, to the application of Gen. Wade. I wish it may have a good effect.[3]

Newcastle's letter of 17th September, 1736, he received late on 30th September, and he answered it on the following day. It had been his intention on first hearing of the 'unexampled violence of the Edinburgh mob' to proceed to the capital forthwith, although his health was not very good, but he had postponed his departure for a few days when he learnt that the peace and government of the town were re-

[1] MSS. in P.R.O. S.P. 36, Bundle No. 23.
[2] *Ibidem.*
[3] Eaglescairnie Papers, Hist. MSS. Com. Report 8, App., p. 310.

stored. Now that he was aware of the seriousness of the situation and since Her Majesty desired the whole affair to be probed to the bottom, he purposed returning to Edinburgh at once.[1]

The Lord Advocate cannot have lost much time in setting out, for by the 9th of October, Ilay and Erskine independently informed the Duke of Newcastle that both Forbes and Wade were in town. The Solicitor-General and his colleague, the Lord Advocate, were soon busy investigating the whole case, and examining likely persons. To this end they sat for three hours every morning and then compared the several examinations they had taken. All the evidence they seem to have secured related only to the inferior actors in the crime. In reporting all this to Newcastle on 19th October, 1736, Ilay added

> and I think it's morally impossible but that the authors of the conspiracy are persons of more distinction than those I have taken up or have signed warrants against.[2]

Among those examined was a master-carpenter who declared his innocence, although four of his employees had been active participants. This man was a great favourite of one of the magistrates, whom Ilay suspected 'of somewhat more than neglect'.

By the 23rd October the inquiry was finished and all likely persons examined. It had been no easy task. Some had been manifestly unwilling to give evidence, while others had been only afraid.[3] A week later Ilay recounted to the Duke some of the methods used to detect people suspected of being concerned in the insurrection. Thus, one of the King's chaplains was to preach at the administration of the Sacrament.

> I sent to him to desire that he would use some proper expressions upon the late murder of Captain Porteous. He accordingly did it by warning all sorts of impenitent sinners and (among the rest) the murderers of Captain Porteous. The

[1] MSS. in P.R.O. S.P. 36, Bundle No. 23.
[2] *Ibidem.*
[3] Ilay to Newcastle, Edinburgh, 22nd October, 1736.

> effect of it was that above 100, as I am told, withdrew and did not receive, but the minister who preached next, gave many hints of his being of another opinion. Tantum religio potuit.[1]

To ensure that the murderers would be brought to justice an Act was passed to be read in the churches. Only about one half of the clergy read the Act and many scurrilous pamphlets were published against it, 'two of them scandalous and seditious beyond measure.'[2]

People were not wanting who cast vile aspersions upon the magistrates, but it appears that no attempt was spared to find out the guilty, and the widow of Porteous vindicated the Magistrates in a letter, which was enclosed by Mr. Irving in another to Mr. Lindsay on 27th January, 1737. She declared:

> While an enquiry was on by the Lord Advocate and the Solicitor-General who have laboured therein with great assiduity, the Magistrates never failed to give what concurrence and assistance thereto that was required.[3]

On the 10th February, 1737, the House of Lords issued three orders requiring the Provost and four bailies of the city of Edinburgh, and the Commander of the city guard at the time of the riot to attend their Lordships a month later. It was also enjoined that an authentic copy of the trial of Captain Porteous and all relative proceedings should be forwarded at the same time. These instructions were duly transmitted to the Lord Justice-Clerk by Newcastle on the following day.[4] It was at this same sederunt of the House of Lords that the Earl of Ilay, admitting the disorder, expressed his surprise

> to hear the least insinuation made, as if the city's charter ought to be taken from them on that account . . . for that tumult was far from being the act of the city and citizens.[5]

[1] S.P. 36, Bundle No. 23, in P.R.O.
[2] P.R.O. State Papers Scot., ii, Bundle No. 23, Nos. 9 and 10.
[3] Eaglescairnie Papers, Hist. MSS. Com. Rep. 8, App., p. 310 ff.
[4] S.P. Domestic, Geo. II, No. 36, Bundle No. 40, Folio 10.
[5] *Parly. Hist.*, vol. 9, p. 1307.

With the opening of the new year the next act was staged in the Porteous drama. No longer is the scene laid in Edinburgh. Westminster is now the theatre of events, and the House of Commons the stage. No longer do the law officers of the Crown and the executive Ministers of the Government busy themselves with investigations into the baffling mystery. The Government itself takes the next step and the battle of debate is fought out on the floor of the House of Commons.

The chief law-officer of the Crown in Scotland, Forbes, had it as part of his official duty to examine witnesses, to collect evidence, and to take such action in the courts as the evidence warranted. Now that the Government was determined to take strong measures against the capital of Scotland, Forbes's point of view became that of the Member of Parliament and not of the law officer solely. He was no mere party politician content to obey the orders of the Party whips even against his own conscience. The man who had helped carry the dead body of the Englishman, Captain Green, to the grave in the face of a hostile rabble in 1705, when he was yet a youth of twenty ; who had done his utmost to raise a fund to defend the unfortunate prisoners awaiting trial in Carlisle after the 'Fifteen rebellion, was not the man to sacrifice his principles for the sake of party discipline and unanimity, especially when his country's honour was at stake.

The Government brought in a Bill of Pains and Penalties whose object was to imprison the Lord Provost and magistrates and to disable them from again holding office ; to abolish the city guard ; and to demolish the Netherbow Port.[1] The Bill was really introduced at the instigation of the Queen and had something of vindictiveness about it. Introduced in the House of Lords the Bill was stoutly opposed by the Duke of Argyll, one of the Government's staunchest supporters, and its passage was not an easy one. Having passed its first reading in the Upper Chamber, on the 16th May[2] it was sent down to the Commons where the opposition was much more vigorously maintained. All the Scottish and

[1] *Parly. Hist.*, vol. x.

[2] *Journal of the House of Commons*, xxii, and *Parly. Hist.*, vol. x,

many of the English members as well stood out against the measure. To the Lord Advocate whose duty it should normally have been to introduce such a Bill, the Government might have looked for backing, but the man who should have been one of its surest supporters proved himself one of its stoutest assailants, even when, by order of the Lords, he appeared before them as a witness.[1] To a question asked of him on that occasion, Forbes made answer :

> 'My Lords, we acted in that affair, as our consciences directed us ; and there is no power on earth that dare call our actions in question.' Which spirited answer put an end to the examination.[2]

When the Bill was introduced into the Commons after frequent adjournments, Forbes again stood forth as the champion of his country at, for him, a critical time. The Lord President's chair, by the death of Dalrymple, was unfilled, and Forbes was his most likely successor.

> It would sound very ill (he said) that a British House of Commons in which there are but 45 representatives for Scotland should receive such a bill ; Edinburgh is now a city of Great Britain, nay, the second city. And I appeal to the gentlemen who represent the cities and boroughs of England to know in what manner they would treat a bill inflicting such pains and penalties upon any of the cities which they represent. They are in honour obliged to protect the Commons of Scotland as much as the Commons of England ; because the Scots trusted to their honour when they united with them upon the terms they did, they are in prudence obliged to protect the privileges of every burgh of Scotland as much as the privileges of any burgh of England ; because no encroachment can be made, no injury done to the one but what may be made a precedent for doing the same to the other. If they allow the

[1] The Lords ordered that a message be sent to the House of Commons to ask 'They will give leave that Duncan Forbes, Esquire, His Majesty's Advocate for Scotland, Charles Erskine, Esquire, Solicitor-General for Scotland, and Patrick Lindsay, Esquire, Members of that House, may attend this House in order to be examined, as witnesses upon the Bill, entitled "An Act to disable Alex. Wilson, Esq., etc., etc."' (*Journals of House of Lords*, vol. xxv, p. 99, and p. 106).

[2] 'Memoir', p. 11, prefixed to his *Works*, 1788.

other House to encroach upon the privileges of the Commons of Scotland, it will be a precedent for their encroachment upon the Commons of England. If they accept of this bill, if they give it a reading, I shall soon expect to see a bill brought them from the other House for turning some of their members out of doors.[1]

On Friday the 20th May, a petition from Alex. Wilson, Lord Provost of Edinburgh, was presented to the House, 'averring his entire innocence of the several matters alleged against him.' On the following Tuesday the Magistrates and Town Council also presented a petition in the name of themselves and the community.[2]

While the Bill was fighting its way through the House during the months of May and June, the opposition was not restricted to Parliamentarians only. The voting was close, and on Thursday, 9th June, 1737, the motion to go into Committee was put forward. It was on this occasion that Forbes, as Lord Advocate, made his eloquent speech against the motion. He followed the two English legal officers who had spoken in support of the measure, and stated his closely reasoned case with point and with vigour and with eloquence. The substance of his speech is preserved for us in *The Gentleman's Magazine* for the year 1737.[3] He first stated his official connexion with the prosecution of Porteous and with the examinations of the persons supposed to have been concerned in his murder, and thereafter declared it his duty to express his opinion about the Bill then before the House. If it could be proved that the Magistrates and the City of Edinburgh had omitted any steps which might have been taken to prevent the unfortunate occurrence, he was ready, he affirmed, to vote for the Bill; indeed, he went so far as to say that, if the allegations of the Bill were proved he was willing to give up any privilege reserved to the City of Edinburgh by any previous act, by even 'an Article of so solemn a Treaty as the Union itself'. He stated that his present defence of the Provost and citizens of Edinburgh did not proceed from any

[1] *Parly. Hist.*, x, p. 248.
[2] *Ibidem*, p. 270 *circa*.
[3] Vol. 7, p. 537, and in *Parliamentary Debates*, vol. x, p. 282.

national prejudices for he was as free and impartial as was the House itself. As one who knew Edinburgh and its citizens intimately, spending as he did, at least six months of the year there, he proceeded to describe local features of the city. The citizens of Edinburgh, he explained, were divided into two classes—those who composed the corporation and paid scot and lot, and had the sole right to elect their magistrates and Party representatives, and those others, the very dregs of the people who had no interest in these matters and who readily embraced every opportunity of being tumultuous. Such a Bill, if passed, would favour the latter class who were certainly the authors of the murder of Porteous, if, indeed, he was killed by any citizen of Edinburgh, and would also censure the well-doing class whose interest it was to quell all riots and who actually did their utmost to that end on the occasion in question.

He next spoke of the topography and layout of the city, for these seemed not a little to bear upon the whole problem under consideration. The city consisted of one principal street and ' upon this street twice every day there are seldom fewer than 1,500 people walking '. Towards the middle of this street stood the guard house which the Bill proposed to demolish. Its situation was highly suitable, for the soldiers were always ready to suppress any commotion which ' must frequently happen in such a concourse of people '.

The suggestion that the burghs should on the abolition of the guard return to their custom of watching and warding on some five or six days each month, was met with the rejoinder that that would entail very great hardship and very great loss to private business. Indeed, it was on representations made to a former government about the services rendered by the burghs at the Revolution, that the existing guard was granted by Parliament and confirmed by the ' glorious King William '.

Here followed an account of the Captain Green episode already referred to in 1705. This was of a highly personal nature, and in it he showed how useful the city guard had been upon public occasions when large and tumultuous con-

courses of people were assembled. Another reason for his allusion to the incident of Captain Green was to show how he had tried ' to shake off those foolish but fatal prejudices that reigned among the subjects of that part of the United Kingdom against the English '.[1]

Forbes next passed to a consideration of the part played by the Lord Provost of Edinburgh during the disorders that resulted in Porteous's death. He was of opinion that the Provost

> behaved not only with prudence but zeal, nay with a courage which could scarce be expected in a much younger and a much more active man.[2]

No evidence of any credit had been adduced to show the Provost and Magistrates to be possessed of any intelligence as to the likelihood of a riot taking place and on a particular day. The statement of several witnesses—a bailie, a Mr. Dun and a Captain Lin—were examined and their weaknesses exposed. The characters of the first two were far from reliable, and the third did not seem himself to give credence to the story he was narrating. Certainly this man did not consider it likely that any attempt which might be made would take place before the day fixed for Porteous's execution. So careful and zealous was the Provost, however, that precautions against every possible course of action should be taken, that he summoned a council. There it was resolved to muster the three companies of the city guard and to have the officers of the trained bands in readiness upon the Wednesday —the day of the execution.

Forbes then examined the charge that the city guard had not been provided with powder or shot. Having stated the normal procedure for dealing with such demands, he contended that the captain of the guard had failed to notify his wants and that no blame could be imputed to the Lord Provost who, being no military man, could not be expected to be acquainted with such a matter as the supply of ammunition.

[1] *Parly. Debates*, x, p. 284.
[2] *Ibidem*, p. 286.

> It appears to me, sir, that he used all precautions that any wise man could have used upon such an occasion and that he committed no other blunder in conduct, except that of not acting contrary to the advice and judgment of every man about him who were all of opinion that, if there was any foundation for the report of a riot's being to happen before the Wednesday which was the day appointed by the judges of Porteous for his execution, that to make any appearance of providing against a riot before the said day was the readiest way to occasion a riot.

Moreover, as the rabble had no certain news of a reprieve having been granted for the condemned man, they would naturally wait to see whether they could secure by law what they were otherwise determined to obtain by violence. As the Provost's conduct was not at fault before the outbreak, so during the riot itself he acted with expedition and courage, and neglected no means of quelling it. No sooner was he informed of the appearance of a disorder than he sent the Captain of the city guard to call out his men, in order that the Provost might put himself at their head and march against the rioters. With an alacrity not to have been expected from a man of his age and infirmities, he followed the commander of the guard and met him returning from the guard-room whence he had been forced by the violence of the mob. The guard thus failing him, he naturally tried to secure the assistance of the King's forces, and that dangerous duty was carried out by a member of the House of Commons at great risk to himself. The supporters of the Bill had objected that no written message had been sent to the G.O.C. troops, without which no help for the magistrates could reasonably be expected. This was met by the rejoinder that there had been no time for the writing of a message, howsoever short, and that the very M.P. who carried the verbal message had declared in evidence that he would have refused to carry any written one (even if such had been handed to him)

> because if he had been seized upon by the rioters, and if such a letter had been found about him, there was no room to doubt but that they would have treated him with as little ceremony as they afterwards showed to Porteous.

Forbes recounted how the mob had increased in violence to such an extent that the magistrates were compelled to take other steps in the interests of public safety. It had been suggested that the alarm bell should have been rung to summon the citizens to the aid of their magistrates, but the foresight of the rioters had prevented this. They had seized the tower in which the bell hung. In like manner he explained how the proposal to raise the captains of the trained bands had been impossible of execution. The Provost had been determined to do his utmost and to omit no step. Accordingly, he had led an attempt to suppress the riot, having with him only a small band of unarmed men to meet the large concourse of armed rebels. Only after several of his followers were wounded with stones, and fire-arms were levelled at them, did the representatives of law and order withdraw,

> because to have done otherwise would have been for the Magistrates to have exposed both their persons and authority to the insults of a barbarous and an enraged multitude.

Only then did the rioters carry out their infamous deed. Forbes held it as an indubitable fact that the Lord Provost had comported himself in a dutiful and gallant manner throughout the whole melancholy proceedings, and questioned whether there was anything left undone by him which might have helped the situation.

Forbes averred he had heard of only ' one positive circumstance ' quoted against the Provost's behaviour after the riot, namely, that he had not imprisoned the man who had been seized in the Grassmarket on the following day. But the Provost had never seen that man, nor heard of him, till he was dismissed. In any case, if those who had laid hold of the man had put him in prison, the tumult would merely have broken out again, so great was the determination of the mob and so numerous were the rioters. Of these facts the man in question was well aware.

Calling his colleague, the Solicitor-General, to witness how strenuously the Provost had sought to discover the conspira-

tors and to assist in every way, Forbes generously and spiritedly declared

> that if they were not discovered, it was not owing to him but to us ; and if this House is resolved to pass the present Bill into a law, on account of any neglect that happened upon that occasion, it is but just that you should strike his name out of the Bill and clap in the names of a couple of your own members.

And having so spoken he concluded :

> Thus, Sir, I have given my opinion with reference to the insufficiency of evidence for passing the present Bill into a law and I have done it in the sincerity of heart ; for what motive, Sir, can I have in what I have spoken but the discharge of my duty as a member of this House ? It is more than probable, Sir, that I shall never trouble you again with my sentiments upon this or any other subject but my conscience would ever afterwards have accused me if I had quitted my seat here before I had given my reasons why I think the present Bill should not be committed.

When Forbes had resumed his seat, he was immediately followed by General Wade, who expressed his great regret at having to differ from his honourable and learned friend who had just spoken. ' I think ', he continued, ' it is the first time I ever had occasion to do so and I hope it shall be the last.' [1] He declared that the Lord Advocate and the Solicitor-General in taking examinations and in trying to seek out the guilty, had both shown ' as hearty a zeal in their proceedings as the best friend to His Majesty and present Government could have wished for '.

It is beside the point to notice all the arguments and evidence for and against the measure. The view of Mr. Serjeant Skinner, who spoke in favour of the Bill, is of interest. He referred to all that had been said by the gentlemen counsel against the Bill regarding the privileges of the royal burgh in Scotland.

> This (he added) was not much insisted upon by the honourable and learned member who spoke first, [Duncan Forbes] against the Bill who well knows that when a tumult happened

[1] *Parly. Debates*, vol. x, p. 290.

in the city of Glasgow, another of their royal burghs, that the magistrates there were brought into the city of Edinburgh and this House passed a Bill amerciating the citizens of Glasgow in a sum of £5,000 towards damage sustained by an honourable member of this House.[1]

The newspapers of the period are rich in references to the subject of debate. *The Old Whig or The Consistent Protestant* on Thursday, 19th May, 1737,[2] contained a vigorous article by 'Henoticus' against the Bill; it takes the form of a letter and is dated 14th May, 1737. The issues of 2nd, 9th and 16th June, 1737,[3] also have articles in a similar vein. It would appear that the case of the city of Glasgow in 1725 had been much insisted upon as a precedent in the course of the debate and was asserted to be a case in point, or rather a much stronger case.[4] Presumably the reason for adducing this incident was Forbes's present activity in opposition, and his former participation in the quelling of the Shawfield mob and in the punishment of the Glasgow magistrates. *The Old Whig* contends that the Glasgow incident, far from being a case in point for the passing of the present Bill, was rather a case for rejecting the Bill as it then stood. The earlier Act had carefully avoided inflicting a censure upon the citizens of Glasgow or upon the magistrates and town council.

The Act is merely a satisfaction of damages, and no punishment. Why the damages were to be made good out of the Public Funds of the Kingdom is a point in which Parliament wisely thought to be silent.[5]

The Bill in its amended form was finally passed on 21st June, 1737.[6] Most of the more offensive items were omitted. Wilson was, however, prohibited from holding any office as a magistrate, a fine of £2,000 was imposed on the city to be handed over to the widow of Porteous, and a further strenuous effort was to be made to bring his murderers to justice.

[1] *Parly. Debates*, vol. x, p. 295.
[2] No. 115.
[3] Nos. 117, 118, 119.
[4] No. 119.
[5] *The Old Whig*, 16th June, 1737, No. 119.
[6] *Journals of the House of Lords*, vol. xxv, p. 106 and ff.

CHAPTER VII

FORBES AS LORD PRESIDENT
THE YEARS 1737–1744

(*a*) The Law Courts

One of Forbes's friends, Colonel James St. Clair, writing him in affectionate terms in January 1737, concludes with the remark :

> We have been told here, that the President was at the last gasp ; and I think it's allowed by everybody, that you may be his successor if you please. I have said so much to you on that head, that I shall trouble you with nothing now upon it ; but assure you, that all your friends will have great cause to be dissatisfied with you if you refuse it.[1]

Sir Hew Dalrymple, Lord President of the Court of Session, died on the 1st February, 1737.[2] By this time the Porteous affair had not been settled. The attitude adopted by Forbes and the strong stand he had taken in the House of Commons [3] had made him a popular figure in Scotland, and when he was made in his fifty-second year Lord President of the Court of Session on the 21st June, 1737, it was with universal approbation. The advice of Hardwicke principally determined him to accept the post.[4]

[1] *C.P.*, 175. [2] S.P. Scotland 54, Bundle 23, P.R.O.

[3] *Parly. Debates*, vol. x, p. 282, and *Gentleman's Magazine*, vol. 7, 1737, p. 537 *et sqq.*

[4] Add. MSS. 35446, folio 2, Hardwicke Papers.*

* On 10th July, when the letter from the King nominating Forbes President was presented, two questions emerged, viz. : 'Whether by the Act of 1579 any trial of the President was necessary, because he could not be considered as an ordinary Lord, for the first institution is of 14 Ordinary Lords and a President ; and whether the Act of Sederunt, 1674, extended to the admission of a President, because the King approved of it only as the trial of the Ordinary Lords.' The case was duly argued, and it was decided that the President at his admission must undergo the same form of trial as the Ordinary Lords.

The promotion was, then, a popular one, and the Faculty of Advocates waited on the new President with an address in which they affirmed their pleasure at the appointment.[1] Lord Cornbury,[2] whose character was highly praised by Alexander Pope, and whose approval was worth having, sent Forbes his cordial congratulations.[3] The new honour brought with it new responsibilities,[4] and soon he was essaying one of the most difficult tasks of his career. All his biographers are agreed upon his success in this work. The Court of Session was at a low ebb both at the beginning and at the end of the eighteenth century, and with the fifteen judges of the Court sitting on the Bench at once in the 'dark and grimy chamber' some thirty-five feet square, the proceedings were not as disciplined as they might have been. Writing in 1875, Patrick Fraser says :

> When Forbes took the chair, the Bench was in its lowest state, and . . . before he left it he brought it to a condition that it has, perhaps never equalled since.[5]

When the decision was arrived at Forbes was called in (19th July) and was then sent to the Outer House with Lord Stricken (*Dictionary of Decisions of the Court of Session from 1733-1854*, by Patrick Grant of Elchies, ed. Wm. Maxwell Morison, vol. i, Appendix II, Notes on Jurisdiction, No. 14).

[1] Brunton and Haig, p. 511.

[2] Pope wrote of Cornbury :

> 'Would you be blest, despise low joys, low gains,
> Disdain whatever Cornbury disdains ;
> Be virtuous, and be happy for your pains.'

[3] *C.P.*, 188.

[4] Scarcely was Forbes installed in the Lord President's chair when he was the recipient of a Memorial (dated 4th Oct., 1737) from Lauchlan MacLean of Hengerloch, beseeching his help. The estate of the Memorialist 'is very often distressed and harassed, there being great numbers of his cows and horses frequently stolen, in quest of which he mis-spends his time'. His other duties and also his 'poor tenants' were constantly neglected, and

> 'So it is most humbly hoped that your Lordship will sympathise with the case of the distressed by contributing a relief with the first conveniency which no less at least than twelve honest pretty fellows of the Independent Companies could operate, whose principal business it would be to guard that aforesaid pass from any such communication to search for thefts, follow tracks, and secure thieves when found out, and bring them to the metropolis when demanded, and prosecution designed, whereby the King's lieges in those parts, my Lord Duke of Argyll's tenants and neighbours, might live in peace and tranquillity, a great common good, which must be owing to your Lordship as the promoter thereof.'

(Uncat. MS. in National Library, Bundle XI).

[5] *Life of Forbes*, p. 12.

According to tradition he had a toast : 'Here's to those of our members as do not deserve the gallows!'[1] And who shall decide just where gravity ends and where jest begins in the toast?

To avoid the tiresome delays that had crept in during the long presidency of his predecessor, it was necessary to draw up a series of rules. To this end Forbes introduced an Act of Sederunt, whereby no legal cause could now be protracted to a period more than four years, although some cases had been known to have been still under consideration for as long as thirty years.[2] It will be remembered how Scott in *Redgauntlet* makes poor Peter Peebles a litigant for fifteen years, and his case was not uncommon. This abuse Forbes set himself to remove.

> From and after 1st November next, they will proceed to discuss rolls both in Inner and Outer House, and will not grant any delays on pretence of lawyers not attending or not being prepared to debate.[3]

To order affairs better, he instructed the Clerks of Court to draw up a roll of *all* causes in which decisions had not been pronounced at the close of the summer session and to fix it on the walls of the Court House.[4] Whereas, formerly, favour had been extended to some litigants as to the order in which their cases were heard, now no such priority was permitted and cases were tried in order. The presiding judge had formerly been able to postpone or call a cause, according to the attitude of the other judges whose opinions were known and who were at the time absent.

Not only was reform in procedure necessary. The law officers, responsible for the carrying out of routine business had to be taught a lesson in discipline, and this lesson Forbes drove home before his first year as Lord President had closed. The registration of a certain bond had been ante-dated by

[1] *Scots Law Times*, 29th Oct., 1933.
[2] See Omond, i, p. 355.
[3] Acts of Sederunt, of the Lords of Council and Session, 29th July, 1737, p. 313.
[4] *Ibidem.*

six days, and thereby 'a falsehood' had been committed. On 18th November it was, therefore, decided that an example be made of Thomas Belsches, sheriff-clerk depute, Patrick Cam, sheriff-clerk, and Colin Campbell, writer. Belsches for 'neglect in his office in not noticing and preventing ante-dating' was to be reprimanded at the bar, Campbell 'to be imprisoned in the tolbooth of Edinburgh for the space of eight days unless he be liberate sooner by the Lords', and Cam to be imprisoned eight days and suspended from 'the execution of his office for the space of one year'. In this way it was made clear that 'the abuse in the inferior courts of giving out extracts of bonds and bills of a date prior to the ingiving' was in future to be frowned upon.[1]

By the end of this year, 1737, Forbes diffidently describes to Lord Hardwicke how things were going in the courts since he took possession of the President's chair.

> I took the chair in our Court, full of the fears I confessed to your Lordship, balanced by the hopes which your opinion gave me, and after some months' experience I continue still in the same state of doubt. By a steady pursuit of what my poor judgment leads me to think right, I have broken my brethren from some very perverse customs, and brought them into a method that is somewhat more promising than what they pursued before, and upon observing this, the mob flatter themselves with hopes of a very great change to the better, but I who know what stuff my brethren are made of, moderate my expectations and fear that when we become more familiar, they will stand less in awe, and relapse into their former discord.[2]

Meantime, he was determined to continue with the task he had taken up.

> For my part, I am resolved, if contradiction do not put an end to me, to try for some time what patience and application will do, and when the Government is fully made, if I cannot succour, I flatter myself I shall have your consent to retire to the country and enjoy myself for the poor remainder of life.

[1] Acts of Sederunt, 18th Nov., 1737.
[2] Hardwicke Papers, Additional MSS. 35446, folio 2.

He described how he was already tackling new problems. Was the time ripe, he wondered, to amend our (Scots) law, in which thirty years' experience since the Union had discovered many blemishes? If the judges could agree to a bill for that purpose, and there were hopes of passing it, without amendments brought forward by men who did not know it intimately, he himself would set about this task without loss of time.[1]

Hardwicke's reply (5th January, 1738), from Carshalton, whither he had gone for a few days' vacation, gives some indication of what the new Lord President was accomplishing :

> I rejoice much to hear that your Lordship hath turned your thoughts towards the improvement of the laws of your country. Such hands as yours are fitted for such undertakings ; whereas others, not so well informed, or not so well intentioned, often spoil what they pretend to amend. If a scheme of this nature were sent up, you might depend on my best endeavours for your service.[2]

Reports of his reforms began to spread. A personal letter written in the following month (February, 1738) by a friend, A. Campbell, then an old man of experience, corroborates this :

> I must begin my letter with giving your Lordship joy of the admirable and useful regulations in the Court of Session which I am told you have already made, and which, I doubt not, will bring the decisions of Your Bench into reputation again here, where I need not tell your Lordship they are generally very ill looked upon.[3]

Other new regulations were maturing in the mind of Forbes. All must be embraced in his disciplinary measures ; even his fellow judges must toe the line. Occasional absence from duty was unavoidable but now the Lords resolved they would ' admit of no excuse for the absence of any of their

[1] Add. MSS. 35446, folio 2.
[2] Hardwicke Papers, folio 4, Add. MSS. 35446, or *C.P.*, 181.
[3] Uncat. MS. in Nat. Liby.

number but upon notification being made to the Court of the specific cause of avocation in writing' (2nd June, 1738). It was another fortnight before my Lord President introduced his next reform. On 15th June, 1738, the Dean of the Faculty was called before the President and to him the new resolution was made known. Hitherto it had been customary for lawyers to sign, without perusal or consideration, papers and bills of various kinds supplied by their agents 'in which the facts were misrepresented. . . . Hereafter the lawyers must understand that whatever is signed by a lawyer or his name subjoined thereto is a deed of the lawyer and he rests his character upon what is therein advanced.'[1]

In the summer of 1739 there was further correspondence between the Lord President and the Lord Chancellor. A letter of 3rd July, 1739, by Forbes is particularly interesting. 'It is a great cordial', he writes, with modest misgivings,

> for a man like me, removed from the ceremony of the world, to be thought of with kindness by the person whom (*sic*) of all others is thought of, as the pattern and wished to be the approver of his actions.[2]

Referring to the reports current concerning the Court of Session, Forbes remarks :

> It is no wonder your Lordship should hear with pleasure, the accomplishment of your own predictions, and that a person who by your advice and instigation, accepted of an employment, discharges his duty to the best of his ability and understanding. The truth of the matter is, the Court is in many respects mended. If I have any hand in it, it is by copying as well as I can, a person whom I freely quote to all the world, but might not mention to your Lordship, but not so amended as fame reports. The men are almost the same as formerly ; bad habits, and evil maxims are hardly to be rooted out, and to tell your Lordship the truth I begin to despair that in the time that I have in my own mind, professed for my services, the mischief can be cured.[3]

[1] Acts of Sederunt, 15th June, 1738.
[2] Add MSS. Hardwicke Papers, 35446, folio 6.
[3] *Ibidem.*

And he continues :

> If vacancies occur (although all are well at present in the Court) and not be properly filled up, the case will grow desperate and then I shall think myself at liberty to quit, even before the period that I had hypothetically allotted for that purpose.[1]

He concludes with a promise to 'carry on' meantime. (Forbes's punctuation is not quite faultless, although the meaning is clear.)

Next month, 7th August, 1739, the President had to consult his friend Hardwicke on a matter of form, or rather punctilio, raised by his brethren in the Court of Session. It appears that the House of Lords in making an order upon the Court of Session had transmitted the order through an Assistant Clerk, a manner far from befitting the dignity of the Court of Session of Scotland. And so with characteristic Scots touchiness the judges besought Forbes as President to write in form :

> but that I absolutely declined because it might be unfit for your Lordship to return me any answer in that capacity. What you may be pleased to say, in return to this, will be for me and for me only.[2]

Three days later we find Hardwicke again congratulating Forbes 'on his progress already made in rectifying some abuses', and exhorting him 'to continue his zealous inclination and good work so happily begun'.[3] Forbes's reply on the 31st August acknowledged the trust reposed in himself,[4] and brought (27th September) Hardwicke's assurance of his high regard for the Court of Session, 'more especially while your Lordship presides at the head of it.'[5]

Forbes was no ornamental figurehead. As a youth fresh from his studies in Leyden, he had viewed with disfavour the

[1] Add. MSS. Hardwicke Papers, 35446, folio 6. [2] *C.P.*, 193.

[3] Hardwicke Papers, Add. MSS. 35446, folio 10.

[4] Hardwicke Papers, Add. MSS. 35446, folio 13. This letter, Duff (*C.P.*, p. 153) in a footnote, says he was unable to find.

[5] Hardwicke Papers, Add. MSS. 35446, folio 16, or *C.P.*, 194.

wrongs that cried out for redress, as Lord Advocate he had not quiescently accepted them as the established order, and now, as Chief Judge, he felt it his duty to act ; in fine, to change the Courts of Law over which he presided into the Courts of Justice. Nor was he merely the new broom, for he went on sweeping clean. This very day, 29th February, 1740, he had signed his name to a document reprimanding and fining Sir John Dalrymple [1] ' the sum of 40 shillings sterling into the poor's box ' for failing to appear on behalf of his client when called by the macer. It was now evening and he reviewed his three years of office :

> One thing, however, I think of with some satisfaction ; that, though it has cost me several hundred hours extraordinary labour this winter, the business of the Court has suffered no discontinuance. When the term ended this day, no cause ripe for judgment remained undetermined ; none that, within the Rules of the Court, could possibly have been decided was laid over to the next term ; a circumstance that has not happened within any man's memory, and of which the mob are very fond.[2]

But the changes wrought by Forbes's improvements were not merely in points of administration. His influence showed itself in the actual legal decisions of the Court. Hardwicke was a competent judge, and we again quote from one of his letters, written 5th April, 1740.

> I am just got to this place, quite fatigued and worn down by the attendance of two causes from your Court : Cunningham against Chalmers, and the Earl of Selkirk against the Duke (of) Hamilton. But though I sensibly feel the labour of going through them, yet I conceive great pleasure in the different degree of weight and credit with which your decrees come now before the House, from what they did a few years ago ; an alteration which I presaged would happen, and do most sincerely congratulate your Lordship upon the event.[3]

The Lord Chancellor did not hesitate to consult Forbes on certain legal points that had cropped up in appeals to the

[1] Acts of Sederunt, 29th February, 1740. [2] *C.P.*, 198.
[3] *C.P.*, 201.

House of Lords, nor the President to put himself to some trouble to give his advice thereon.[1]

One of the highest tributes paid to Forbes for his work in the Law Courts is to be found in a letter from his philosophic friend, Robert Leslie, a master in the use of metaphor, then in Ireland ' in retreat from the smoke of the city ' and written towards the close of 1740 (29th October, 1740).

> I have often heard, my Lord, with great satisfaction that you have done wonders in abridging . . . and consequently cleaning up the dilatory forms and intricate chicane of the pleadings. For Justice used to be so skilfully barricaded and obstinately defended by the outworks and troops of the law, that it was an arduous undertaking and the work of many a well-fought campaign to approach within sight of her. I have heard many a quaint harangue about curing this great malady but I always thought they began at the wrong end ; they were for bringing their amendments into the body of the Law itself, and for correcting the Rule, which for the most part is founded on Principle of Justice, when the thing to be redressed was the tedious, expensive manner used in applying that rule to particular cases. This introduced that technical law which grew up so mighty rank that it overshadowed poor Astraea and hid her quite from our eyes ; insomuch that Cicero owns, that of all mortals mere ' causidici ' understand true Justice the least, ' et litigandi potius quam Justicia vias tradient '. But you have redressed this in your own country, which is almost sufficient to make amends for their union ; and for which I am resolved that Hercules's cleansing the Augean stables shall be applied [big blot here in Manuscript] you from this time forward. I always thought that a great good Prince (the phoenix of at least a Millenium) was the highest blessing which Providence bestows on a nation, and that next to such an one, a thoroughly able and upright Chief Judge (a bird almost as rare) was nearest in value and fame.[2]

It must not be supposed that all Forbes's energies were directed to clearing away the barricades that made Justicia so difficult of access. He occupied himself, between times, at this very period, in organising the estates of the Duke of

[1] Hardwicke Papers, Add. MSS. 35446, folio 20. [2] Uncat. MS. in Nat. Liby.

Argyll and perhaps found in this change of work, if not financial profit, at least a relaxation from his other duties. As we shall see (Cap. XX), Argyll was thoroughly appreciative and much indebted to him for 'the vast trouble' he had put himself to on his account. Immediately the Duke received Forbes's report on the 9th of October, 1740, he wrote thanking him, for

> I think myself well off on the foot that you have put them, and I am fully persuaded, if you had not given yourself the trouble you have done, some gentlemen had brought about their ends whose duty it was to serve me better. When you have time, my curiosity makes me wish to know your observations on Tiree, I have strange notions of that island.[1]

The financial position of the new Lord President, so far as his official post was concerned, appears to have been uncertain. His predecessor had drawn £700 in respect of the Presidency, and in addition the salary (£200) as one of the Lords of Session, together with the wines allowed by the Treasury,—about £1,000 in all. By an Act of the year of the Union (1707), however, it was decided, as the cost of living was rising, that the President should receive £1,000 and £500 as a Lord of Session. This apparently never materialised. Accordingly, Forbes's income was about £1,000 in all, for his legal duties.[2] The Town Council of Edinburgh, shortly before his death, offered to pay the rent of his town house, in this, reviving an old privilege enjoyed by some of his predecessors. This Forbes refused.[3][4] Demands on his

[1] *C.P.*, 179. [2] *C.P.*, 45.

[3] See Council Minutes, 30th Dec., 1747.

[4] In recognition of his worth, Lord Stair, the great seventeenth century lawyer, while President of the Court of Session, had been exempt by the Corporation of Edinburgh, from payment of rent and maills for his town house (1676) [Council Records, 15th Dec., 1676. See also *Scots Law Times*, 11th February, 1933]. This privilege was enjoyed by his successors with certain intermissions (Council Records, 12th January, 1694, and Council Minutes, 5th November, 1703).

Maitland in his *History of Edinburgh* (1753) states that Forbes's rent continued to be paid till 1741, in which year he declined the payment, in view of the financially depressed state of the city of Edinburgh (Council Minutes, 4th September, 1728, and 30th December, 1747). Maitland appears to have been unaware of the Town Council minute of September 1728, which finally

purse were heavy, nor was he ever the man to husband his own resources or keep his purse strings tightly fastened. On many occasions he found it necessary to borrow money, in sums varying from a hundred to a thousand pounds.[1]

Among his contemporaries Forbes won for himself a reputation for fairness as a judge, and great honesty and incorruptibility as a man.[2] It is natural, therefore, to find the importance of his post and the excellence of his achievement bringing him into greater prominence. Thus, the first number of the monthly periodical known as *Letters of the Critical Club*, which appeared in January 1738 and ran for only six months, was dedicated to the Lord President, Duncan Forbes. Nor is one surprised to find his friends remonstrating with him about his excessive devotion to business and to hear the Solicitor-General, Mr. Murray (later Earl of Mansfield), advising him to take care of his health and to 'consider what import it is to the public' (18th February, 1738).[3] But not all his correspondence was solicitous in the same manner. Many were the requests made to him for assistance. In September and November of 1740, for example, we find him recommending a young gentleman to the Duke of Newcastle for appointment to H.M.'s consulship at Venice and failing that, at Malaga,[4] and another, for the consulship at Tunis.[5]

The path of the reformer is a thorny one, and four and a half years in the President's chair were leaving their mark on Forbes. When he wrote Murray, telling of his difficulties, he was appealing to one man at least who realised that ambition had no part in his acceptance of the responsible post he now

withdrew this grant (see *Scots Law Times*, 29th October, 1932, and 11th February, 1933), and of the Council Minute dated 30th December, 1747.

I am indebted to Dr. Marguerite Wood, Keeper of the Archives, Edinburgh, for the transcription of these Minutes and Records.

[1] Many of these bonds are preserved in the Library of Edinburgh University, the money being lent by people such as Mrs. Gibson ; Hugh Clerk, Merchant in Edinburgh ; Alexander Strahan, his friend in Hampstead ; etc.

[2] *Papers of the Earls of Marchmont Illustrative of Events from 1685-1750*, vol. ii, p. 95—Earl of Stair to Alexander, Earl of Marchmont.

[3] *C.P.*, 185.

[4] Add. MSS. 32695, folios 65 and 375. Correspondence of the Duke of Newcastle, vol. 10, Home.

[5] Add. MSS. 32703, Duke of Newcastle's Correspondence.

held. Murray's reply came as a tonic to his friend, at this time perhaps a little weary in well-doing.

> If the obstacles were fewer (he wrote), your merit would not be so great. I know that you accepted of the office, which you fill with so universal applause, against your interest and against your inclination ; but merely with a view of serving the public. Your success has been beyond expectation ; business is now put into a regular and equal method of despatch ; personal solicitations are out of fashion ; the people have a confidence in the determinations of private property ; and they are respected here. This is a great reformation, brought about in a few years ; not by the assistance of new men, but by that authority which integrity, assiduity and knowledge, gives one man over the same persons who sat there before. The people enjoy the benefit of the change, and bless you as the author of it. I am not surprised, that in political questions the influence of party or power is sometimes too strong for you ; but don't let this, my dear Lord, sour your mind ; you have more reason to rejoice that you have been able to do more than any other man could have done, than to complain because you can't do all you wish. When you undertook this arduous task, you neither consulted your interest nor your ease. Should you now resign, I am afraid it would look like preferring your ease to your country and your fame. Could you name the successor? If you could, where is the man who could have the same weight, even though he had the same virtue and judgment? Can you say you despair of doing any good, the general voice would, from experience, contradict you. If you can't do all you wish, might they not answer, 'Hac satis est prodire tenus, si non detur ultra?' Might they not say, 'Though you can't stem the undue influence of power, party or prejudice, in every instance, you are able to overbear it in many, and keep it out in most? Whereas if you was gone, it might probably rule in all as much as it did before.' You did me the honour to ask my opinion ; I gave it you freely and sincerely ; I am almost tempted to give it warmly. I would as soon advise a General to desert his post in the day of battle, because the service was too hot, as you to abandon yours at present. It is not wonderful, that nature should return to men ; it is wonderful that you should drive it from them so often.[1]

[1] *C.P.*, 213.

Words like these heartened Forbes and gave him renewed courage to continue with his difficult work. That he was sensitive as to opinions passed in London on his judgments is clear from Murray's undated letter of 1741, written just before the dissolution of Parliament.[1]

It is more than possible that the Marquis of Tweeddale's plan for the better regulating of the Courts of Justice in Scotland and particularly for making the Circuit Courts more useful to the country was due to Forbes's own initial suggestion made to Hardwicke in his first few months in the Presidency.[2] In any case, Tweeddale in August 1742 instructed the Lord Advocate to discuss such a plan with the Lord President.[3] Forbes knew well the difficulty of the task, the great delicacy of the work involved, and the expenses that must attend any attempt at reorganisation; and these he duly stated to Tweeddale in his reply on the 18th September, 1742. Accordingly,

> I fling out this observation at present, that your Lordship may have it in your view, that towards giving the Law its just course, the Government must be at a larger expense than is now bestowed.

But, he points out, whoever would devise means for securing the peace or improving the policy of his poor country must begin with correcting those abuses that have long prevailed with respect to the revenues, the promotion and management of which would prove the first step towards improving Scotland's legal system.[4] This letter drew from the Marquis an expression of his opinion (6th October, 1742),

> that the Revenues . . . should be well managed, and narrowly looked into. . . . I shall be much obliged to you, if I am favoured with your sentiments of what may be the fittest method of promoting and securing the Revenue, as well as for correcting any abuses that may have crept into the management.[5]

[1] *C.P.*, 215. [2] *Vide* Hardwicke Papers, Add. MSS. 35446, folio 2, dated 1737.
[3] *C.P.*, 231. [4] *C.P.*, 233. [5] *C.P.*, 234.

This became one of the President's pet schemes. Although during his ten years in the Lord President's chair he was engaged chiefly in his legal duties in connection with the Courts, much of his time and interest was directed to the improvement of the revenues; to the development of the manufactures of his country; and to the safe-keeping of the Records. These topics are dealt with in subsequent chapters. To crown his efforts in all fields of public service—legal, financial, commercial, administrative—there is his noble part in the crushing of the Jacobite Rebellion of 1745, which must later claim our attention.

After the death of his friend, John, second Duke of Argyll, on 4th October, 1743, Forbes took little part in the game of politics. Ilay succeeded his brother, and when we remember the less friendly relations that had existed between the Lord President and the new Duke for some years, we are not surprised to see the pilot once more being dropped. His appearances in politics thereafter are only casual.

Forbes's endeavours to promote and secure the revenues form the theme of the next chapter.

CHAPTER VIII

FORBES AS LORD PRESIDENT

(*b*) The Revenues

Forbes was no mere servant content to carry out the routine work of administration. On the contrary, he was a man of considerable versatility, and, while it is usually his organising skill and wise patience as the artificer of victory in 1745 that are referred to when he is referred to at all, his sagacious statesmanship in other directions is equally outstanding. He was a man of ideas, and nowhere are his individuality and leadership shown more clearly than in his attempt to increase and husband the Revenues, and to develop the country's trade and manufactures.

At the death of George I in 1727, the Excise produced almost two and a half million pounds a year, so great had been the prosperity of the country, but the total sum possible was much reduced by the widespread smuggling. This was particularly true of Scotland where the evil was very serious. The honest trader suffered through unfair competition ; the ports lost much shipping, especially in Fife ; the importation of large quantities of ' run ' tea and brandy hit brewer, distiller and farmer alike ; and the Revenue as a result was diminished.

> In almost every case, despite its speculative gains, it (smuggling) added to the general discontent by bringing ruin on the smuggler himself.[1]

The system obtaining in England as well as in Scotland for the collection of customs and excise duties was far from per-

[1] Mathieson, *Scotland and the Union*, p. 349, who cites Forbes's pamphlet against Smuggling, entitled *Some Considerations on the Present State of Scotland*, 1744. See *C.P.*, 238, and *M.C.P.*, iii, p. 201.

fect, and there was little collaboration between these two government departments. Says a modern writer :[1]

> The service of the Excise was moderately efficient, but that of the Customs, when it worked unaided was deplorably inadequate. Frauds on the customs revenue were committed wholesale at many seaports, while the force of coastguards was no match for the smugglers.

The words are used in no Macaulayesque sense when one says that every schoolboy knows the exploits of Dirk Hatteraick in *Guy Mannering*. Sir Walter in his Additional Note on 'Galwegian localities and personages . . . supposed to have been alluded to in the Novel' speaks of Dirk's prototype having been 'employed by French, Dutch, Manx and Scottish smuggling companies'. The very word 'companies' is significant, and one understands the novelist's original authority when he says

> that he had frequently seen upwards of 200 Ling-tow men assemble at one time and go off into the interior of the country, fully laden with contraband goods.

And it is in the recollection of most how the smuggling trade plays a prominent part in the plots of *The Heart of Midlothian* and *Redgauntlet*.[2]

When the smugglers themselves were so well organised, and when Government customs were found acting in collusion with the law-breakers, there is little cause to wonder at the loss sustained by the country's Revenues. It is only right to mention that Forbes's own family interests were adversely affected by the amount of 'brandy run over' the Highlands in opposition to the wares distilled on the Forbes lands of Ferintosh. Definite proof of this is contained in a letter (19th December, 1732) from Norman MacLeod to John Forbes, and quoted in a later chapter.[3]

As a good servant of the state, as a lawyer, and perhaps also as an interested party, Forbes realised that this smuggling

[1] F. S. Oliver, *The Endless Adventure*, ii, p. 235 *sqq*.
[2] See Scott's Note on Cap. 13 on 'Concealments for Theft and Smuggling'.
[3] Cap. XX. 'Letters and Friends'.

must be stopped, and, in addition, he wished to see enforced the Act imposing the Malt Tax. It was a part of the law, and he had not forgotten how he had been embroiled because of it with the Clydeside magistrates and with the Edinburgh brewers in years gone by. Moreover, it brought in as revenue about £20,000. The sum, however, likely to be obtained by taxes was inadequate and so other means must be adopted if Scotland was to achieve prosperity. Forbes saw that this could be secured only by growth of her industries, the success of her agriculture, and an increase in her trade. The development of the linen industry became his especial charge, and throughout his voluminous correspondence numerous letters reveal his interest and fostering care. Between the years 1730-1744 he constantly reverted to the subject of the Revenues, Manufactures, and Trade Development, and discussed it with a variety of persons—Delafaye, Scrope, Mitchell, and Tweeddale. To make the narrative more clear, it is, perhaps, advisable to isolate these topics as far as possible and deal with them separately.

Forbes began to interest himself actively in the reformation of the revenues while he was yet Lord Advocate and while the Secretaryship of State for Scotland was yet in abeyance (1725-1731). As early as 11th August, 1730, he was in a position to report on the matter to Scrope, Secretary to the Treasury.

> The imminent distress, from the condition of our Revenue, has now for some time possessed my attention ; the Customs, from the defects of the law, from the corruption of officers, and from the perverseness of juries, are fallen to nothing ; and never can by any art be raised, till those complaints are removed, which must be the work of some time, though our disease seems to demand a more speedy remedy.
>
> The Excise, though not under so correct management as formerly, seems to be the only revenue from which we can look for any immediate relief, but unless it is put on a better foot, we cannot depend upon its answering any immediate purpose.[1]

Knowing the immense quantities of brandy that were consumed throughout the country, and that it was commonly

[1] *C.P.*, 150.

sold at two shillings a gallon, he reflected that the Excise must be very adversely affected by the excessive use of foreign spirits, and

> that the price of grain is beat down to nothing by it, which is a very sensible loss to the men of estates, whose rents are almost universally paid in grain ; as well as to the farmers.[1]

This induced him to think that, if the people in general could be made to see where their own interests lay, ' as they are not a little national ',[2] it might be possible to get them to pass some popular resolutions against the use of run brandy. The result would be to aid native industries, improve the excise, and perhaps

> help to give our juries in general a different turn of thinking from what hitherto they have had touching the running trade in general.

In furtherance of his plan, Forbes

> became author, and published against the meeting of the last Convention of Royal Burghs, the Paper [3] which is enclosed, and seconded that conceit so well, as to procure from that Assembly the Act and Resolution which is printed at the end of the Paper.[4]

Despite the usual opposition of the zealous Robert Dundas, the resolution was unanimous. The plan now was to get all the burghs and the counties to pass resolutions not to use any foreign spirits after a certain day (e.g. Christmas) nor to use any inn where these might be sold. On the contrary, they were to do their utmost to seize and destroy them wherever possible. If these principles were put into execution, several thousand pounds would accrue to the Excise on beer, ale, and spirits. He announces almost gleefully that he has had such a resolution passed in the county of Midlothian : ' the like is

[1] *C.P.*, 150.

[2] *Ibidem.*

[3] This is doubtless the pamphlet in the Goldsmith's Library, London, entitled, *Consideration upon the State of the Nation as it is affected by the excessive use of foreign spirit* (Edinburgh, 1730).

[4] *C.P.*, 150.

a carrying forward in the neighbouring counties', and he goes north himself now 'to propagate the same spirit over that part of the Kingdom if I can'.[1]

The outcome of this propaganda campaign was disappointing. On his arrival in Edinburgh in the summer of 1731 Forbes observed the great remissness of the boards of Customs and Excise in putting into force the laws against uncustomed brandy and the consequent

> great discouragement to the private gentlemen who had resolved against that pernicious drug. I therefore, called both boards together and rattled them up as well as I could.[2]

As a result of his exhortations, 1,100 gallons of brandy were seized in St. Andrews, the Fife coast being evidently a hotbed of smuggling. He was at pains, however, not to allow his own name to appear in the transaction [3] lest the smouldering fire of Ilay's jealousy should be fanned into flame. His whole work in the proceedings was approved by Ilay on his arrival, ignorant as he was of the prime mover.

Forbes had now been waging war on revenue abuses for more than a year, and once again he reported results to Scrope. In his opinion the Customs could not be considerably improved so long as they continued under their present management and without amendment in the laws and regulations for their collection.

> Whoever would raise the Revenue must turn his thoughts to those branches that are under the management of the Commissioners of Excise.[4]

It was, he continues, on this view that he himself in the previous year had put forward the popular resolution against the drinking of foreign spirits, which would have been more successful in effect, if all whose duty it was to do so had supported him. However,

> it still had some fruit; a great part of the country stick to it, and I believe it is in part owing to this that the excise upon

[1] *C.P.*, 150. [2] *M.C.P.*, iii, p. 45. [3] See Cap. V.
[4] *M.C.P.*, iii, p. 45.

liquor has rose above £3,000 in the year from midsummer 1730-31, higher than it has been for some years past.[1]

He had two other plans to lay before his friend for consideration. He suggested both a leather duty, whereby the dressing of leather would be on the same footing as in England, and a candle duty. Hitherto, this had been levied only in burghs, but in the country (where the candles were home-made), it had been allowed to lapse. The country folk had not kept records, but were willing, he had discovered, if bygones were neglected, to make entries for the future. Forbes suggested that the authorities should go back only a year or two, adding that the result would be to double the candle duty.

But all Forbes's measures were not limited to the imposing of taxes, new or old. From Edinburgh on 8th August, 1732, he is found writing to Scrope again,[2] making certain proposals for improvements in the Scottish administration. He wishes the appointment of a general surveyor for the malt duty. This official would be recommended by the Trustees for the Manufactures, and it would be his particular business to superintend the officers employed in that service. Making his rounds throughout the country, this new officer would impress on men to abstain from illegal trade and would inculcate the doctrine 'that the revenues of all kinds bear surpluses'. He names the man for the post, and adds that the proposed salary of £150 may readily be obtained without undue burden by appointing the new man to a vacancy recently created by the death of one of the four 'General Supervisors' whom the Commissioners appointed in 1726. The result of all this will be to 'do the Revenue and the Country a kindness'.

In England, matters were in an equally bad state. In 1721 the Excise there had yielded some £3,000,000, but just about the time Forbes penned the above letter, frauds and smuggling had caused—to take only one instance—a loss amounting to five-sixths of the total tobacco tax alone. With

[1] *M.C.P.*, iii, p. 45. [2] *C.P.*, 161.

such glaring abuses at the door, so to speak, and no doubt too, as the result of the importunities of the 'plaguy stubborn' Lord Advocate in the north, at last Parliament was compelled to direct itself to finding the cause of the losses sustained. Accordingly, in 1732, we find that the 'leakages, frauds and evasions were considered by a parliamentary committee'.[1] As has happened with other Parliamentary Committees before and since, the fruits of their deliberations were not clearly apparent and so Forbes harped on the old string, intermittently till 1741 in which year he again approached Hardwicke on the matter [2] (21st November, 1741), and with constantly recurring *da capo* especially between the years 1742-1744.

That Forbes had again become active on the tea question early in 1742 is clear from an answer of Scrope's, dated 10th February, 1742.[3] He reports having had much conversation on the subject with the Marquis of Tweeddale and the Lord Advocate

> but could [not] find anybody inclinable to attempt to do anything in it this session of Parliament.

This was an attitude to which Forbes was well accustomed but he was independent enough to follow up his opinions and suggestions despite the absence of supporters. He persevered, plying the Marquis of Tweeddale himself direct with reasons for his policy. In the summer of the same year, he laments

> the desperate condition of the Revenues of this country ; which are now in such a declining state, that the usual expense of the Civil Government can hardly be answered ; and as the chief support for executing our scheme of improvement must arise from surpluses on the Exchequer, should the Revenues continue to produce as little as they have done lately, there must be an end to our hopes as Manufacturers. The Civil Government cannot without great difficulty be carried on ; and, what very few people attend to, the Landed interest, as well as the trade, of this part of the island must be undone. What I shall do is, to

[1] F. S. Oliver, *The Endless Adventure*, ii, p. 239.
[2] Hardwicke Papers, Add. MSS. 35446, folio 22.
[3] *C.P.*, 218.

> hint to your Lordship the source from whence this mischief springs, and to suggest such remedies, as if they shall be approved of, may, by the aid of an Act of Parliament, relieve us from ruin.[1]

As a conclusion he states that the obstructions he had himself 'met with in my manufacturing capacity',[2] had ceased in great measure for some months past.

A little later, to allow Tweeddale to turn the matter over in his mind, Forbes ventured to throw out the observation 'that towards giving the law its just course the Government must be at a larger expense than is now bestowed'; and fearlessly stated that this question of putting the Revenues upon a sound basis was one that had been 'hitherto scandalously, if not criminally, neglected'.[3] Tweeddale expressed great sympathy with Forbes's views, fully acknowledging that it would be impossible to 'secure the peace'[4] if the Revenues were not promoted and firmly established. He asked (6th October, 1742) to be favoured with Forbes's sentiments as to the best means of accomplishing these ends and of correcting any abuses which may have crept into the system.[5]

In compliance with Tweeddale's request, the Lord President duly forwarded to London a Memorial describing the State of the Revenues and Manufactures of Scotland with proposals for improving it. A lengthy fragment of this lengthier document is among the MSS. in the 'Culloden Chest' in the National Library, but the full account is fortunately preserved in *Culloden Papers*, No. 235.[6] Forbes had taken the opportunity to crystallise all his ideas from his former writings on this theme, and the document shows his usual thoroughness. Alive to the great importance of the subject and the need for its grave consideration, and fearing lest he might not convey Forbes's meaning clearly, Tweeddale ordered copies

[1] *C.P.*, 230. [2] *Ibidem*. [3] *C.P.*, 233.
[4] *C.P.*, 234. [5] *Ibidem*.
[6] In the original *Culloden Papers* (ed. Duff), the Memorial is dated 'about 1742', but Tweeddale's reply of 17th February, 1743, proves it was written on 1st January, 1743.

to be made for Lord Carteret and Mr. Sandys, another minister, 'who both said the subject deserved to be thoroughly considered.'[1] It was not possible in the present session of Parliament to take up the business. The ills arising to the Revenue, and consequent upon the excessive use of tea, had already been severely felt in England, and Parliament had intended tackling the problem in the current session, but the delicate nature of the question made it much more difficult than was anticipated. Forbes's letter had, nevertheless, 'given great light with regard to Scotland',[2] and might prove an incentive to the Ministry to essay a remedy in the House of Commons the following session.

But to turn to the Memorial itself. After alluding to the success which is attending his efforts to develop the manufactures,[3] Forbes explains that the fund chiefly relied on has been the Excise and discusses once more its fall to nearly one half of its former total and this, not owing to bad crops. The decay is both regular and progressive and has been increasing for the last ten years. As a result there has been a serious failure to produce the requisite sum to defray the expense of the Civil Government, a fact he has pointed out previously,[4] and the 'Exchequer has been obliged . . . to delay payments'. An example of this is the non-payment of the Michaelmas quarter's salary to the Judges of the Three Courts. But the Lord President is perturbed not about a trifle like the delay in payment of his own salary, but about 'the inability we, as Trustees of the Manufactures, are under to answer the expense of our little system'.

Diagnosing the causes of all the mischief, he finds the prime cause to be the excessive use of tea by all classes. Even the labouring people and the very lowest classes, like the fish-carriers of Musselburgh and the blue-gown beggars,[5] drink it at breakfast in place of the native-brewed ale, and the women

[1] Uncat. MS. in Nat. Liby., or *M.C.P.*, iii, p. 166. [2] *Ibidem.*

[3] Forbes's work in connection with the Manufactures is dealt with in Cap. IX.

[4] *C.P.*, 230.

[5] *M.C.P.*, iii, p. 174, or Uncat. MS. in Nat. Liby.

of the same class consume the drug at 'their afternoon's entertainment to the exclusion of the twopenny'.[1] The Ostend and Gottenburg Companies flooded Northern Europe with tea. The price consequently fell and this low-priced tea could be 'run' into Scotland and sold at 2s. 6d. to 3s. or 4s. per pound. With one pound of tea able to last them for a month, women have, he thinks, taken to the drug because of its cheapness, and in imitation of their 'betters'. This abuse he had foreseen seven years ago.

Not only does the State Revenue suffer, but the chief towns like Edinburgh and Glasgow, and most of the other large burghs which had the right (granted by Parliament) of levying a duty of two pennies on the pint of beer and ale for the raising of their chief fund to defray common expenses, have found that their income has sunk proportionately even lower than has the excise.

His second cause of all the trouble is the importation of brandy and other foreign spirits, but this is not half so bad as 'that most mischievous drug'.

Having advanced the causes of the malady, Forbes suggests a series of remedies to combat the evil. Prevent smuggling, put a tax of 4s. in the pound on all tea imported—and the abuse will disappear. There are, he admits, difficulties in the extent of coast-line to be patrolled, in the small number of officers at present available, and in the corruption of many of these officers. The only plan possible, therefore, is for Parliament to forbid, under penalties, the use of tea to those of the population 'whose circumstances do not permit them to come at tea that pays the duty'.[2] And, he adds, these measures will in no way affect the fortunes of the East India Company, for the run tea is brought from Gottenburg and Holland. Accordingly, persons having an income of less than £50 or £100—to take an example—'or any other sum to be fixed in the bill' should be forbidden the use of tea. He elaborates his points and outlines a scale of punishments which might be inflicted upon delinquents. The penalty for a first offence should be 20s. (or 30s.), and double that

[1] *C.P.*, 235.

[2] Cf. the Gin Bill of England.

amount for the second ; and so on with increasing severity. Informers would be the Excise officers who would receive half of the penalty paid by the culprit, while the other half would go to the cashier for manufactures for the use of the manufacturers. In addition, all servants were to be prohibited the use of tea, and this penalty was to be extended to the master or mistress of the family if unmarried. But, as it may be injurious to the health of some persons if they are compelled to forgo their tea, a licence to use tea for a year may be obtained on payment of a sum of 40s. (say) to the Excise officer.

In conclusion, the President hopes that his measures will meet with the approval of all right-thinking persons, and especially with that of farmers and landed interests, for grain is the source of all rents in most parts of Scotland. Moreover, the Royal Burghs with their present Parliamentary grant of twopence per pint on ale will assuredly be favourably disposed. And so the Memorial ends.

We, viewing the written page of history two hundred years after Forbes's day, smile at his futile attempts to stem the tide of growing luxury, at his thunderings against the 'pernicious drug', at his elaborate plans for its restricted use, at his class distinctions, and are amused at his very modern suggestion to tax the unmarried ! To him the matter was serious. Was not his country's prosperity at stake, and were not her new industries, his own particular nurslings, likely to suffer? This topic of the Revenues had become almost an obsession with him. It cropped up like King Charles's head in nearly all his letters at this time. The first day of the year (1743) found him drawing up his Memorial, April saw him giving Scrope a detailed account,[1] and in August he again returned to the attack. On this occasion he addressed his lamentations to his friend Andrew Mitchell, Under-Secretary to Lord Tweeddale, and he optimistically remarks that his remedy 'might in a year or so deliver us from the imminent danger'. To this end he had outlined a measure, the exact details of which he wished the Lord Advocate (Robert Craigie) to

[1] Uncat. MS. in Nat. Liby., or *M.C.P.*, iii, p. 168.

work out and to forward to London that summer to be examined at leisure by the business men there, for should delay occur, no English minister or member would consider it, while Parliament was sitting, if more interesting business offered.

The Lord Advocate was unable to find time for this work during term owing to pressure of other duties, but he wrote that on his return to the capital four or five weeks later he would comply with the President's request and forward the draft to him at Culloden in October. At this, Forbes, who had resolved to sacrifice some weeks of his vacation in the country and also some of his own private business at home, that he might lend the Lord Advocate a hand in the task, was naturally wroth, and wrote him on 10th August, 1743,

> a pretty strong letter, finding fault with his delay in a matter so essential to this country[1] . . . and pressing him instantly to fall to work.

And then, even at the moment of rebuke, Forbes regrets his being out of humour with the Lord Advocate.

With untiring assiduity the same night he despatched to Tweeddale a

> very long and I am afeard a confused letter, stating shortly the chief heads of the regulations for preventing the smuggling tea and foreign spirits over the whole United Kingdom.[2]

This incomplete but lengthy and important document is summarised here.

The law, Forbes avers, forbids the importation of tea from any European port, and of foreign spirits in smaller casks than 63 gallons, and declares forfeit any of these commodities imported in contravention of this law, which seems, however, to have been loosely interpreted. Thus,

> a ship chockful of brandy in small casks and of tea, being met with anywhere on the coast, produces clearances from Holland, suppose, or Dunkirk, or Norway, or any other foreign port,

[1] Uncat. MS. in Nat. Liby., or *M.C.P.*, iii, pp. 176, 177 and 185.
[2] Uncat. MS. in Nat. Liby., or *M.C.P.*, iii, pp. 178-185.

> pretends she comes on the coast by stress of weather or some other accident, and must be permitted to proceed on her feigned voyage, whilst the use she makes of this indulgence is to put on land her prohibited goods on some less guarded corner of the coast ; if she have bulky entrable goods on board, she comes boldly into port, enters those fairly at the Custom House and reports her prohibited goods for some foreign port.

While the legitimate cargo is being unloaded, arrangements are being made by the smugglers with their accomplices as to the place at which the run tea and brandy may be landed. This is duly accomplished with the first fair breeze.

Strange to relate, this importation of prohibited goods along with customable goods was permitted by a statute of Richard II's reign, although the prohibited goods had, of course, to be reported, but the method had grave consequences. Forbes states that many years before he had been annoyed at the fraud resulting from this practice and had tried to repeal that clause, but owing to the great width of his proposals which were to include all kinds of prohibited goods, his plan did not meet with success. Britain's importance as the supreme carrying power in Europe made it impossible for her to limit the cargoes of the Dutch or other trading nation who might hire her ships. He believes that his measure, now that it is limited, first to tea, and secondly, to spirits in *small* casks, cannot meet with any reasonable objection, and asks Tweeddale to secure the repeal of the Richard II statute. Since tea is not a normal commodity from ports on the Mediterranean or coasts of Spain or Portugal, British shipping would not suffer if tea was prohibited on board with other customable goods. On the other hand, brandy produced in these southern countries and therefore a usual article of merchandise ' carried from the Southward to the Northward ' [1] is always sent in large casks ' when it is carried in the fairway in the course of trade, without intended smuggling '. The honest merchant naturally takes consideration of the fact that the expense, freightage and tonnage is greater in the case of smaller casks. In a nutshell, the size

[1] Uncat. MS. in Nat. Liby., or *M.C.P.*, iii, p. 180.

of the brandy cask would serve as a gauge as to the honesty of the trader.

These are Forbes's remedies : he would forbid the importation of tea, and of spirits in small casks when these are alleged to be destined for a foreign port ; and, with certain exceptions, he would prohibit the carrying of tea in British ships in any seas within (say) fifty leagues of the coast, and, in case of default he would forfeit the cargo and punish the master of the ship. His exceptions would be :

(1) ships belonging to the East India Company, and in the discharge of the company's service ; . . . and . . .

(2) ships from the port of London and having proper clearances in respect of the tea cargo.

The only disservice to the British carrying trade would be trivial—a few pounds per annum—and would result from the loss of the transport of tea from Holland or Gottenburg to the other ports. The result of all these proposals would be to make smuggling more difficult ; to enhance the price of the run commodities ; and so to reduce their consumption. Forbes advances another suggestion which might further act as a check upon the traders in smuggled brandy. Private persons are at present permitted to have in their possession up to sixty gallons of brandy without being liable for an explanation as to how it was obtained. And if the competent Crown officers have, by chance, come upon any quantity less than sixty gallons, it has always been regarded as harsh to demand proof from the owner that the requisite duty has been paid. All those who have brandy in their possession, excepting, of course, those with only one or two gallons, should be made to produce a certificate showing the name of the seller and the amount originally purchased. Similarly, the seller should be required to show corresponding proof of his source, thus tracing the history of each keg back to the original brandy importer who would be required to keep a regular daybook, showing his sales *de die in diem* and the purchasers. All infringement would be punishable by forfeiture and by a scale of penalties. He is aware of the subterfuges which may be resorted to by the breakers of the law

in their desire to escape the consequences of their misdemeanour, and he readily supplies the remedy for the abuse. If indigent persons, who are unable to pay the penalty, are introduced purposely as intermediaries in the sale or as 'dummies', to use the modern cant phrase, then these should be whipped at the cart's tail. And, that ignorance may be no excuse for delinquency, he would have the law promulgated from the pulpit after the service four times each year in all churches within five miles of the coast.

Assuring his correspondent of the great and immediate ruin which must inevitably befall Scotland unless remedy is found at once, Forbes sees little point in considering the development of the manufactures and the filling of vacancies among the trustees for the manufacturers while the country's revenues are in their present parlous condition. They must wait till Parliament shows its intention before further action is taken. To illustrate the state of the finances, he reports that one of the two thousand pounds due at midsummer 1742 was received only the previous week; but when the £2,000 due at midsummer 1743 will be paid is utterly beyond his knowledge, or even surmise. Indeed, money is so tight that,

> in place of launching into trade, men can hardly go to market, a disease that cannot possibly be cured so long as the issue of bullion in exchange for run tea and brandy remains unstopped.[1]

The exchange of bullion, he explains elsewhere, is necessary because we had no other trade with the country whence the smuggled goods came.

The Lord President concludes with an apology 'for the enormous size and the many imperfections of this scrawl'.[2]

Christmas Eve of the same year found Duncan Forbes writing from Stoneyhill a long letter to William Murray, Solicitor-General of England (and afterwards Earl of Mansfield) as well as letters on the same theme to Lord Tweeddale, Andrew Mitchell, and the Lord Advocate. Showing clearly the close connection in Forbes's mind between the state

[1] Uncat. MS. in Nat. Liby., or *M.C.P.*, iii, p. 184.
[2] *Ibidem.*

of the Revenues and the success of the new manufactures, all of these epistles also reveal the earnestness of his endeavours to make both prosper. Since these letters deal more specifically with the manufactures than with the revenues, it will be best, perhaps, to defer full consideration of their contents to a later chapter. The letter to the Lord Advocate betrays a mixture of discouragement, irritation and resignation in Forbes's mind with regard to the whole business.

> I do not choose to go on like a fool, framing projects that can only take place on the supposition that there is a fund, when at the same time there is no probability that any fund will answer and therefore I must confess to you I am heartily tired of my present situation as a trustee [i.e. of the manufactures].[1]

The same weariness is reflected in his letter to Tweeddale (24th December, 1743). If anything is in this session to be effectually done. . . .

> I for my part will cheerfully go on and drudge as heretofore ; but if nothing is likely to be done, I shall choose to be quiet and not to give myself unnecessary trouble.[2]

If Forbes's memorials to Tweeddale in the past had run to such length that the writer himself believed he had written 'a book rather than a letter',[3] he was now pointed enough, and a reply to his letter of the 24th December, 1743, came speedily by return of post from Whitehall. The Ministry was alive to the seriousness of the situation and considered that it was quite necessary for the Legislature to do something that session to remedy the evils. Owing to the difficulties in the Board of Treasury for some time past and to the re-election of Mr. (Henry) Pelham to the Chancellorship of the Exchequer within the last three days, it had not been possible to consult the Treasury as would be necessary. Meantime, Tweeddale himself and Pelham did not favour the prohibition of the use of tea to any class of people under penalties, since that commodity brought in a large revenue in the

[1] *M.C.P.*, iii, p. 191. [2] *M.C.P.*, iii, p. 192.
[3] Uncat. MS. in Nat. Liby., or *M.C.P.*, iii, p. 189.

south. Again, Forbes's measure, although restricted to Scotland only, would give the alarm for the future in England. The present situation in foreign affairs was not convenient for the consideration of such domestic matters. Tweeddale concludes :

> I am extremely concerned at what your Lordship hints at the end of your last. I am hopeful no cause will be given here for your taking such a resolution, nay, I am so partial to myself that I think no reason could justify it.[1]

Mitchell, on 5th January, 1744, gave little encouragement for his friend's proposals against tea but reported universal approbation was expressed of his scheme against the importation of tea and brandy in small quantities.[2] Two days later an answer to Craigie, the Lord Advocate, makes clear Forbes's position : . . .

> but if the revenue is proposed to be raised, not for the sake of the revenue as such, but to prevent the utter destruction of the trade, of the manufactures, and the landed interest of the nation, I should not expect to see the project the object of those gentlemen's ill-will. . . .[3]

Craigie was still in London, and, like the others, having been thoroughly roused by the strong terms in which Forbes's recent letters were couched, made a point of securing an interview with Tweeddale, Pelham, and Scrope, and early in the new year (10th January, 1744) reported on all that had transpired. He held out no hope of the prohibition of the use of tea being enforced, but stated that some of Forbes's proposals were less exceptionable than certain other remedies put forward by the Commissioners of the Revenue who were themselves aware of the defects in the existing law. The project of demanding certificates from families, however, with regard to brandy was not relished. So great would be the outcry against inspection of private houses by Excise officers that the measure would have to be rejected as inex-

[1] Uncat. MS. in Nat. Liby., or *M.C.P.*, iii, pp. 193-4.
[2] *M.C.P.*, iii, pp. 195-7.
[3] Uncat. MS. in Nat. Liby., or *M.C.P.*, iii, pp. 194-5.

pedient. The plan to raise the Revenue so as to assist the manufactures was held to be a good one, and should be followed when a more suitable time arrived, but the nation was now at war, the opposition was clamorous, and Mr. Pelham was only newly into his new office as Chancellor of the Exchequer. The remainder of the letter dealing with the assistance now to be given, as a temporary expedient, to the manufactures, will be reserved for consideration in that section.

And still the President, though weary of procrastinations, kept on hammering on the old theme of the Revenue and the Manufactures.[1] If his correspondents shuddered at the sight of his too well known hand, were bored at his long-winded argumentations, they had in justice to admit the earnestness and single-mindedness of his motives. When the Rev. Patrick Murdoch, Rector of Stradishall in Suffolk, wrote [2] in the early summer (4th June, 1744) to his former pupil, Lieutenant John Forbes, du Regiment Blue Cavallerie, Flanders, he passed on this piece of news :

> The President was very well a few weeks ago, and has been roaring so loud against smuggling in a very honest vehement pamphlet he printed, that most of the smuggling counties, Gentry as well as Commonalty, have entered into combinations for its extirpation. And it was high time, for by the excessive use of Foreign Spirits and tea, the funds of the manufacturies (*sic*), viz. the surplus of the Malt Tax had last year totally failed.[3]

This is certainly a reference to the pamphlet entitled *Some Considerations on the Present State of Scotland, 1744.*

This pamphlet created quite a stir.[4] A contemporary comment is worth quoting. It is written by a convert, a trader who admits that he

> once acted the part of one of these unhappy men called smugglers.

After perusing the pamphlet, however, he became

> so sensible of the justness of the charge and so charmed with the force of reasoning, that I stand self-condemned . . . and

[1] *C.P.*, 396—1st March, 1744, and *C.P.*, 397—31st March, 1744.
[2] *M.C.P.*, iii, p. 201. [3] *Ibidem.* [4] See *C.P.*, 238.

publicly declare, though I should starve, I am resolved never to deal in smuggling and I hope this has had the same effect upon others who have been deeper involved in this guilt.

. . . . . .

If ever men, in any age, deserved the honours they received from their country; if the public can be obliged by private men; if to employ a great genius in defending the essential interests of a nation, its trade and manufactures and very zealous not about trifles but to preserve the whole nation from destruction; if to spend our lives unweariedly in the service and defence of our country;—if these things be esteemed meritorious, the name of this Maecenas must be dear to all true Scotsmen.[1]

Making allowances for the flowery style employed, we feel, nevertheless, that the tribute paid to Forbes, the Maecenas referred to, is a just one.

As late as May 1747 we find the Lord President still interested in the question of the Revenues. The Surveyor-General of Customs at Inverness having died, rival applicants came forward for the post, the one backed by Forbes, and the other by Brodie, the Lord Lyon. As neither would yield, the authorities appear to have decided, after a vacancy of twelve months, not to fill the post again, it being alleged that the position had been originally created many years before, only to oblige Duncan's brother, John Forbes. The President in a letter dated 14th May, 1747, to Henry Pelham, controverts this statement, and declares it to be 'undoubtedly false'.[2] He continues:

The officer first appointed was indeed named by Sir Robert W[alpole] to oblige my brother, and the private history of that transaction was merry enough. But as to the office itself, I had laboured for years to have it granted, as the only possible means, of restraining the unbounded smuggling, which destroyed the revenue, as well as the large country which lies on both sides of the Moray Firth, and I take upon me to say that in the hands of an honest man, it must be of very Great Service, whereas

[1] From a pamphlet dated 1745 on *The Present State of Scotland considered*, in Nat. Liby.

[2] *M.C.P.*, v, p. 179.

without it, or some more expensive Guard, the prevention of smuggling is impossible. What I write on this subject (Pardon my vanity) is the more to be considered, that I have contributed more to the support of the Revenue, than any (*sic*). Perhaps more than all my countrymen put together, and I hope you know me well, so well as to believe, that I scorn to say what is not true, in a serious matter.[1]

Having declared himself in a manner so foreign to his usual nature, Forbes assures Pelham that he will now meet with no further opposition from Brodie as to the nomination of the officer, as he has reasons for knowing that the Lyon will now concur with Forbes's own request.[2]

It is easy to see what was influencing Brodie to withdraw his support from one of the rival nominees for the Inverness Customs vacancy. He was himself a prospective candidate for the Inverness Burghs and knew well the influence of the Lord President. Despite the withdrawal of the Lyon's opposition, Pelham remained obdurate and no appointment was made.[3]

This Inverness squabble was merely a side-issue of no national importance. If it did nothing else, it yet wrung from Forbes an admission of his labours in this field outwith his own sphere where success or failure could not touch him professionally. We have seen something of the effect created by his pamphlet, but we have evidence from a more definite source that Forbes was within sight of the realisation of his dream, of a reformed and self-supporting Scotland. Let Andrew Mitchell's conclusion be ours :

I must not conclude without congratulating your Lordship for the reform you have made of the manners and opinions of our countrymen which the legislature could not have done and as it is probable that smuggling and perjury will be no more, I am rejoiced that you have the honour of driving them from our native land. (Whitehall, 24th July, 1744.)[4]

[1] *M.C.P.*, v, p. 179.
[2] Uncat. MS. in Nat. Liby., or *M.C.P.*, v, p. 180, and pp. 187-9.
[3] Uncat. MS. in Nat. Liby., or *M.C.P.*, v, p. 184.
Uncat. MS. in Nat. Liby.

CHAPTER IX

FORBES AS LORD PRESIDENT

(*c*) The Manufactures

Forbes's zeal for the maintenance of the revenues of Scotland and his lengthy correspondence (1727-44) against tea and smuggling were entirely due to his desire to promote trade and manufactures. Both had been neglected from 1603 to 1707, but the prospect of their improvement had been one of the influences at work inducing many to favour the Parliamentary Union in the latter year. By the 15th Article of the Treaty of Union in 1707 it had been agreed that £2,000 per annum should be spent for seven years on the encouragement of the coarse wool industry in Scotland. The designs of the Government early in 1715 to use the Fund of the seven years' accumulated grant of £14,000 for the appropriate purpose was frustrated by the Jacobite Rebellion in the summer. Nothing systematic seems to have been done to carry out these promises till 1726, when Forbes himself took action at the instigation of the Convention of Royal Burghs.[1] In that year he brought forward a bill which was passed in the following year. By this it was laid down that the money due for the development of Fisheries and Manufactures should be utilised. Accordingly, twenty-one trustees were appointed in 1727. Their duty was to apply the allotted revenues (£6,000) to the fostering of the Herring Fisheries (£2,650), the Linen Industry (£2,650), and

[1] *M.C.P.*, iii, pp. 12 and 14, and Uncat. MS. in Nat. Liby., or *M.C.P.*, iii, p. 187.

In ' the Report (by) Wm. MacLean as Commissioner to the Convention of Burghs adjourned from July 1726 to the 2nd Nov. thereafter ' he sets forth a scheme in detail : e.g. Manufacturing coarse wool yearly, £700 ; 40 lappers, £10 each per annum, £400 ; 2 general riding surveyors, each £125, £250, etc. (Uncat. MS. in National Library.)

the Spinning Manufactory of coarse tarred wool (£700). Prizes for the best linen cloth woven were made available for the encouragement of housewives. In addition, in imitation of an earlier precedent, an attempt was made to teach the art of making cambric by the introduction into Edinburgh of a number of French Protestant weavers from Picardy.

The Linen Grant was made use of to secure a variety of aims :

(1) Premiums for growing lint and hemp seed at 15s. an acre took up £1,500 ;

(2) To set up schools in various parts of the country but especially in the Highlands, where children might be taught the art of spinning lint and hemp, a sum of £150 was allowed ;

(3) Prizes for the best linen cloth woven were to be made available for the encouragement of housewives ; for this purpose £200 was allowed.

The remainder of the Linen Grant was allocated for a series of purposes : salaries of officials, expenses of prosecution, and obtaining models of latest looms, etc. Not all were as enthusiastic about the new proposals as were the friends of the movement. Animadverting upon the subject in 1726, Wodrow (whom we have already cited in connection with the Shawfield mob in 1725) says in his *Analecta or Materials for a History of remarkable Providences* . . . :

> This summer there is to be a very great inclination through the country to improve our own manufactury, and especially the linen and hemp. They speak of a considerable society in Glasgow of the most topping (*sic*) merchants, who are about to set up a manufactory for linen, which will keep 600 poor people at work.[1]

He expresses some scepticism as to the success of the movement, for he has seen several similar projects reach nowhere.

The very fact that there were such projects was in itself a sign of progress. The same spirit of adventure that sent the great Elizabethan sailors on voyages of discovery was stirring in the breasts of the douce Scottish merchants, most of whose

[1] *Analecta* (Robt. Wodrow), Maitland Club, iii, p. 319.

adventures, like those of Goldsmith's Vicar were by the fireside. In their case, the desire for research set them experimenting and a case in point is that of the Glasgow merchant, Robert Lang. With the object of trying out some foreign processes, he sowed eight acres with lint seed at Riddrie.[1]

The success attending the efforts of the trustees for the manufactures and of the redoubtable Forbes himself may be seen in a letter of the 31st October, 1729, which he wrote from Edinburgh to John Drummond. Returning thanks for the interest and care bestowed upon the activities of the Trustees, he is very hopeful that these ' will be in a very small time very much the concern of the country '.[2] He reports that twenty-one foreigners are now established in a colony in Edinburgh.

> We are busy cantoning them and setting them to work to spin. But as we cannot begin their houses or set up their looms, till Daseville [3] come down if he is not yet come from London, I must beg the favour of you to despatch him that we may be able to make some progress before our annual report to the King.[4]

This refers to the group of ten weavers and their families invited over from St. Quentin.[5]

That the industry prospered in the following years there is little doubt, for in 1730 (11th August) the Lord Advocate, himself one of the Board of Trustees, wrote to Delafaye from Perth in this strain :

> The linen trade is mightily improved in this neighbourhood and if His Majesty's bounty continues under proper care will it is hoped, produce very good effect on the whole island.[6]

[1] Glasgow Burgh Records, 1718-38, p. 301 and quoted by Miss Dean in *Scottish Spinning Schools*, p. 56, *c.*

[2] Hist. MSS. Com. Report X (1885).

[3] Daseville or d'Assaville, a weaver from St. Quentin. Picardy Place in Edinburgh marks the site of this colony's original settlement (1729). ' A few years after this, weavers were brought over from Holland, and manufactories for linen established in the West.' *Some Remarks on the Change of Manners in my own Time* (Miss Mure of Caldwell), New Club, Paisley, 1883, Part I, 260.

[4] Hist. MSS. Com. Report X (1885).

[5] Mentioned by Warden in his *The Linen Trade, Ancient and Modern.*

[6] *M.C.P.*, iii, p. 41.

For the year 1731 the regular fund for carrying on improvements in the fishery and manufactures amounted to no more than £3,000. Of that sum the Trustees devoted £725 to improving the Fishery, £1,163 2s. 5d. to improving the Linen Manufacture, and £430 to promoting the manufacture of coarse wool. There was thus a saving out of the £3,000 of some £600. The Trustees reported a daily improvement in the Linen manufactures, for 3,891,573 yards had been 'lapped and stamped for sale' that year quite apart from the great quantity for private use. Moreover, the number of yards for 1731 exceeded that of the previous year

> by no more than 135,910¾ yds. yet the quality is better, greater in demand and encourages the manufacture.[1]

The whole system of their improvements had received much benefit from the use His Majesty had authorised them to make of the savings accruing from year to year. This had been utilised by them to encourage ten additional lappers and stamp-masters to set up prizes for housewives that made the best linen, to give out reeds and shuttles to such weavers as worked the piece that earned the prize and to encourage spinning schools. The Report speaks, too, of the skilled flax dressers brought from Flanders and of the apprentices started.[2] [3]

It may appear at first sight, strange that any connection should exist between a Bank Charter and Scottish Manufactures. Someone described the banks as Forbes's 'own bairns' and the same term might equally truly have been applied to the manufactures which were partly dependent on the banks for capital. In March of 1734, the Directors of the Royal

[1] Newcastle Papers, vol. 364, Add. MSS. 33049, Papers relating to Scotland, 1715-1802, being Abstract of Report of the Commissioners and Trustees for Fisheries and Manufactures in Scotland for year ending at Christmas 1731.

[2] *Ibidem.*

[3] Two letters, dated 29th June, 1732 and 1st July, 1732, among the MSS. in the National Library, Scotland, show how closely knit were the Revenues and Manufactures. Fane (nephew of Scrope, Secretary to the Treasury) writes Forbes referring to the signing of certain warrants. He adds (1st July, 1732), 'I have the honour to enclose to you a warrant for payment to the manufactures of Scotland, £500 out of the surplus of the Malt Duties.'

Bank were anxious to make a number of amendments and additions to their charter. Five leading officials, therefore, in a letter dated 22nd March, 1734, approached Forbes, then Lord Advocate, in the 'firm belief we shall have your Lordship's assurance for obtaining from His Majesty what we want'. Perhaps as a sort of quid pro quo, they add :

> Far from being forgetful of the conversation we had with you on the subject matter of laying out the Public Money, intended for the manufactures, at interest in the most beneficial manner, for the sake of the public, (that) we have pretty near agreed how it may be done to your Lordship's contentment and with some safety, though with very small benefit to the Bank. We may venture to say that if we can indemnify the Bank, so as to sustain no loss, we will insist for no benefit, other than the pleasure of doing service to this country in general and the satisfaction of doing what we know will be very agreeable to your Lordship.[1]

This prospect of financial aid came at an opportune moment, for the Lord Advocate was himself busily engaged, just about this time, in drawing up a report for the Government, on the State of the Manufactures and Fisheries in Scotland.[2] The Scottish Fisheries had been dealt a very severe blow (1712) by the increase of the salt tax in Scotland to make it the same as that in England.

Forbes's interest in the spinning industry was not limited to public policy. He took a genuine interest in his tenantry, and a letter to his factor, dated 28th November, 1735, shows his personal care for his people, as well as enthusiasm for the spinning-school about to be established on his estate :

> As to the spinning mistress, a hut must be put up for her in the Space which you and the tenants shall judge the most critical for the service of all of them, the design being for the benefit of all. The expense not only of putting up the house but of supporting the woman, must, I believe, be supported by me for some time, because, though it is for their good, they are not yet sensible of it. You will, therefore, consult with Provost

[1] Uncat. MS. in Nat. Liby., or *M.C.P.*, iii, p. 101.
[2] Uncat. MS. in Nat. Liby.

Hossack, and make the establishment as prudently and frugally as possible, yet not so as to starve the child.[1]

An interesting sidelight on the publicity methods of the period is shown in a letter addressed by Forbes, as Lord Advocate, to the Right Hon. Arthur Onslow, Esq., Speaker of the House of Commons. Onslow had just received from the Convention of Royal Burghs a quantity of table linen, and wrote to Forbes on 23rd November, 1736, stating his intention of making a present in return.[2] The Lord Advocate's reply [3] explains that Mr. Speaker had been under a misapprehension, for the linen was not paid for out of official funds intended for the encouragement of the manufactures. This was impossible, for the Lord Advocate was himself one of the Trustees for these very funds and would not have allowed such illegal expenditure. The linen was bought by moneys subscribed by the Convention of Royal Burghs themselves after their usual annual practice. The Convention were prompted by two motives, a desire to acknowledge Onslow's friendliness to all their endeavours to promote the fisheries and manufactures in their country and a wish to advertise something 'made in Scotland'.

Being informed that you wanted a supply of linen from home for your table, which they took to carry a favourable intention to them, as it must show their manufactures to the best company in Great Britain, they laid hold of the opportunity and ordered it to be made after a particular pattern, fit to show the country it came from, trusting to Mr. Lindsay and me that we would explain the motives to their action, and make their compliments to you in such sort as you should at least excuse their zeal. . . . And this being the case, you see the manufactory funds have nothing to do with it.

(And here the Lord Advocate continues with delightful persiflage and in his happiest vein.)

Though I do not very well know whether, if we the Trustees lawfully could, we should not have laid hold on the money you

[1] Uncat. MS. in National Library, Bundle XI.
[2] Uncat. MS. in Nat. Liby., or *M.C.P.*, iii, pp. 118-120.
[3] *Ibidem*, and *C.P.*, 174.

have sent down, as a punishment for your parting with it so easily.[1]

The development of the Scots linen industry, among the scattered population of little over a million people, was both slow and difficult. It was not so much new treatment as patient nursing that was required, but signs of progress were not wanting. A London merchant, Mr. Neil Buchanan, from his intimate acquaintance with the Scottish export trade, reported in 1737 to a Committee of the House of Commons :

> That the manufacture of linen was greatly increased in all parts of Scotland, and that, in the Northern Division of the Kingdom, within these eight years such an increase hath amounted to near three times the quantity of what the same was formerly.[2]

By 1738 Forbes had become Lord President, but he was yet a member of the Board of Commissioners, and still an enthusiast for the promotion of the linen industry. Even a letter from his long-winded friend, the Duchess of Gordon, was welcome, for in it she discoursed on his favourite topic.

The bearer of the letter was a Mr. Macray, who had brought the linen manufacture in his region to some perfection,

> though it's very plain no place in Scotland is more proper than Huntly for such an undertaking, . . . the ground is admirable for lint, and fine rivers, and brooks for bleaching, so that I shall only now recommend him as a proper person to be encouraged by your Lordship ; he tells me he made last year 6000 marks worth of good Scots Holland, which was sold in the country, but when I have the good fortune to see you here, I shall more fully give you my opinion of linen and woollen manufactures which I hope you'll some time encourage as much in the North as you have done in the South.[3]

Not everyone thanked Forbes for such encouragement, especially if it involved personal loss. At this very time a certain manufacturer, Wm. Dalrymple, wrote voicing a grievance :

[1] Uncat. MS. in Nat. Liby., or *M.C.P.*, iii, pp. 118-120, and *C.P.*, 174.
[2] Quoted by Miss Dean from *Journals of the House of Commons*, xxiii.
[3] *M.C.P.*, iii, p. 135 (12th December, 1738).

As to the charges I have incurred by the Spinning School, I looked to your Lordship's assistance when I reflect that it was at your desire that I set it up and that you began a subscription for that purpose. You promised, if I remember aright, . . . to collect at least 40 guineas and with that view, I have kept a regular account of my disbursements ever since.[1]

The disbursements had made a hole in his finances. His next letter is itself similarly perforated and, in places, indecipherable.

I am sorry I should be obliged to show my ugly phiz so often in your D [hole in MS.] room.

He proceeds :

Was not you among the rest a chief instrument to make me [hole] on the cambric trade and was not [hole] the sole instrument to that of setting up [hole] spinning house? If the £200 sterling of my money and better is lost or locked up in these projects, is not this a considerable part of my stock and is it any wonder that I should be pinched to carry on my business, and if I am pinched is not your Lordship in a great measure the author of it, and if you are, is this not an obligation on to you to assist me in some shape or other? Have not I relied on your faith ? Have not I boldly ventured my stock for the good of my country ? Has not my example brought manufactures . . . among the better sort of people ? [2]

This enterprising merchant must have come to an amicable arrangement with the President, for by the end of the following year (1740), he had betaken himself to London, there to open a warehouse in which Scots Hollands were to be sold. He again wrote Forbes, already cognisant of his plans, asking that some ' Picardy ' cambric be sent forthwith, to be sold at cost price, merely by way of advertisement. Hardly a single person among ' the nobility and gentry ' had

refused to come under articles for his annual consumption. The Dukes of Argyll, Queensberry, Montrose and Buccleuch have assured me of their utmost support. The warehouse that is intended is now talked of all over the town and

[1] Uncat. MS. in Nat. Liby. (8th February, 1739).
[2] Uncat. MS. in Nat. Liby. (Edinburgh, 16th July, 1739).

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what with subscribers and others it is infallible but it must have a run. . . . I have provided very large quantities of linens and hopes to show the public that our manufactures are worth their notice.[1]

In 1740 the Annual Report of the Commissioners for improving Fisheries and Manufactures—they certainly did not believe in approximations—gave the quantity of linen stamped for sale in Scotland in 1727 as 2,183,977½ yards and in 1739 as 4,801,537½ yards.[2]

As was pointed out already in dealing with Forbes's work in connection with the Revenue, the President's correspondence for the years 1742-44 is much taken up with the case of the Linen Manufactures. Letters between him and the Marquis of Tweeddale are frequent and often lengthy. In the midsummer of 1742 the prospect for the manufactures was 'extremely satisfactory' to both. They were, in fact, showing themselves, what the Marquis described as 'a promising child and well worth nursing and bringing up'. Writing on 3rd June, 1742, he expressed himself as fully sensible that the fair prospect of success for the linen industry in Scotland was 'chiefly owing to your unwearied and disinterested care and concern about it', and that no one was better fitted than Forbes to advise upon its development and future. He, moreover, was ready to concur in any reasonable scheme Forbes might put forward for the perfecting of the manufactures.[3]

Knowing how closely connected were the Revenues and the Manufactures, Forbes, early in July was not a little disturbed to hear it whispered that his old crony, George Drummond, Lord Provost of Edinburgh, was in danger of being turned out of the Commission of Excise. This piece of news he reported (6th July, 1742) to his friend Mitchell. Not only did Forbes have regard for Drummond, but he wrote chiefly because of his own regard

[1] Uncat. MS. in Nat. Liby., or *M.C.P.*, iii, p. 164.

[2] Quoted by Miss Dean (p. 56) from *Reports from Committees of the House of Commons*, ii. Miscellaneous Subjects, 1738-65. London, 1803.

[3] *C.P.*, 229 and *C.P.*, 231, dated 24th August, 1742.

> for the Revenue which is almost the sole support of the expenses of the Civil List and of the expense that comes from the Public to our Manufactures.[1]

The Revenue, he pointed out, had been declining for some time past, due mainly to bad harvests, but this was not the sole explanation of the falling returns. He was of opinion that something that was not commendable in the management had also occasioned the decline, but was hopeful for the future. While he did not desire to write anything to the prejudice of the gentlemen composing the Commission, he asserted that Drummond and Dowdeswell were the best men, both in ability and in application and in long experience. To remove these two would weaken the Commission and be to the evident detriment of the Revenue.[2] This touched the Lord President closely, for to weaken the Revenues still further was to injure his beloved manufactures, 'an undertaking which I am so fond of.' His genuine interest and 'zeal'[3] helped to lighten the burden which he had voluntarily shouldered. And he did not spare himself. The voluminous correspondence on the theme, the number of his correspondents, and the length of some of his communications, all reveal, as we have seen similarly in the case of the Revenues, his genuine enthusiasm.

Reference has already been made to the famous *Memorial*, written by Forbes on 1st January, 1743. We have seen his somewhat fantastic proposals with regard to the importing of tea, but the *Memorial* deals with other matters, such as the linen trade, upon which he could speak as an authority. In his opinion, the linen industry was thriving well and high hopes were entertained for the future; attempts were to be made to encourage the manufacture of coarse linen, as the fine had already reached a satisfactory quality; they expected, too, to discover a process of bleaching this coarse cloth under one penny a yard; they purposed breaking new ground in the linen trade (e.g. thread, stockings, tapes,

[1] Mitchell Papers, folio 33, Add. MS. 6857.
[2] *C.P.*, 233, 18th September, 1742.
[3] *Ibidem.*

figured work for table linen, etc.) and would already have done so if funds had permitted. Scottish spinning, which was the basis of the manufactures, was in an advanced state, and ahead of that of neighbouring trade rivals. At this time very large quantities of Scots yarn were being bought up by the Irish merchants and consequently the spinners were prospering. The view entertained by Forbes and the other trustees was that the export of large quantities of linen yarn to Manchester was good since it encouraged spinning, but as it lessened the quantity of Scots cloth it must be winked at only for a time. The help of the legislature should then be obtained to prevent trade rivals from increasing the sale of Scots yarn to such a degree as to endanger Scots trade ! And then, lest Tweeddale should form too rosy a view of Scotland's prosperity, the President hastens to add :

> As what I have said gives a very promising view of this manufacture, I must not conceal that it is the *only* thing that promises any good to this poor country.[1]

The depressed state of trade generally was for him a source of great regret ; for some years the fisheries had failed utterly ; the foreign trade of Glasgow, chiefly with the West Indies and America, was reduced by the war with Spain, and the market for the serges and stockings of Aberdeenshire had fallen for the same reason. The great diminution in the amount of coin in circulation, Forbes attributed to the gradual and continual export of our bullion for tea, coffee and foreign spirits. The result was that the exchange was against Scotland, and so remittances had to be made in gold, and paper money had greater currency than formerly. Manufacturers, therefore, were faced with ruin through the 'apparent failure of the revenues by which they are supported '.[2] Can we wonder, then, at the President's anxiety regarding the Revenues and his wish for their reform ? On

[1] *C.P.*, 235, p. 188. *Memorial :* Duncan Forbes to Tweeddale, about 1742. *State of the Revenues and Manufactures of Scotland.* Part of *C.P.*, 235, from p. 171 is in Uncat. MS. in Nat. Liby.

[2] Uncat. MS. in Nat. Liby., or *C.P.*, 235, p. 188.

this depended all hopes of success of the Manufactures,—and statistics were bearing witness that this success was almost within their grasp. From its institution till 1st November, 1742, the Board of Trustees for the Manufactures had produced linen stamped for sale worth between £2,500,000 and £2,700,000, no mean achievement for a young and struggling industry.[1] Even the old factor at Culloden, Tom Stewart, was called on, willy nilly, to play his part. His master never disguised his keen interest in the linen trade, and the poorer trader felt few qualms in approaching him. When a certain Mr. Hook proposed employing a Dutch weaver, and was in need of money to purchase yarn and other requisites, he considered it quite in order to call on the resources of the Lord President. Stewart was instructed by his master to advance the man £20 or £30. Nor are we surprised to find 'honest Thomas' forgetting, and causing his master the trouble of a second letter to remind him of his remissness (July 1743).[2]

As the Government contemplated making certain changes in the list of trustees for the manufactures, Tweeddale on the 28th May, 1743, applied to Forbes, since none knew so well the system

> which with so great trouble to yourself and advantage to the country, you have been so carefully nourishing for some years past.[3]

As a proof of the melancholy[4] outlook for his beloved manufactures, which he had regarded as possessing a 'very flattering prospect', he mentions to Andrew Mitchell (August 1743), that of the £2,000 annuity due at midsummer the previous year (1742) only £1,000 had been paid at the proper

[1] MS. in Nat. Liby., or *M.C.P.*, iii, p. 188, 24th December, 1743, Forbes to Wm. Murray, and MS. in Nat. Liby., or *M.C.P.*, iii, p. 170, Forbes to Tweeddale.

[2] Uncat. MS. in Nat. Liby.

[3] *Ibidem*, or *M.C.P.*, iii, p. 172 : Tweeddale to Forbes.

[4] He had written to Mitchell on 5th July, 1743, promising to write soon 'on a very melancholy subject, the state of the revenue and of the trade and manufactures of this poor country, which are at present in a ruinous condition'. (Mitchell Papers, folio 37).

time, and that the other £1,000 came into the cashier's hands only the previous week. In other words, a whole year's annuity of £2,000 was due, and the date of its payment still in the lap of the gods.[1] The position was serious. As a consequence of this non-payment and the absence of any prospect of the money being forthcoming owing to lack of funds, the officials engaged in checking and superintending the manufactures could not be paid their salaries ; the premiums which had been held out as inducements to development in the industry, and which had been earned, could not be met ; no new branches of the manufacture, however promising, could be encouraged ; and the trustees were unable to fulfil their promises already made. The disaster impending for the manufactures and consequently for the nation, Forbes had foreseen, for the last ten years. Indeed he had endeavoured to secure fitting Parliamentary regulations to prevent the catastrophe and threatening distress, but ' the complaints of this poor country seldom make impressions with you, when the evil is not felt to the southward '.[2]

There is no attempt here to give his pill a sugar coating, and however unpalatable the plain blunt truth might be, Forbes was in no mood to play the courtier. All he could do was to try to open the eyes of the men of influence in the south to his country's needs, by constantly referring to them, and so even on 24th December, the day before what he calls somewhere ' goose-time ', he penned these lengthy epistles to Murray,[3] to Tweeddale,[4] to the Lord Advocate and to Mitchell.[5] What grieved him the more was that in that very year the number of yards made for sale exceeded the previous year's output by 600,000.[6] This amount of 600,000 yards was the total quantity produced in 1727 (when the Board of Commissioners first began their work) by the foremost county, Forfarshire, which through all the subsequent increase of the linen manufacture maintained its pre-eminence. The President was

[1] Uncat. MS. in Nat. Liby., or *M.C.P.*, iii, pp. 174-5.
[2] *M.C.P.*, iii, p. 189.
[3] *Ibidem*, p. 186.
[4] *Ibidem*, p. 192.
[5] *See also* p. 150.
[6] Mitchell Papers, folio 41.

nothing if not determined, and his importunity in his demands to the Government received a slight reward and encouragement in 1744. In January of that year he was informed by the Lord Advocate that a meeting attended by himself, Tweeddale, Pelham and Scrope had discussed and weighed the whole question. The Receiver of the Malt Tax in Scotland held at that time a surplus of £2,770 from the year 1726 to the year 1738, and this sum was legally due to be spent on the manufactures and in no other way. The Barons of Exchequer had reported that amount to be then in the Receiver's hands undisposed of, and accordingly it was finally resolved to make this contribution 'to keep your manufactures afloat for another year'.[1] The warrant for the payment of £2,770 4s. 3½d., to be exact, was sent from Whitehall on 20th March, 1744, and is described as

> the surplus of the malt duty to midsummer 1738, to the trustees of the fisheries and manufactures.[2]

In forwarding the warrant to Forbes, his friend, John Hay, in Edinburgh (25th March, 1744) adds :

> I am desired to put you in mind of the Bleachfield at Haddington, as your Lordship was so good as to promise that a sum would be ordered to enable them to reform their Bleachfield and purchase proper instruments and materials as soon as the Trustees came to be in cash.[3]

Unfortunately, cash has a way of disappearing, and the demands were heavy. In acknowledging the receipt of the money, the Lord President pointed out to Tweeddale that the arrangement was only a makeshift, that it staved off the evil day for merely another year when disaster would inevitably fall 'unless the evil—I mean the disease—that affects the revenue is removed'.[4]

[1] Uncat. MS. in Nat. Liby., or *M.C.P.*, iii, p. 199.

[2] Even a letter by Forbes dated 1st March, 1744, answering questions on a possible Jacobite rising has a postscript impressing upon Tweeddale the importance and the parlous state of the manufactures.

[3] Uncat. MS. in Nat. Liby., and *C.P.*, 396.

[4] Uncat. MS. in Nat. Liby. *C.P.*, 397.

An interesting proof of the great advance in the linen manufactures in Scotland is to be found in the Report of the Committee (11th March, 1744) appointed to examine the Petition of Dealers in and Manufacturers of linen, threads, tapes, made in Great Britain and Ireland. The Petitioners read out of the *Journal of the House* the evidence of a member of Parliament who had appeared before a committee in 1737. He had affirmed the greatly increased manufacture of linen in all parts of Scotland. Another, Withers, being examined by the present committee (1744), said the linen manufactures

> were greatly increased in value, particularly in Glasgow, where there are now near 1,500 looms employed in making coarse and fine linens.[1]

The Report from the Committee relating to checked and striped linens (26th April, 1751) quotes the *Journal of the House* of 19th April, 1738. As a result of the improved and increased manufacture of linen just prior to 1738, the prices of both foreign and home fabric were said to have been considerably reduced ; indeed, it was stated

> that the further extension of such manufactures would be attended with several national advantages ; and that all proper support and encouragement ought to be given thereto.

The *Journal of the House* for 1742, bears a similar resolution. An Account presented to the House on 8th May, 1749, declared

> that the whole quantity . . . exported from Scotland entitled to the bounty, between Ladyday, 1744 and Ladyday, 1745, amounted to . . . 65,889 yds.

The quantities of linen on which duty was paid to the Government and their value are shown :

Year	*Yards*	*Value*
1728	2,183,978	£103,212 9 3
1738	4,666,011⅝	£185,026 11 9$\frac{6}{12}$
1748	7,353,098⅜	£293,864 12 11$\frac{2}{12}$ [2]

[1] *Reports of the House of Commons*, vol. ii, 1738-65.
[2] *Journal of House of Commons*, vol. ii.

The last reference to this topic of so absorbing interest to Forbes is found in a letter of Tweeddale's, dated Whitehall, 2nd May, 1745. He acknowledges Forbes's letter of the 11th April and the enclosed copy of the Report of the State of the Manufactures for the year ended at Christmas last. 'It gives me great satisfaction to find that in your opinion the Linen Manufacture continues to prosper and will soon make a more remarkable progress.' [1]

In less than three months the Pretender was to land on Eriskay (23rd July, O.S.), to reach Moidart on the 25th July, and by the 19th August his standard was to be raised at Glenfinnan. It is little wonder, then, that the activities of the Commissioners were rather upset, if not discontinued. With the defeat of Cope's forces at Prestonpans on 21st September, and with the Prince holding court at Holyrood, there was something more immediate to be done than merely to continue 'business as usual'. Accordingly, the Board did not meet, nor do they seem to have rendered to the Government their Annual Report on the Manufactures. Still the industry continued to prosper, despite the unsettled state of the country. The amount of cloth stamped surpassed the previous year's quantity by 56,198⅞ yards.[2] This, it was argued by the Trustees, 'is some evidence that the Manufacturers had not quitted their work to dance after the Highland pipes.' The minute is signed by Forbes, and do the words not bear his impress?

Less than a year after Prince Charles's landing at Eriskay, and less than three months after the slaughterous defeat of his followers at Culloden, there was formed on 5th July, 1746, the British Linen Company (now the British Linen Bank) with the prime aim of helping the linen trade by participation and by granting loans to the manufacturers for development. This was the second Scottish Bank within a few years to concern itself with the linen trade.

Once the actual rebellion of 1745-46 was over, Forbes resumed his former interests, and among these was the im-

[1] *M.C.P.*, iv, p. 4.
[2] See Warden, *The Linen Trade*, p. 236.

provement of the linen trade. He had discussed the question with Wm. Dalrymple of Cranstone, the man who had opened a linen warehouse in London (see p. 163), and the two had as formerly differed considerably as to the steps to be taken for the development of the industry. Dalrymple, clearly a man of decided character and one with practical and first-hand knowledge, in his letter of the 15th February, 1747, stated his views ' without disguise '.[1]

> But as I cannot help contradiction even with my betters when truth and the good of my country is the prize I must premise to your Lordship that you must expect to have most of your maxims if not all debated.[2]

To back up his own arguments, Dalrymple proposed as arbiters certain experts in the linen trade in Glasgow, in London, and in Ireland, but would have nothing to do with any ' persons holding offices from the trustees and such likewise as may be in expectation '.[3] His desire was to lay before the Lord President his opinions as to which foreign linens should be imitated and which should not. He pointed out that Scotland made no coarse linen, and that it would be impossible for her to attain to that

> without pains in the first place being taken by the trustees to alter the method of spinning in use and the machine with which they spin.[4]

Confident in the policy he was advocating, Dalrymple expressed his hopes of furnishing his Lordship with a system which alone would stand the test. He concludes :

> I hope to make your Lordship before I have done with you, what you most ardently wish and what you rave of I dare swear in your very slumbers, the best Countryman in Scotland.[5]

Time pressed, if Dalrymple had only known it. Death had already marked out as an early victim the man so jocularly termed ' the best countryman in Scotland '. In the month of May 1747 a short trip to the south, to Moffat and Dumfries

[1] *M.C.P.*, v, p. 151. [2] *Ibidem.*
[3] *Ibidem.* [4] *M.C.P.*, v, p. 152. [5] *Ibidem.*

in search of health, did not answer either his own or his doctor's expectations.[1] August found him in the home of his childhood's days, Bunchrew. In this quiet retreat he sought and found rest. In a post-script to a letter despatched to Will Forbes, W.S., he says

> My being at this place has proved hitherto an effectual charm against company.[2]

Yet he kept in touch, and his interest in his pet manufactures never flagged. Will Forbes was requested to ask at his bookseller's for any new plans of looms arrived from London. 'If any are come to Edinburgh, send me one by the post.' (Bunchrew, 26th August, 1747.) Will dutifully complied. The Lord President varied the monotony of his sojourn in Bunchrew with another health trip into Ross-shire. He returned 'rather the better for it'.[3] But alas! the glorious warm summer days he had told Will of earlier, were gone, and although he purposed setting off soon for the south, he wanted to keep au fait with the newest inventions that might improve weaving.

> The weather here begins to break. I see snow at a distance from my window; and that leads me to thoughts of decamping. . . . I have got the plan of Borgoness Loom. If any different one come out, which may be the case, as I doubt this one is not great, send it me. (Bunchrew, 16th [probably September], 1747.)[4]

And so to the last months of his life the 'best countryman in Scotland' tried to justify the appellation.

[1] MS. in Edinburgh University Library, catalogued as 'Eight Autograph Letters and some other papers by Forbes, written shortly before his death (December 1747).'

[2] MS. in Edinburgh University Library, catalogued as above.

[3] MS. in Edinburgh University Library. [4] *Ibidem*.

CHAPTER X

FORBES AS LORD PRESIDENT

(*d*) The Records

In the early eighteenth century the public records had fallen into a disgraceful state of neglect. Tossed about in bags in the Register House, without systematic arrangement or even proper protection from the damp, many valuable historic documents were in danger of being lost altogether, and the finding of any particular one became as difficult as the recovery of the lost needle in the proverbial haystack. To restore order in the chaos became another of the ambitions which the Lord President set himself to realise.

In 1739 a number of cases appearing before the English courts turned upon points of privilege claimed by some who declared themselves to be Scottish peers. Reference was naturally made to the competent Scottish law-officers for an authoritative pronouncement, but 'the confusion of our Records, and the negligence and ignorance of our officers'[1] made an answer a matter of no little difficulty. The House of Lords sent a request to the Scottish Court of Session for the compilation of a record of those entitled to the privilege of peerage. The request was submitted by the Lord Chancellor, Lord Hardwicke, in a letter to Forbes on 27th September, 1739. So great was the labour and fatigue involved in the task that Forbes generously assumed it himself. So great too, was the confusion of the Records, as a result of the 'scandalous neglect'[2] that had prevailed, that he was not able to complete the compilation of the Roll till 29th February, 1740, when he duly despatched it to the Lord Chan-

[1] *C.P.*, 197. [2] *Ibidem.*

cellor.[1] Although the troublesome researches involved had cost him several hundred hours' extraordinary labour during the winter, the judicial business of the Court suffered no interruption and was in no way in arrears. Sadly he relates the pain occasioned him by finding the Records so neglected and the officers concerned so 'insufficient'. He is ashamed, for the sake of his country, of what he has to relate, but duty demands that he narrate these things to his Lordship, who by his supreme legal position 'belong(s) equally to every part of Great Britain'.[2] A post-script runs: 'I need not suggest that this is only for yourself.' Conscious of the imperfections in his report, he asks the Chancellor to 'freely censure it to me that I may avoid mistakes upon any future occasion'. While prudence might require that he should not acknowledge the report as his own work, owing to its imperfections, yet he freely confesses that the report is his handiwork and therefore its faults must lie at his door and not be put on his brother Judges. In the same strain he writes on the same date to Wm. Grant who had furnished some data for his inquiry.

Such, then, was the chain of circumstances which brought into the light this defect in Scottish administration. Since the Union of the two Parliaments, this 'scandalous neglect' had prevailed. The Lord Register had a very large allowance for taking care of the Records, Register, and Rolls, and one duty of his, among others, was to keep an account of the votes at elections of Peers since the Union. No Record of any election of a Peer or Peers since the Union had been made. No trace of the transactions of such elections existed. To a methodical man like Forbes, it was a painful discovery. He reported to Hardwicke that certain less important documents were

> tied up in bundles or bags and tossed together into a heap in the Register House, without a possibility of being satisfied as to

[1] Among the uncatalogued documents at the National Library, Edinburgh (Bundle XI) are several MSS. in Forbes's handwriting concerning the Scots Peerages. One is marked 'after 1716' by an earlier editor, while two others may belong to the years 1737 and 1740. These are mainly a series of hastily written jottings, but in addition is a Memorandum on the Earldom of Ross.

[2] *C.P.*, 197.

any one question, except one look through the whole lumber . . . and that, though at the conclusion of every Parliament of Scotland before that in which the Union was enacted, all the proceedings of Parliament were regularly reduced into Registers properly authenticated, yet the Acts and transactions of that Parliament lie still in heaps of bundles unentered and unregistered ; and it is now at the mercy of every rat, by cutting the packthread with which the several bundles containing the resolutions of that Parliament are bound up, to mix them together so as to make it difficult to separate them, and consequently to destroy the evidence of the very Act of Union. I mention this circumstance, not only with a view to satisfy your Lordship that I had more labour than at first sight could easily be suspected ; but that, if your Lordship permit me, I may hereafter, when you have more leisure, make use of your intercession to have this gross abuse remedied ; and at present I would only say that a very small sum, under proper direction, will do it ; and that if the matter is not speedily looked after, it will in a very few years prove irremediable.[1]

Replying on 13th March, 1740, Lord Hardwicke congratulated Forbes on his work in the report and suggested that he should take steps to have the Records put in proper order by first of all making representations to the Lord Register.[2]

The chaotic state of the Records, however, was not held by Forbes to be due to the fault of the Lord Register, for the neglect giving rise to the present confusion went back to the Union itself. To collect, systematise, and catalogue all the Records which had lain so long in such confusion was a task involving much labour and some expense. Accordingly, it was necessary for a small grant to be made to the Lord Register, Forbes thought (22nd March, 1740), to enable him to undertake the work. That done, this officer and his successors should be obliged to keep them in order.[3] A few months later (10th June, 1740) Forbes was again congratulated on his Report by a law officer at Lincoln's Inn, a Mr. Wm. Murray, who wrote in this strain on the instructions of the Lord Chancellor, remarking upon the great labour in-

[1] *C.P.*, 197. [2] *C.P.*, 199. [3] *C.P.*, 200.

volved in collecting the materials ; on the clear method in which they were put together ; and also on the great judgment with which the observations were made. He was of opinion that Forbes's Report would in the future form the basis of a larger and more general work. Meantime, it would 'be the rule applied to upon all questions of Peerage which may arise.' [1]

A 'Memorial anent the Records of Scotland in 1740' was now drawn up.[2] The ancient Records kept in His Majesty's Register House at Edinburgh below the Parliament House were described as being, as we have seen, in such bad condition that many in a short time would be entirely defaced. To prevent this it was set forth that a sum should be sought from Government to rebind in Russian leather all the Records of Charters,—Parliamentary and Privy Seal, and Privy Council, etc. Up to this time (1740) the warrants of the Union Parliament had not yet been put into books, although this should have been done by the Lord Register of the period or his assistant officers. In 1740 the then Keeper of the Records (John Corss) had not only carefully indexed the Rolls down to James I, but had 'completed the index alphabetically down to the year 1670 in three large folios of Lombard paper'. Previous to the Union, the Keepers of the Records, under the Lord Register, had emoluments amounting to some £200 per annum for their work in connection with the frequent sitting of Parliaments and the Privy Council. Since the Union, despite their increased expenditure and added labour and the great trust imposed in them, they had received less than £20 a year. Quite recently a great number of very ancient and valuable writs had been found. Ten hogsheads yet remained not broken up or searched 'in the Laigh Parliament House'.[3] These might contain many more ancient writs which should be set in chronological order and recorded.

The Case of Master Holins, Keeper of the Records in Queen Anne's reign in the town of London, was quoted. A fund had been formed whereby he might collect, put in

[1] *C.P.*, 202. [2] *C.P.*, 208. [3] *M.C.P.*, iii, p. 222.

order, and book the old documents found there in neglect. Such a precedent might enable a similar method to be followed in Scotland, provision being made for payment of the salary of the responsible official. The time when the Memorial was presented seemed to the Keepers a favourable one for such action, for there was clearly an inclination to take notice of the concerns of the Public Offices in Scotland. So great was the advantage to the legalists of Corss's index of the Rolls that any charter could now be found within an hour, when formerly several months would have been required. And yet this index was a private possession of John Corss and its removal from the public office by the compiler would greatly embarrass the authorities and cause the loss of much time when need arose for the searching out of old writs. It was, therefore, suggested that the Government should purchase the Index, which should become an official document, and that an allowance be made to Corss to carry the Index down to his own times. This, the compiler thought, could be accomplished 'by close application in something more than a year.[1] The former compilation having been finished, by great labour and industry, in the space of five years.'[2]

Much the same fate had befallen the Old Scottish Rolls Registers. These had always been kept in H.M.'s Chancellery till Oliver Cromwell ordered them to be sent up to London, and at that time they were in very good order. Returned to Scotland at the Restoration, they were kept in Edinburgh Castle and then in the Lower Parliament House. It was from this time that the ruin overtaking them dated, arising from damp and from moths. A 'Memorial Anent the Ancient Rolls and Registers—and Proposals, etc.', dated 1740, submitted by the Clerk to H.M. Chancellery, advances some proposals for recovering the ancient, invaluable and almost ruined documents in the keeping of the Lord Register :

(1) The Lords of Session should be petitioned to ordain that all such Registers and Rolls be redelivered to the

[1] The punctuation of the original. [2] *C.P.*, 208.

Director and Clerk of Chancellery, as sole custodiers. The Registers, too, should all be kept in one place.

(2) The Clerk of Chancellery should receive an annual allowance for his office, for parchment, for binding and re-binding, for coals, candles and incidentals.

(3) An annual allowance of £200 should be made for transcribing the Rolls till completed. They could be done in ten or twelve years.

(4) The Lords of Session and Barons of Exchequer should delegate certain persons to oversee the work and report, from time to time.

(5) When the work is completed, office rent, coal, candles and £60 should be continued to the memorialist for his encouragement.[1]

An itemised account of the annual expenditure for transcribing the ancient Registers and Rolls shows the total estimated cost as £253.[2] A later computation (1741) of the expense of transcribing charters, furnishing paper, etc. and binding all the books in Russian leather brings the sum total to £508 2s. 6d., of which £358 2s. 6d. is for transcribing and the remaining £150 for binding.[3]

Four years later a second 'Memorial concerning the present State of the Records of Scotland, anno 1744',[4] was drafted, evidently by the Lord President, to be presented by the Lord Clerk Register.

Another series of letters on the same subject begins on 9th March, 1745, when Forbes was again engaged in correspondence with Lord Chancellor Hardwicke. Here was set forth Forbes's complaint as to the great neglect in the control of the Records. He reiterated the fact that the Laigh or Under Parliament House where the Rolls and Books of Records were kept, was very damp and likely to damage the precious documents. Most of the Charters and Sasines bound in books had actually fallen out of their binding and many of the first and last leaves were so obliterated as to be hardly legible. In a short time these would be entirely defaced.

[1] *C.P.*, 209.
[2] *Ibidem.*
[3] See *M.C.P.*, iii, 222-4.
[4] *M.C.P.*, iii, p. 224.

Despite an Act of Parliament (1469), the Charters of Bruce and his successors yet remained ' in rolls not booked '. About ten to twelve hogsheads of documents still lay in the Laigh Parliament House, having been returned to Scotland in 1661. It was imperative, then, these should be arranged in order and inventoried, as they might prove of importance for the History of Scotland or of Private Families. Even the Warrants of the Union Parliament were still in loose bundles and unbooked. A large number of documents—warrants of the High Commission and Sub-Commission Courts, and Records of the Privy Council—instead of being housed in H.M. General Register House were in private hands. If for no other reason than that the Registers of Scotland were the great security of the Rights and Properties of the Subject, these documents should have been carefully preserved. Lest blame for this neglect should be laid at the door of the then Lord Register, Forbes took pains to explain that the abuses named occurred before his contemporary assumed office. He continues :

> However as the People are now uneasy and complain that those Registers are not more carefully noticed and regarded, the Lord Register thinks it was his duty to represent the grievance.

While he and Forbes were anxious for the proper care and preservation of the Records, they did not wish the Government to incur great or unnecessary charges, especially at the time of writing. Accordingly, it was suggested that the twelve hogsheads referred to should be removed to a suitable place for inspection and cataloguing.

The Gate House to the Abbey of Holyrood House was named as a proper place for storing the Records

> until a General Register House capable to hold the whole Records of the Kingdom shall be built and finished.

Unfortunately, the Gate House was in a state of disrepair almost as deplorable as the documents it was destined to house. To render it habitable, therefore, at least £400 would

have to be expended. The new estimate, drawn up by the Underkeepers, for transcribing and rebinding the Records amounted to £621 8s. 6d., a sum fully £100 in excess of the figure quoted in 1741. A work of such importance and intricacy, involving both labour and patience, must be entrusted to a 'person of application, skill and integrity' who even with the assistance of two or three clerks would take some years to complete his task. The Lord Clerk Register, the third Marquis of Lothian, considering himself answerable for its satisfactory execution, ventured to recommend a suitable and reliable man for the post.[1]

We learn from a later letter reporting these same facts, that the Lord Register had taken the matter very much to heart, as if the neglect was his rather than the fault of his predecessors. In Forbes he found an interested partisan who, in mentioning the proposed schemes of the Marquis, begged Hardwicke 'to prevail with those who may boggle at the expense though small'.[2] On the same day (9th March, 1745) he wished the Lord Register 'success in this undertaking'.[3]

This was, perhaps, one of Forbes's last attempts in rectifying this abuse. Pressing as the whole matter was, action was slow, for the country was then in the tangle of a continental war. In 1753 the hogsheads which had escaped shipwreck in 1661 were at last opened, and in 1765 £12,000 was paid out of the proceeds of the forfeited estates in Scotland to allow of the building of 'a proper repository for the Records of Scotland'. The grant, however, seems to have been withheld for nine years. The General Register House was at last founded, 27th June, 1774. Forbes had surely played his part in bringing these things to pass.

[1] *M.C.P.*, iii, p. 227. [2] *C.P.*, 242. *C.P.*, 241.

CHAPTER XI

AGRICULTURE IN THE HIGHLANDS BEFORE THE FORTY-FIVE REBELLION

It is by his work in the Jacobite Rebellion of 1745 that the name of Forbes is most frequently remembered when it is remembered at all. Before we proceed to discuss in detail the patriotic and triumphant part he played in that event, it is desirable to have some idea of the state of the Highlands before 1745.

The rebellion of 1715 had brought about the Disarming Act of 1716, whereby the Highlanders were forbidden, under penalties, to carry arms in public places. Ten years later the reins were drawn still more tightly and an Act was passed ordering all weapons whatsoever to be delivered up to the Government. The loyalist clans were punctilious in their obedience. Not so those with Jacobite sympathies. Arms they did hand over, but these were chiefly antiquated weapons, whilst many a cranny in the thatched roof and many a dark corner in the cow-shed watchfully guarded its shining musket. Although the forbidding of arms to the Highlanders would not of itself make them less harmless, the hope was entertained that the next generation would be much less given to the internecine strife which had been so frequent in earlier Highland history. From a military point of view, then, it might be considered that the Highlands had made a slight advance along the paths of peace. But if the military tendency of Celtic Feudalism had been curbed, there still remained in the Highland area another element of the system to be reckoned with—Feudalism as a system of land tenure. The chief of the clan was due military service, but he was also an important personage on the side of land tenure. No doubt the lot of the people in the lower walks varied with their

chief. Agriculture in the period after the 'Fifteen rebellion was in a backward condition and had made little or no advance. Moreover, the population was increasing within the Highland line.

In a series of changes wrought in the Celtic system of land tenure prevalent among the clans, Forbes played a foremost part. It would be futile here to discuss whether he was himself a real Highlander or not, but he had lived close to the life of the Highland people among whom his three estates were situated, and his ancestors had been domiciled in the same region for about a century. No one was better equipped,[1] therefore, than Forbes with his knowledge of the character and habits of the Highlanders, with his well-balanced mind and impartial judgment, and with his legal training, to make clear what was required to bring the Highlands into conformity with the civilisation and culture of the rest of the country. Hence we find him employed by his friend and patron, John, second Duke of Argyll, in an enquiry into the condition of affairs on some of his territory in the Western Isles.[2]

Forbes's investigations were illuminating. They showed not only the poverty and ignorance among the islanders, their crude farming methods, and the primitive state of agriculture, but also the oppression under which they laboured as the result of the faulty system of land tenure.

In Tiree, at the harvest, only one tenth of the great show of herbage which covered the fields was found to be corn, for the rest was only rank weeds which grew with the crops in the utmost profusion. As the corn could not be cut, it was pulled up by the roots. And the straw was burnt ! There is little wonder that the visitor remarked upon the ' ridiculous processes of husbandry which almost utterly destroy the island '.[3]

[1] He did not, however, speak Gaelic and was therefore at a disadvantage in Mull. When he proceeded to Tiree on a similar mission, he had his schemes presented to the islanders in the Celtic tongue. ' Crofters Commission Report, Appendix A (1884).'

[2] *C.P.*, 179 and Uncat. MSS. in the Nat. Liby.

[3] Forbes's ' Report ' on Tiree, 1737. ' Crofters Commission Report, Appendix A', and Argyll's *Scotland as it was and is*, p. 265.

The difficulties set forth by Sheriff Campbell, as a result of a former investigation, lay largely with the leaseholders, who jealously opposed innovations which would reduce their own power, and who set the lower tenants on their lands to oppose the changes. The expiry of a number of leases was the occasion for Forbes's visit, and his report gives a valuable account of the state of the Highlands at that time. By reason of the oppression of the tacksmen, and by their ' unmerciful exactions ',[1] land lay waste in some parts.

> If the system had continued but a few years longer, the islands would have been entirely unpeopled.[2]

In the last seven years, he recounts, over a hundred families had fallen into poverty and had been compelled to quit their island, so absolute was the power of the tacksmen. Owing to the vague and indefinite nature of the conditions of possession under which the sub-tenants held from the tacksmen, their position was thereby all the more dangerous. The lease-holders themselves had not permanent possession ; in fact, they were interested only in the immediate private gain which might accrue to themselves. Forbes's plan was to free the under-tenants by removing the irksome and uncertain services which had been hitherto exacted, and to give them the opportunity of acquiring leases of their farms at a fixed rent. Thus, tenure by lease took the place of tenure at will. His whole policy was to check the tacksmen and to assist the sub-tenant.

All this Forbes made clear in his visit to the islands, which was no mere pleasure jaunt. Leaving Edinburgh on the 3rd August, he got to Culloden on 16th September, after having put in some strenuous weeks in Mull and Tiree. He was accompanied by Ronald Dunbar MacMillan, Sir Duncan Campbell, and ' one sergeant with men whom I begged of Brigadier Guest '. The party travelled through Breadalbane and Glenorchy to Lochaweside, where they were received by the Sheriff and factors. After a few days' delay they proceeded

[1] ' Crofter Report, Appendix A.' [2] *Ibidem.*

> to Aros in Mull, where we sojourned under huts and tents, but the inclemency of the weather soon made the last impracticable.[1]

The favourable terms of leasing for nineteen years offered by Forbes to the tenants in Mull and in Morven, were rejected by the recalcitrant islanders who ' pleaded poverty to a man ' owing to inclement weather and poor prices for cattle. The former tacksman advised them that the bad weather would soon drive Forbes out of the island and leave them in possession of it at whatever rents they might offer.[2] But Forbes was not so easily beaten. He succeeded in leasing a number of the farms on his terms, said the rest of the lands would lie waste,

> and immediately gave orders for sailing to Tiree. But before I went on board I suffered myself to be entreated to call on my return at Mull, and to receive any further propositions that might be made to me. . . . It happened very luckily that one of the promoters of this confederacy, MacLean the minister, had an advantageous farm, for which he offered far short of the value, and notwithstanding all my arguments, and entreaty with him personally, because he could understand me. This was one of the three farms which we found a person to bid the value for. The minister seeing himself by his own cunning beat out of an advantageous possession he had for many years enjoyed, was raving mad, and you may believe his fate caused some speculation in Mull before my return from Tiree.[3]

Owing to the ' bad methods of husbandry ' that were employed, Forbes advised the introduction of ' a skilful farmer from East Lothian to instruct the natives '. In Tiree he at the same time ' bargained for the building of one mill upon a farm that is pretty high set ', and recommended the same in Mull.

Despite the spell of ' bad weather, which the inhabitants of that climate say, was the worst they ever saw ', the party completed their task without serious mishap.

[1] ' Evidence taken by H.M. Commissioners of Inquiry into the condition of the Crofters and Cottars in the Highlands and islands of Scotland,' iii, p. 387, Appendix A.

[2] ' Crofter Report,' p. 388.

[3] ' Crofter Report,' p. 389.

> My son (says the Lord President) was seized in Mull with a sneaking fever, which I cleared him of by taking between 30 and 40 ounces of blood and giving him two or three vomits. His tent, which Sir Duncan imprudently lay in for some time, could not possibly secure him against the excessive rains and winds which prevail in these watery regions. He was seized with rheumatic pains at Tiree, without any doctor but myself, and I had no medicine but rhubarb and gum pills, however I doctored him so well as to bring him home in the barge, and as I passed he was perfectly recovered. His volunteering was undoubtedly of great use to us.

Clearly, Forbes's duties were not limited to the law and to the leasing of land.

Forwarding (September 1737) his brief report,[1]— and this, only to satisfy His Grace's curiosity—he concludes:

> I believe by this time, Your Grace is heartily tired of me and my islands.

This narrative of some 5,000 words he had written out himself, but, to make it more legible, he had had it copied in a clearer hand.

The difficulties of the situation arising from the combined selfishness, prejudice, and ignorance of the different parties being now overcome, Forbes tackled the difficulties inherent in the legal aspects of the case. The great reform of the measure lay in the actual delimitation of the services which must be discharged by the tenant, in addition to the payment of his agreed rental. A lease for a farm in Mull, in 1739, signed by the Lord President himself acting as Commissioner for the Duke of Argyll, is still extant and specifies the services which are to be rendered, viz. repairing harbours, mending roads, making or repairing mill lead [=conduits], for the good of the community of the island. The Duke of Argyll, from whose *Scotland as it was and is* [2] the information upon this complex subject is largely obtained, sees in the abolition of all services, except the few defined in the lease, 'the symbol and con-

[1] The final report on Tiree was acknowledged by the Duke on 25th March, 1738. (*C.P.*, 186.)

[2] p. 254 *sqq.*

summation of a change which amounted to a revolution'.[1] It is the death of the medieval system and the birth of modern society. That dependent class that had once been only tenants-at-will, were now raised to a higher social level.

The same authority makes another important point. The leases drawn up and signed in 1739 by Culloden (now Lord President of the Court of Session), as Commissioner over the Duke of Argyll's estate, omit all clauses having regard to military services, which had 'for many hundred years been among the fundamental obligations of those to whom the occupation of land had been lent or given'. The alarm consequent upon the rising in 1715 had led Parliament to forbid, in Charters or Leases, the inclusion of clauses imposing obligations of such a nature.

> They now became illegal. Accordingly in the leases of Culloden in 1739, there is not even a whisper of the kind. We have entered finally on the times of peaceful industry.[2][3]

[1] '*Scotland as it was and is*', p. 261.

[2] *Ibidem*, p. 263.

[3] It is interesting to note that the leases granted some 20 years later by Archibald, third Duke of Argyll, allow of commutation for specified services and according to a definite scale. For one penny one day's labour could be commuted, and service could not be exacted at seed time or harvest. And commutation had been effected in England some four centuries before! Agriculture under Celtic Feudalism could hardly be regarded as advanced.

CHAPTER XII

THE HIGHLANDS BEFORE THE 'FORTY-FIVE

The Storm Clouds Gather

The active and richly seminal mind of Forbes was never long idle. While he was yet in the midst of his long correspondence to secure the revenues, to check smuggling, and to encourage manufactures, he evolved a scheme which would be doubly advantageous to the United Kingdom in the event of any Highland strife. In 1738, when he was barely seated in the Lord President's chair and when the reverberations of the Porteous mob had scarcely died away, he put forward his plan to raise Highland regiments to be utilised in regular Government service. Already there existed a body of local militia, for the purpose of preserving peace in the mountains and glens of the north, and organised at the instigation of certain enlightened Scotsmen who knew well the military character and mode of life of the Highlander. As far back as the reign of Charles II, the second Earl of Atholl is found raising a body of men for policing the Highlands (1667). After the Revolution of 1688, the four independent companies raised by William III did good work in this region following the withdrawal of the regular forces of the Crown. Only two independent companies existed in 1703, but next year a new one was formed. These companies were broken up in 1717. Simon Fraser, Lord Lovat, was astute enough to appreciate the value of the companies, and in his Memorial (1724) to King George I, he suggested the raising of similar units—of course, under his Lordship's command ! In July 1724 General Wade was sent to inspect the Highlands with instructions to have special regard to Lovat's allegations and suggestions. On 10th December, he sub-

mitted his report. It contains this recommendation among others :

> That the companies of such Highlanders as are well affected to His Majesty's Government be established, under proper Regulations and commanded by officers speaking the language of the country.

A fortnight later, Wade was appointed Commander-in-chief in Scotland. He immediately took the necessary action for the administration of the Highlands. Although he himself did not arrive in Scotland till June 1725,[1] orders for the raising of six companies totalling some 500 men were carried out by April of that year. Officered by gentlemen selected from the loyal Whig clans, this local militia consisted of Highland recruits from any source. Forbes's idea was to extend this existing plan and raise a body of men, not merely as a sort of local police, but for regular service of the Crown.

To this end, he visited Andrew Fletcher, Lord Milton, at his old country seat of Brunston, in the autumn of 1738. The Lord Justice-Clerk's house was four miles from the capital, and the visit took place before breakfast. It is clear, therefore, that the Lord President regarded his scheme as one of some importance, for his object in consulting Milton seems to have been to secure his support, and his recommendation to his friend Ilay, expected in Edinburgh that or the following day. It will be in the reader's recollection that signs of jealousy had manifested themselves in Ilay's attitude towards Forbes on several occasions when the latter was yet Lord Advocate, and that Forbes had taken steps to conceal his hand. Feeling that a scheme sponsored by himself would probably, for that very reason, not find favour with Ilay, he sought out Milton and laid before him his plan.[2] Although

[1] 'Stewart of Garth gives 1729 as the date when the independent companies received pay as regular companies.' Salmond, *Wade in Scotland*, p. 42.

[2] Home, in his *History of the Rebellion*, Chap. I, puts words into the mouth of Forbes, (after the modern Stracheyesque manner, and adopting oratio recta), and for these he gives no evidence. Indeed, the meaning conveyed is in direct contradiction to what we know to have been his ideas with regard to the removal from their native country of the Highland troops for foreign service. Hill Burton—inappropriately—quotes this passage on p. 368 of his *Life of Duncan Forbes*. See p. 191 *post*.

Walpole is said to have regarded it favourably, it failed to convince the Government of the day who feared the Opposition would raise the cry that aliens were being recruited to overawe England and to overthrow the Constitution. On 25th October, 1739, during the Spanish War, the principle was adopted, however, when the six Independent Companies were increased to ten and formed into a regiment 780 strong —the Black Watch or 42nd (originally, for a time, the 43rd).[1]

1742 saw a series of important changes not without their effect on the situation in the Scottish Highlands.

In February of that year, Walpole was succeeded on his resignation from the premiership by Carteret. The following month the Duke of Argyll resigned all his offices.[2] The Secretaryship of State for Scotland was assumed by John, fourth Marquis of Tweeddale. Immediately after his appointment, he wrote to Forbes as Lord President requesting his presence in London to discuss the management of Scottish affairs,[3] exactly as the Duke of Newcastle had written to him as Lord Advocate in 1725.[4] Forbes's health made it impossible for him to travel so far, and Lord Arniston, who was also invited, was similarly prevented. In August (24th August, 1742) Tweeddale expressed the hope that Forbes would lend his aid in drafting a suitable bill to be passed by Parliament, with the object of maintaining peace in the Highlands, as all previous attempts had proved ineffectual.[5] The Marquis had already advised General Clayton, Wade's successor as Commander-in-chief in Scotland, to consult with the Lord President, Lord Arniston, and the Lord Advocate on this same difficulty. Having at once communicated his views to

[1] It is interesting to read Chatham's words, spoken twenty years later, on the system which he had called into being for the support of the Empire in her struggle in Canada. 'I sought for merit wherever it was to be found. It is my boast that I was the first minister who looked for it, and I found it in the mountains of the north. I called it forth and drew into your service a hardy and intrepid race of men. They served with fidelity as they fought with valour, and they conquered for you in every part of the globe.' (Quoted by Anderson, *State of Society and Knowledge in the Highlands of Scotland*, p. 137.) It is Forbes, however, who is really due the praise which is so generously bestowed upon the more famous Chatham by most historians.

[2] *C.P.*, 224.
[3] *C.P.*, 220.
[4] *C.P.*, 121.
[5] *C.P.*, 231.

Clayton, Forbes informed Tweeddale to that effect, assuring him that further expense would have to be incurred. The whole question would require to be discussed more fully, and this he would do once he returned to Edinburgh, either with his Lordship himself or with Lord Arniston and the Lord Advocate.[1]

In the opinion of Culloden, the system actually employed at the time for preserving the peace of the Highlands was a particularly effective one, and in part, carried out his scheme of 1738. A garrison of regular soldiers, with General Clayton as Commander-in-chief, occupied the line of the present Caledonian Canal, between Inverness and Fort William. These were re-inforced by a 'body of disciplined Highlanders, wearing the dress and speaking the language'[2] of the region, in a word, the old independent companies, now regimented. Not only could they do the work of cavalry in difficult country among bogs and mountains where cavalry were useless, but as intelligencers, they could bring to their leaders, secrets circulating among the native population.

Towards the end of 1742, rumours began to spread that the Highland regiment was to have marching orders for the south, with the possible intention of proceeding on foreign service. This news was disturbing. Forbes at once wrote to Clayton and pointed out the foolishness, if not even the foolhardiness, of this policy. The danger he foresaw was not that arising from the raids and disorders to which these parts had been long accustomed. With the cat away, the mice would play. In the event of a French attempt to revive the Jacobite cause, the Pretender's emissaries would have a free hand to 'cajole, to cabal, to promise, to pay, to concert'. What fear of their intrigues being discovered would they have, from the regular troops, alien to the Highlands? Indeed they might

> tamper with the poor unthinking people of the Highlands with as great safety as if there were no Government at all in the island.[3]

[1] *C.P.*, 233, 18th September, 1742.
[2] *C.P.*, 390.
[3] *Ibidem.*

For once Rumour was no lying jade. The Highland regiment marched south with the prospect of serving abroad under Cumberland. Several deserted. Tweeddale, who had read the warnings of Forbes as set forth in his letter to General Clayton, made reference to this unfortunate occurrence and weakly disclaimed any blame. The removal of the Highland regiment, he said,[1] had been urged by the Earl of Stair and was, therefore, no scheme of his. This did not prevent Forbes, three months later (August 1743), from again emphasising the foolishness of the plan and the evils already resulting from its adoption.

> The country adjacent to the Highlands suffers extremely by the absence of the Highland troops, nor is it possible to obviate the mischief but by the same or other forces of the like nature.[2]

Heedless of these and like warnings, the Government pursued its blind policy.

The new year brought a rude awakening, causing no small flutter in Whitehall dovecotes. Tweeddale wrote by express on 1st February, 1744,[3] to intimate to Forbes that a squadron of twenty ships of war certainly sailed from Brest on 26th January, and were steering northwards, carrying, rumour said, 15,000 musketeers. The Lord President's hopeful reply left Edinburgh by the 5th. Unless the foreign aid should be sufficiently large to make the two contending parties equal, he considered a Jacobite rising in the Highlands unlikely, especially at that season of the year.[4] Cautious as ever, he informed Tweeddale that he would try to ascertain through 'a friend' in the Highlands the true state of affairs. The I-told-you-so flavour of the concluding paragraph of the letter was surely excusable, irritating as it doubtless was to the recipient.

> May I beg (as you see this letter is wrote in haste) to put your Lordship in mind of a letter which I wrote about twelve months ago to General Clayton and which he sent to your Lordship, about Highland regiments, and ask you whether you are not now convinced that the reflections therein made were just.[5]

[1] *M.C.P.*, iii, pp. 172-173, Tweeddale to Forbes, 28th May, 1743.
[2] *M.C.P.*, iii, p. 184. [3] *C.P.*, 392. [4] *C.P.*, 393. [5] *Ibidem.*

Without loss of time, in fact, on the same day as Tweeddale's express arrived, Forbes communicated with his 'friend', who turned out to be none other than John Hossack, Provost of Inverness, an intimate of long standing.[1] Having related the rumour which occasioned this letter, Forbes continues :

> I at this distance can do little. . . . You having no such hint at all in the matter, might not give sufficient attention to circumstances though if you were on your guard you might mind. It's for this reason I send you this line by express, to desire that without communicating what I write or the cause of it to any one living, you will in a prudent manner listen to what you hear and inquire, where you may think it proper.[2]

Hossack's reports were reassuring. When the Lord President from Stoneyhill, on 1st March again wrote Tweeddale, it was to tell that there was 'no appearance of stirring there' and that the condition of the Highlands of Scotland was 'very different from what it was when the last great push was made for the Pretender'.[3] Nevertheless, the rumours of a rising persisted and detained Forbes that spring much longer in the capital than was either good for his health or pleasing to his inclination.

For fully a year the matter of a Jacobite rebellion hung fire. It was again the month of May before Tweeddale made any further definite reference to it. On the 2nd (1745), having acknowledged the President's letter of 11th April, with its enclosed

> Copy of the Report of the State of our Manufactures for the year ending Christmas 1743,

he asked for more information regarding 'the good number of recruits . . . enlisted in Scotland for the French service last year', especially in the town of Inverness, in the neighbourhood of which French emissaries were known to have lived.[4]

[1] *M.C.P.*, iv, p. 1.

[2] *M.C.P.*, iv, p. 2.
On the 24th February, 1744, there was a debate in the House of Commons on the Papers concerning an intended invasion by the Pretender (Cobbett, Parliamentary History, vol. xiii, col. 666).

[3] *C.P.*, 395.

[4] *M.C.P.*, iv, pp. 4 and 5.

Parliament rose for the session on 2nd May, 1745, and was prorogued till 20th June, and afterwards further prorogued till 17th October, 1745.[1] At this time Scotland was unprotected by troops, and England, but scantily ; both the King and the Duke of Cumberland were on the continent ; and the ministry were divided and indecisive as to a course of action.[2] It was not the strength of the enemy that deterred, but the inability or languidness of friends of the Government.[3]

The end of June brought Forbes a more disturbing letter than that of the Secretary of State, written in the previous month. His correspondent was MacLeod of MacLeod. As chief[4] of a powerful Highland clan with his estates in the outer isles, his practised ear was nearer to the ground than Hossack's in his more civilised quarters. His report was alarming.

> I cannot help informing you of a (more) extraordinary rumour spread all hereabouts . . . which is that the Pretender's eldest son was to land somewhere in the Highlands in order to raise the Highlanders for a Rebellion. . . . I shall spare no pains to be better informed and if it's worth while, run you an express.[5]

In fulfilment of this promise, MacLeod despatched messengers to various likely places, even as far as Ardnamurchan, but heard of no signs of a landing.

Rumour, nevertheless, had again spoken truly. The Prince was already (2nd July) making his final preparations for embarking at Nantes.

[1] Cobbett, *Parliamentary History*, vol. xiii, col. 1307.

[2] *Ibidem*, col. 1309.

[3] *Parliamentary History*, vol. xiii, quotes Pelham to Archibald, Duke of Argyll, 20th August, 1745, Campbell Papers.

[4] Norman MacLeod, nineteenth Chief. It was a great disappointment to the Jacobites that he did not espouse their cause. He was frequently known as 'An Droch Dhuine' (The Wicked Man).

[5] *M.C.P.*, iv, p. 10.

CHAPTER XIII

THE 'FORTY-FIVE REBELLION

The Outbreak

The Gathering of the Independent Companies (1745)

This does not pretend to be an account of the 'Forty-five rebellion in general, but may be regarded as a bare chronicle of the attendant circumstances so far as these form part of the career of the Lord President. We shall see the receipt and the despatch of innumerable letters. Of necessity there will be much indirect speech employed in recounting the contents of these, and sometimes the same facts will be repeated to show how the situation was regarded from the different points of view of the various correspondents. The names of these, their location, and the date of writing will frequently and unavoidably break the continuity of the narrative, and naturally, no attempt has been made to deal with the part played by each of the main actors (e.g. Lovat, MacLeod of MacLeod, Sir Alexander Macdonald, etc.), whose deeds lead to the complication and dénouement of this enthralling Scottish drama. Forbes for us occupies the centre of the stage, and on him we have focussed the spotlight.

We have already seen (Chapter XII, 'The Highlands before 1745, etc.') how, for over a year, rumours of an intended Jacobite rising had circulated freely, although even by June, MacLeod could trace no signs. On the 2nd July, 1745, Forbes brought to Cope, who had been appointed Commander-in-chief in Scotland almost a year and a half earlier (18th February, 1744),[1] a letter received the previous night containing a rumour of a possible rising. Cope im-

[1] Introduction in *M.C.P.*, iii, p. 211.

SCOTLAND

during the JACOBITE RISINGS of 1715 & 1745

The Independent Companies



mediately informed Tweeddale, 2nd July,[1] These rumours MacLeod was still unable to corroborate (Dunvegan, 16th July, 1745). He vouched, however, for the fidelity of Sir Alexander Macdonald. Describing his own state of health, for he had not been at all well of late, he recounted his symptoms, probably those of influenza : shivering fits, accompanied by feverishness for twelve to twenty-four hours, sweating, low spirits, aching in his limbs and ' constant disorder in my head which is the most disagreeable thing of all.' And so, he continues, ' I would not have plagued you with this stuff did I not know you a most noted quack, and I expect your assistance '.[2] Forbes was versatile indeed !

Reports of a French invasion in the summer were current in London at the end of July, and on the 1st August a reward of £30,000 was put on the head of Prince Charles, news having been received of his departure from Nantes. The Lord President himself at this time gave no credence to these statements, and regarded the report of the Prince's landing as improbable (8th August, 1745, Forbes to Tweeddale). Half in alarm, half in doubt, he was writing (2nd August) to Henry Pelham, on the

> advices said to have been received at London, of intended invasions ; and particularly of a visit which the Pretender's eldest son is about to make to us, if he has not already made it.[3]

In accord with his usual prudence, therefore, the Lord President was resolved to take all possible precautions against such an eventuality. His mind was made up to pay his accustomed visit to the North, but at an earlier date than usual, for ' though my fighting days are over ',[4]—so he modestly and erroneously imagined,—and his health was not robust, he could give countenance to the friends of the government, employ his credit, encourage the faithful in their duty, discourage the waverers, prevent the seduction of the unwary, and collect intelligence, if there should be any truth in what was reported.[5]

[1] S.P. 54. Bundle No. 25, No. 16. P.R.O.
[2] *M.C.P.*, iv, p. 13.
[3] *C.P.*, 245.
[4] *Ibidem.*
[5] *C.P.*, 245 and 247.

The day following (3rd August) MacLeod of MacLeod sent Forbes the first definite news of the landing of the Young Chevalier.[1] He was reported to have one ship, with sixteen or eighteen guns and some thirty Irish or French officers aboard. His movements are not definitely known for the period between his landing at Eriskay on the 23rd July (O.S.) and the 4th August,[2] although he probably coasted about the islands between Skye and Mull. Be that as it may, MacLeod's letter of the 3rd travelled slowly and did not reach the Lord President's hands till the morning of the 9th, just a day after he had written Tweeddale expressing his scepticism as to the likelihood of any rebellion.[3] This lengthy epistle, however, was already in the hands of the post and contained points that merit our consideration though it failed unfortunately to claim that of the Government.

In the opinion of Forbes, none of the Highland gentlemen who had anything to lose were likely to risk their fortunes, unless foreign support were forthcoming. Nevertheless, there was no harm in being prepared, and, therefore, he made suggestions to the Government through Tweeddale, out of his former experience. In the first place, if occasion required it, there was no lawful authority in the north who could call forth to action those remaining loyal to the throne. In 1715 there had been lieutenancies in all the counties, but now there were none. His second point was that the friends of the Government, though few, were armed in 1715; but now they were not, 'though the loose banditti . . . are,'[4] and plenty of arms would come from abroad. Ought they not, he asks,

> to lodge a sufficient number of arms in the Forts of the Highlands, with directions to whom and by whom they may be delivered out?[5]

[1] A postscript reports an improvement in his own health, as a result of the regimen prescribed by the President. 'A thousand thanks for your advice!' he wrote. (*C.P.*, 246.)

[2] The apparent discrepancy, sometimes found, in dates for the Chevalier's landings at places on the west coast of Scotland, is due to a confusion of the Old and the New Style of reckoning.

[3] S.P. Dom. 54, Bundle 25, No. 51. [4] *C.P.*, 247. [5] *Ibidem.*

Thirdly, he reminded Tweeddale that the loyalists had been hampered greatly through lack of funds in 1715 ; that private gentlemen (John Forbes had been one) in their zeal advanced for the public service large sums which were never repaid, and that it was unlikely that men would be ready now to put their hands in their pockets. Thus, much help might be lost. He concludes :

> What I therefore submit is whether it may not be fit at this juncture to lodge with some proper person, or persons, money or credit sufficient to such occasions, to be accounted for.[1]

The wisdom of the President's advice given at the very outset is amply and tragically borne out by the whole history of the rebellion. The absence of legally recognised persons to inspire the defence made the burden fall on those whose personality was sufficiently dominating. Throughout, Duncan Forbes was himself that ruling personality.[2] To him all men turned for advice : he was indeed the oracle of his country. Till well on in 1746 the constant and unheeded cry was for arms with which to equip the twenty independent companies that had been raised ; and his own case was the tragic example which he had unwittingly foretold, for he spent his fortune in the public service, and reaped neither repayment nor reward.

News of the Prince's arrival in Scotland reached Edinburgh on 8th August and was contained in a letter to Cope from Lord Milton then staying with the Duke of Argyll at Rosneath. The following day (9th August) Forbes had the exciting news confirmed on the arrival of MacLeod's letter. He hurriedly called on Cope ' in his boots in his way northwards ' and told him of the ' express just received from a gentleman of consequence in the Highlands '.[3] ' The gentleman of consequence ' he left nameless in deference to MacLeod's own wishes expressed in his letter (3rd August, 1745).

> As it can be of no use to the public to know whence you have this information, it is, I fancy, needless to mention either of us

[1] *C.P.*, 247.
[2] Maxwell of Kirkconnell, *Narrative*, p. 92.
[3] S.P. 54, Bundle 25, No. 54.

[MacLeod and Sir Alexander MacDonald], but this we leave in your own breast.[1]

While crossing from Leith to Kinghorn and Falkland (where he spent that night) he met Lord Elcho on his way to Wemyss Castle. The President discussed with Elcho the Prince's landing (Elcho had already heard rumours of it on 2nd August before Forbes himself), and spoke of the number of troops at Cope's disposal. He began his propaganda of prevention when he hinted at the ruin that must overtake the foolish gentlemen who had been misled. If he was trying to turn Elcho from the wrong path, his warning was unheeded. Passing Bridge of Earn Forbes arrived at Dunkeld on the 10th and after a night at Blair Castle, where he was entertained by the Duke of Atholl,[2] he reached Culloden on Tuesday, the 13th.[3]

Sending Forbes the names of some of the Highland gentlemen who had been mad enough to join the Pretender, Sir Alexander Macdonald (11th August, 1745) began that long series of enquiries that was to run through his bulky correspondence for the next nine months.

> If defeated, these rash men will retire to their islands; how we ought to behave in that event we expect to know from your Lordship.[4]

Four days later (14th August, 1745), from Edinburgh Cope addressed a communication to the officers belonging to the Earl of Loudon's Regiment in the north of Scotland. Far removed as he was from the scene of the present emergency,

[1] *C.P.*, 246.

[2] During dinner a Petition from a poor man condemned by the Baron-bailie was presented to His Grace who looked favourably upon it. On hearing the Duke's recommendation to mercy, the Lord President, the head of the legal system in Scotland, interposed : 'But, Your Grace knows that after condemnation no man can pardon but His Majesty.' To this the Duke replied : 'As to that, since I have the power of punishing, it is but right that I should have the power to pardon. Go, send an express to Logierait, and order Donald Stewart, presently under sentence, to be instantly set at liberty.' (Stewart, *Sketches of the Character, Manners and present state of the Highlanders of Scotland*, p. 52.) Here was a weakness in the Scottish system to be rectified once the Rebellion was over.

[3] *C.P.*, 400.

[4] *C.P.*, 250.

he felt that a force in that region should be under the direction of some person of great weight and influence. Forbes's splendid services rendered in 1715 had proved his military abilities and there was no doubting his zealous attachment to the Government. Cope, therefore,

> thought proper to put that part of the Earl of Loudoun's Regiment in the North of Scotland under his command; whose directions you (the officers) are to receive and follow.[1]

It would appear that Lovat, when he addressed Forbes as 'my dear General', was speaking more truth than jest after all; and the future was to justify the compliment of the treacherous Lovat and the orders of the friendly Cope.

On the very day on which Cope's order was dated, Forbes had himself been established a day at Culloden House, had assumed the initiative, and at once communicated with the chiefs. We see him advising the Duke of Gordon by letter [2] on what seems best to be done for the king's cause by the 'men of fortune and figure'. These should take up a definite position that would at once let the rebels see they had no hopes of success. But his real work lay not in leadership only, nor yet in confident exhortation of the loyal and the wavering, but largely in his attempt to save from themselves some of the Highland leaders who wished to espouse the Stewart cause. Among those whose rumoured defection was a source of genuine regret to him was the Gentle Lochiel, although the President (15th August, 1745) still entertained hopes that the information might prove false.[3] In the same letter to Cope,[4] in which reference was made to this fact, Forbes announced that he had that very day had Lovat to dine with him. Simon was as slippery as ever. Both in conversation and in letter (August 1745) he assured the President of his loyalty. Let him speak for himself:

> Your Lordship judges right when you believe that no hardship, or ill-usage that I meet with, can alter or diminish my

[1] *C.P.*, 251.
[2] *C.P.*, 400.
[3] *C.P.*, 400 and 401 and MacPhail MS. in Nat. Liby.
[4] *C.P.*, 401.

zeal and attachment for His Majesty's person and Government. I am as ready this day (as far as I am able) to serve the King and Government as I was in the year 1715. . . . But my clan and I have been so neglected these many years past, that I have not twelve stand of arms in my country, though I thank God I could bring twelve hundred good men to the field for the King's service, if I had arms and other accoutrements for them. . . . Then that mad and unaccountable gentleman [Prince Charles Edward] has set up a standard at a place called Glenfinnan, Monday last.[1]

Compare this letter with one he wrote to Lochiel in the following month. The opening sentence is characteristic :

I fear you have been ower rash in going out ere affairs were ripe. You are in a dangerous state. The Elector's general, Cope, is in your rear, hanging at your tail with 3000 men, such as have not been seen here since Dundee's affair, and we have no force to meet him. If the Macphersons would take the field, I would bring out my lads and help the work ; and 'twixt the twa, we might cause Cope to keep his Xmas here ; bot only Cluny is earnest in the cause, and my Lord Advocate [Duncan Forbes] plays at cat and mouse with me. But times may change, and I may bring him to Saint Johnstone's tippet [= the gallow's rope]. Meantime look to yourself. . . . I'll aid you what I can, but my prayers are all I can give at present. My service to the Prince ; but I wish he had not come here so empty-handed ; siller will go far in the Highlands. I send this by Ewan Fraser, whom I have charged to give it to yourself, for were Duncan to find it, it would be my head to an onion.

Farewell,

Your faithful friend,

LOVAT.[2]

The friendship of these two, Forbes and Lovat, is surely one of the strangest in history. Never were two men in greater contrast, the one as loyal and honourable as the other was self-seeking and unscrupulous. Some have thought that Forbes's simplicity of character was deceived by the arch-villain, but there seems little doubt that he knew exactly what

[1] Quoted in Dr. James Taylor's *Historic Families of Scotland*. [2] *Ibidem*.

his neighbour was. It is certain that he was not deceived by Lovat's alleged uneasiness at the reports scattered abroad, by his expressions of loyalty to the reigning house, and by his declared inaction in the present situation. The President accepted Lovat's request for guidance in the present emergency, and advised him to dissuade his kinsmen from being seduced by their mad neighbours. It was better for his cause that he should gain time by doing his utmost to keep Lovat from declaring himself definitely against the Government. Lovat's policy of waiting to see which side would be the more advantageous to himself, and of trying to keep friendly with both in case of eventualities, was itself the justification for Forbes's action. So long as Lovat had not openly declared himself, something was to be gained by maintaining relations with him. It must be remembered that the battle of Prestonpans was still more than a month ahead, and it required that victory for the rebels to decide his course of action.[1]

Rumours of the raising of the Prince's standard on the west coast reached Forbes before the 17th August, but, although they lacked confirmation, he was yet prudent enough to urge Sir John Cope to quicken his march as if the reports were true. By this time a Government sloop had arrived with 1,000 stand of arms, a number quite inadequate for purposes of effective defence, and these had been safely stored in Inverness castle.[2] The same day irrefutable evidence was received by Forbes from Norman MacLeod at Sconsar of the Prince's strength and movements; he had one ship of eighteen guns, 1,600 bad guns (=? hand arms), as many worse swords, and about twenty-four Irish officers. His standard was to be set up at Glenfinnan. Sir Alexander Macdonald and MacLeod himself promised to raise between 1,500 and 2,000 men for the king's service, if required, but ships would have to bring arms to that number 'else 1,800 staves with about 200 guns and swords would make but a

[1] The Earl of Seaforth (Lord Fortrose) wrote on 15th August, 1745, assuring the Government of his loyalty, probably influenced by the President's advice and prestige. (S.P. Scotland, P.R.O., quoted by Warrand in *M.C.P.*, iv, p. 17.)

[2] *C.P.*, 402 and 406.

foolish figure'. Despite the threatened landing on the south-west of England of a strong force from Spain, with 30,000 stand of arms for the discontented there, MacLeod considered Scotland had little to fear and that it would be a wrong step to draw many of the Government troops to the threatened area.[1] By this time, in addition to the arms already received, 'a Credit' had been sent to Cope, and Tweeddale informed Culloden on the 17th August:

> When I mentioned the expediency of supplying your Lordship with money for procuring intelligence, and other services to the government, Mr Pelham assured me that whatever sums you advanced he would certainly repay; I hope, therefore, your Lordship will have no difficulty on this head.

He also asked Forbes freely to suggest anything which he might think of use to the Government.[2] It is important to note these statements, in the light of future happenings.

It was not all so simple as Tweeddale imagined. Fortune so far was fairly equal in her favours, and while Forbes was patiently bearing with the irritating obtuseness of Government officials, the rebels were gaining heart and recruits. The day before Tweeddale wrote promising financial support, a skirmish took place (16th August) in which two companies of Government troops were completely worsted on the march between Fort Augustus and Fort William. This trifling success at Highbridge had its effect. The rebels were encouraged, ignoring the fact that the companies were only at half strength and the officers inexperienced.[3] The fact remained, nevertheless, that the rebels were literally advancing, perhaps their best ally, Fear. It was this invisible foe already attacking many avouched loyal, that Forbes found so difficult to overcome. The case of Cluny Macpherson is perhaps the most interesting. If we follow a rough diary of events at this period, we may see his position more clearly and thereby appreciate his difficulties.

Cluny held a Captain's commission in the Earl of Loudon's

[1] *C.P.*, 252.
[2] *C.P.*, 253 and 265.
[3] *C.P.*, 406, Forbes to Sir Alexander Macdonald.

regiment,[1] and on the 18th August he wrote to Forbes telling him of the skirmish just mentioned. The following day he again wrote. He was clearly worried by the rumoured approach of the rebels who threatened, as he informed Cope, 'to burn and slay'.[2] To the Lord President, he was more personal, and in the light of his later conduct, his words are revealing. Still a loyal Hanoverian, he, nevertheless, showed how he and his were on the horns of a dilemma. Speaking of the rebels marching southward, he says :

> This country, as you know, lies directly in their way ; and if the Government does not forthwith protect us, they must either be burnt or join. . . . What to do, so as to save this poor country from immediate ruin, is a very great question to me. . . . What this country . . . may do when force is at their doors, I leave your Lordship to judge, as force has often made people commit that which was no choice.[3]

Forbes replied to this wistful appeal, 'late at night' on the 20th. He tried to reassure the harassed chief by telling him his reports that 'all the Highland chieftains' had joined the Jacobites was an exaggeration. A day or two later, Cope with his advancing army met Cluny at 'Dalcharrie'. By his high-handed treatment Cope alienated this proud Highland gentleman, like others, touchy on a point of honour. When Cluny asked leave to go home to bring up his recruits, Sir John refused

> never once asking his advice or using him as a friend ; which was too low a way of treating a gentleman of his spirit.[4]

Such, at any rate, is the construction put on Cope's behaviour by a friend of Cluny's, Alexander Robertson, who later wrote the Lord President an account of the whole affair. Cope himself showed nothing of this so-called 'jelousie' when he told Forbes that that very morning (27th August) he, then at Ruthven, had sent Cluny home 'to bring his men . . . as soon as possible'.[5]

[1] *C.P.*, 293. [2] *C.P.*, 404. [3] *C.P.*, 405.
[4] *C.P.*, 452. [5] *C.P.*, 423.

The next scene in the drama was enacted in Cluny's own home. Between ten and eleven o'clock on the night of 28th August, the house was surrounded by a party of a hundred and twenty rebels who took Cluny prisoner. The following morning they were joined by two hundred more. Lady Cluny despatched the news at once to the Lord President and begged his advice as to what was 'necessary to be done for Cluny's interest'. She strikes a pathetic note when she tells how she and her sister when the rebels marched off with their prisoner

> followed, to beg of the gentlemen who had the principal command of the army to allow him return home on parole; but, after all our intercessions, it was not in our power to prevail with them to part with him one minute.[1]

Cluny himself lost no time in slipping away a dispatch to Forbes, for he wrote on 30th August, and in this letter, he detailed the rebel strength.[2]

Cluny's case has been one long debated. Was he a willing or unwilling prisoner? By 23rd September he was still a prisoner with the Jacobites, and still deaf to their persuasions or threats, but fearful 'that he (had) already gone too far'. His friend Alexander Robertson [3] writing of this says:

> I promised your Lordship would bring all to rights betwixt the King and him; which softened him much. . . . He's just now at a vast uncertainty.

At what time he made his final decision we do not know. We shall allow the great Court of Session judge to pass his comment. Writing to Tweeddale, 13th November, 1745, Forbes said,

> He was seized by the rebels that night in his house, whether with or without his consent did not then appear, nor does it

[1] *C.P.*, 426.

[2] This letter dated 'Dalwhinnie, 30th August, 1745', was discovered in October 1933 by one of the officials in the National Library of Scotland. It is contained in an album originally belonging to the now extinct Tweedside Physical and Antiquarian Society. The album was deposited on loan with the National Library only that year. See Appendix and map.

[3] *C.P.*, 452.

now, otherwise than as, after having been carried about with the Highlanders as a prisoner for some weeks, he at last listed in their service, returned to Badenoch, and, partly by persuasion, partly by violence, prevailed with the greatest of his kindred, to the number of about 300, to go along with him to the Highland Camp, which they reached before the rebels left Edinburgh.[1]

Forbes was the man to whom everyone looked. On the 22nd August, Tweeddale sent to an unknown correspondent

only the enclosed Copy of the President's letter to Sir Jno. Cope of the 15th, as it contains the best intelligence and substance of the whole.[2]

Soon he found himself left almost alone in the north to cope with the situation. Many of the greater Scottish nobles, finding discretion the better part of valour, forsook their country seats for the more assured safety of the towns. For instance, Atholl had heard that the Duke of Argyll thought it unwise to stay at Rosneath and had therefore quitted it for Edinburgh without going to Inveraray, proceeding therefrom direct to London. As the country was without troops or arms, and quite exposed to the invaders, Atholl opined he could not do better than follow the Duke's example. Consequently, he and his family left Blair for Edinburgh where they intended to wait till the storm was over. When notifying the Lord President of his decision, he expressed the hope that his Lordship would think he did prudently to go to Edinburgh ![3]

The 20th August was a busy day for the President, and it speaks well for his assiduity and zeal that six important letters are extant, bearing this date. A long letter was addressed to Cope ;[4] and the following were also written to : the Duke of

[1] *C.P.*, 293.

[2] S.P. 54, Bundle No. 25, No. 89.

[3] *M.C.P.*, iv, pp. 22-23.

[4] *C.P.*, Nos. 411 and 412 (President to Stair, and to Cope) bear the date 20th August, 1745, but this should be 20th September ; and the postscript (20th August) belongs to *C.P.*, 407. See *M.C.P.*, iv (Corrections), pp. 212 and 213.

Atholl,[1] Cluny (two),[2] John McPherson,[3] and Brodie of Brodie.[4] He received letters the same day from Sir Alexander Macdonald and from MacLeod of MacLeod cheerfully announcing their success in preventing ' the invaders from having the assistance of so much as one man from the estates depending upon them ',[5] and complaining of the arms shortage.

It was impressed on Cope that, if the rebels were by any chance to march south, more arms would be urgently needed, and, to that end, money and credit should be furnished to make the independent companies effectual.[6] To the Duke of Atholl, Forbes expressed doubt as to their power unarmed to meet the advance of the rebels, and having referred to the possible interception of communications, he suggested the use of a watchword.[7] And amid all this bustle he could yet find the heart to tell Cluny he was ' prodigiously concerned for the folly of our friend Lochiel '.[8] But his pity and warning were misspent, for Cluny himself, as we have seen, soon joined forces with the rebels. There is little wonder that his letter[9] written at ten o'clock the same night to Brodie the Lyon, should contain this :

> If you would say truths, say my eyes are almost out, and that it is not possible for me to write one line more with candlelight.

But even here his humorous outlook does not desert him, for he concludes : ' My service to the Lyoness ! '[10] With a correspondence so large as his, is it little wonder that his eyesight suffered ? We find later an entry in the family accounts (11th December, 1745) for 6d. paid to the post ' for carrying herbs for his Lordship's eyes from Edinburgh '.[11] Neither was Forbes's general health too certain. He was pretty well when he wrote MacLeod on the 19th August,[12]

[1] *C.P.*, 408.
[2] *C.P.*, 409 and 413.
[3] *C.P.*, 410.
[4] *M.C.P.*, iv, pp. 26-27.
[5] *C.P.*, 407.
[6] *Ibidem.*
[7] *C.P.*, 408.
[8] *C.P.*, 409.
[9] *M.C.P.*, iv, p. 26.
[10] *M.C.P.*, iv, p. 27.
[11] *M.C.P.*, iv, p. 27. This does *not* appear in the Account for Medicines, in App. II, *M.C.P.*, v, *or* in the Uncat. MSS. in the Nat. Liby.
[12] *M.C.P.*, iv, p. 38.

> notwithstanding the astonished crowd that are eternally buzzing in your ear. Have you not Gartered Knights &c. (*sic*) Prittle Prattle ?[1]

as MacLeod phrased it on 22nd August, 1745, when he was again requesting one or two hundred stand of arms for defence purposes. Lovat himself 'never in a worse state of heafth', on the 24th August reported the rebels to be 3,000 strong, although his word is hardly reliable.[2] On the 25th of the month (Sunday) Forbes despatched the doctor to see Lovat, with a request at the same time, that he might be allowed to return as soon as possible, 'for I feel myself pretty much out of order.'[3]

Towards the end of August, Forbes was under a misapprehension in thinking Cope still in Edinburgh with the Duke of Argyll. He was as a matter of fact at Trinifuir and confident in his power to subdue the rebels and to make them repent of their folly. The Commander-in-chief promised to write Forbes from Dalwhinnie, by which time he hoped to be able to tell when he would get over the Corryarrick. He begged Forbes to let somebody write his (the commander's) name to the chiefs in the north encouraging them by news of his formidable forces.[4] This duty Forbes himself discharged, sending messengers to Lord Fortrose,[5] Lovat,[6] and Grant.[7] Cope's letter was crossed in the post by one from the President himself, in which he suggested that the Duke of Argyll and the Earl of Loudon would find it easier to raise their men in the shape of militia, under their own masters as officers, than to incorporate them with the regular troops, and he advised this course of action. He added

> that the Highlanders assembled receive regular pay; it is ridiculous that those in this neighbourhood who are disposed to serve the King cannot be supplied in the same manner. I need say no more about arms than what I said in my last.[8]

The same date (24th August, 1745) saw Forbes answering a letter from the Provost of Aberdeen, who asked news on the

[1] *M.C.P.*, iv, p. 38.
[2] *C.P.*, 256.
[3] *C.P.*, 257.
[4] *C.P.*, 415.
[5] Uncat. MS. in Nat. Liby., or *C.P.*, 424.
[6] *C.P.*, 257
[7] *C.P.*, 421.
[8] *C.P.*, 416.

general situation. He assured his correspondent that the rebellion was a fact, and having named the Highland rebel chiefs, stated that 'none of the clans to the northward will dip in their folly'. It behoved the town of Aberdeen, therefore, to take all necessary steps to guard itself, to maintain peace, and to discourage fools from joining the revolt. What the best means were to secure these ends, the Provost and magistrates were better able to judge than the Lord President who was himself at such a distance.[1]

Tweeddale at this time, from his safe point of vantage in Whitehall, and ignorant of the difficulties of the Highland terrain, was advising Cope to march to Fort Augustus. He expressed to Forbes his pleasure on learning on the 24th August that the Commander-in-chief had at last begun his march, for there seemed to his Lordship to have been some unnecessary delay. He was sure that Sir John, even with his small forces, would be able to quell very soon any insurrection, if only he kept them in a body and went direct to the place aimed at. The remainder of the letter is a hearty commendation of the good sense shown in Forbes's letter to the Commander-in-chief, and an expression that 'Your Lordship will continue to give your advice often; and which I hope he will pay a due regard to'. As the king was expected home soon from the continent, Tweeddale purposed letting him know what use Forbes's presence in the north had been at this juncture.[2]

If the Lord President did not as yet issue orders to the General, he certainly played the part of a valuable intelligencer. It was duly reported to the Commander-in-chief that the Highlanders were rumoured to be awaiting Cope

> on the North side of the mountain over which the road of Corryarrick leads, in a precipitous or boggy ground where cavalry can't act.

If the bushes were well beaten, there could, however, be no surprises in daylight. In a postscript Forbes helpfully and tactfully adds :

[1] *C.P.*, 417. [2] *C.P.*, 418.

> I ask your pardon for the impertinence of suggesting to you that the Highlanders can at pleasure mar the made roads and thereby prevent the carriage of heavy artillery over steep and boggy ground.[1]

Sure now of the advance of H.M.'s forces, Forbes advised (26th August) at once both Lords Fortrose and Lovat to have their followers in readiness as well armed as possible, to be placed at the disposal of the Commander-in-chief on his arrival.[2]

But Lovat continued to shuffle, and on the 27th he declared that, while his people were ready, they had no arms, and he would never present them to king or general without arms. And astutely he suggests how powerful the rebels would be, if only his men were added, and praises the President's 'constant, uncommon, and fiery zeal for this Government'.[3]

On that very day Cope had reached Ruthven and was marching in haste straight for Inverness. He was desirous that Loudon's regiment and many other armed men in Inverness should come forth to join him on the march, as the result would be to raise the spirit of his troops and to deter the waverers from taking the final plunge for the rebel cause. Cope had already learned to rate, at its true value, Forbes's judgment, and he adds: 'I beg to leave it to your Lordship's [=Forbes's] discretion and ordering, and I shall approve of everything you are pleased to do.'[4] Meantime he had crossed the Spey and was encamped just north of it. He had, therefore, not proceeded by the Corryarrick, not from fear of the rebels, but in case they might give him the slip and move southwards. He had ordered biscuit and other provisions for Inverness, and also 5,000 arms from London.

In accordance with Cope's request Forbes prepared 150 armed men who were to be ready to march at an hour's notice. Writing at ten o'clock at night (28th August, 1745), he pointed out to the Commander-in-chief that he had not

[1] *C.P.*, 422.
C.P., 260.

[2] *C.P.*, 258 and 259.
C.P., 423.

mentioned his time of departure, nor the time for meeting, and emphasised that there was no authority for collecting other armed men, nor for subsisting them. The Lord President gently continues :

> I presume you have considered what is to be done in case they, [i.e. the rebels] leaving their miserable huts to mercy, should resolve to pass the Corryarrick and march south.[1]

He reported that Macdonald of Skye was pressing for 200 arms from Inverness, but adds with wise discretion that he had not disposed of so many weapons from the small store available, as the General himself might need them at once. However, he had detained the messengers till he might have Sir John's orders.[2] He did not learn till later [3] that on that very day the rebels had been near Fort Augustus to the number of 2,000 ; that, having reached the foot of Corryarrick they were apprised of Cope's proceeding by Ruthven to Inverness, and had, therefore, decided to pursue him speedily.[4]

And still the letters poured in. From Lord Reay in Tongue on the 30th August came another request for advice. Repeating the common plaint of lack of arms, he besought the President to take his own method of laying their situation in Sutherland before Cope when he should arrive.[5]

A Memorandum concerning the rebellion in Scotland (and apparently addressed by Lord Stair to the Ministry) is dated August 1745.[6] This document criticises Cope's action in marching from Dalwhinnie to Inverness, for by so doing he had given the Jacobites the opportunity of going south and so taking possession of Edinburgh. The document states :

> It is humbly proposed, in the first place, to grant a number of blank commissions, to be distributed among the well-affected clans, as the Lord President of the Session, &c. shall think proper. Such a number of Highlanders, being formed into

[1] Uncat. MS. in Nat. Liby., or *C.P.*, 425. See map in Appendix.
[2] *Ibidem.* [3] *C.P.*, 262. [4] *Ibidem.*
[5] *C.P.*, 427. [6] *C.P.*, 264.

> regular companies will be in a condition not only to hinder more men to be raised for the Pretender's service, but a part of them may go and live at discretion in the countries which the rebels have left ; or, if it shall be thought necessary, either the whole or any part of them may march into the South country, according to the orders they shall receive.[1]

The remainder of the Memorandum deals with further movements of troops, which in no way bear upon the history of the Lord President.

The 29th day of August saw the arrival of Cope in Inverness. He communicated with the Lord President immediately he reached the loyal northern capital. The Highland host, when they passed the Corryarrick, did not exceed 2,000 men, a fact which Forbes attributed chiefly to the loyal efforts of MacLeod of MacLeod and Sir Alexander Macdonald. His own neighbours were quiet enough, but showed no great inclination to take up arms in the king's cause and so prevent the rebellion growing. If MacLeod had been able to quit Skye for a few days without danger to the cause, his seconding of Forbes's argument might have been helpful among his neighbours and they could have discussed plans far better than by ' writing quires of paper '.[2]

But what interest can a man have in rebellions, marches, and counter-marches if his own personal interior economy is not at peace ? In the hasty ride from Edinburgh, one indispensable article had been forgotten. A courier had now been despatched with orders to procure it in the capital. We should like to think of his having been caught, searched and his message read. What was wrong ? My Lord President had forgotten his rhubarb !

> It is ridiculous enough that notwithstanding my own care, and the pretended diligence of the fools of servants I have about me, thay should have forgot to have packed up any more rhubarb, than I had in my pocket which is now almost done as I cannot live without it.[3]

[1] *C.P.*, 264.
[2] *M.C.P.*, iv, p. 41.
[3] MS. letter—Forbes to his cousin Will Forbes, 1st September, 1745—in Library of University of Edinburgh.

The letter continues :

> I send the messenger the low way, lest he fall into the hands of the Highlanders, who are in possession of the upper, and I write no news for that reason. Should they seize him with the rhubarb and know it is for me, I flatter myself notwithstanding our present powers they would let it pass for auld lang syne.[1]

Cope's arrival in Inverness, then, was a cause of rejoicing in the north,[2] and brought no little relief to the mind of Forbes himself. Knowing so well the difficult country and the dangers that lurked there, dangers unknown and unsuspected by the Sassenach, he had been amazed at the ill-advised orders to the general to advance with his handful of troops into these mountain fastnesses.[3] The Government troops were safe—but so too were the rebels, now making for the capital without let or hindrance. Cope, therefore, made up his mind to go south by the coast, that he might be near the ports. All this Forbes narrated to Lord Harrington in a letter of the 3rd September, 1745, at the same time mentioning the not inconsiderable success he had met with during the last three weeks in his attempt to use his reputation with people to ' preserve them in their duty and prevent their madness '.[4] But the real point of the letter was to ask what was to come over that part of the country once Cope left it, for, as had already been reported to Tweeddale, arms were lacking ; no authority existed to collect forces, and there was neither money nor credit to support them. If these three things had been supplied ten days earlier, the situation, in Forbes's opinion, would not have been so serious. If these were sent soon, he hoped the country could be secured, but if not, ' preaching and praying only ' were left to them.[5]

Despatches from London were slow in coming, what with the distance to be covered along bad roads, and what with the danger of letters being intercepted. And when they did come, some of the news was stale. It was with relief, nevertheless, that Forbes read Tweeddale's letter of 4th September,

[1] MS. letter—Forbes to his cousin Will Forbes, 1st September, 1745—in Library of University of Edinburgh.

[2] *C.P.*, 429. [3] *C.P.*, 430. [4] *Ibidem.* [5] *Ibidem.*

even if he began by telling him, what he already knew, that the rebels had passed Cope and were marching south. Eagerly he read of vague references to the raising of Independent Companies.[1]

> The Earl of Stair has proposed that a number of blank commissions be sent down to be distributed among the well-affected clans, as your Lordship shall think proper. This I heartily seconded ; as I know your Lordship will make a right use of this mark of His Majesty's confidence. . . . In my letter of the 17th August, I acquainted you that Mr. Pelham had assured me, that whatever sums of money you should advance at this juncture, for the service of the Government, should be punctually repaid. I am likewise to inform you that Sir John Cope has a credit to answer the exigencies of the Government.[2]

Hard on the heels of this despatch came one from Andrew Mitchell, Under-Secretary to Tweeddale (5th September, 1745) announcing joyfully to his friend the President that it had been thought proper to raise twenty independent companies in the Highlands,

> and your Lordship is the person pitched upon to choose the officers. Your zeal for His Majesty's Service, at a time when zeal is no epidemic, and, your integrity and justice are so well known, that everybody thinks the choice is not the effect of favour, but of judgement. . . . Your Lordship's judgement, and the state of affairs in Scotland, will be the best guide to direct how far the Commissions are to be made use of at all, or what part of them may be proper to give out. . . . Your behaviour on this occasion, and the part you are now acting, meets with the universal applause of every Whig subject His Majesty has, a very few excepted.[3]

The twenty blank commissions for Captains, Lieutenants, and Ensigns were to be sent to Forbes by the Lord Advocate as speedily as possible.

News of the rebel army was meanwhile coming in. It was reported on the 5th September to be inconsiderable in numbers, only some 1,800 men, and to have passed Blair-Atholl. Before the post arrived with this intelligence, Forbes had

[1] *C.P.*, 265. [2] *Ibidem.* [3] *C.P.*, 266.

with his usual thoroughness already despatched a courier to Blair-Atholl to ascertain the exact state of affairs.[1] It was this news that the rebels were in full march for Edinburgh which induced the authorities to recall by express ten battalions of English from the continent, on the 4th September,

> a counsel that has prevailed with the greatest difficulty, and is blamed by Granville, as it was opposed by Lord Tweeddale. The latter did not, ten days ago, believe the Pretender's son in Scotland ; the Duke of Argyll left it because he was there, as the Duke of Atholl has his house and estate and clan to his elder brother, and is set out for Edinburgh, on a message from Lord Tullibardine to get dinner, &c. ready for him by such a day. England, Wade says, is for the first comer.[2]

Cope's action in marching to Inverness and proceeding thence to Aberdeen appears to have given cause for adverse criticism at this time in military circles in London, where it was held that he should 'have stayed somewhere about Dalwhinny',[3] to prevent the rebels going south. According to his own report (31st August, 1745) Cope seems to have paid some deference to the judgment of Forbes and Lord Loudon, who had both favoured the sending of orders to Edinburgh to provide shipping at Leith to transport his troops by sea in the event of the land routes being impracticable. This plan was approved by the authorities in Whitehall (Tweeddale to Forbes, 10th September, 1745). And Forbes was further cheered by Tweeddale's striking tribute.

> I am much of opinion that it is greatly owing to your Lordship's presence and countenance there that so great a body of the North Highlanders has hitherto remained quiet.[4]

Unfortunately this letter also made him aware once more that there was no hope for moneys from the Government, but only a power to draw on Pelham for the value of what he had

[1] *C.P.*, 434.
[2] Mr. Fox to Sir Charles Hanbury Williams, Hanbury Papers.
[3] *C.P.*, 435.
[4] *Ibidem.*

already obtained locally. As it was impossible for ministers so distant from the scene of action to direct operations, the king and his ministers wisely entrusted to Forbes's ordering everything that the crisis might demand.[1]

On Wednesday, 11th September, Cope had reached Aberdeen, and on the 12th informed the President that the Young Chevalier had arrived at Perth on Tuesday the 10th, with not more than 4,000 men mostly Highlanders, many of whom were without firearms. These had demanded payment of the excise at Coupar-Angus, and having raided Dundee on the 7th, had carried off some ships, guns, pewter, and lead for musket balls.

The contagion of rebellion was still spreading and even remote and unlikely parts were affected. The fighting spirit of the old Vikings seemed to be stirring in the breasts of some of the Caithness men, and eager for the fray, they grew restive. To join the Highlanders, they must needs pass through the lands of the loyal Earl of Sutherland and deemed themselves lucky in having in their possession, arms. These they bore under the pretext of guarding their cattle. In alarm the earl despatched (11th September) a message [2] to Forbes telling of their approach and begging advice for himself and arms for his defenceless followers. The first of these demands was less difficult to supply than the second. Forbes replied the following day, saying that 6,000 stand of arms had arrived at Leith from the Tower but must await Cope's arrival at Edinburgh again. In his opinion, the threatened approach of the Caithness men was not to be taken too seriously. If they were sending south droves of cattle they had of necessity in the state of the country, to guard them. The Earl was, therefore, to attempt to hinder their passage only if their numbers and arms suggested reinforcements for the Prince in the south.[3]

With Cope and the Chevalier now both beyond his immediate ken, Forbes employed the brief respite by setting himself to the ordering of his own peculiar charge, the Inde-

[1] *C.P.*, 435. [2] *C.P.*, 438.
[3] *C.P.*, 439, or Uncat. MS. in the Nat. Liby.

pendent Companies, and much of his correspondence at this time, deals with this topic. On the 19th September[1] he wrote Lovat asking for the names of the officers to take up the commissions, and at the same time expressed his own disbelief in the rumours floating about that Lovat had sent his cousin, Inveralachie, to command his Stratherrick men and to raise his other followers. The offer of one of the Independent Companies was definitely made to Lovat. As usual he only hedged instead of giving a frank reply. Wisely Forbes consulted with various other Highland notables about the allocation of the new commands—the Earl of Sutherland, Lord Reay, Ludovick Grant, and Seaforth. The subsistence and pay of the new companies was to be met by a draft drawn on the Paymaster-General of H.M. Forces in London.[2] London, however, was distant 600 heavy-riding miles, and what the far-sighted Lord President saw was the urgent need for a vessel with cash or credit. By it, too, communication would be kept open. Unless this were done speedily the companies would not be worth half their real value. When arrangements were complete and ready for action, there would be no further defection like that of McPherson of Cluny who was alleged to be now raising his clan for the Prince.[3]

Meantime Cope had arrived at Aberdeen where he hoped (13th September) to embark his troops in the transports which had arrived on the 11th. He was, however, somewhat uneasy at his present situation, although he affirmed he had never delayed a moment since leaving Stirling. He had some misgivings, he told the President, as to what might be the opinion of those far from the scene of action and unacquainted with the difficulty of the country traversed. He expected a favourable view of his action would be taken by the President himself.[4]

The packet from Tweeddale with the commissions reached Forbes on the 13th September, having been transmitted by the Lord Advocate, who had stated 'that the seals were

[1] *C.P.*, 268.
[2] *M.C.P.*, iv, p. 71.
[3] *C.P.*, 447.
[4] *C.P.*, 437.

broken up, before they came to him, he does not know how'.[1] The task of disposing of the Commissions was a difficult one. Only dire necessity and an extreme sense of duty compelled Forbes to undertake it. Here his knowledge of the Highland character was invaluable. Diplomatist that he was, he saw clearly he must recognise the zealous loyalists, and also those who had been Jacobite in 1715, but were now favourable to the Hanoverian succession. Keeping these points in mind, he bestowed the commissions on those who could be trusted and who could most quickly assemble their followers.[2] Whitehall's recommendation that three companies should be given to the Munros who had marched first for the King's cause, created an awkward situation. Highland jealousy and vanity were easily provoked with awkward results in the north. Writing to Cope on the very date of the arrival of the commissions, Forbes explained how useless these were without arms and money; indeed 'bank notes have at present no credit here'. Arms he hoped to get from the General himself on his return to Leith, but money and credit must come from London.[3]

The same day Forbes acknowledged the commissions to Tweeddale, remarking that he would refuse the task 'if the exigency left time to remonstrate'. If he should err, his mistakes would be those of judgment only, for his heart was well disposed. Mistakes were liable to happen, however, for instances had occurred lately in Lord Loudon's regiment of men who deserted to the enemy, after having accepted a commission. It was his purpose to make the companies up to 100 each; and to expedite the work the recommendations for the commissions were to be made by the chiefs of the clans raising the men. Again he stressed the imperative need for arms and money, and an armed vessel for carrying despatches.[4]

This done, he at once (17th September, 1745) approached

[1] *C.P.*, 441. [2] *C.P.*, 294. [3] *C.P.*, 441.
[4] *C.P.*, 442.*

* *C.P.*, 442 erroneously bears title 'The Lord Advocate to the Marquis of Tweeddale'. Obviously this should read, 'The Lord President to, etc.' See *M.C.P.*, iv, Corrections, p. 213.

Inverchasly, the Earl of Sutherland, and Lord Reay to help him in the disposal of commissions among their supporters.[1] Time pressed. Already a despatch was on its way begging the aid of one of the newly-levied regiments, and sent by the magistrates of Elgin, apprehensive of a visit from Glenbucket. The Lord President had to refuse this request. He tried, nevertheless, to reassure the panicky civil chiefs by pointing out (18th September, 1745)[2] that as the rebels had left Perth, Glenbucket would probably go south rather than amuse himself with useless marches. Moreover, was so good-natured a man likely to commit any outrages? Events justified this charitable estimate of an opponent; the Elgin magistrates again slept soundly in their beds; and Gordon of Glenbucket with some zealots of Banffshire hied him southwards to join Prince Charlie.[3] Forbes, relieved of this minor difficulty, returned to his main charge, that of organising the independent companies, but in this work he was hampered. The refrain of all his letters, at this time, to Tweeddale,[4] to the Earl of Stair,[5] and to Cope [6] is the need for arms, money, credit and the use of a sloop.[7]

The demands made upon Forbes were many and various. Individuals and townships consulted him and for many reasons. On the 21st September Sir John Gordon (of Newhall) in applying for a commission for his cousin, tells Forbes

> to impute, as you may, the variety of trouble given you this season to your Lordship's known zeal for the public service and acknowledged judgement in discerning how 'tis to be best promoted.[8]

This was no doubt pleasing to Forbes's vanity, but it brought with it only another request, to be granted if possible, and certainly to be answered. To the same effect wrote Lord

[1] *C.P.*, 444 and 445. [2] *C.P.*, 446.
[3] *C.P.*, 447 and S.P. 54, Bundle No. 26.
[4] *C.P.*, 442. [5] *C.P.*, 411. [6] *C.P.*, 412.
[7] These letters were erroneously dated 20th August, 1745, in *C.P.*, Nos. 411 and 412. See *M.C.P.*, iv, Corrections, pp. 212 and 213, where the correct date is given as 20th September, and where the postscript to the Cope letter is rightly transferred to No. 407, already a long letter.
[8] *C.P.*, 448.

Reay from Tongue (23rd September), when he thanked Forbes for choosing him to nominate officers in one of the companies.[1] The President next offered (23rd September) a company to the Earl of Cromarty's son, but despite the youth's former willingness to accept, Forbes would not conclude the transaction without his Lordship's approval.[2] The offer was now refused (26th).[3] Pursuing his policy of keeping in close touch with his neighbours, either by letter or by interview and so endeavouring to deter the rash from a desperate plunge, Forbes was glad to have the wavering Lovat dine with him at Culloden House (25th).[4]

On the very next day Cope's army was routed in the Battle of Prestonpans. General Wightman described the battle in a letter on the 26th September. Forbes thus learned that 'the scuffle . . . lasted about four minutes',[5] and that the foot consisting of 1,300 men were almost all prisoners, together with sixty officers. According to the Mayor of Newcastle,[6] the rebels to the number of about 8,000 were encamped round Edinburgh. The capital and the south were now in their possession, and great alarm naturally prevailed. Steps were taken in Whitehall to send 9,000 Dutch and English troops to Scotland at once under Marshal Wade. What chiefly concerned Forbes, was the news that Lord Loudon was about to join him. The mills of the Government, like those of the gods, grind slowly, and it was only now (28th September)—after a battle had been lost and won—that Tweeddale appears to have grasped the real urgency of the President's appeals. At last he saw the desperate need for a supply of cash in the north

> to render the service of the 20 Independent Companies effectual, for the raising of which His Majesty has been pleased to send commissions to Scotland and to entrust them to the said Lord President.[7]

[1] *C.P.*, 450. [2] *C.P.*, 451. [3] *C.P.*, 455.
[4] Sutherland, Book II, p. 256.
[5] *C.P.*, 271. [6] *C.P.*, 270.
[7] Treasury Papers, 1745, August-December, No. 318, No. 10, Tweeddale to Lords Commissioners of the Treasury.

As Forbes had not specified the sum necessary for this purpose, Tweeddale merely forwarded to the Lords Commissioners of the Treasury an estimate of two months' subsistence for the twenty companies amounting to £4,290 6s. 3d. This figure had been supplied by George Ross, Forbes's agent for the independent companies. Tweeddale expressed the hope that their Lordships would forthwith order the money to be paid to the agent.[1] And now (1st October), he duly expressed to Forbes H.M.'s approval of his plan for the distribution of the commissions [2] and stated, what Forbes already knew, that the Earl of Loudon had been ordered to proceed at once to Inverness to command the troops and independent companies raised, and 'his Lordship is desired to act in everything with your advice and consent'.[3] In addition Tweeddale announced that 1,500 stand of arms were being sent to Inverness in a sloop, 'the captain (of which) will take directions from you.' The next day Andrew Mitchell from Whitehall wrote (2nd October, 1745):

> If '. . . your Lordship shall be able to raise the Independent Companies, so as to act before the arrival of the troops, you will have done the most essential service to the Government, that has in my memory been performed by any subject.[4]

Meantime all land communications with Edinburgh were cut, and so Forbes had to send his letter to Tweeddale of the 3rd October by an open boat to Berwick. He refers to his letters, dated 13th and 20th September, in which he had asked for arms and money by an armed vessel, and which had evidently miscarried. Arms would now have to come from the Tower, since Edinburgh was taken. He explains the imperative need for keeping the communications open by an armed vessel, if the power granted to him of drawing on Mr. Pelham and on the Paymaster-General was to be of any service towards furnishing money. Many in the north had been influenced by the rebel successes at Edinburgh and

[1] Treasury Papers, 1745, August-December, No. 318, No. 10, Tweeddale to Lords Commissioners of the Treasury.

[2] Uncat. MS. in Nat. Liby., or *C.P.*, 456. [3] *Ibidem.* [4] *C.P.*, 274.

Prestonpans, and while no one of consequence had yet marched from his side of the mountains, yet 'several clusters of people' were 'on wing' and might soon fly to succour their successful kinsmen in the south. The financial position was delicate. No bank notes were current, coin was locked up for safety, and

> bills drawn by the Major of Loudon's Regiment on Edinburgh for the subsistence of some of the new companies of that regiment now at Inverness, have returned protested.[1]

The troops, therefore, were in danger of disbanding for want of pay,

> which they have at present on the private credit of their officers; and how many days that resource may last, I cannot say, though I have offered to support the private credit of these officers with the additional security of mine.[2]

Forbes had hoped to keep out more than joined in, but there was now grave danger of this plan falling through owing to lack of supplies.

Among those whom the President was successful in keeping loyal to the king at this time—and that in spite of the strong Jacobite tendencies of his wife—was the easily-persuaded Mackintosh of Mackintosh. And it is a nice question in what light his action should be regarded. His motive was, first, to delude Cluny into thinking that the Mackintosh was to join the rebels and so render his clan immune from the ravages of the rebellious Macphersons who were seeking to press them into the Pretender's service, and secondly, to gain time.[3] This question thus becomes an ethical one.

The letter from Mackintosh of Mackintosh to Evan Macpherson, younger of Cluny, is dated, Inverness, 1st October, 1745. Alone, this letter seems to suggest that the Mackintosh was a Jacobite. The truth, however, appears to be that the letter was actually dictated by the President himself with the object of retarding some of the likely rebels, at a juncture when the gaining of time was vital. There is marked disagreement between MacLeod of MacLeod's belief and that

[1] *C.P.*, 457. [2] *Ibidem.* [3] *M.C.P.*, iv, pp. 77-80.

of the Earl of Loudon (both stated in letters)[1] as to the efficacy of the letter dictated by Forbes. But the success attending it is not the point at issue now; rather is it the strategy employed by the President in his desire to gain time, that arms and money and credit might arrive.

With one person, at least, the ruse worked well enough, for, by the 7th October, the titular Duke of Atholl wrote to the Mackintosh expressing delight at his abandonment of the usurper to join, at the head of his numerous clan,[2] in restoring the King. Still the mind of Forbes was in a state of uncertainty, and, as late as 29th October, he told MacLeod that he was greatly concerned about their friend Mackintosh owing to some two hundred of the clan rising under Lady Mackintosh, better known as 'Colonel Anne'.[3]

Illness prevented Lord Reay from replying to Forbes's letter of 26th September until 5th October. Bad weather had made difficult the assembling of the principal clansmen to decide upon the best persons to receive the subaltern's commission in his son George's company. As his lands were widely scattered he pointed out that he required time to collect his men, and arms with which to supply them. They had too few broadswords. He submits to his Lordship's better judgment as to what was best to be done in the circumstances.[4]

Aware of the danger of letters miscarrying, Forbes in his letter to Tweeddale on the 8th October, 1745, briefly summarised the points of his letter of the 3rd sent in an open boat.

> I have thought it necessary . . . to say, that it would be very melancholy if such a force as has been ready in this country for some time should be rendered useless for want of such a vessel as I have so often mentioned, and some money and credit by her; and if to the same accident it should be able to force numbers from this part of the world to serve them. Hitherto they have had no accession of any consequence from the North since their boasted victory. If we continue neglected I do not know what may happen. The obstruction of the correspondence, and con-

[1] *M.C.P.*, iv, pp. 77-8 in 1761.
[2] *M.C.P.*, iv, pp. 78-9.
[3] *C.P.*, 486.
[4] *M.C.P.*, iv, p. 92.

sequently of credit, is such, that the companies of Lord Loudon's new regiment now at Inverness must have disbanded for lack of pay, had I not subsisted some of them out of my pocket, which is at present very light ; and the regular troops in garrison at Fort George [1] and Fort Augustus will in two weeks be in the like condition ; but for a few weeks I will try to subsist them also, in hopes of a speedy relief. The importance of the matter will excuse my importunity.[2]

So far it was not his intention, as he informed Tweeddale on 10th October, to dispose of more than ten or eleven of the Independent Companies, according to exigencies. The remaining companies were to be placed later as the situation developed and as need arose.[3] This letter of the 10th contained as an enclosure a copy of that written on the 3rd and sent by the open boat. To carry this one, Forbes had decided to hire a ship from Inverness (*The Pledger*, under Hugh Inglis) to go to Berwick or Newcastle, but as H.M.S. *Glasgow* which brought Loudon (10th October) was ready to sail, he entrusted the despatch to it as a more speedy and certain means of conveyance. He concluded his letter with the hope that the sloop-of-war so often mentioned in his communiqués would arrive with some more money.[4]

The Earl of Loudon's arrival brought a certain relief to the Lord President. In the first place, he came to assume command of the troops of all kinds in the north, and, secondly, empowered as he was to equip and subsist them, he at last brought some money. It was now possible, and indeed necessary, to assemble the Independent Companies forthwith. Loudon's actual command, on arrival, consisted of 150 Highlanders of his own regiment. Accordingly, Forbes (11th October) instructed Lord Reay to gather his son George's company and to have them marched towards Tain, where orders would be issued as to the place for collecting arms and ammunition. The company was then to be put on the regular establishment for subsistence. While muskets and

[1] This, of course, was in Inverness, and should not be confused with the present Fort of the same name near Ardersier.

[2] *C.P.*, 460, Forbes to Tweeddale. [3] *C.P.*, 462. [4] *Ibidem*.

bayonets would be supplied to the men, they would require to provide themselves with broadswords. The rest of the letter contained the heartening news that strong reinforcements were already on the way north.[1] Illness once more delayed Lord Reay's reply till the 19th October, but he promised his men would be at Tongue on Friday, the 25th.[2]

Forbes had been busy too with Seaforth, who had written him from Brahan Castle on the 10th October. He needed arms and money for the Independent Companies, and something less tangible, Forbes's advice 'which I shall always follow'.[3] This letter appears to have crossed one from Forbes of the 11th October,[4] which was answered on the 13th.[5] While Seaforth expected a few changes would be necessary in some of the officers owing to the refusal of Lord MacLeod (son of the Earl of Cromarty), he hoped to have one company ready within 24 hours after the commission was filled. Certainly the President did not tarry in the issuing of his instructions. On the 11th October he wrote his third letter of instructions, this time to the Earl of Sutherland telling him to assemble his company at Dornoch. Once the news of their arrival was intimated to him, the President promised that directions would be issued naming the place where arms were to be obtained. The officers were to receive their commissions according to the Earl's recommendation.[6] The Earl immediately reported (14th) that the officers expected to have their men at Dornoch by Saturday, the 19th October, but money for subsistence was meantime urgently needed.[7]

The fourth letter of this date—11th October—from the Lord President's pen was to Ross of Inverchasley, requesting the assembly of his company at Tain, where further instructions would be issued concerning arms and commissions (for the officers). It was made clear that they would be paid

[1] *M.C.P.*, iv, p. 93.
[2] *C.P.*, 469.
[3] *M.C.P.*, iv, p. 93.
[4] *C.P.*, 463.
[5] Uncat. MS. in Nat. Liby,. or *C.P.*, 466.
[6] *M.C.P.*, iv, p. 94.
[7] *M.C.P.*, iv, p. 95.

regularly and subsistence expenses repaid, once arms had been drawn from the stores ; and

> that the men who serve at this juncture are not to be bound further than the immediate service is over.[1]

This letter concludes with a reference to a note (the fifth of this date) enclosed for Mr. Will Baillie of Ardmore, who had written Forbes at great length on the previous day. This letter of Baillie's (10th October, 1745) contains this appreciative tribute of the President's efforts :

> . . . the affair, in which you have already done more service to your country, as well as to His Majesty, than was in the power of any other man alive to expect in the North of Scotland.[2]

The sixth letter of the 11th October was despatched to George Munro of Culcairn asking him to dispose of the commissions for one of the Independent Companies and to assemble the men as soon as possible. The result was a promise from Munro on the 17th October that his company of a hundred men would be assembled by Tuesday, 22nd October.

Lovat was the recipient of the seventh letter written by Forbes on the 11th. He continues the friendly, almost intimate tone of his epistle of the 7th October, even though he must by this time have received MacLeod's two letters from Beaufort dated 7th October, in which it was clear how Lovat's sympathies were tending.[3] Announcing Loudon's arrival at Culloden the previous night, he gives some accurate information about the disposition of troops and the reinforcements coming under Marshal Wade. A reference to 'the prodigious spirit' among the nobility and gentry of England who were levying troops and regiments of horse at their own expense, leads him to express his concern for Lovat's family and the joy it would give him to be the instru-

[1] *M.C.P.*, iv., p. 95.

[2] *M.C.P.*, iv, p 96.

[3] MacLeod's conscience later (15th October, 1745) pricked him for his part in this action. (*M.C.P.*, iv, p. 87.)

M.C.P., iv, p. 84.

ment of saving and doing it good.[1] Forbes's motive is not hard to find. His aim was to keep the Frasers from marching, and at all costs to gain time. The next morning, apparently unwearied by his prodigious activity of the previous day, the President was again at his desk, his correspondent being Ludovick Grant, younger of Grant. To him he detailed similar instructions for the raising of the company of a hundred clever fellows for the duration of the war.[2] MacLeod of MacLeod, Forbes's faithful ally and supporter, had also been 'doing his bit' to keep the clans at home, but mid-October found him troubled about what some have regarded as his Machiavellian methods. In the ear of the President as father-confessor, he frankly told of his qualms of conscience about his conduct towards Lovat. Here again the motive, if not the method was honourable, and he optimistically expressed his hopes of their gaining their main point, viz. 'keeping the Frasers and McIntoshes at least at home'. Writing from Mugstot (15th October), he described how he had visited Applecross, after being well nigh drowned on the way, and (he hoped) had persuaded Mackenzie to follow his chief and remain loyal. He had despatched emissaries to the Macleans and to South Uist, and he counselled the dividing of a company among them and his namesake of Raasay. This he thought would keep them all right, but although he already had permission to bestow the company, he was unwilling to do so without Forbes's specific approval, and his own knowledge that his action would help the cause. The next day he announced that the officers would assemble their companies at once, a matter of some difficulty, as the islanders were busy with their late harvest. Other difficulties were scarcity of arms and lack of funds. Some eight hours later a sudden idea struck him, and this he passed on to Forbes, namely that a considerable number of broadswords at Glasgow should be brought north by a sloop-of-war, as these were weapons with which the Highlanders were much more expert than they were with guns.[3]

In the midst of all this 'in' and 'out' correspondence,

[1] *C.P.*, 277. [2] *C.P.*, 465. [3] *M.C.P.*, iv, p. 102.

Culloden House was during the night of 15th October unexpectedly attacked. The party of 200 of the Frasers under James Fraser of Foyers, chose as their zero hour 3 a.m.[1] The warrant to Foyers was dated 23rd September, 1745, and was issued in the name of the Prince himself, as Regent of Scotland, England, Ireland and the Dominions, and signed by Murray (of Broughton). The instructions were to seize the person of Forbes and to carry him as a prisoner to the Prince at Edinburgh or wherever he might be.[2] The failure of the raid did not keep the rumour from reaching London that Forbes had been captured. There the effect was to create a feeling that with Forbes's capture went the loss of the northern section of Scotland.[3]

Although the attackers were beaten off without having achieved their object, they took with them sixty of Forbes's sheep, twenty-nine cattle belonging to tenants on the estate,[4] and robbed the gardener, and the poor weaver who 'is a common benefit to the country' [=county].[5] Forbes complained to Lovat on the 18th that the marauders, having failed in their principal object, now intended to pillage, burn, and destroy 'his innocent tenants'.[6]

Whether because of MacLeod's second letter of the 7th October, or from reasons of diplomacy, the Lord President wrote Lovat both on the 18th and 19th October and held him innocent of the attack.[7] As a well-wisher, and not as a law-officer, he hoped that the Master of Lovat would desist from the dangerous enterprise. He freely forgave the marauders, he said, provided they did no more harm, although they 'loitered . . . for some hours to taste my mutton by daylight'. He hoped they would restore the cattle and goods stolen from tenants, gardener and weaver.[8]

[1] *M.C.P.*, iv, p. 103, and *Transactions of the Gaelic Society of Inverness*, vol. 26, pp. 175 and 179.

[2] *M.C.P.*, iv, p. 103.

[3] *C.P.*, 297.

[4] *M.C.P.*, iv, p. 104.

[5] *C.P.*, 279.

[6] Munro of Culcairn was instructed on the same day by the President to 'fling yourself into Inverness early' as it was threatened with a visit from the rebels, and Loudon had already disposed his men to defend it. (*M.C.P.*, iv, p. 102.)

[7] *C.P.*, 279 and 280.

[8] *C.P.*, 280.

An interesting illustration of the methods employed at this time to deceive the enemy, or suspected persons, is shown in the two letters written by MacLeod to Forbes on the 23rd October. Both letters were conveyed by the same runner, and the ostensible letter could be easily found if he were searched. This letter expressed belief in Lovat's abhorrence of the whole attack and in his desire to bring the culprits to justice. The Independent Companies were reported to be getting on 'but slowly' owing to the bad weather.[1] And now see the genuine letter,[2] carefully secreted about the person of the messenger. In it MacLeod regretted the villainous attempt on Forbes's life and hoped he might be preserved from the 'treachery of pretended friends or the open attacks of known enemies'. The men for the Independent Companies were gathering and he had already 300 that could 'move on a day's notice'. According to Murray of Broughton[3]—if he can be trusted,—Lovat had complained that the reason for the failure of the attack was the absence of the order 'dead or alive'. Forbes's death, he contended, could easily have been accomplished, and so would have prevented the junction of MacLeod with the northern clans.[4]

Forbes's labours at this season were not all due to the issuing of instructions. His emissaries kept sending him intelligence which had to be read and then redistributed to the various commanders concerned. Among those who were especially helpful at this juncture was William Baillie of Ardmore, to whom reference has already been made. By the 17th he had secured 100 very good men—all tenants of the estate of Balnagown,— who were ready for present service provided Baillie himself went with them. It says much for his loyalty that he was not only quite willing to do this, but to give them subsistence as well while they were in his part of the country, and as long as necessary thereafter. 'But', he

[1] *M.C.P.*, iv, p. 105.

[2] *C.P.*, 471.*

* From MacLeod's letter in *C.P.*, No. 471, the last paragraph is missing; it is given in *M.C.P.*, iv, p. 106, and shows the methods used to deceive enemy searchers.

[3] *Memorials*, p. 277.

[4] Quoted *M.C.P.*, iv, p. 107.

asks Forbes (17th October, 1745),[1] 'where are they to get arms?' His recital of Barrisdale's eight days of recruiting for the rebels in Assynt, shows how the rebellion was going; it is somewhat amusing as well, and indeed 'mightily diverted' the President.[2]

> They flocked to him very throng, and while some aquavitae which they had tasted, they engaged not only to follow, but to fly after him, and fight like Dragons, and he had as he supposed near 100 of them engaged. But he would not go with these while there were a few more in the country [=region or county], for he must have all. But when the whisky was done, and the people sleepd and coold they began to repent, and by the means of one Ross who lives there, a great band of them deserted . . . and the Commanders united could not reclaim the fellows since they had no aqua vitae. And, in short, my Lord, I believe Barisdale will not bring from that country 30 men.[3]

Seaforth's influence was, however, strong, and his displeasure, Baillie thought, was keeping so many from 'moving' that in the three northern counties 'scarce a hundred (if so many) will go'. Nor were any now expected to stir in Wester Ross. The report had got abroad of the arrival at Montrose of a rebel vessel with arms, money, and several officers, and this, of course, tended to raise the spirits of the waverers.[4]

The Lord President, as we have seen, wanted his new companies to converge, as soon as they were assembled, on Inverness as a centre, and there arms were to be issued. What had been laid out on subsistence, he promised would be 'at sight repaid'.[5] His plans were maturing to his satisfaction, and it was gratifying to hear from the widely divergent areas where the men were actually recruited that the companies were actually now in being and some, already on the move. For example, Inverchasly expected his company to reach Tain by the 19th, Culcairn's men were to march as soon as possible, and the Earl of Sutherland, immediately on the receipt

[1] *M.C.P.*, iv, p. 111.
[2] *M.C.P.*, iv, p. 112.
[3] *M.C.P.*, iv, p. 111.
[4] *M.C.P.*, iv, p. 112.
[5] *Ibidem.*

of Forbes's letter urging haste,[1] reviewed some of his men at Dornoch (21st October, 1745) and ordered them to proceed by road to Dunrobin, whence they would be sent in boats to Inverness. There is something touching about the Earl's explanation for this course. Arms were scarce and so, as they were 'good' and 'valued' men, their chief was reluctant to risk them on so hazardous a journey by road. Is it any wonder they in turn loved and looked up to such a leader? Naïvely the Earl adds in a postscript a request for the return of the arms he had lent.[2] And now Seaforth reported (23rd October) from Brahan Castle on his contribution to the forces for national defence. By the beginning of the following week two companies would be complete although all the officers had not yet been selected. These, however, would arrive at the head of their men at Culloden or Inverness as Forbes should direct.[3]

It was surely a strange irony that at this very time, when these notable Scotsmen were sacrificing time, energy, and money in the service of their king that they and their countrymen should be so maligned and misunderstood in England. Every Scotsman was 'looked on as a traitor, as one secretly inclined to the Pretender and waiting but an opportunity to declare'[4] (Andrew Mitchell to Forbes). By a process of illogical reasoning, the conclusion was reached that *all* were disloyal, because disloyalty could be attributed to some.

Forbes, having set his machinery in motion, turned his attention to the more remote parts of his control. Sir Alexander Macdonald and MacLeod of MacLeod were instructed in two fairly long letters of the 24th October to march their companies forthwith, as the other Independent Companies were assembling and drawing to Inverness, and it was intimated that one of them must accompany their raw recruits whilst the other remained in Skye on guard.[5] Lady Margaret Macdonald's condition made it very difficult for her husband to leave home, and, owing to indisposition,

[1] *C.P.*, 470.
[2] *M.C.P.*, iv, p. 113.
[3] *M.C.P.*, iv, pp. 113-4.
[4] *C.P.*, 472.
[5] *C.P.*, 473 and 474.

MacLeod did not wish to go in haste, but was quite ready if necessity demanded it.[1] Forbes at this time (24th October, 1745) was ' almost resolved to have two other companies from Skye ', of which Sir Alexander and MacLeod would each furnish one of a hundred men. Lord Loudon agreed with this policy. Accordingly, orders were given that these two new companies should set out for Inverness, where like the others they would be armed and the officers receive their commissions.[2] Even if these were not issued, the journey would not be in vain, for the men would, from the newly arrived *Saltash*, get arms to be carried back for the defence of the island. Expenses would be paid too. Forbes reiterated these points five days later, stressing especially the desirability of the presence of one of the two lairds. His words are eloquent :

> I in my conscience think that measure will determine several of our neighbours to save themselves.[3]

The Lord President had just reason to be satisfied with the success that had so far attended his efforts both by way of prevention and cure, and it came as a sad blow to him to learn of the defection of his own grand-nephew young Pitcalnie.[4] He couched his letter to the youth's father in strong language, and we can judge of his anger from his words :

> the villains who seduced him, profiting of his tender years and want of experience, though I hope I am a Christian, I never will forgive.

We shall hear more of this rash youth before the end of the rebellion. Immediately following on this, came news to cause Forbes further perturbation. Lovat, playing the part of the innocent and injured father, wrote telling of his son's obstinate determination to go on with his enterprise in joining the rebels (27th October, 1745). He himself had succeeded in recovering eight of the cattle stolen from Culloden House on the occasion of the raid on the 16th ; the rest, unfor-

[1] *M.C.P.*, iv, p. 101.
[2] *C.P.*, 474.
[3] *C.P.*, 486.
[4] *C.P.*, 475.

tunately, had been killed. He had received assurance that the President's people would not be molested again and hoped soon to be able to restore the things taken from the house of the gardener and the weaver.[1] In reply the faithful and trusty Forbes, hoping for the best and loth to believe the worst, tried to give what Lovat pretended to ask, advice, and that was to prevail over the Master and those of his clan who were ready to follow him to 'forsake the dangerous course'.[2] This correspondence went on, as we shall see, regularly for another month.

The tone of Lord Loudon's letter of the same date forms a sharp contrast to that of his companion leader. He clearly saw through Lovat's 'double game' and in administering a dignified rebuke added, 'You have now so far pulled off the mask that we can see the mark you aim at.' He stated the strength of the Government against the Pretender and tried to get him to recall his son and his men at once. This action, he said, might cause the rebellion to collapse and so save Lovat's family from possible extirpation. This he wrote 'no less out of friendship to your Lordship than duty to the public'.[3] On the same day Forbes despatched a note to MacLeod correcting the exaggerated news sent by Lovat ten days before about the huge quantities of arms and money[4] recently landed at Montrose for the Pretender. To Seaforth, he was indebted for the supplying of escorts to the Skye post, a precaution very necessary when expresses were passing so frequently to the two island lairds and when what Forbes called the 'pen and ink way' was the only medium possible. Can we wonder that, in all this never-ending work of letter-reading and letter-writing and general direction of affairs, all he was able to send Seaforth by way of thanks was a 'confused scrawl'? Yet there was no confusion in the directions given. He asked for the two new officers to be sent to him for arms and their commissions, and advising Fortrose

[1] *C.P.*, 285.
[2] *C.P.*, 286.
[3] *C.P.*, 485. This letter is erroneously headed 'The Lord President to Lord Lovat'. It is really by Lord Loudon. (See *M.C.P.*, iv, p. 214. Corrections.)
[4] *C.P.*, 486.

to put his castle of Brahan in a stronger state of defence by gathering more men about him, he assured him that his expenses would be made good.[1]

At last (25th October) along the various radii of the wide circle of the north, the men began to gather, and the honour of being first to arrive went to the Earl of Sutherland's company. In spite of 'the distance and the difficulty of the passage' it was 'earlier than any of those that have been called for, except Culcairn's which was just at hand'; [2] and a brave show they made as they marched into town. Hear the report of an eye-witness :

> The Company when it reached Inverness (Friday night, 25th Oct.,) consisted of 108 men and a piper and made a fine appearance. I assure your Lordship there was none at Inverness that came within sight of them, the very cadies in the street was whispering to one another that the Sutherland men had affronted all the rest except the MacLeods. They were very well clad and mostly gentlemen's children. Major MacKenzie was clapping your men, making very much of them and did not house till they got their billets.[3]

And now, like Oliver Twist, the Lord President pleased with a first instalment, must ask for more, and in his letter announcing the safe arrival of the Sutherland troops, he followed his diplomatic pat on the back with a request for the raising of a second company, the three officers of which the Earl should himself nominate. Hard on the heels of the Sutherland men came a messenger direct from the Earl, en route for London, with letters (and one of these for Duncan Forbes) pressing the claims of a friend to a commission. The messenger was no less a dignitary than the minister of Thurso, Mr. James Gilchrist, who, apart from being a thoroughly reliable bearer of news, had supplied valuable intelligence of the state of affairs in Caithness, and in so doing had precluded himself from ever returning there. For him the Earl,

[1] *C.P.*, 484. [2] *C.P.*, 479.

[3] Letter from Patrick Gray to the Earl of Sutherland, dated 28th October, 1745 ; in Sutherland Charter-chest and quoted in *The Sutherland Book*, *I*, p. 407.

amidst the weighty matters of state, begged the Lord President's good offices in the future, and, for the present, a passage to the south in H.M.'s sloop *Saltash*.[1]

In the Grant country, meantime, recruiting was disappointing so far as the company unit was concerned. The tenants were loyal subjects and willing to fight for country and Chief, but were deterred from enlisting in the Independent Company captained by Patrick Grant of Rothiemurchus, an ex-lieutenant in Loudon's regiments,[2] from a fear, as Lord Deskford explained to the Lord President (25th October),[3] of being retained after the fighting was over. Some, again, were unwilling to risk leaving their homes and families in such unsettled times. Already they had an example of what might happen, for their neighbours the Urquhart people, at that very time, were being harried by groups of rebel Frasers and McDonalds.

The chief, Ludovick Grant, felt ashamed of his cautious and calculating kinsfolk, and made an eloquent appeal, trying his powers of persuasion individually on the more influential.[4] Latterly, as Forbes was pressing for men, he decided to set off himself with no less than 500 volunteers. These, be it noted, were not to be included in the Independent Companies. Sending on word to Inverness to arrange billets and accommodation pending their arrival,[5] Grant put both Lord Loudon and Forbes in a fix as 'no plan had been concerted for the disposition of them',[6] although suitable quarters had been prepared. These far-seeing leaders, too, thinking of the difficulties attending the march of 500 men in the present state of the country, feared this might result in what Forbes called the beginning of 'horse-play before we are sufficiently prepared'.[7] Their fears were unrealised. Second thoughts decided Ludovick Grant himself on the inadvisability of transferring so large a body of men to Inverness without first receiving the approval of the leaders. He

[1] *C.P.*, 480, Earl of Sutherland to Forbes.
[2] *M.C.P.*, iv, p. 100.
[3] *C.P.*, 476.
[4] *M.C.P.*, iv, p. 116.
[5] *C.P.*, 476.
[6] *C.P.*, 481.
[7] *C.P.*, 477.

therefore delayed, awaiting advice on the matter.[1] Still his 'company' was incomplete (28th October) under Rothiemurchus as captain, and this was a sore point with the Chief.[2] Forbes, however, pressed for the immediate despatch of 'Rother's' company, as they had 'relied upon them'.[3] While appreciative of Grant's zeal in assembling his five hundred volunteers, Forbes was more anxious to gather his properly organised companies, bound only for present service, but *bound*.

The plans, then, for the raising and gathering of the Independent Companies were working out, on the whole, very satisfactorily, and, so far, we have had to make mention of only a few setbacks. Lord Cromarty was the cause of another of these. As recently as 19th October [4] he had assured the President of his loyalty and readiness to fall in with his projects, and these assurances were accepted in all faith.[5] Judge, then, of Forbes's disappointment when he discovered that Cromarty had refused one of the Independent Companies offered to his son Lord MacLeod. Indeed, he visited Lovat at Beaufort along with his son on 6th November,[6] and proceeded thence on Saturday the 9th November to join the Chevalier in the south going by Urquhart on the north side of Loch Ness where he intended to await the Frasers. He took with him only some hundred and fifty or hundred and sixty of the Mackenzies, whom he had 'debauched' from the Chief, Lord Fortrose, a zealous supporter of the Hanoverian cause.[7]

The Mackintosh household was not the only divided one; at least, so Lovat pretended, and he tried to carry through this deception during the whole month of November. He (30th October, 1745) expressed amazement and grief at the foolishness of his 'obstinate, stubborn son, and an ungrateful kindred', stated his own peaceful attitude, talked sentimentally of his old age and infirmities, and declared his

[1] *M.C.P.*, iv, p. 116. [2] *Ibidem.*
[3] *C.P.*, 481. [4] *C.P.*, 281. [5] *C.P.*, 283. [6] *C.P.*, 289.
[7] *C.P.*, 293.*

* This letter (Forbes to Tweeddale) contains some 2,800 words and was followed by one to Mitchell on the same day consisting of about 800.

friendship to the President and his family especially in view of many past kindnesses from Forbes himself as well as his father and brother.[1]

The 30th October and the two following days saw MacLeod assembling his men to the number of about three hundred. These he expected to move without delay. As he anticipated that the rebels would soon beat a retreat, he considered it a very great hardship that his followers were not yet properly provided with arms to withstand them. Two hundred and forty of his best men were in Harris, and so he resolved on the 30th to move a hundred and fifty of them to Skye at his own expense in case there might be need for them.[2]

The safe delivery of despatches was becoming increasingly difficult as the days passed, and All Hallows' Eve found Sir Alexander Macdonald in his house in Mugstot busy preparing two for the eye of the Lord President. Possessed of a fine sense of humour, many evidences of which are to be found in his letters, he must have enjoyed transcribing these, one the ostensible letter to be discovered by the searchers, the other the real one carefully concealed. This second epistle expressed his intention of having his quota ready to travel with MacLeod, and his hourly expectation of the men from Uist. He requested, too, that a proper escort might be sent back to the island with arms, once they joined Forbes.[3]

During the last days of October the Lord President was evidently somewhat exercised by the case of Malcolm Ross, Young Pitcalnie already referred to on p. 233, and that of Mackenzie of Fairburn. Ross was a great nephew of the President, who had secured for him an ensign's commission in Lord Loudon's regiment in June 1744. In spite of this, and of his father's remonstrances, Young Pitcalnie joined the Prince. Although, as we have seen, Forbes wrote (25th October) to his father expressing his astonishment and sorrow at the young man's madness, he was nevertheless willing to forgive him if he returned quickly to his duty.[4] The youth,

[1] Uncat. MS. in Nat. Liby., or *C.P.*, 287.
[2] *M.C.P.*, iv, pp. 123-124 (MacLeod to Forbes).
[3] *M.C.P.*, iv, pp. 124 and 125. [4] *C.P.*, 475.

however, remained adamant. Again the 'affectionate uncle' promised (4th November) his nephew a safe-conduct if he would come to Culloden, but again he turned a deaf ear.[1] The result of this action on the part of Young Pitcalnie was to make it extremely difficult to get together from among the Rosses the Independent Company which Forbes so much wished to raise.[2] Holy Writ tells us that 'those who are not for us are against us', and while the youth does not appear to have persuaded the clansmen already enlisted in the Independent Companies, to follow him, he thus far gained recruits in a negative way, for by his interposition, those who had assembled were prevailed upon to disperse.[3] We shall see the hand of this young firebrand later, when the rebels laid waste the countryside around Dornoch following the defeat of Loudon's forces in March 1746.[4] Mackenzie of Fairburn was offered one of the new Independent Companies and visited the President on 30th October. Two days later he refused the command, although he remained loyal. He 'would bring no tash or imputation' on his family by opposing the Stuart line

> as this small mealling I possess was given my predecessor by King James V in free gift . . . the case is conscience with me.[5]

The 31st October was a day of good omen. At last the sloop of war *Saltash* arrived,[6] having been delayed [7] by contrary winds. She carried strong boxes of money (£4,000) for expenses,[8] and 1,500 stand of arms. By the beginning of November the Independent Companies were busy mobilising, and events followed each other quickly.

By the 4th, the Earl of Sutherland at Dunrobin acknowledged the return of the arms previously sent with his first company.[9] Half of the second company which Forbes had requested from him on 26th October had also gathered at Dunrobin, but the other half was expected to be rather longer

[1] *C.P.*, 492 and 497.
[2] *C.P.*, 487.
[3] *M.C.P.*, iv, p. 136.
[4] *M.C.P.*, v, p. 47.
[5] *M.C.P.*, iv, p. 122.
[6] *C.P.*, 505.
[7] *C.P.*, 293.
[8] *C.P.*, 293.
[9] *M.C.P.*, iv. p. 125.

in assembling, having to come a considerable distance from Strathnaver. On their arrival Sutherland promised to despatch them at once. Despite his absolute power in his region, he had had great difficulty in gathering his company and had been obliged not only to be the executor of his own warrants but to go through all his country. The result was there were scarcely six volunteers in the whole hundred."[1]

By this time (4th November) four companies had reached Inverness : Munro's on the 23rd October, the Earl of Sutherland's on the 25th October, the Grants [2] on the 3rd November,[3] and the Mackays [=Lord Reay's] on the 4th November.[4] In addition, the two companies of Seaforth were expected, unless he might deem it expedient to retain them where they were, against local disturbances,[5] and the arrival of MacLeod from Skye with his followers was looked for soon.[6] These forces, Forbes hoped (6th November), would enable them ' to show a good countenance ',[7] as he wrote to Fortrose, when requesting the usual escort for the Skye post who would call at Brahan two days later. Lord Fortrose had already promised to raise another company if necessary,[8] as did Lord Reay, who offered (6th November, 1745) to do it through his son. The latter had been an officer abroad, and so was experienced.[9]

All this time Forbes and MacLeod were in close communication about different aspects of the situation. MacLeod expected to have his forces in motion on the 6th November and to be in Inverness in a week's time, provided they met no interruption on the way, indifferently armed as his men were.[10]

As an example of the expedition and zeal with which some of the companies were raised we may quote the example of the Earl of Sutherland. By the 6th November,[11] he announced

[1] *M.C.P.*, iv, p. 134.

[2] In congratulating Grant on his first company, ' and a very fine one it is,' Forbes (5th November) asked the Chief to raise and officer a second Independent Company. (*C.P.*, 493.)

[3] *C.P.*, 491. [4] *C.P.*, 293. [5] *C.P.*, 494.

[6] *Ibidem.* [7] *Ibidem.* [8] *C.P.*, 293.

[9] *C.P.*, 495. [10] *M.C.P.*, iv, p. 127. [11] *M.C.P.*, iv, p. 128.

the completion of his second company in spite of the difficulties we saw he had to surmount, and named the officers to command it. The men arrived in Inverness two days later,[1] and yet Forbes's instructions for its assembly had been issued as recently as the 26th October. And still Forbes occupied his time welcoming his new companies, writing, persuading, expostulating. He himself gives his policy in a nutshell when, gratified at the arrival that day (18th November) of another body of men (Sutherland's), he bethought him of one on whom so far he had made no impression, that Artful Dodger, Lovat.

> My errand to this country was (he writes) to preserve if possible, the peace and to exert the little credit I had with my friends and countrymen and to prevent their ruining their families.[2]

Even when adequate allowance is made for exaggeration and flattery, surely there was some truth in this Lovatism, that Forbes had done

> more service to King George and to his family and Government than if he had an army of 5,000 men in the north.[3]

How the canny Lord President must have smiled, half-pleased, yet half-regretful, to find himself described, by way of adulation, moreover, as 'more obnoxious to their [=the king's enemies] hatred and revenge than any man on earth'.[4] Forbes even went the length of securing a promise from Lord Loudon (O.C. troops in that region) that Lovat's person and family would not be molested unless express orders came from the Government for that purpose.[5] Lovat's aim, even while he knew of this pledge, seems to have been to do everything but commit himself openly to the rebel cause.[6]

To encourage the Town Council and citizens of Aberdeen in their loyalty, Forbes promised (8th November, 1745) to send men as reinforcements when these became available.[7]

[1] *C.P.*, 293. [2] *C.P.*, 290.
[3] *C.P.*, 289. [4] *Ibidem*. [5] *C.P.*, 292.
[6] *C.P.*, 290; Uncat. MS, in Nat. Liby., or *C.P.*, 291, 299, 300.
[7] *M.C.P.*, iv, p. 142.

He had already been engaged in a correspondence with Provost Morison of Aberdeen after an attempt (25th September) had been made to seize the Provost and make him drink to the Jacobite cause. Having expressed his loyalty, the Provost consulted Forbes about the Council elections which were actually in process when the rebels appeared.[1]

Between the 7th and the 11th November Forbes strove manfully to rally the Rosses to the public cause, in spite of the defection of his young kinsman.[2] These pleadings were not entirely futile. On the 10th of the month seven gentlemen of the Ross family signed a letter addressed to him. In it they assured him of their loyalty to the Government in the present situation, and more particularly because of his own interest in the quelling of the trouble. They hoped to assemble the following week, after the market day. In conclusion, they congratulated him on his birthday and wished him many more years of useful service to his king and country.[3] Fine words, no doubt—but Forbes preferred deeds, and so he is found regretting the tardiness and inaction of the Rosses, when he writes to George Ross, one staunch member of the family (15th November, 1745).[4]

In a very lengthy epistle dated 13th November, 1745,[5] Forbes summed up the situation to Tweeddale. With the forces already mustered he hoped to prevent rebel recruitment and to open communications with Fort Augustus. He advised the delivery of Moray, Banff and Aberdeenshire from parties of the rebels, who had gone north under Lord Lewis Gordon to levy money and raise recruits. As the Duke of Gordon, his brother, had refrained from joining the Prince, small progress was made. Indeed, contrary to the rebel rumours, only two of 80 freeholders joined the Prince's cause in that sector. It was Forbes's intention to send an Independent Company into these unsettled regions at an early date. He went on to explain what might, at Headquarters, be considered an irregularity. Realising the importance of keeping open communication with the south, he had in-

[1] *C.P.*, 461 and 467. [2] *C.P.*, 496. [3] *C.P.*, 500.
[4] *C.P.*, 504. [5] *C.P.*, 293.

structed Captain Pitman of the *Saltash* to proceed to Newcastle, to drop at Berwick letters for the Commander-in-chief of the north giving an account of the present situation and to ' express ' his despatches to London from Newcastle by land. A very careful officer, Captain Pitman knew the waters of the Cromarty Firth and would be performing important work if he waited at Newcastle for despatches from London and carried them north to Forbes. Although this was contrary to other instructions, the Lord President had prevailed on him to do as he requested, and now asked that these instructions to the captain be confirmed by the Admiralty. Meantime, Pitman had agreed to remain at Newcastle (provisioning) for eight to ten days till despatches for the north might arrive from London. Tweeddale was asked to send a further supply of money in addition to the £4,000 brought by the *Saltash* and still more arms from the Tower to be distributed from Fort George among friendly persons.

To Tweeddale's Secretary, Andrew Mitchell, Forbes penned on the same day (13th November) a more intimate account. Tired as he was, still he contrived to brighten his businesslike description of the general situation with a glint of humour. With his friend, he could relax. Thus his ' Lordship's most obedient and humble servant ' whispered in the ear of his ' dear Andrew ' :

> I am mortally tired with writing a letter to the Marquis of an immoderate length and in a hand so like Arabick that I doubt your help will be wanted to decipher it ; but it was impossible to make it shorter, and I am but a bad scribe.[1]

How self-revealing are his words as he refers to the unenviable rôle he has had to fill ! Not only had the Jacobite germ affected the men.

> All the fine ladies, if you will except one or two, became passionately fond of the young Adventurer and used all their arts and industry for him in the most intemperate manner. Under these circumstances, I found myself almost alone, without arms, and without money or credit, provided with no means

[1] *C.P.*, 294.

> to prevent extreme folly, except pen and ink, a tongue, and some reputation ; and if you will except MacLeod,[1] whom I sent for from the Isle of Skye, supported by nobody of common sense or courage. Had arms and money come when they were first called for, before the unexpected successes blew up folly to madness, I could have answered it with my head that no man from the North should have joined the original flock of rebels that passed the Forth.[2]

Mitchell, as a Scotsman with a knowledge of the clans, could appreciate what Forbes had done by way of prevention. He understood why his old friend felt gratified that the number of recent Jacobite recruits was so small, smaller than the Government with its tardy methods had any right to expect. Except Macpherson of Cluny's posse of less than three hundred men,[3] none arrived in time from these northern regions to march south from Edinburgh after Prestonpans, in spite of the many thousands who had been expected.[4] The two hundred of the Clan Chattan, who followed the White Cockade, had reached by 9th November no farther than Perth. Only a hundred to a hundred and fifty of the Mackenzies had been debauched by the machinations of the Earl of Cromarty, the Master of Lovat, and others, but even these had not yet passed the Corryarrick. There was still a chance that the five or six hundred Frasers who had risen might think better of their action and not leave their country exposed, especially if the weather did not delay the arrival of the hourly expected reinforcements from Skye. These new troops, Forbes thought, would create a diversion and so reduce the enemy forces with whom His Majesty's army would have to contend in the south. In the north, the outlook was not too gloomy nor could Forbes complain of the success of his 'weak endeavours'.[5] He informed Scrope (14th November, 1745) in a short note, that although the Highland host had departed, more real Highlanders were assisting them or were detained at home by persuasion or

[1] This refers to the period before the arrival of Loudon on 10th October, 1745.

[2] *C.P.*, 294. [3] *C.P.*, 502. [4] *C.P.*, 293 and 294. [5] *C.P.*, 501.

force than had marched from Edinburgh towards England.[1] The seasonable arrival of the Earl of Loudon had relieved the situation and generous and unstinting praise for his vigilance and application are themes on which the President descants to both the Earl of Stair [2] and Mitchell.[3]

> The Earl's skill and diligence, joined to patience and a very obliging behaviour, must be of very great service to the public at this juncture, when those talents are so much wanted and so scarce.[4]

By the middle of November, while the snow lay thick on the ground,[5] MacLeod and four hundred of his kindred arrived at Inverness and it was hoped thereby that the Frasers would be prevented from marching south. Loudon and Forbes had, now (16th November, 1745), seven hundred Highlanders in Inverness and were hourly expecting some hundreds more.[6] And yet when Loudon first arrived there, it was an open and defenceless town, with no garrison but 150 men of Loudon's own regiment. Things looked rosy enough in the northern capital, but what of the unprotected country regions beyond the Beauly? Still came in the cry from Assynt and other remote districts for more arms, more arms.[7] It was over bad tracks, made almost impassable by the deep snow, that the company raised in Assynt by Hugh MacLeod of Geanies (Genzies) marched in these short, dark November days to reach Inverness by the 28th.[8] In the mountain fastnesses of these northern Highlands, the extreme rigour of the severe winter was being felt; yet, despite all this, Seaforth was proving himself an enthusiast for the Government cause. He asked (16th November, 1745) whether Forbes would approve of it, if his nominee from the Lewis brought more than his company.[9] Enraged and ashamed, he reported,

[1] *C.P.*, 501. [2] *C.P.*, 502. [3] *C.P.*, 294.
[4] *Ibidem.* [5] *C.P.*, 505.
[6] This they reported in a joint despatch to Marshal Wade, or the Commander-in-chief in the North. *C.P.*, 505.
[7] *M.C.P.*, iv. pp. 149-150. [8] *C.P.*, 318.
M.C.P., iv, p. 152.

nine days later, that some of his name had deserted, and he issued strict orders for them to return.[1]

It must be noted that not all the Independent Companies were recruited among the clansmen under their chiefs. The town of Inverness itself seems to have raised one of the companies of a hundred Highlanders and it was rightly put under the command of one of its own magistrates, William Mackintosh,[2] a bailie of the town, who had himself raised it locally. It was up to full strength on 18th November. No letters have been found among the various collections showing the manner in which the company was formed, and Warrand remarks [3] that local historians seem scarcely to have been aware of its existence. Possibly Forbes issued his instructions orally owing to the proximity of the town to his own house of Culloden. (It was only four miles away.)

Forbes's work was not limited to distributing the commissions and to raising the Independent Companies. His advice to the Provost of Aberdeen about the local council election has been already noted. His duties were multitudinous and the ramifications many. To secure a load of coal for the town and garrison of Inverness (in a starving condition for want of fuel), Hugh Inglis, the commander of the *Pledger* of Inverness, was sent to Newcastle. He arrived on the 28th November in the Government sloop of war *Saltash* and found his task anything but an easy one owing to the embargo on Scots shipping there. On receiving the President's letter from Inglis, the magistrates were most helpful in trying to put a ship or two at his disposal, as well as a convoy. The collector, however, had been ordered by the Commissioners to forbid Scots ships to leave port. Knowing the extremity in which the people of Inverness were, and that they could not last for another month without 'dismal doings

[1] *M.C.P.*, iv, p. 153.

[2] (*a*) Warrand (*M.C.P.*, iv, p. 130) cites a letter, dated 16th December, 1745, quoted in Dunbar's *Social Life in Former Days* (p. 348). See also *C.P.*, 519.
(*b*) Many of the copies of Forbes's own letters written during the last ten days of November 1745 are missing.
(*c*) *C.P.*, 318 and 519.

[3] *M.C.P.*, iv, p. 130.

amongst us', Inglis was resolved not to return empty-handed, if fuel could be had in any other part of Britain. To secure this load of coal he had orders from the President to draw upon him for whatever money he might want. The necessary permission for the sailing of the Scots ships was obtained from London, and about the 13th December Inglis proceeded to Inverness.[1] Meantime, Sir Alexander Macdonald, his wife having the previous day 'set him and her daughter at liberty',[2] was still desperately in need of arms and powder, when he exhorted MacLeod on 30th November to represent his case to Forbes. It was hard that out of 1,000 men (including the two companies) whom he could put in the field, he was able to arm not even three hundred properly.[3]

By the 1st December the Master of Lovat marched to join Prince Charlie. His father informed the President[4] who replied by return expressing his concern.[5] Two days later (3rd December) Lord Loudon with 600 men in one of the severest frosts seen for a generation, set out to the relief of Fort Augustus, besieged by the Frasers. Meeting with no opposition, and having furnished supplies to the Fort, he returned to Inverness on the 8th December.[6] By this time (Wednesday, 4th December, to be precise) the rebels were at Derby.[7]

The zealous Seaforth by the beginning of the month had gathered round him some five hundred men in all,[8] and his two companies, completed and ready for some time, were called into Inverness on 9th December.[9] They made a much needed addition to the men at the disposal of Lord Loudon who proposed extending operations. Public safety demanded his intervention in two fields, viz. in the Lovat country and again in Banff and Aberdeenshire, where Lord Lewis Gordon

[1] *M.C.P.*, iv, p. 148.

[2] 'My wife yesterday produced a nymph.' (*M.C.P.*, iv, p. 154.)

[3] When arms did arrive about the 14th December in the North by the *Hound* sloop of war, they were for Lord Loudon's regiment only. With this vessel came the President's son, John Forbes, and also the Master of Ross. (*C.P.*, 519 and 520, and *M.C.P.*, iv, p. 162.)

M.C.P., iv, p. 156.

[4] *C.P.*, 302. [5] *C.P.*, 303. [6] *C.P.*, 519.

[7] *C.P.*, 305. [8] *M.C.P.*, iv, p. 153. [9] *C.P.*, 519.

'was raising men and levying money by force and threats'.[1] Just returned from Fort Augustus, Lord Loudon was resting his men for one day, preparatory to their trip to Castle Dounie, and so deputed to Forbes the writing of the reassuring news of speedy help to the Duke of Gordon, brother of the rebel Lord Lewis.[2] Promise of a detachment of five to six hundred men to be followed, possibly, later by a like number, came as a relief to His Grace who proposed meeting the troops at Elgin.[3] Loudon wanted to go in person on the expedition to Castle Dounie. Well he knew how difficult it is to catch a fox, even if you know where he has gone to earth. Nor would it have been politic to send MacLeod considering the correspondence, worthy almost of the Delphic oracle, that had so recently passed between him and the crafty Simon. It was decided, therefore, to entrust the Banff and Aberdeenshire business to the Skye laird, who set off for Elgin at the head of five hundred MacLeods (four hundred of his own clan plus a hundred MacLeods of Assynt). Forbes had already prepared the way by advising the Duke of Gordon of their arrival,[4] and, as he never left anything to chance that could be arranged beforehand, he similarly, after the troops marched off, wrote to the Earl of Findlater (10th) telling him of their coming and asking him to give all the advice and help he could to the commanding officer and to arrange accommodation for his troops.[5] The same day (10th) Loudon with eight hundred men marched to Beaufort. His force consisted of the two Sutherland companies; the two companies of Seaforth; the companies of the Grants and the Munros, Lord Reay's, and a hundred men of his own regiment.[6] His object was 'to obtain the best satisfaction that he could for the peaceable behaviour of the Frasers'.[7]

What actually transpired is best told in the words of the despatch Forbes sent to Lord Tweeddale.[8]

[1] *C.P.*, 519.
[2] *C.P.*, 507.
[3] Uncat. MS. in Nat. Liby., or *C.P.*, 510.
[4] *C.P.*, 507.
[5] *C.P.*, 508.
[6] *The Sutherland Book*, *II*, p. 93.
[7] *C.P.*, 519.
[8] *Ibidem*.

Earl Loudon prevailed with Lord Lovat on Wednesday the 11th to come into Inverness alongst with him, and to live there under his eye, until he should bring in all the arms which the Clan were possessed of; which he promised to do against Saturday's night, excusing himself from answering for his son, and some of the mad young men of his name, who he said he could not govern, and some of which, he informed us, had already gone to Perth; which he knew to be true, to the number of between two and three hundred in different small parties. The surrender of the arms was all that could well be expected from him. As there was no direct evidence of his accession to his son's treason, of which he was perpetually complaining; and as committing, on suspicion, a man so aged, and seemingly so infirm, would have had the appearance of cruelty, therefore Lord Loudon determined to await the delivery of the arms; and in the meantime, on Friday the 13th, detached 200 men more, under Captain Munro of Culcairn, to follow MacLeod to Elgin and Aberdeen; . . . But instead of delivering the arms at the time prefixed, excuses were made, and fresh promises; which continued from day to day till last Thursday; when Lord Loudon, finding himself deluded, clapped sentries on the gate of the house where he [Lord Lovat] resided, resolving to commit him next morning to the Castle; but in the night time Lovat found means to get out at a back passage, which was not suspected (as, indeed, his attempting an escape, in his state of health, was what no one dreamed of) and to be conveyed away, probably on Men's shoulders; but whither, we have not as yet learned.[1]

The result of this escape was that it became now impossible to spare more men (i.e. in addition to the 200 under Culcairn) to proceed towards Aberdeen, until the future action of Lovat and his clan became clear.

MacLeod, in the interim, had reached Elgin in safety on Thursday, the 12th, but had pushed on to secure the boats on the Spey from the rebels,[2] before Munro's reinforcements arrived. While Lovat was still a 'free' prisoner in Inverness, Forbes wrote twice on the same day (13th December)

[1] *C.P.*, 519.
[2] *C.P.*, 519, and *M.C.P.*, iv, p. 160, quoting *Letters at Dunvegan*.
[3] *C.P.*, 511, and *C.P.*, 513.

to MacLeod explaining clearly how he should employ his troops in various contingencies during the march ' to deliver the Duke of Gordon's vassals and tenants and their neighbours in Banffshire '.[1] He suggested that as frequent communication was necessary between them, steps should be taken in Elgin at once, to employ one or two reliable men as runners.[2] Lest he be thought to be arrogating to himself authority, he modestly begins : ' I presume you will not scruple to take directions from me, though I have no military commission or authority.' [3] Replying on the 15th, MacLeod calls himself no military man, and says : ' I shall long almost hourly for direction and intelligence from you.' [4] Forbes's provisional instructions are very systematically set forth, and all this trouble is taken when he actually expects Loudon to arrive with definite orders for MacLeod within a few hours. Surely the work of a dutiful, industrious, and orderly mind ! In the first place, MacLeod was at once to collect all information possible as to places where large quantities of arms might be gathered. He was to secure the weapons, and to surprise and disperse any of the enemy who might be within his reach. Should the rebels return in a body upon Aberdeen or elsewhere, MacLeod was to be ready to take up the pursuit as soon as Loudon's orders reached him. If, however, the rebels were in force and had taken up positions, he would probably receive orders to march for Aberdeen. There James Morison, the Provost, had been warned of his and Loudon's approach and instructed to arrange billets for the companies.[5] In that case some troops, possibly the Grants, would have to be left in Strathbogie. In conclusion, Forbes requests ' an abstract of all the Creditable Intelligence ' he might have touching Aberdeen, its vicinity, and his own neighbourhood.[6]

The same day (17th December) Forbes again wrote [7] to

[1] *C.P.*, 513.
[2] *C.P.*, 511.
[3] *C.P.*, 513, cp. *M.C.P.*, iv, p. 194.
[4] *M.C.P.*, iv, p. 161.
[5] *C.P.*, 518.
[6] *M.C.P.*, iv, p. 162.
[7] An ' ostensible ' letter (*C.P.*, 517), without any meaning, was also written to MacLeod on this date. See *M.C.P.*, iv, p. 214. Corrections to Original *Culloden Papers*.

MacLeod announcing Loudon's arrival, and his endorsement of all Forbes's provisional instructions, save one. It was not considered necessary to leave a party behind at Strathbogie. In the absence of any duty which might delay him, MacLeod was to hurry on to Aberdeen to relieve that city from the oppression under which it was then groaning, according to the latest direct information just received.[1]

It is difficult for us, in these days when letter-writing is said to be a lost art, to conceive of any man occupying himself, for hours, as Forbes must have done daily, in writing long, detailed despatches such as those he had just sent to MacLeod, and yet his industry of the 17th pales before his achievement of 22nd December. On that day he addressed lengthy documents to the Marquis of Tweeddale,[2] the Earl of Stair,[3] and Andrew Mitchell,[4] giving an accurate account of the state of affairs in the north and of the movements of troops. The President was at that date awaiting reinforcements at Inverness, viz. two companies of Macdonalds from Skye; one company of Mackenzies from Lewis; one company of Mackays from Strathnavern; one company of Rosses under the Master of Ross, who with John, the President's son, was landed at Inverness from the *Hound* sloop of war a few days earlier.[5] Each company contained one hundred men. Forbes still had to expostulate earnestly with Tweeddale about the scarcity of arms and the lack of money. Indeed, he had not easily forgotten how difficult it had been for him to reply at the beginning of this same week to Lord Fortrose who had written requesting the refunding of the £400 expended on his troops during the last two months.[6] That reply might have been concisely sent in two words: 'No cash.' What he had said was 'Cash is very low with us at present', but he held out the promise that the account for debt would be made out 'in the same manner with what we lay out of our own purses which is no inconsiderable sum'.[7]

[1] *M.C.P.*, iv, p. 164.
[2] *C.P.*, 519; 2,400 words.
[3] *C.P.*, 520; 800 words.
[4] *C.P.*, 521; 700 words.
[5] *The Chiefs of Grant* (W. Fraser), ii, p. 198; and *C.P.*, 520.
[6] *C.P.*, 515.
[7] *C.P.*, 516.

And so to Tweeddale he chorused out his refrain for arms and money. If these were but to come in time, he might yet add one, two or three thousand Highlanders to the forces of the king.[1]

Cries for help, gentle expostulations, urgent entreaties, all fell on deaf ears ; Whitehall could not or would not understand. It is with some emotion and pointedness that the President made reference to this neglect when he wrote the Earl of Stair on 22nd December, 1745. He was fully aware of the excuse ' for not minding us when the enemy was so near London ' ; [2] but now that that danger was happily past, supplies were essential in the north if they were to defend themselves against the rebels. Unless help were sent, any danger, dishonour, and expense that might ensue could not be blamed on those administering affairs in the north. Moreover, in the event of a future rising, honest men would not rise to defend the government but would ' sit with arms across '.[3]

By this time there were eighteen Independent Companies of one hundred men each actually afoot. Of these, seven were with MacLeod in Aberdeenshire and Banffshire ; six were with Loudon at Inverness ; and other five were en route for Inverness. Of these five companies, two were composed of Macdonalds raised by Sir Alexander, and were expected to reach headquarters by 24th or 25th December, and the rest were expected soon after. The commissions had all been distributed among those who ' undertook the service when in this country it seemed the most desperate ', and the remaining companies would be allotted in the same way, if required.

The conclusion of this letter anticipates the possible censures which might be levelled at him for his conduct of affairs. If he had committed any fault, it had been one of judgment, for he had acted throughout according to the best of his understanding and as any honest man ought to have done, and

> upon this single principle, that I thought it was my duty. If any man will take to himself the merit of my endeavours to

[1] *C.P.*, 519. [2] *C.P.*, 520. [3] *Ibidem.*

serve the King, or, to raise the value of his own, he will depreciate mine, let him ; I scorn to contend for such trifles, and can with great tranquillity despise the creature that has them for the object of his pursuit. But these reflections have carried me out of my way.[1]

This, indeed, is an accurate account of what came to pass later after the rebellion was crushed when not all the deserving received the rewards. The money available for defence was nearly spent,[2] and yet for want of a few thousand pounds and a few thousand stand of arms, things were in a parlous state.

The events of the following day were to give pointed proof of the justice of Forbes's complaints. A skirmish took place on the 23rd December at Inverurie in which MacLeod was surprised and defeated by a superior force including some of Lord John Drummond's French troops, under Lord Lewis Gordon. The casualties—killed, wounded and captured—were about seventy. Lord Lewis now held all the country from Aberdeen to the Spey for the Pretender. As a result of the panic following upon this, their first encounter with the enemy, quite a number of the men in the various Independent Companies represented, deserted. This was a hard knock to MacLeod. He was compelled to retire on Elgin, and his letters to the Lord President written on the 25th and 26th December, show him and his brother officers doing their best to hearten their troops. His own attitude of mind is clear from his words : ' The ruffle has not abated one bit of my spirit '.[3] What was urgently needed was ammunition, of which they were quite destitute. The letter ends : ' Your advice and direction I shall be glad to follow, and long for.' [4]

That Forbes did not regard the affair as serious is seen from his own description, written early in the new year. His correspondent was his cousin William Forbes, W.S. He says :

The Solicitor will let you know the truth of the scuffle between Lord Lewis Gordon's people and MacLeod at Inverurie—

[1] *C.P.*, 520.
[2] *C.P.*, 521.
[3] *M.C.P.*, iv, p. 167.
[4] *M.C.P.*, iv, p. 168.

where the laird's behaviour and that of the handful he had with him was very noble. The unsuspected ploy that young lord has taken grieves me extremely. Pray how does his mother take it?[1]

Naturally it was vexing for the volunteer officers to see the men they had enlisted and brought so far, melt away, some, though they were 'hardly ever fire burnt',[2] and some, after the end of the fight where they had behaved well.[3] It is significant that it was to Forbes, MacLeod turned to provide for this 'disgraceful frenzy' 'a proper remedy without loss of time'.[4] Of his own four companies, he had left only upwards of two hundred men. (The company of Ross of Culcairn and MacLeod of Geanies had in like manner suffered.) In a short time, confidence was partly restored when a detachment of Loudon's men arrived with ammunition.[5]

[1] MS. in Edinburgh University Library, or Hist. MSS. Com. Reports—Laing MSS., vol. i.

[2] *M.C.P.*, iv, p. 170.

[3] *M.C.P.*, iv, p. 171.

[4] Two letters, dated 29th December, *M.C.P.*, iv, pp. 169-170.

[5] *M.C.P.*, iv, p. 171.

CHAPTER XIV

THE 'FORTY-FIVE CONTINUED

Forbes and the Independent Companies in Action (1746)

The desertions after the Inverurie reverse, and the returning home of some of the sick, who had been left at Nairn, a number taking their arms with them, added greatly to Forbes's worries.[1] One mildly consoling fact he recounted to Tweeddale on 29th December,[2] namely, since Lovat's dramatic escape, his clan had kept fairly quiet. And so the fateful year drew to a close.

As Forbes sat at his desk, taking stock of affairs in general, things must have looked black enough. There was the delay on the part of the Government in sending on money and arms; there was the escape of Lovat, in itself a slur on Loudon and his men; there were desertions following on the recent reverse at Inverurie, and the loss of prestige and morale on the part of the Independent Companies he had gathered and equipped with so much labour. Little did he know that by this time the rebels, less than 4,000 strong, had got as far north as Glasgow (28th December) after their return from England. That tragic retreat had commenced on the 6th, two days after their arrival in Derby. This news, Dundas, the Solicitor-General, wrote from Edinburgh, 29th December.[3] The letter contained one other piece of information of great interest to Forbes: 'Marechal Wade returns to London and Lieut-General Hawley is to command here.' Had he known this, his own despatch (dated 30th December) to Wade would of necessity have been different. In it he reported the arrest of Lovat and his subsequent

[1] *M.C.P.*, iv, p. 171. [2] S.P. 54, Bundle No. 26. [3] *C.P.*, 307

escape. At the same time he requested a sloop of war with directions, and with news of the rebels' movements. This, he pointed out, was to enable him to co-operate in the best manner with Wade's action.[1] A few days later Marshal Wade returned to London and was succeeded by Lieut.-General Hawley as Commander-in-chief in Scotland,[2] having under him the Independent Companies and the Earl of Loudon.[3]

The rebellion was certainly proving the undoer of a few reputations. No sooner had the change in the director of military operations in Scotland taken place, than other changes followed. On the 4th January Tweeddale resigned from the post of one of His Majesty's Principal Secretaries of State.[4] All his official letters were now to be sent to the Duke of Newcastle.[5]

The year 1746 opened with Scotland clamouring for funds to pay the troops, for the rebels had collected nearly £60,000 of the Revenue, and it was with difficulty money was obtained from the Royal Bank. To prevent the impending distress,[6] it was therefore urgent that ready cash should come with Hawley's troops, as Fletcher, Lord Justice-Clerk, wrote to Tweeddale (2nd January, 1746). The new Commander-in-chief arrived in Edinburgh on 6th January, and the following day corroborated Fletcher's report. 'There's not a penny to be got there, for bill or loan in any shape.'[7] His despatch (9th January, 1746) to Tweeddale reporting his intelligence gathered as to the doings of the Lord President at Inverness, stated his intention to write to Forbes and Lord Loudon that night. He added,

> but [I] must leave it to Lord Chief Justice-Clerk to give them directions what to do. I can only tell them what we do. As to Lord Justice-Clerk there never was a more zealous or more active man, in every article for His Majesty's Service.[8]

[1] S.P. 54, Bundle No. 27, No. 15.
[2] *C.P.*, 307.
[3] S.P. 54, Bundle No. 27, No. 4.
[4] *Ibidem.*
[5] S.P. 54, Bundle No. 27, No. 5.
[6] S.P. 54, Bundle No. 27, No. 1.
[7] S.P. 54, Bundle No. 27, No. 9.
[8] S.P. 54, Bundle No. 27, No. 15.

This, three days after his arrival in Edinburgh! And of Forbes, the man who was at the seat of action in the theatre of war,—nothing!

But to return to the seat of action and the man. It looked as if 1746 was going to make as many and varied demands upon the Lord President as had the year that had just closed. Complaint, and what was worse, justifiable complaint was the theme of MacLeod's first letter (8th January). Apart from the fact that he dated it from Forres and so proved he was as far from his objective as when he left Inverness a month earlier, Forbes was annoyed to learn of the slowness with which the meal came in, of the profiteering that ensued, and of the consequent grumbling of the men at the enhanced prices demanded. An embargo on shipping further complicated matters. The simple faith of the Highland laird in his friend is touching. If there was any remedy for these ills, he believed Forbes would know it and how to apply it. And in the midst of these many demands poor Forbes was unable to apply a remedy to his own ill and so aid himself of 'a most plaguy companion—the toothache'.[1]

On the 9th January Lord Stair at last broke silence. A couple of complimentary letters, the one amplifying the other, were sent, one to the Lord President and another to Lord Loudon. To the former he expressed himself

> perfectly satisfied of the disagreeable situation you must have been in not hearing anything from hence during the course of so many weeks.[2]

Forbes's last despatch (dated 24th December) had put the case of the loyalists in the north so well that Stair had simply shown it to the king himself and his ministers. Acknowledging Loudon's letter of the 25th December ('a letter . . . received in less time than any letter ever came'[3]) Stair likewise (9th January) announced that he had made application to his Majesty, to Pelham, and to all others concerned, and was now able to report that the money and arms demanded on the 25th December were on board the sloop which was

[1] *M.C.P.*, iv, p. 176. [2] *M.C.P.*, iv, p. 184. [3] *Ibidem.*

ready to sail.[1] Broadswords he admitted as necessary, but there was no such thing to be found ready made. He surmounted this difficulty by concluding a transaction with a Birmingham manufacturer for a weekly supply of four-score hilts. These were to be used for mounting the blades which Loudon already had for his own regiment. Further, a London manufacturer agreed to supply 1,000 complete swords at nine shillings apiece, these to be supplied to the Independent Companies. Having dealt with arms, Lord Stair now turned to the man. As General, Hawley was to have fifteen old battalions besides horse and dragoons, and in the future, Forbes and Loudon himself, would receive their directions from time to time, as to military operations, from him, or from the person at the time commanding in Scotland, an arrangement which would 'considerably abridge and diminish' their 'uncertainties and disgusts'.[2] But Forbes had sought relief from no responsibilities, nor had he set forth grievances; he had merely stated the urgent needs of the situation. And behold how it was received!

This was the first practical notice taken of the President's repeated demands for arms and money and credit: hitherto, these had been more or less ignored. True it was that 'to the generality' in London, Scotland was 'the same as Norway'.[3] Apparently Lord Stair's 'fruitless attempts . . . to save the ruin of the north'[4] received scant support from those in authority,

> lest by their success he should get power, which is not the interest of the present ruler, who, although not publicly declared, yet privately manages the Scots affairs, with the same despotism he ever has done.[5]

'The present ruler' was almost certainly the Duke of Argyll.[6] It is probable he arrogated to himself more authority, now that Tweeddale had given up the post of Secretary

[1] *M.C.P.*, iv, p. 185. See also S.P. 54, Bundle No. 27, No. 3.
[2] *M.C.P.*, iv, pp. 185-7.
[3] *C.P.*, 525.
[4] *Ibidem.*
[5] *Ibidem.*
[6] See *C.P.*, 527 and p. 259 *infra*.

of State (for Scotland). That this resignation gave Forbes no great pain, was doubtless true,[1] but were matters likely to be better in the hands of Lord Harrington and the Duke of Newcastle who were to divide his duties?[2] If the departure of Tweeddale from office might presage more active support for the loyalists in the north, certainly the entry of Newcastle upon the scene could hardly be regarded as reassuring.[3] He (Newcastle) wrote himself on 11th January, 1746, announcing these administrative changes and, what was more to the point, promised that 1,000 stand of arms were to be immediately sent with a sum of money for the payment of the troops. At the same time Forbes was asked to furnish Hawley with such intelligence as he possessed.[4]

Not all the President's correspondents wrote about the dangerous situation in the north, but even when they dealt with other matters they were equally complimentary to his ability and popularity. Thus General Wightman (who seems to have been no friend of Milton, the Justice-Clerk's) wrote (14th January) from Edinburgh that the Squadrone was totally routed and

> the D—ke [=Argyll] and J—ce [=Milton] return into power in the same shape they formerly were, which bodes no good to this city and country. . . . I write this chiefly to beg your coming hither, and that you may be a check upon the D—ke and the J—ce, and may take the Government of this town till we get a new constitution of Government. All the inhabitants will petition for a Commission Lieutenancy to you, which will put you on a par with the D—ke, and enable you to do more, to put spokes in his wheel as formerly, when you were Lord Advocate. Your country calls upon you at present loudly to

[1] *M.C.P.*, iv, p. 193.

[2] On the 10th January Forbes was informed by the Duke of Argyll (the Ilay of the earlier days) from London that he had recommended a Mr. Corse to the law chair at the University of Glasgow as Forbes desired, and 'in prejudice of a friend' of his own. (*C.P.*, 526.) This was recognition of the President's worth by one, too, who had not always given him fair play. Here also is proof of the President's desire to help a friend even in the midst of the stir of this national upheaval. See p. 264 *infra*.

[3] *C.P.*, 308 and S.P. 54, Bundle No. 27, No. 21.

[4] *C.P.*, 308, Newcastle to Forbes.

act for it ; I beseech [you] don't be deaf to it, by staying longer where you are than you needs must.[1]

Forbes, however, considered his duty lay at hand, there in Inverness ; was satisfied he was doing it ; and was 'convinced the event' did not depend on him. All this he explained to his cousin, Will Forbes, W.S., strangely enough on the very day Wightman wrote, viz. 14th January.

If you ask me whether I have been idle, since I saw you ? I can answer with a very safe conscience. No ! . . . If you ask whether I have been ill employed ? Consulting the same conscience, I can answer No ! I have been doing what I take to be my Duty—and from that motive only. If you ask me whether I have been agreeably employed, I can with great truth answer. No ! The strange mixture of Knavery and Folly, which I have met with, and the fatal bias of the Unthinking misleading them to disappointment and Destruction, in spite of all advice and industry, has chequered my time with very disagreeable moments. If you ask me what the issue of all my labours is to be ? My answer is—God alone knows ! So many unexpected things have happened : and there is such a dash of Folly flung into the councils of men nowadays that it is easier to predict the weather, than to foretell how men will resolve or behave themselves, of which I have had numberless instances, since we parted ; in the meantime, I thank God, solicitude, about the event, does not much disturb me ; because I am satisfied I am doing what I ought to do, and yet at the same time, convinced that the event does not depend on me. My health has stood much better by me than I expected, considering that ailments of various kinds have confined me very much to the house, my spirits have answered every occasion I had for them ; my success has been, hitherto, better than most people looked for, though not so good as I wished, and sometimes hoped ; and all appearances portend that issue which makes me wish that everyone had the same disposition to mercy—that I feel in myself. Could I be indulged in this wish, I should have done with campaigning, and hardly put in for a second wish. . . .

[1] The words—' put you on a par with the Duke and enable you to do more, to put spokes in his wheel as formerly when you were Lord Advocate '—seem corroborative proof of the theory, put forward in Chapter V above, that jealousy was at the root of the overbearing Ilay's attitude to Forbes. *C.P.*, 527.

I have no complaint but a sneaking toothache which is now almost gone—and a sore eye which Robin Brown is doctoring. My son has been laid up for a few days, with a broken shin which is now very near hale, and my lazy nephew the Doctor complains of nothing, but the intolerable hardship of being obliged to get out of bed before nine o'clock.

Talking of this lazy member of the medical profession recalls to his mind his fine old friend Dr. Clark, and so he adds : 'I am overjoyed to hear that Clerky stands it so well.' Clerky ! The name brought others to his mind, other boon companions, and recollections of jovial evenings spent together before Prince Charlie came to turn father against son and friend into foe. He had news of one of these. Pawkily and a little ironically he gives the latest health bulletin of the escaped Lovat.

My Lord Lovat, who has for many years been complaining of colds and fevers . . . has mended, as I am told, much in his health since he made a moonlight flitting into the mountains. I wish his march may be found to have been as prudent as it has proved medicinal.[1]

And what of those other old friends, his rivals on the Musselburgh links ?

I long to hear what is come of all my gouf companions, particularly whether John Rattray is come back, and in what health. If you can find any such answer as this is, pray give me some account of the fate of my acquaintances, for I have not for these five months seen anyone that could give the least satisfaction to my anxiety to know.[2]

Before this letter arrived in Edinburgh the battle of Falkirk had been fought (Friday, 17th January), and the consequent rejoicing among the rebels increased the difficulties with which Forbes had already to contend.[3]

[1] MS. in Edinburgh University, or Hist. MSS. Com. Reports, Laing MSS., i, p. 452.

[2] *Ibidem.*

[3] Archibald Grant of Monymusk, proposed (17th January) that the chieftains and principal members of the loyal clans in the north should ' exert themselves for the public service by a strong address to the King '. It was a significant example of the high esteem in which the Lord President was held that he was ' the proper judge of its expediency '. (*M.C.P.*, iv, p. 192.)

With a real understanding of the situation, the Lord President tried now to prepare for eventualities and on the 23rd January penned two long letters extending to some 2,000 words in all (and also an ' ostensible letter '), the one to Seaforth and the other to Sir Alexander Macdonald. He tactfully answers the former's complaint of the previous day.

> I know it, and am sorry for it, that your Lordship has no employment Civil or Military, and I am so far in the like case that I have no employment that can entitle me to meddle in those matters. But your Lordship has and has shewn it very much to your honour, and for the service of both, an unalterable attachment to your King and country, as you very properly express it, which gives you an undoubted title to advise and to act. I have often told your Lordship I act under no other character, and would never desire better advisers on such an occasion, than such as act from the like principles and under the same title.[1]

Noble sentiments and simply expressed ! Forbes's warning to Macdonald to prepare for a retreat of the rebel army by assembling a force ' as shall obviate or extinguish all hopes in them ' is pregnant with his customary foresight. They might do much mischief especially as the Regular troops could not follow them at this season,

> but if there was a sufficient posse here to lock them out, there would be no other party they could possibly take but to separate and be quiet.[2]

As they hoped soon to be able to arm and ration ten or twelve hundred men, in addition to those already enlisted, he suggests gathering this force or a greater number from Skye, Seaforth, Sutherland, etc., who are to serve on longer than the duration of the present trouble. Macdonald was himself, according to Forbes's advice, to come with four hundred at least of his own and MacLeod's clan and leave the island (of Skye) ' naked '. It would be safe enough as they would be ready to ' fly ' to the help of their kinsfolk if necessary. Macdonald agreed to come with his men, but discovered he

[1] *M.C.P.*, iv, p. 194, and cp. *C.P.*, 513. [2] *M.C.P.*, iv, p. 197.

could not bring MacLeod's and some of his own owing to their lack of plaids ![1] Plaids, alas ! were not the only deficiencies. The promised sloop with its 1,000 stand of arms and ready money was still an unrealised hope when Forbes wrote to the Duke of Newcastle on 26th January.[2] He pointed out that the want of these—arms and money—made it impossible to gather in Inverness more troops from the loyal clans. Moreover, double the number of arms promised could have been profitably employed and as contingent expenses were heavy and the funds to meet these very scarce, he suggested that a remittance should be made forthwith.

It was the intention of the President and of Loudon, as they told Hawley (26th January), to secure Inverness by means of ' as many of the well-affected clans ' as could be collected and supplied with the weapons now awaited. The troops already on foot were to be marched wherever the service might require.[3]

On the 9th February Captain Porter of H.M.S. *Speedwell* dropped anchor at Inverness. She had acted as convoy to the *Helen* and *Margaret* carrying arms, ammunition, and £5,000 or £6,000 to be delivered ' to the order of Duncan Forbes, Esq., Lord President of the Sessions '. According to both Loudon and Forbes, however, the rebels were too near —only 24 miles from Inverness—and in greatly superior force. It was therefore decided that Captain Porter should retain the money and arms as these would not be secure in the northern capital, and lie off in case of need.[4]

By this time (11th February) Loudon had collected 2,000 men at Inverness [5] and was fortifying the town with a ditch, placing ship cannon at proper places, and laying in provisions. He was daily expecting more men.[6] Forbes had established his headquarters at Fort George (in Inverness). The situation was becoming tense. The Highland army was

[1] *M.C.P.*, iv, p. 202.
[2] *C.P.*, 528 and S.P. 54, Bundle No. 27, No. 49.
[3] *C.P.*, 529.
[4] *M.C.P.*, v, p. 16, and *C.P.*, 318.
[5] S.P. 54, Bundle No. 28, No. 31.
[6] *London Gazette*, Saturday, 22nd Feb.—Tuesday, 25th Feb., 1746.

approaching. While Forbes's well-wishers in the south breathed freely once more, their own safety assured, they realised that their friend, more than others, was in imminent danger. This is borne out in the letter (dated 15th February, 1746) Forbes received from Wm. Corse at Edinburgh, thanking him for his recommendation to the chair in the University of Glasgow, and at the same time describing at great length (some 2,800 words) the battle of Falkirk. An eye-witness of part of the battle, he relates the resentment felt by the rebels against Forbes. Let Corse himself speak :

> As the scene is shifted nearer your quarter, you will know more than we. I wish to God you may not know too much. We can see no help for you, but shipping, in case they do come in a body ; and we are not sure that you have that at hand. We form many schemes for your safety, and are very anxious ; as, by their discourse here, you were the chief object of their resentment : especially when they came back from England : for it was their fixed opinion, that with the McDonalds and MacLeods of Skye, the McKenzies and Frazers, they might have been masters of London, had all these joined them soon enough : the failing of which they place to your Lordship's account.[1]

On Sunday, the 16th February, Prince Charlie took up his quarters at the House of Moy, seven miles from Inverness. The same day advanced parties of the contending forces met some four miles south of the town, and a skirmish of no consequence took place.[2] Deciding late at night to march out with his fifteen hundred men,[3] Loudon left the town guarded by a chain of troops to prevent information leaking out. By midnight he had reached beyond the city boundary. They marched three miles in ' great order and silence '. Suddenly, a mile on his left, he heard ' a running fire from the whole detachment '. The troops had seen, or thought they saw, four men, and therefore fired.[4]

[1] *C.P.*, 313.

[2] *London Gazette*, 1st-4th March, 1746, and quoted in *Gentleman's Magazine*, xvi, p. 145.

[3] *London Gazette*, 8th-11th March, 1746.

[4] *M.C.P.*, v, p. 4.

For the cause of this sudden and almost mysterious surprise, we must seek the Jacobite camp. The 16th of February, 1745, saw the Young Pretender reach Moy Hall where his worshipping partisan the young Lady Mackintosh, 'Colonel Anne', gave him hospitality. The Dowager Lady Mackintosh learnt of the danger impending from Loudon's party and sent warning, her messenger a lad of fifteen.[1] So lustily did the boy shout to rouse the sleeping servants that he succeeded in awaking the Prince, who in slippers and nightcap, leant over the banisters to find out the cause of the disturbance. Descending hastily, he made his escape along with his ten followers.

The local blacksmith became now the hero of the moment. Sent out to reconnoitre with four others, he loudly exhorted the imaginary clans by name, shouting 'Advance, my lads! Advance! We have the dogs now'. And so the resourceful blacksmith outwitted, in the darkness, the Earl's newly recruited Independent Companies. While the attack on Moy Hall failed in its object to capture the person of the Prince, it nevertheless was one reason why the rebel cause lost time through delay. Scantily clad as he was, Prince Charlie caught a chill, and for several days was seriously ill.[2]

The result of this unfortunate incident known as the Rout of Moy was a panic among the Government troops, and the consequent temporary loss of five of the Independent Companies in the rear. This was equal to a third of Loudon's total force.[3] Among those killed in the raid on Moy Hall was the famous piper MacCrimmon. There was nothing else for it, but to march back to the town. The rebels on their side,

[1] Another account says that Loudon's officers were drinking in Mrs. Bailey's inn in Inverness, when plans were discussed for a raid upon Moy Castle with the object of capturing the Prince then known to be in residence there. They were waited on at table by the landlady's fourteen-year-old daughter who heard all the details of the plan. Once the troops had departed for the attack she set off to cover the ten miles across country by a short-cut, and so raised the alarm. (See Kempt, *Convivial Caledonia*, p. 35.)

[2] See Wilkinson, *Bonnie Prince Charlie*, p. 188.

[3] In Lord Loudon's account of the Rout of Moy, he explains how in the panic and darkness, one short-sighted officer did not perceive that the men in front were running, and deliberately marched his men after them! (*M.C.P.*, v, p. 5.)

on hearing the firing, retired in great confusion two miles, but, confidence being restored next day, they advanced nearer Inverness, by which time (17th February) Loudon had lost by desertions two hundred men.[1] In these straits he naturally turned to Forbes, MacLeod, Innes and Munro for advice, and as a result of their consultations he resolved to vacate the town.[2] Had he remained, not only would he still have lost the town, but the troops too, of whom at least half would have joined the rebels. He would also have lost 1,700 arms. It is an undeniable fact that the Independent Companies lacked stamina at the moment, but their commander firmly believed that later, when the back of the rebellion was broken, they, strengthened by regulars, would be of incalculable use as 'moppers-up' in hunting out the rebels and guarding passes.[3]

Loudon's plan was to cross to Kessock. To put everybody off the scent, he evacuated the town about 10 a.m. on Tuesday, 18th February,[4] made a pretence of marching east [5] as if to meet the rebels, and then began embarking the troops. Captain Porter of the *Speedwell* with 'a great number of boats' was in charge of the crossing, and that was thrilling enough for those who loved adventure.[6] The rebel host had got wind

[1] Lord Loudon received from the President £633 8s., a sum which was to be used for payment of the troops, and for which he was to be accountable. (*M.C.P.*, iv, p. 208, where Warrand refers to Mackenzie Deeds, Register House. It has been impossible to trace this vague reference.)

[2] S.P. 54, Bundle 29, No. 10.

[3] *M.C.P.*, v, p. 6.

[4] *M.C.P.*, v, p. 8 and p. 43.

[5] *M.C.P.*, v, p. 6.

[6] An interesting story preserved among the old people of the region concerns this period, and is related in *The Statistical Account of Scotland*, vol. xiv, p. 369 (ed. 1845). There was a plot to capture Forbes, Loudon and some friends while they were at Culloden House. A woman, who was searching for some of her sheep, was asked by a tall Highlander whether she knew the President or not, but she made no reply. Thereupon the man told her he was friendlily disposed to the President, and enjoined her, if she wished to save his life, to deliver to his Lordship a letter, which he took from his sporran. As the family were at dinner, the woman experienced some difficulty in securing access to the Lord President to deliver her message with its timely warning. This man turned out to be Coll Bain (Macdonald), who had been acquitted of a capital charge some years previously, owing to Forbes's skilful pleading as advocate. On being thus warned the President gave instructions that the troops should be treated 'with ample cheer'; the bagpipes were blown, and some danced on the lawn. All this Forbes ordered, that no suspicion might arise that the plot had been discovered. Then followed the hasty flight to Kessock Ferry, the Black Isle, and thence to Ross-shire and the Sutherland coast.

of Loudon's design and with 'the horses upon a full trot',[1] hurried three pieces of cannon, a six-pounder, and two three-pounders, to the attack. They arrived just opposite Kessock about noon and were 'in time to play [2] upon the boats that transported the rear-guard' with Loudon himself in command.[3] Although the crossing was managed without loss of a man,[4] many loyalists in terror deserted that night, and more soon after.[5] On the 19th February Loudon passed his troops over from the Black Isle in three sections at three different places, one near Brahan, another at a ferry above Cromarty, and a third at Cromarty itself, but finding the country too narrow, he now decided to cross at Tain into Sutherland.[6]

The castle of Inverness, garrisoned by two of the Independent Companies (the Grants and the Rosses), surrendered to the rebels on Thursday the 20th (or Friday 21st),[7] 'but upon no other terms than prisoners at discretion'. Forbes and Lord Loudon would appear to have separated for a time, for the former passed through Alness on the 21st February. His list of expenses contains the entry under this date: 'To a horse-shoe at Bridge of Alness [8] =6d.; and to mending his Lordship's boots=6d.' [9] That the separation of the two was for a brief period only at the time of the crossing is clear from the fact that they sent a joint letter from Balnagown to an unknown correspondent.[10]

Consequent on instructions received (19th February) from

[1] *M.C.P.*, v, p. 17.

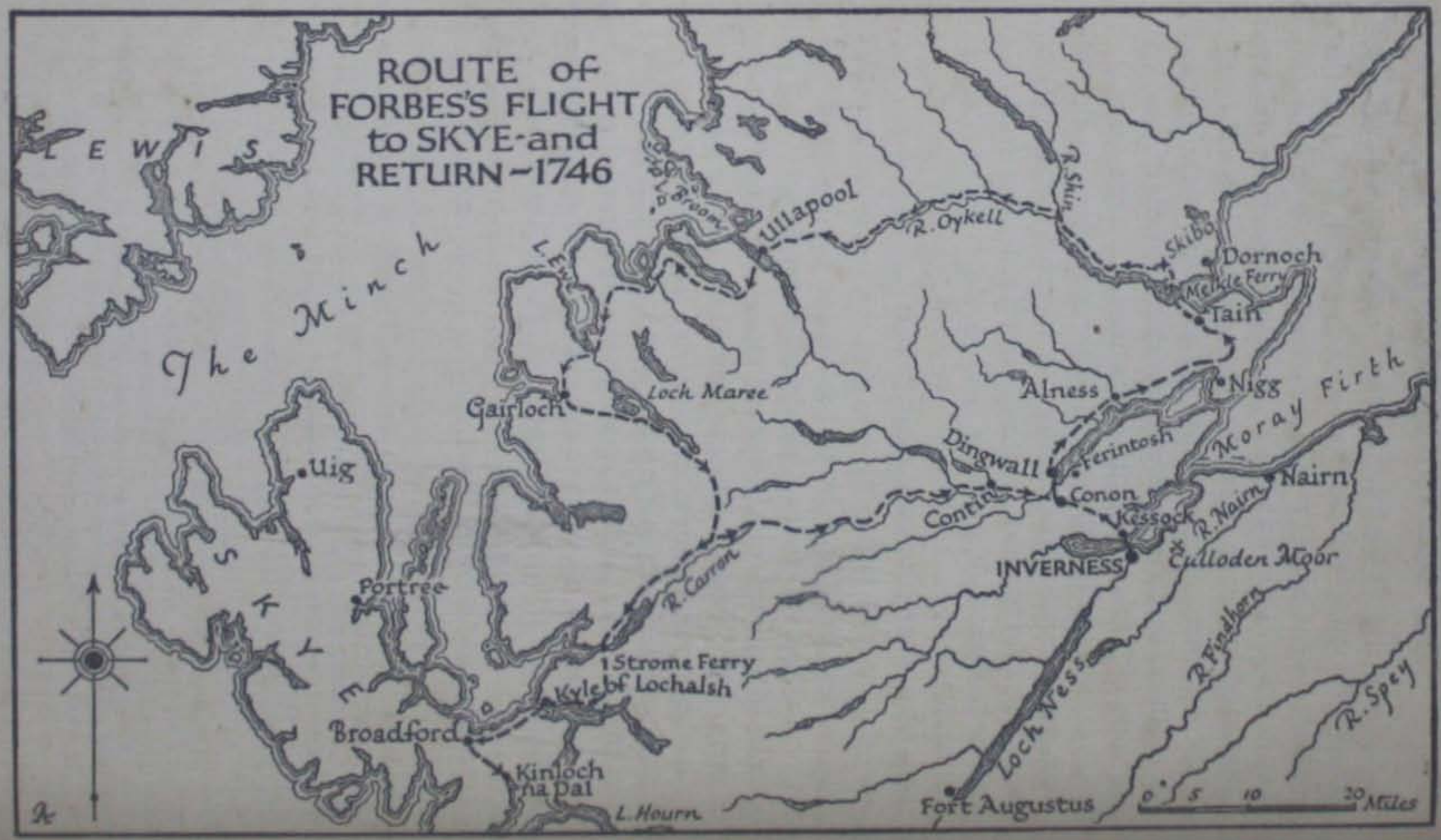
[2] 'I must here observe the Lord President's regard for Captain Munro's merit, for he would not provide for his own safety, till he had (however unwillingly) obliged that brave officer to cross the ferry first to Kilmoor, well knowing the inveteracy of the rebels against him and his clan.' (*The Wanderer* (1752), p. 69.)

[3] *M.C.P.*, v, p. 33. [4] *M.C.P.*, v, p. 7. [5] *M.C.P.*, v, p. 42.

[6] S.P. 54, Bundle 28, No. 47. [7] *M.C.P.*, v, p. 8 and p. 17.

[8] By a strange coincidence the present writer in the winter of 1917 while stationed at Invergordon visited a house, an old one next to the Bridge of Alness, and subsequently resided there for three midsummer vacations, during which he traversed most of the ground covered by Forbes in his flight to Skye. He learnt by chance that this house had formerly been an inn. It is a pretty fancy at least that the Lord President was a guest here some two centuries earlier.

[9] *M.C.P.*, v, p. 9. [10] *M.C.P.*, v, p. 10.


ROUTE of
FORBES'S FLIGHT
to SKYE-and
RETURN-1746
LEWIS
The Minch
Ullapool
R. Oykell
R. Shin
Skibo
Dornoch
Meikle Ferry
Tain
Alness
Nigg
Firth
Loch Maree
Gairloch
Dingwall
Ferintosh
Moray
Nairn
Uig
Conon
Kessock
R. Nairn
INVERNESS
Culloden Moor
SKYE
Portree
R. Carron
Strome Ferry
Kyle of Lochalsh
Broadford
Kinloch
na Dal
L. Hourn
Loch Ness
R. Findhorn
R. Spey
Fort Augustus
0 5 10 20 Miles

Loudon, Captain Porter left the Beauly Firth with the 'boats that I had secured together with the ships that were in the road in Inverness', and made for Cromarty. This was on the 22nd February. That very day he got word that, as Lord Loudon and Duncan Forbes (who were then at Balnagown in Ross-shire) [1] had now been compelled to cross to Sutherland,[2] he was to cruise upon that coast in order to supply them with money and arms. The weather was very bad—'thick weather and blowing strong easterly'—and so, although Porter had sailed from Cromarty on the 26th, he had to return for shelter, still having on board the arms and money.[3]

The 23rd—a Sunday—saw a third crossing, this time to the Sutherland coast, Loudon to Dornoch by the Meikle Ferry, and Forbes to Overskibo, for he had refused (25th February, 1746) the Duke of Sutherland's invitation to Dunrobin, that he might be near his troops.[4] These positions they occupied till 20th March. Dornoch was now the headquarters of the loyalist troops, and Tain on the other side of the Firth that of the rebels.

What were the objects of Loudon and the President in retreating thus before the rebels? They purposed meeting the Jacobites, if they pursued in not too great numbers. If, however, the rebels should prove too strong numerically, the aim was to retire still further from Ross into Sutherlandshire. By doing this, they would be acting as a decoy and creating a diversion [5] for by drawing so many of Prince Charlie's followers after them, they would relieve the Duke of Cumberland who had arrived at Aberdeen (25th February). It was their intention to return on the Duke's approach and join him, if the enemy did not offer pursuit. One piece of service they, in

[1] *London Gazette*, 8th March, 1746.

[2] *M.C.P.*, v, p. 17.

[3] *Ibidem*.

[4] *The Sutherland Book*, i, p. 415.
On the 26th Forbes, writing to Sutherland, discounted the rumours of a possible attack from the west led by the Earl of Cromarty with 2,000 or 3,000 men. He seems to have misjudged the attitude of the Jacobites towards Loudon and his troops. (Bentinck, *Dornoch Cathedral and Parish*, p. 320.)

[5] *M.C.P.*, v, p. 10.

the course of the retreat, did certainly render and that was that they were able to prevent the rebels from gathering meal and provisions.[1]

To return to the narrative of events. On the 26th February the *Speedwell* (Captain Porter) lay off Tarbat Ness with the arms and money still on board. Owing to the ' dirty weather ' he was compelled to return to Cromarty, and so he requested the Lord President to send a messenger with a receipt whenever he might need the money.

At last Porter sailed (2nd March) from Cromarty with his precious cargo, only to be met by disaster. The pilot ran the sloop on a rock off Tarbat Ness at 8 o'clock that morning. Porter at once communicated with Forbes and Loudon, telling them of the accident. Being now established in Sutherland, and masters of the passes there, the two leaders ' sent for the money on shore '. The arms which the *Speedwell* carried were ultimately got to the little harbour of Ferry Oons in Sutherlandshire, having been transferred to Captain Hugh Inglis's vessel.[2] There they were guarded by a party detailed from Loudon's men. On the 4th March Porter left Dunrobin Bay for Sheerness ; through losing his false keel his boat was disabled, and he had to go into dock to refit.

Meanwhile Lord Loudon and the President picked out all the vulnerable spots—the ferries, and possible places of attack at Bonar, the River Shin (three fords), and Loch Shin. At these strategic points the commander threw up entrenchments and posted guards varying in numbers from two hundred to four hundred men. Lord Sutherland had supplied many men since their arrival and these volunteers Loudon had armed. Of their ultimate usefulness Forbes seems to have been dubious.[3]

It is interesting, and even amusing, to consult the Lord President's private accounts for this period when matters of such moment were occupying his attention. The careful, matter-of-factness of the lawyer and of the Scot are surely reflected in such entries as these :

[1] *M.C.P.*, v, p. 34.
[2] *M.C.P.*, v, p. 3 and p. 15, and p. 18.
[3] *M.C.P.*, v, p. 34.

		£	s.	d.
March 4th.[1]	To a merchant for 6 handkerchiefs -	0	5	6
	To a pack of playing cards - - -	0	0	2
	To 2½ lbs. of tobacco - - - -	0	2	10

In making his defensive preparations against attack by the rebels, Loudon foresaw the possibility of a crossing from the Moray coast, but appreciated the difficulties involved. Accordingly, he seized all the available boats [2] and, holding the passes, he felt secure. This possible attack from the Moray coast was actually the method successfully adopted by the Jacobites later, but this hardly proves Loudon's precautions to have been inadequate. Fortune favoured the rebels in the shape of a dense mist lasting two days, and under cover of this they made a successful crossing and so sprang a surprise on their kinsmen enemies.[3]

Ordered (7th March) to join Cumberland at Banff, Loudon pointed out the impossibility of this, as he had not sufficient boats of a suitable type. A number of these that he did have were 'horse' boats, flat-bottomed and not fit for sea, and some were smaller vessels which could be used only for the small ferries but not for 'a passage of twenty-five leagues'. All this he explained to Cumberland in his letter of the 10th March,[4] and at the same time reported that he had lost many by desertion. He feared more would follow suit when they came to embark, especially the new recruits belonging to Lord Sutherland. The Lord President from Overskibo, Dornoch, confirmed (7th March) Loudon's statement of the impossibility of transporting large numbers of men from the Sutherland coast to Banff, until such time as sufficient vessels might be sent from the southern shore to fetch them.[5] The

[1] *M.C.P.*, v, p. 23. [2] *M.C.P.*, v, p. 7. [3] *Ibidem.*

It is possible that Forbes received about this time, while in Sutherland, a most interesting letter dated 26th February from David Erskine, Lord Dun of the Court of Session, asking his aid 'toward my reprieve'. Erskine tells of his meeting with the Duke of Cumberland who cast aspersions on his loyalty, and goes on to describe his brother's imprisonment. (*M.C.P.*, v, pp. 19-23.) This brother, Collector of Supplies at Montrose, seems to have been undoubtedly loyal, for he had lost three sons in the service, and had his eldest now serving as a Captain in General Anstruther's Regiment, but the youngest had joined the rebels.

[4] *M.C.P.*, v, p. 27. [5] S.P. (Scot.) 36, Bundle No. 29, No. 19.

request itself shows how little Cumberland was cognisant of the difficulties confronting these two men, who, till his coming, had held the north for His Majesty. Unfamiliar with the wild northern Highlands, and without topographical knowledge, he asked the impossible and made, what, coming from any other than the king's son, would have been openly termed a ridiculous demand. What did the Duke of Cumberland know of the Ross-shire fiords to be crossed or wearily circumvented, or of the danger of rounding Tarbat Ness—a danger, of the presence of which at least the *Speedwell* had so recently given proof? How unjust, too, were his later criticisms!

The Lord President was meanwhile not ignorant of the enemy's movements. One reliable source of intelligence was the Rev. James Fraser, minister of Alness, who wrote him on 8th March.[1] A second was the ferryman at the Meikle Ferry. Later on this poor man suffered for his loyalty to Forbes when the rebels broke and demolished all his boats.[2]

All this time, between 23rd February and 10th March, the rebels, who had followed up the retreating forces of Loudon and Forbes, had contented themselves with keeping a post at Dingwall with numbers varying, in estimates, from four to fourteen hundred. Their chief object was to amass all the meal and provisions possible, and this they were doing under the threat of heavy pains and penalties.[3] The presence of Loudon's forces was, of course, preventing much of this.

There is here a gap in our information regarding the situation during the third week in March. On the 19th, writing from Aberdeen, Cumberland transmitted to Newcastle

> Copies of Lord Loudon and the President's letters to me with the return of the forces in His Majesty's pay now under Lord Loudon's command.

He made severe strictures on the two leaders, strictures far from justified by the real course of events. Referring to their 'aversion to the embarking and coming southward', he

[1] *M.C.P.*, v, p. 23.

[2] MacGill, *Old Ross-shire and Scotland as seen in the Tain and Balnagown Documents*, No. 614.

[3] *M.C.P.*, v, p. 33.

seems to have been quite pleased at their refusal, as his only reason for inviting them was 'that they should not have to say that we refused making use of their assistance'.[1] It was his intention, therefore, to finish the affair 'without any further use of the Highlanders'. And in all this there is no word of approval of the part being played by Loudon and Forbes and their irregulars. And yet to Newcastle on the 28th February, 1746, he had enthusiastically praised Lord Leven, Lord of the Session and Lord High Commissioner, and also Andrew Fletcher (Lord Milton), the Lord Justice-Clerk, for their part, played far from the scene of the military action.[2] Can it be altogether wondered at that, in spite of his own correspondence with Forbes, Newcastle purported to be truly concerned (6th March, 1746) for the state of things in Scotland, where 'little or no assistance is given to His Majesty's Government'?[3] At the same time

> the behaviour of Lord Justice-Clerk, I own, has pleased me better than any man's in Scotland.

Politicians have either short memories or easy consciences, and Newcastle was no exception to the rule. By midsummer we shall find this same suave diplomatist, whose words, we feel sure, 'honest Duncan' accepted at their face value, writing :

> His Royal Highness the Duke has upon all occasions done ample justice to the active and unwearied zeal your Lordship has shewn for promoting His Majesty's Service and for defeating and disappointing the views and designs of the rebels. I have already by the King's order expressed to his Royal Highness His Majesty's entire satisfaction in your Lordship's conduct ; and it is with great pleasure I take this opportunity of assuring you, that the King has the truest sense of the great and useful services your Lordship has performed in this critical conjuncture.[4]

But we must return to the account of these same useful services which the Duke had forgotten.

[1] *M.C.P.*, v, p. 35. [2] *Ibidem*, pp. 36 and 37. [3] *Ibidem*.
[4] *C.P.*, 330 (d. 3rd July, 1746.)

Dawn was just beginning to show dimly on the morning of 20th March, when Lord Loudon left his headquarters. A thick wet mist or haar hung like a pall over the firth, so dense that it was impossible to see anything more than a hundred yards away, and sea and hills had become one indistinguishable mass. The Earl was anxious to visit his outposts on the River Shin, and as the going was bad, he set out early. He was sixteen miles away, when, about nine o'clock in the morning, a sudden and unexpected attack was made by the Jacobites.[1] Under cover of the heavy fog, the rebels had crossed over in fishing boats from Findhorn to Tain, where they already had a detachment quartered. Thence they effected a second crossing to Dornoch. In all, some eight hundred men were so transported, and of these three hundred marched to Overskibo with the particular aim of seizing two persons, the one, the Lord President Forbes who was known to be stationed there with about six hundred [2] men under his son John, and the other, MacLeod. The latter had lodged at Overskibo some days before but fortunately had by this time gone. 'Against these two their chief vengeance was levelled.' [3]

Dornoch was taken, and of Loudon's three hundred men who were stationed there under Major Mackenzie only a few on outpost were taken prisoner.[4] The Government troops managed to throw small quantities of ammunition into a ditch, and Captain Hugh Inglis ,who was now in command of the ship with the money *vice* Captain Porter of the *Speedwell*, succeeded just in time, in getting the military chest aboard a small boat.[5]

News of the landing reached the Duke of Sutherland, and he, knowing he could not hold Dunrobin in case of attack, with considerable difficulty made his escape by sea accom-

[1] *M.C.P.*, v, p. 39, quoting *Scots Magazine*.

[2] The numbers are variously given by the different narrators.

[3] S.P. (Scotland) 36, Bundle No. 29, No. 30.

[4] *M.C.P.*, v, p. 41, and Maxwell of Kirkconnell's *Narrative*, p. 130. Lord MacLeod in *The Earls of Cromarty*, ii, p. 397, says the greater part of Loudon's Regiment was captured.

[5] *M.C.P.*, v, p. 44.

panied by some others.[1] The following day, the sloop *Vulture* picked up not only the Sutherland group but those who had got away in the boat with the military chest.[2]

The rebels set fire to several houses near Dornoch. This order, it is of interest to note, was given by young Ross of Pitcalnie, the grand-nephew of Forbes whom he had tried so hard to keep out of the rebellion. So far he had prospered, for he had now risen to the rank of Colonel in the rebel army.[3]

The whole affair was a highly successful venture on the part of the rebels, but after all it was only an episode and had little real military significance beyond illustrating the value of surprise in attack. True, it gave confidence to the Jacobites, but in no military sense weakened the main forces of the Government. Of course, the attack on Dornoch, by causing the flight of Forbes and Loudon, deprived the irregulars of their leaders, but their work was largely done, now that Cumberland with his main body was upon the scene of action. The rôle of the Independent Companies was very similar to that played by the Territorial Force during the Great War. They had kept many of the enemy troops engaged until the regular Crown forces were at the main seat of action. Cumberland, in professional soldier fashion, gave them little credit. His point of view, on learning of the attack on Dornoch, is summed up in his own words when he remarked, 'how negligently these Highlanders who are with us do their duty.'[4,5]

[1] For many of the facts relating to Loudon's movements we are indebted to an anonymous narrator who had participated in all the proceedings and had accompanied the Earl of Sutherland in his escape from Dunrobin on Thursday, the 20th March. (*M.C.P.*, v, pp. 42-47.)

[2] *M.C.P.*, v, pp. 45 and 46.

[3] *M.C.P.*, v, p. 47.

[4] *M.C.P.*, v, p. 40.

[5] Tradition has it that the Duke declared, in the hearing of one of Forbes's friends: 'The Lord President's services were not worth five shillings.' When the story was recounted to him later, Forbes forgot neither his history nor his wit. His sole remark was: 'I thought they were worth three Crowns!'

CHAPTER XV

THE RETREAT TO SKYE (1746)

After the attack on Dornoch, Lord Loudon, left with little ammunition, less provisions, and no money to pay his men, was in a sorry plight. His little force had been reduced in numbers and dispersed, and he was separated from his friend and colleague, the Lord President. Soon, however, they managed to rejoin each other and hastily decided that retreat was the only course open to them. Thanks to the methodical and indeed punctilious way in which he paid for everything, and to his 'Account of disbursements, 1745 and 1746' made out even in the midst of these misfortunes and excitements by John Hay on his behalf, we are enabled to follow in some detail the route pursued by the Lord President in his headlong flight.

The day after the attack on Dornoch, Forbes with many of the men of the Independent Companies passed through Strathoykell, on the sterile and pathless moors that almost a century earlier the great Montrose had wandered over when in flight—towards Assynt and his despicable betrayal. Thereafter the fugitives followed Glen Einig to Loch Broom in Wester Ross, which was reached on the 22nd. Proceeding thence, they hurriedly made for Loch Ewe where four horses were hired to help Forbes to Loch Carron. Here they spent the 24th and the 25th March. The following day Forbes and his followers crossed 'in small boats, like canoes, in great hazard'[1] over to Skye by way of Lochalsh.[2] He remained at Broadford for a few days and finally reached Kamlochdell (?)[3] in Sleat.[4]

[1] *The Wanderer*, p. 72.

[2] *M.C.P.*, v, p. 89.

[3] Variously spelt Kenlochnadale and Kinloch na daale; the place named must, therefore, have been near Loch na Dal.

[4] *M.C.P.*, v, p. 49.

In Skye were now assembled the Lord President, Lord Loudon and MacLeod with nine hundred men.[1] 'After a distressing and fatiguing march, [they] arrived there (26th March) in want of money, ammunition, and provisions.'[2] Before the 31st March they were joined by Sir Alexander Macdonald of Sleat.[3]

Isolated as he now was from the scene of hostilities, Forbes's natural interest was to secure news of what was happening at the storm-centre on the mainland. It was not easy for him to find correspondents reliable and trustworthy, who would be at the same time informed as to events. On the 1st April, therefore, he wrote 'on a small slip of paper sewed in a man's coat'[4] from Kamlochdell to the Chisholm requesting intelligence as to the general situation and the disposition of the enemy forces. The reply, he instructed, was to be sent, if it was not safe for him to write freely, by 'some sensible man whom you may intrust and whom I may credit'.[5] There is no reply to this letter extant, but the Chisholm seems[6] to have furnished what information he could.

At this season the Lord President's statement of accounts is as detailed as ever, ranging from the payment of three shillings and fourpence for four creels of oysters (12th April) to three shillings 'to the groom boy to buy a shirt out of his wages' (6th April).[7] Interesting as these entries are, they are not so important as specimens of his correspondence would have been. That he was silent, is not likely, and we must deduce the nature of his letters from the extant answers to them.

At the end of March (29th) Forbes had sent an express to Major-General John Campbell (he was later John, 4th Duke

[1] *London Gazette*,* 5th April, 1746.

* The *London Gazette* of 29th April, 1746, speaks of Loudon and 1,300 men being ordered by Cumberland to land in the country of Clanranald and to march up to Fort Augustus.

[2] *M.C.P.*, v, p. 51. See also *The Wanderer*, p. 72.

[3] *London Gazette*, Tuesday, 8th April to 12th April, 1746.

[4] *M.C.P.*, v, p. 54. [5] *M.C.P.*, v, p. 55.

[6] *Vide Memorial for Roderick Chisholm*, 1748 and *M.C.P.*, v, p. 53.

[7] *M.C.P.*, v, p. 55.

of Argyll) at Inveraray explaining his predicament and requesting aid for their detachment. This intelligence was duly communicated to Andrew Fletcher, Lord Milton, who immediately informed Newcastle. Campbell despatched a vessel with a quantity of meal for the relief of Lord Loudon's men. The ammunition he sent by an overland route so far, and then, as his amanuensis added (4th April, 1746), 'by the boat that carried your messenger.' [1] He [2] stated that Forbes would be unable to import meal from Ireland, and advised him to try to obtain it, although it would be dear, from the Clyde, which had large supplies from Liverpool and Bristol.

> The General (he further explained) wished much to have the E. of Loudon and your Lordship with any officers you have with you, to assist him to carry on His Majesty's Service in the West Parts.[3]

Between the 10th and 12th April Forbes and Seaforth exchanged several letters. Among the numerous petty items of Forbes's accounts relating the paying of a shilling 'to a smith for horse-nails', and of two shillings for the servants' washing at Kamlochdell, appear two bald entries dated 18th and 19th respectively :

To my Lord Seaforth's servant : - - - -	2/6
To Lord Seaforth's servant that brought a letter : -	2/-

Now, the Chisholm was at this time working in close conjunction with Seaforth, and it is highly probable that one or other of these entries above, refers to the Chisholm's letter to Forbes containing the first news of the victory at Culloden on 16th April. His claim of being the first to announce to the Lord President this good news rests upon a reply from Forbes in Skye dated 18th April, and stated still to be in the Chisholm's possession.[4] Writes Forbes :

[1] *M.C.P.*, v, p. 56.

[2] General Campbell himself would have written to Forbes 'if he had not been very suddenly taken ill of a severe fit of the rheumatism last night'. (*M.C.P.*, v, p. 56.)

[3] *M.C.P.*, v, p. 56.

[4] See *Memorial for Roderick Chisholm of Chisholm*, 1748,—Fraser-Mackintosh Papers in the Register House, and *M.C.P.*, v, p. 53.

> I have no news to give you in return. . . . If you can learn with any certainty what course the rebels have taken since the action, what loss they have sustained, or what route the regular troops are pursuing, it will be very obliging to let me know.

With mixed feelings must Forbes have heard the news of the battle. That his own house had been the headquarters of the Prince before the engagement, and that his own estate of Culloden should have been the site of the battle itself, were ironies of situation that must have touched him sorely. He could not know that in a very definite way the mere name of his house and estate was to become one of the best known in Scotland's history, while he himself was forgotten. The news had come hot-foot from the battlefield, if the Chisholm's letter (received in Skye on the 18th) contained the account of the victory.

On the 22nd the first despatches risked by Forbes or Loudon since reaching Skye were sent to Cumberland by way of the Chisholm, who was instructed

> the moment this comes to you whether by night or by day, [to] take horse and proceed straight to the Duke, and put the two letters enclosed into his hands, and with the like care and despatch transmit his commands to us.[1]

But the Chisholm was not Forbes's sole correspondent while he was on the island. Thomas Stewart of Inverness sent off an account of the victory immediately after the battle.[2] 'Honest' John Hossack of Inverness wrote on the 19th, and strongly advised a speedy return to the mainland as the road was clear.[3] Accordingly, on the 23rd April, after being nearly a month on the island, the Lord President left Skye, without waiting for further instructions as to his movements. From Kyleakin, he travelled by Loch Carron and Contin, crossed at Kessock by the ferry (26th), and reached Inverness, where he stayed for some twenty-five days before proceeding to Edinburgh.[4] He had had more than two months of

[1] *M.C.P.*, v, p. 63. [2] *C.P.*, 530. [3] *Ibidem.*

[4] Two days after Forbes's arrival in Inverness, the House of Commons thanked the Duke of Cumberland for his very important services.

The Lord President appears not to have visited Culloden on this occasion. *Vide* Accounts, *M.C.P.*, v, pp. 64-5, and p. 93.

strenuous campaigning since Loudon evacuated the town of Inverness, and he was now a man of over sixty years of age. To his cousin he describes himself in a letter (9th May) after his return.

> I am absolutely naked: soled shoes, darned stockings, ragged shirts, fragments of boots are my apparel.[1]

Far from glorying in his past hardships, he admits that he is 'rather improved than impaired' by his travels, and his elixir for renewed health—

> bad weather, forced marches, through mountains almost impassable, lying on roots or straw or heather, and a low diet from mere necessity.

Merrily he describes 'a cure for vapours', to be summed up in two words—'A Rebellion, if the patient can stand it.'[2]

In replenishing his own wardrobe, the Lord President did not forget the needs of the humbler members of his household. The entries in the Accounts for 20th May, for example, would delight the hearts of those who good-naturedly poke fun at Scotsmen for their native thrift. We read for that date of the purchase of a pair of second-hand boots (2s. 6d.), a pair of stockings (1s. 4d.), a suit of livery, making included (£1 18s. 6d.), for Fergus Ferguson, the boy who had accompanied him in his wanderings. The accompanying footnote tells the story of how this boy of fifteen entered his employment under unusual circumstances.[3]

[1] Laing MS. in Edinburgh University Library, or Hist. MSS. Com. Reports, Laing MSS., i, 452.

[2] Laing MS. in Edinburgh University Library.

[3] The story is worth retelling for its own sake (see *M.C.P.*, i, pp. 5-6), and was recounted to the minister of the Free Church at Dores by a grand-daughter of Fergus's in 1876 when she was herself a hundred and two years of age. Early in 1746 Fergus, then a lad of fifteen, was employed as a messenger by the Duke of Atholl. To assist him in his mission, the lad was taken to the Duke's library and shewn a portrait of the unknown gentleman, to whom a confidential letter was to be delivered. (It transpired later that the portrait was that of the Lord President Duncan Forbes of Culloden.) Asked whether he would recognise the gentleman in the portrait, if he should see him again, the boy was confident of his ability to do so. Accordingly, he was given a written message by the Duke for Forbes then at Culloden, but owing to its importance the letter was in triplicate and was to be carried in an unusual manner. One copy was inserted in the end of the boy's walking stick; another

Although Forbes was originally [1] under the erroneous impression (9th May [2]) that his house had escaped harm at the hands of the rebels, he knew that his cattle and lands had suffered. (The total damages on the lands amounted to £571.) We have already seen above his description of his own plight, and if the leader was in such sore straits, can we wonder that his men are described as emaciated after their long and arduous wanderings in the mountains? [3] Neither had the President's tenants got off scatheless. They had suffered at the hands of both the Jacobites and the Government troops, and a long list [4] extant shows the nature and value of the damages sustained by the various claimants through the depredations of both sides. In addition, his estate of Ferintosh the rebels had 'rendered a complete desolation'.[5]

was sewn between the soles of one of his shoes, and a third was secreted in the collar of his jacket. Although he was searched seven times, Fergus succeeded in reaching Culloden, where the company was sitting down to dinner, and, meeting one of the servants carrying dishes from the kitchen to the company, he made known his mission. The domestic was greatly amused at the boy's idea of delivering a letter to one whose name he did not know, but whom he would recognise at sight. The party was equally amused and laughed at the strange story. Several of the gentlemen present went one after the other to see the boy in the library, but Fergus refused to deliver his message to any of them. Finally Forbes himself entered the library and was immediately recognised as the gentleman in the portrait. Still he would not hand over his message, till the room was cleared. The boy's whim was gratified, the letter taken from the stick, and handed to the Lord President. A night's hospitality at Culloden House was not reward enough for so capable and determined a messenger. On the morrow when on the point of setting out on the return journey he was asked by Forbes whether he would like to continue in service at Culloden. He expressed his readiness if only His Grace, the Duke of Atholl, would permit of this. And so Fergus Ferguson entered the service of Forbes of Culloden, accompanied him on his wanderings in 1746, and died a pensioner of the family when over seventy years of age.

[1] The Prince's order, under Murray's hand, on the 28th February, 1746 (*C.P.*, 314), had tried to ensure the protection of Culloden House and its furniture. The Memorial of Arthur Forbes, the Lord President's grandson (Uncat. MS. in Nat. Liby., Bundle XIX), expressly says:

'Upon his retiring the rebels took possession of his House, which they converted into a garrison, destroyed his furniture, horses, cattle, sheep, and everything belonging to him to the amount of a very large sum.'

The *London Gazette*, 1st-4th March, 1746, states that his house had been plundered, but it does not say which one. (See also the fate of Ferintosh, *infra*.)

[2] MS. in Edinburgh University Library, or Laing MSS., vol. i, p. 452.

[3] *New Statistical Account of Scotland*, xiv, p. 369.

[4] *M.C.P.*, v, App. I.

[5] S.P. (Scotland) 36, Bundle No. 29, No. 30.

It is one of the ironies of the rebellion that the estate of the mildest and most peace-loving man involved in the whole miserable business should itself have been the scene of one of the most abhorrent of the subsequent butcheries. William Rose, grieve to the Lord President, stated that twelve wounded men were carried out of his house under pretext of having their wounds dressed by the surgeon, and were shot in the hollow very near the scene of the battle.[1] The king is said, later, to have asked Forbes 'if it was true that a party of the Duke's army had killed certain supposed rebels, who had fled for safety into the court of Culloden House'. He replied: 'I wish I could say "No".' This put an end to his favour at Court.[2]

But such barbarities were utterly foreign to the President himself, and we are not surprised to find him, after his return from Skye, making appeal to Cumberland on behalf of two prisoners. Two surgeons, Rattray [3] and Lauder had been imprisoned in the church at Culloden [4] for complicity in the rising, but were liberated on Forbes's intercession.[5]

> The liberation of Rattray and Lauder was the only favour the President ever received for his extraordinary services; and yet he was soon affronted even in this matter,[6]

for on their reaching Edinburgh later, they were arrested once more and taken to London on 28th May, 1746, although finally released in January 1747.[7]

[1] *Jacobite Memoirs of the Rebellion of 1745*, p. 232, ed. from the MSS. of Bishop R. Forbes, by R. Chambers, 1834.

[2] Memoir, p. xv, prefixed to his *Works*, 1788.

[3] Rattray was a son of the Jacobite Bishop Rattray (ob. 1743), whose *Liturgy of Jerusalem* was published in 1744. Duncan Forbes was one of the subscribers to this work. Miss E. H. Dowden, Keeper of the MSS. in the Chapter House, Edinburgh, in pointing out this fact to me in a letter remarks:

> 'Of course it does not follow from Forbes's subscribing to Rattray's *Liturgy of Jerusalem* that he took the slightest interest in Liturgiology; I think Rob Roy subscribed to Keith's *History*!'

But surely this action of Forbes's was in keeping with his usual Maecenas-like attitude to literary men when new work was about to be published.

John Rattray was the Captain of the Honourable Company of Edinburgh Golfers of which Forbes was Secretary.

[4] *Lyon*, ii, p. 312, note. [5] *M.C.P.*, v, p. 144. [6] *Lyon*, ii, p. 232. Seton and Arnot, *Prisoners of the '45*, i, p. 219.

CHAPTER XVI

AFTER CULLODEN (1746)

Although the rebellion had been quelled by Cumberland's victory at Culloden, the Lord President's labours were not yet ended. Even the Duke found him useful for a time, if not for long. In view of what we know to have been the recent attitude of His Royal Highness towards the Highland volunteer army and its leaders, his comment on Forbes on his arrival at Inverness is worth quoting. Writing to Newcastle, he made reference to the Lord President :

> I need not say anything about him, as he has the honour to be personally known to the King, and as he has given such convincing proofs of his affection, and zeal, diligence, and activity upon this occasion.[1]

And again he writes :

> As yet we are vastly fond of one another, but I fear it won't last as he is as arrant Highland mad as Lord Stair or Crawford,[2] he wishes for lenity if it can be with safety, which he thinks but I don't, for they really think that, when once they are dispersed, it is of no more consequence than a London mob. . . . I have got the Lord President to direct Sir E. Faulkener in the drawing up of a proclamation which I shall take the liberty to publish in His Majesty's name requiring of all the civil magistrates to exert themselves, in order that these dispersed rebels may be brought to justice.[3]

Forbes's humanity appears to have been a known quality, for Sir Alexander Macdonald hoped that he would use his ' utmost efforts for that lenity that will end the disturbances of

[1] S.P. (Scot.) 36, Bundle No. 30, No. 30.
[2] The punctuation is Cumberland's own.
[3] *M.C.P.*, v, p. 71.

this country', and (he jestingly adds) 'quicken His Royal Highness's departure from the Highlands of Scotland in quest of more laurels'.[1]

For two months Forbes had led a strenuous life for a man of his years and he was no doubt glad to resume his old sedentary mode of living. Circumstances in the shape of much correspondence compelled him to spend long hours at his desk as of old. There were requests for assistance or for advice to be answered, from all and sundry, even when they knew he must 'necessarily have so much business'.[2] Eric Sutherland, titular Lord Duffus, asked whether the President deemed it proper for him to come to Inverness, at this season, as so many were doing, and hoped he might have the opportunity of waiting on his Lordship, if for only half an hour; the loyal MacDonnell of Glengarry[3] reported his success in persuading his people to give up their arms, earnestly requested that Forbes would use his influence to have a more suitable place named for the clan to hand in weapons, and asked a pass for his servant to draw aquavitae from Ferintosh;[4] MacLeod wanted Gortuleg to be remembered for his past help to the loyalists under Forbes, now that slander was against him;[5] and Ross of Inverchasley would apply for redress or be silent as Forbes should direct. He aspired to the post of collector of rents in Ross, and begged the good offices of his Lordship on behalf of himself, and his interest in procuring for his son a commission in a marching regiment. He was half afraid at his own presumption in making so many demands upon the President, but 'I recover when I think with whom I use it, the best man (without flattery) on the face of the earth. May God long preserve him!'[6] Nor were the suits from individuals alone. The Governors of Aberdeen appointed by Cumberland, sent a letter thanking him for his 'late generous good intentions of relieving the city under rebel oppression',[7] and asking for his advice with regard to

[1] *M.C.P.*, v, p. 79.
[2] *C.P.*, 443.
[3] *Ibidem.*
[4] *M.C.P.*, v, pp. 80 and 81.
[5] *M.C.P.*, v, p. 83.
[6] *M.C.P.*, v, pp. 83-84.
[7] *M.C.P.*, v, p. 84.

the procedure in electing a new magistracy and council. And, as if this were not enough, the Dean of Guild of the city, wrote him on the same date (12th May) and in similar vein, concluding :

> Permit me, my Lord, with pleasure to remember your Lordship's truly patriot wish 'A speedy settlement to our country with as little mischief to Scots-men as possible'. And to add that your Lordship's family may always continue to be the Decus et tutamen of their country.[1]

Such are some of the small matters that came the way of the Lord President before he proceeded south to Edinburgh. For most of these problems he could find a solution, but a much more awkward one remained still unsolved, that of the pay of the Independent Companies. Much thought and many weary hours he spent in his endeavours to secure for those whom he described 'as children of my own',[2] the bare justice that was their due. This forms the theme of a series of lengthy epistles written before he quitted Inverness, to the Duke of Newcastle,[3] Pelham,[4] George Ross,[5] and Scrope.[6] But this subject is best dealt with in detail in a separate section.

The whole matter was still unsettled when Forbes resolved, as Cumberland had no further need for his services, 'to return to the plough which I have so long deserted'.[7] He travelled by the east coast route via Banff, Aberdeen, Dundee, and the ferry at Kinghorn.[8] It was ten long months, crowded with events exciting enough to spread over as many years, since his eyes had last seen the smoke curling from the tall chimneys of Auld Reekie. He set out with a stout heart on 21st May to resume his 'regular drudgery'[9] of the law and to face many new problems, the aftermath of the rebellion.

Scarcely was he settled in the capital, when requests of various kinds began as usual to come his way. Strange are the changes that the whirligig of time brings round. Twenty

[1] *M.C.P.*, v, p. 87. [2] *C.P.*, 531. [3] *M.C.P.*, v, p. 88.
[4] *C.P.*, 317. [5] *C.P.*, 318.
[6] *C.P.*, 531. [7] *Ibidem*.
[8] *Vide* his 'Accounts', *M.C.P.*, v, pp. 93-4. [9] *M.C.P.*, v, p. 91.

years before, when passions in Scotland were roused to fever heat by the Malt Riots, Forbes, it will be remembered, acted firmly, almost harshly, in the case of the magistrates of Glasgow. Now, in 1746, we find the City Fathers looking for support to Scotland's chief pillar of the law. The Glasgow magistrates of a new generation knew now the worth of the Lord President of the Sessions. Their letter of congratulation rings true, allowance always being made for the frills of flattery that the fashion of eighteenth-century courtesy demanded. They rejoice at his return to his normal duties, congratulate him upon the impartiality, penetration and knowledge which he shows in administering justice, and ask his help in procuring them relief in their present great distress.[1] Numerous letters, too, passed between the President and several correspondents, in an attempt by the Earl of Dunmore to secure a pardon for his brother, the Hon. William Murray, who had sided with the Pretender,[2] and on the occasion of Cumberland's very brief visit to Edinburgh on the night of the 21st–22nd July, 1746, Forbes pleaded the suit of the unfortunate man.[3] The fact that His Royal Highness remained for only a few hours—from 9 p.m. till 3 a.m.—made him more difficult of approach and we may infer from the favourable reception given to the Lord President that he must have astutely chosen his hour, knowing his man. 'I said what appeared to me to be fit on that occasion.'[4] (22nd July, 1746). It took five months more before a decision was made, and it was with satisfaction that Forbes learned (27th December, 1746) from the Earl of Dunmore who wrote thanking him for his 'cordial assistance upon this occasion', that his brother had been set at liberty.[5]

In July 1746 orders were issued for prisoners and witnesses to be sent to Carlisle for trial. Andrew Fletcher, Lord Milton, wrote the Duke of Newcastle (14th July, 1746) acknowledging the instructions. The postscript is interesting :

[1] *M.C.P.*, v, p. 95.
[2] *C.P.*, 321-323 ; 328-329 ; 333-334 ; 341 ; *M.C.P.*, v, pp. 95 and 96.
[3] *C.P.*, 334.
[4] *Ibidem.*
[5] *C.P.*, 341.

I delayed sending this letter till I could consult with Lord President and others of my brethren here about the difficulty in sending the witnesses and thereby my difficulties, instead of being removed, are increased.[1]

Forbes, the Lord President of 1746, was still the Scotsman who had had qualms about acting as prosecutor at Carlisle after the 'Fifteen rebellion. Indeed, his attitude of 'lenity and mercy'[2] towards his misguided countrymen, made him lend a ready ear to their cries.[3] And when the suppliant was an impulsive young lady who had in the past been a favourite with the Lord President, his sympathy meant active help. Lady Anne Mackintosh found in him a chivalrous supporter, and through his intervention secured 'better usage' in the time of her great distress.[4] It is strangely fitting that the last letter of the original volume of *Culloden Papers* should be one of grateful thanks from the lady's father, John Farquharson of Invercauld.

Within six weeks of the spirited 'Colonel' Anne's rather wistful letter came one from another lady, whom the President held in great esteem, Lady Margaret, the accomplished wife of his friend and ally, Sir Alexander Macdonald of Skye. Both she and her husband wrote soliciting Forbes's assistance to secure the release of the man who for twenty-eight years had been their steward, the kindly McDonald of Kingsburgh. In an excess of good nature and compassion he had played the part of the Good Samaritan to the fugitive Prince and so enabled him to escape. Lady Margaret in her simple womanly appeals spoke of what nowadays would be described as Kingsburgh's previous good record, 'a man well known

[1] Albemarle Papers, ii, p. 346.

[2] *C.P.*, 533.

[3] When it is recollected how little those in the highest government places in London knew of the real situation in the Scottish Highlands, one is not surprised at finding so clement and pacific a man mistakenly called a Jacobite. Thus we find a letter dated 5th January, 1748:

'Greater advantages and encouragements cannot be imagined for rebels than in Scotland. The late Lord President notwithstanding his applauded Letters to Lovat, was as bad as the worst.'

(Letters to Dr. Birch, 1746-55, Copies and Extracts by Dr. Birch of Letters and Papers, 1712-55; British Museum.)

[4] *C.P.*, 533 and *M.C.P.*, v, p. 105.

for his singular honesty, integrity, and prudence . . . before that unhappy night.' She did not hesitate to approach her friend as she knew his esteem 'for worthy men, and how much of your life has been employed to serve them in distress'.[1] Her husband contented himself with telling the story of how Kingsburgh came to be an unwilling actor in the tragic drama. Informed by Flora McDonald of the real identity of her 'maid-servant', he had met the Prince, 'maigre, ill-coloured, and overrun with the scab'.[2] He was wet and hungry

> having had no meat or sleep for two days and two nights, sitting on a rock beat upon by the rains; and when they ceased, ate up by flies.

All the miserable youth, who had just missed being king, asked was shelter for one night. Common humanity compelled Kingsburgh to accede to this request, and next morning he supplied Prince Charlie with a horse to carry him the seven miles to Portree (from which he escaped by boat). Sir Alexander had tried his own 'little rhetoric' with the Duke in vain, but he had still hopes that Forbes would be more successful. Four months later, his friends were shocked to learn of the sudden death of Sir Alexander Macdonald. He died on 23rd November, 1746,[3] at Glenelg as he was on his way to pay a visit to London. This deprived Kingsburgh of a valued friend and advocate, but it served to supply the Lord President with a telling argument in his plea for the steward, still a prisoner in Edinburgh Castle. As Donald Macdonald of Castletown [4] and MacLeod [5] pointed out, Sir Alexander had deserved well of the Government because of his help in suppressing the rebellion. His estates were now without either master or manager, and the release of Kingsburgh to look after affairs would really be a mild way of rewarding the widow for her late husband's loyalty. The Lord President on 27th December, 1746, made intercession by letter and at great length.[6]

[1] *C.P.*, 335.
[2] *C.P.*, 336.
[3] *M.C.P.*, v, p. 140.
[4] *C.P.*, 337.
[5] *C.P.*, 339.
[6] *C.P.*, 342.

> I so little think that he [=Kingsburgh] would make a bad use of his liberty that I am ready to become bail for his appearance when called and for his good behaviour, and I believe Mr MacLeod will be willing to join me in the security.[1]

A week previously, a trifling incident took place which showed the grip Prince Charlie still held on many Scottish hearts. The anniversary of his birthday fell due. A tale spread that a plan had been adopted to do him honour by public rejoicings. Albemarle, the Commander-in-chief, had been invited to dine that day with the Lord President at Stoneyhill, but he felt anxious to ascertain whether these untoward happenings of which rumour spoke were likely to take place. The Lord Justice-Clerk, the Lord Advocate and several of the Lords of Session gave little credence to the story, and accordingly the Commander-in-chief went out of town. That very afternoon

> a surprising, audacious, and impudent attempt was made . . . by several people to celebrate the birthday of the Pretender's son ; the women distinguished themselves by wearing tartan gowns with shoes and stockings of the same kind, and white ribbons on their heads and breasts ; dinners were bespoken in Leith with an intent to have balls afterwards, and several societies were to meet in town.[2]

General Huske by three in the afternoon had communicated the news of this colourful demonstration to the Earl, and with the letter came a copy of the warrant intended to be granted by the Lord Justice-Clerk for which he wished the approval of Albemarle and the Lord President. Nothing happened ; the tartans were folded away; and Charles remained in exile.

Where justice and mercy were at stake, no one ever appealed to Culloden in vain. It might have been better for him if he could have pleaded his own case with half the vigour and cogency which he devoted to the interests of others. We have touched on some of the cases brought under his notice,

[1] *C.P.*, 342.

[2] Earl of Albemarle to Duke of Newcastle, Edinburgh, 24th December, 1746, S.P. (Scotland), Geo. II, Bundle 35, No. 55, quoted by *The Albemarle Papers*, ii, p. 349, ed. C. S. Terry.

but we may take it there were many. As his old friend John Hossack[1] of Inverness bluntly put it[2], 'Your Lordship must look for innumerable solicitations', and there and then he made one on behalf of Colonel Wedderburn, who like many others had been 'led blindly into the Rebellion through infatuation'. Hossack had to tell his friend—what must have touched him on the raw—that some of his creditors who had lent money during the rebellion expected settlement. Others, no doubt cognisant of the true state of affairs, were ready to forgo payment. The letter had a third theme, merely touched on by the Provost—who called a spade a spade,—and we can be sure his friend shared in his feeling of resentment.

> Yesterday two regiments have quartered themselves in the town, we are all accounted rebels, we have no persons to complain to, nor do we expect redress.

A plain statement of facts, without embroidery, each phrase pregnant with tragedy. The Lord President read fuller details later (9th January, 1747)[3] in a letter from the magistrates, of the hardships his fellow townsmen were enduring at the hands of the military during their occupation.

That misunderstandings should arise between the citizens and the army of occupation in the north was inevitable. The Lord President's reply (21st January, 1747) is diplomatic in that he blames neither the citizens nor the troops. At the same time, he points out the need for amicable living together in spite of temporary inconveniences.

> And I am pretty confident that if each were well acquainted with the other's purpose, of endeavouring to arrive at that end, misunderstandings for the future might be prevented.[4]

[1] Hossack's neat summing up of the Lord President's achievement is worthy of quotation :

> 'Your Lordship smothered the Rebellion and procured glory to the Duke of Cumberland, its suitable to your Lordship's benevolence to have several sharers in your eminent services as you have reformed many persons of distinction, they are now taught by experience, and when they may dare to speak may confess their holdings are due to your Lordship.' (*M.C.P.*, v, p. 124.)

[2] *Ibidem.*

[3] *M.C.P.*, v, p. 128.

[4] Uncat. MS. in Nat. Liby.

This letter appears in error in vol. ii of *M.C.P.*, instead of in vol. v. The date of the MS. in the National Library, 21st January, 1747, has been, pardonably,

Nevertheless he had got Albemarle, the Commander-in-chief, to give directions to the officers on the spot

> that no meal coming to the mercat ought to be detained on any pretence whatsoever and that the mercat should be open and free to the townsmen as well as to the troops.[1]

Forbes was of opinion that the strife should be ended at once 'as the poor must be great sufferers'. And, ever fertile in ideas, and thinking that the additional troops in the north might make meal scarce, he shrewdly continues :

> I wonder that none of your burgesses of substance think of purchasing meal in quantities in Ross and where else it may be had, and carrying it to town to be disposed of for the supply of the troops as well as the inhabitants. One should think that scarcity in this way, may easily be prevented with a reasonable prospect of gain to the undertakers, and therefore I hope somewhat of that kind will be done.[2]

That the hardships were real, there can be no doubt. We may find it difficult to suppress a smile when we read of the city dignitaries complaining in righteous indignation of the fact that the

> Town Hall is taken for the Main Guard, the Town Clerk's office for the Officers of the Guard, . . . and we are reduced to a Spinning school . . . for public meetings and Town and County Courts.[3]

Inverness was indeed in the hands of the 'soldiers, the greatest rogues in the British Army'[4] who paid little or no attention to private property. The civilian had no rights. Small wonder then, that the magistrates were 'thankful to God for their access to your Lordship and your constant

misread as 1717. The error has led Major Warrand to think this letter was written by Forbes 'in his capacity of counsel to the magistrates of Inverness'. (*M.C.P.*, ii, p. 170.) Even had the original document not been seen and the error of date (through the mistaking of the figure 4 for the figure 1) noted, the fact that the name of Albemarle is mentioned (in the words : 'I . . . have since waited of the Earl of Albemarle'), would have been conclusive proof. The Earl was, of course, Commander-in-chief after the 'Forty-five, not after the 'Fifteen rebellion.

[1] Uncat. MS. in Nat. Liby. [2] *Ibidem*. [3] *M.C.P.*, v, p. 126.
[4] *M.C.P.*, v, p. 129.

watchfulness over the poor country '.[1] But ' constant watchfulness ' can become an ordeal, and Forbes was beginning to feel the strain. He describes himself (9th January, 1747) as ' oppressed with a load of business, which there is no prospect of lessening so long as I tug at this oar to which I am at present chained '.[2]

Again it was this ' constant watchfulness ' that made Forbes turn his serious attention to the settlement of the country after the rebellion. Once the immediate danger was over, it was necessary to adopt a course of action that would both punish the guilty and also prevent a recurrence of the outbreak. Early in June 1746 Forbes wrote from Edinburgh to the Lord Lyon concerning the means to be adopted for the prevention of rebellion.[3] If anyone knew the places that had been the storm-centres, and the terrain where the final bloody encounter had been decided, that man was Forbes himself; but even of more significance than mere knowledge of the region was familiarity with the people. Frankly, yet modestly, he wrote of himself:

> I have had very uncommon opportunities to be better acquainted than most people with the situation, the condition, disposition and in short, the fact and the foible of that part of the country that ought to be reduced to order.[4]

The real difficulty lay in the drawing up of suitable regulations and the setting afoot of fair and just measures that, while effectually preventing further outbreak, would satisfy those in authority who were unacquainted with the true condition of the Highlands. Malicious tongues, too, were wagging, their theme nothing more nor less than what was termed the injustice of his late administration. With quiet mind, certain that, throughout, he had done his duty to the best of his understanding, ' at least acting with a perfect heart, however sound my head may have been ',[5] Forbes, in spite of these idle tales, intimated his willingness to undertake the task of

[1] *M.C.P.*, v, p. 133.
[2] S.P. Scotland II, Bundle No. 35, iii.
[3] S.P. Scotland, Bundle No. 32, No. 16.
[4] *Ibidem.*
[5] *C.P.*, 531.

drawing up a set of regulations. He knew well it meant ' an infinity of writing ' but he was ready ' to club my mite of knowledge to so good and necessary a design '.[1]

In pursuance of this plan, the Lord President set himself (1746) to sort out his thoughts on the subject. We find several documents unsigned in his small, neat handwriting, one consisting of mere jottings of ideas as they occurred to him,[2] another appended to a list of prisoners,[3] and others with definite headings, viz. ' Opinion relative to Attainders',[4] ' Some Thoughts concerning the State of the Highlands of Scotland ',[5] and the last, ' Some considerations on the Present State of the Highlands of Scotland . . . if the French should think fit to risk a few battalions '.[6] While his mind was occupied with these points, he was also concerned with kindred topics in his correspondence with the Lord Lyon, e.g. the prohibition of the Highland dress. Forbes's main ideas on these subjects are set forth below.

The Act of Attainder, he thought, would be of little avail, especially in the Highlands, unless that act were enforced by particular provisions. Since it was already High Treason to correspond with the Pretender or his sons, he suggested that it might be further declared High Treason (or at least Felony) to have relations with attainted persons. The offering of a reward for information leading to the arrest of an attainted person in any part of Britain or Ireland, and the disposal over the Highlands of a force fit to effect arrest, would make the lot of rebels in the Highlands dangerous. As the gentlemen of the Lowlands, who had been involved in the rebellion were not nearly so dangerous to the public peace as those in the Highlands, it seemed that a less severe policy might be followed there. But a law should be enacted at once ' making it a felony . . . to wear or have in the custody of any persons inhabiting the rebellious districts, arms of any kind, after a day to be limited '.[7] The loyal part of the Highlands, he considered, should not be disarmed, until the rebels had

[1] S.P. (Scotland), Bundle No. 32, No. 16.
[2] *C.P.*, 326.
[3] *M.C.P.*, v, pp. 101-103.
[4] *C.P.*, 325.
[5] *C.P.*, 343.
[6] *M.C.P.*, v, p. 98.
[7] *C.P.*, 325.

been effectually deprived of their weapons and French or Spanish aid was not to be feared. He was also of opinion that it was highly just, as well as expedient, that particular persons, or even corporate bodies who had been taxed, pillaged and oppressed on account of their zeal for the Government, should be indemnified, if not also rewarded for their fidelity.[1]

No. 326, 'Culloden Papers', is, as we saw, a series of detached ideas jotted down as they occurred, the intention being, no doubt, to develop and lay them before Ministers. Some of the points are worth mentioning. While the Lord President held that no necessary severity should be dispensed with, yet the rousing of pity by unnecessary severity would only prove a danger and the nurse of disaffection. Just punishment should be speedily done, and it should be carefully considered how far mercy might be extended, consistent with the future tranquillity of the Kingdom. It was true that the common people were compelled in great numbers to join the rebellion by terrible threats, and about half of the 'supposed 8,000 rebels at Culloden' were probably destroyed or captured. Hunting down and killing the commons would, therefore, only rouse compassion and disaffection. Forbes suggested that if the most active and dangerous participants in the rebellion were transported to America, they might there become of use to the Crown. Their departure, he believed, would be welcomed in Scotland by those on whose territories they bordered and would bring greater security to the nation as a whole. It is interesting to note that early in July 1746, a special free pardon passed the Great Seal to more than one hundred rebels, on condition that they would transport themselves to His Majesty's plantations abroad. This seems to show that Forbes's idea had been favourably regarded. (In all, over 1,100 were transported or banished.)

The clan system was conceived by the Government to be the main source of danger. Accordingly, in 1746, a Disarming Act was passed, whereby arms were forbidden to the Highlanders. Forbes strongly favoured this Act. He

[1] *C.P.*, 325.

thought, were it ' properly framed and the due execution of it judiciously provided for ', it might ' be of infinite service '.[1] To another Act forbidding the wearing of the Highland dress and of tartan, he strongly demurred. This Act was a distinct blow at the clans. Illuminating is the correspondence that passed between Forbes and the Lord Lyon on these measures in July 1746, while they were yet under discussion in Parliament. Writing from London on the 1st July, 1746, the Lord Lyon informed the President that the bill forbidding the Highland dress was to be introduced into the House of Commons by the Attorney-General in a few days. The Lord Lyon was himself in favour of the bill, ' but as I understand that your Lordship and my friend MacLeod were against it, I have objected to it.' [2] He, the Lyon, asked a pertinent question, viz. why the Campbells, Sutherlands, MacLeods, Munros, Mackays, should be punished by the legislature, when they had been loyal to the Crown. This objection rather puzzled the promoters of the bill, and it was conceded that the Whig clans would be exempt from its provisions. The Lord Lyon pressed for the concession to be made general. He therefore wrote asking the President to furnish him with suitable arguments against the bill.[3] These duly arrived. Forbes's letter (8th July, 1746) from Edinburgh put the case against the proposed measure. He regarded the prohibition of the Highland dress as ' no more than a chip in porridge ', and signifying ' not one half-penny '. What really mattered was a prohibition to bear arms, let them dress as they liked.[4] He understood, of course, how those far from the scene of action could not understand the real situation. The Highland dress he himself regarded as suitable for the country in which it was worn, for the people's work, and for the weather. To Forbes it seemed unreasonable that the Highland clans who had remained loyal should be so severely punished because some of the others had offended. Nor did he approve of the plan of thus making invidious distinctions between the clans and so perpetuating disruption among

[1] *C.P.*, 332.
[2] *C.P.*, 327.
[3] *C.P.*, 327.
[4] *C.P.*, 332.

them when union and harmony were what the country needed.

An interesting document in Forbes's handwriting is *C.P.*, 343,[1] which is a description of the State of the Highlands of Scotland. The Lord President expresses the view that the advance of industry into such counties as Perth, Forfar, Kincardine, Banff, Moray, where the soil is tolerable, had caused the people to leave off the Highland dress, to forsake the Irish [=Gaelic] language, and discontinue the use of arms. The laws had their course in these regions and there was thence no danger to the public peace. Social and economic improvements, he contended, were the best weapon against Highland lawlessness. Hitherto the Highlanders were ignorant of the advantages of industry and of the blessings of having these benefits safeguarded by the laws. If arms were debarred for one generation, the people would become harmless and would be forced to turn to industry and to trade for a livelihood.

While the loyal Highlanders would raise no difficulties in the execution of the Disarming Act, a considerable standing force would be required among the disaffected clans, now, and for some years to come, to make the disarming really effective. It is typical of Forbes, always practical and methodical, that, having generalised and arrived at a conclusion, he must work out his idea in detail. His experience of the ways of politicians had taught him that theories and fine speeches led nowhere, and so he unfolded his plan. Forces were to be located at five or six stations among the turbulent clans, and detachments sent out from these to the straths and glens. In the military stations thus established, necessary tradesmen—butchers, bakers, and maltsters—would be encouraged to set up and to build on a plot of ground allotted for the purpose. To ensure that no drones

[1] The editor of *Culloden Papers* says of this Document, 'perhaps 1746,' but there is no doubt of this, for the Earl of Albemarle, Commander-in-chief in Scotland, received it from the Lord President on 3rd October, 1746, and forwarded it to Newcastle on 15th November, 1746, with the remark: 'The whole (is) worthy of your serious perusal.' (S.P. (Scot.), Bundle No. 34, No. 4.)

would cumber these new hives of industry, 'spinning schools [were] to be set up, to draw the idle females of those counties into that manufacture.' Later, weavers would follow. The station once established, when it was deemed advisable,

> the King should erect the village with such further lands as he shall judge convenient into a Burgh of Baillie, to be held immediately of the Crown.

That the cause of Justice be not forgotten, His Majesty would

> appoint the ordinary Judge the Baron Baillie, to issue all warrants in His Majesty's name ; in the execution whereof he will be assisted by the troops until that county shall be brought to reverence the authority of the law.

When the stations happened to be fixed on the sea coast, the industry of fishing would be encouraged,

> not only for the convenience of the troops, but for promoting the trade of the nation.[1]

We hardly associate anything so unsubstantial as day-dreams with the practical mind of a great lawyer, and yet to Forbes his Utopian New Scotland was a real possibility. He foresaw a Scotland with peace and security established within her borders ; her people happy and prosperous, because her energies were organised and directed no longer to war, but to work and industry. These are some of the advantages he saw : the disarming would be effectual, the law enforced, and in time, judges would hold courts in their circuits in the boroughs. If mines were found, men would be 'disposed to take leases of them, by the security to their persons and property' that would attend this plan. Troops and tradesmen alike would become interested in peaceful occupations such as gardening. In fine, swords would be beaten into ploughshares, spears into pruning hooks; the eighteenth-century Highlander would learn war no more, as at last he was taught to reverence the dignity of labour and the advantages of obedience to the law.

[1] *C.P.*, 343.

We may take it as almost certain that it was his ' very great concern for this unhappy country ' [1] and his desire personally to lay these plans for reconstruction, outlined above, before the ministers of state that sent Forbes to London some time in August 1746. The early days of September saw him attending the examination of Sir John Cope.[2] It was known that his visit was to be a short one. Hardwicke, the Lord Chancellor, on 1st September, warned Newcastle that if he wished to confer with the Lord President, it would be wise to choose an early date, ' because I suppose his stay here will not be much longer.' [3] Is it possible to connect the brevity of his visit with what tradition tells was his reception at Court? We read that the king turned his back on this man, patriot rather than courtier, of whom so recently he was said to have ' the truest sense ' of his ' great and useful services ' (3rd July, 1746).[4] Be that as it may, certain it is that Forbes was not slow in pushing the claims of his native land and his unfortunate countrymen in their dire need. An undated letter in his hand bearing the time indication ' Monday forenoon ' seems to belong to this period. It is addressed to Andrew Stone, Private Secretary to Newcastle, and requests information ' as to the names and numbers of the gentlemen who were concerned in the Rebellion, and who are not attainted or in custody '.[5] It was doubtless in pursuit of his merciful mission that he was engaged to meet Henry Pelham at his house on 29th September, 1746. Knowing Forbes's determination when once he had adopted a cause that merited devoted attention, we can conceive how wearisome would prove his importunities, both in respect of money spent, and of pardons for delinquents, to Pelham or his brother Newcastle. We find the latter instructing a friend to

> send me word to my house that I may put off my long-winded friend Duncan [Forbes] till the next day for at present he stands appointed to come to me to-morrow in the evening at seven.[6]

[1] *M.C.P.*, v, p. 121.

[2] Warrand quotes ' Report of the Proceedings, etc., London, 1749 '. *M.C.P.*, v, p. 135.

[3] *M.C.P.*, v, p. 136.

[4] *C.P.*, 330.

[5] *M.C.P.*, v, p. 136.

[6] *M.C.P.*, v, p. 137.

But not all his London friends regarded him thus. Hardwicke evidently took seriously Forbes's proposal of a general pardon with exceptions and limitations, and himself wrote Newcastle on the subject on 23rd October. His own mind was not yet made up upon the measure in general, but he believed that James II had issued even such a proclamation after Monmouth's rebellion. Although

> the History says a General Pardon was published, I cannot find any Act of Parliament for that purpose, or any title of such an Act in the Statute-book. If there was such a proclamation or Declaration, it will be found in the Council-books, and I wish your Grace could order it to be looked out in a private manner, because it might possibly furnish some hints. I would myself cause it to be searched for, but that I cannot so well do it, without giving a handle to observations and constructions.[1]

Some six weeks later, Hardwicke again wrote Newcastle on the same topic enclosing a copy of the bill to be introduced concerning forfeitures in Scotland.[2] Newcastle was asked to transmit the bill to the Lord Advocate and was instructed in a postscript: 'Your Grace will have the goodness to remember not to mention my Lord President's name.'

His trip south was hardly a pleasure jaunt. Forbes was no fool and knew now if never before at what value to rate the glib meaningless insincerity of politicians. Anxious to get home, he was still detained in a London which no longer offered him the congenial society of long ago. Ever discreet, he did not risk unbosoming himself even to his cousin. It was the end of October.

> There are many reasons why I do not write. The enclosed is to acquaint the Court that I cannot attend them when they first meet which I believed I should some days ago; but I am ordered to remain here for some time. . . . All that I shall say to you at present is that my health still stands good and that I hope to be with you in a few days; I am not detained by any business of my own and I very much long to be elsewhere. (28th October, 1746.)[3]

[1] *M.C.P.*, v, p. 137. [2] See *M.C.P.*, v, p. 138, but no reference is given.
[3] MS. in Edinburgh University Library.

By the 13th December he was back in Stoneyhill once more.[1] His long journey at 'so rude a season of the year' had been none too pleasant. He had travelled in an 'untried machine',[2] and latterly had a sad heart to bear him company. At Durham he learned of the untimely death of his friend Sir Alexander Macdonald and was much affected by it.[3] Pressing duties once more occupied him; at least he was blessed in that he had 'found his work', and all that to him that word connoted, he did ungrudgingly.

To aid us in estimating the real value of the work done by Forbes to keep the House of Hanover on the throne, we may quote the words of a Jacobite, a certain John Daniel:

> The President may truly be styled the oracle of his country, for many resorted to him for advice, and had he been as great a friend as he was an implacable enemy, James would in all probability have swayed the English sceptre; for by his interest, cunning and persuasion he brought over his own party together with Sir Alexander Macdonald and several others, who before were just sworn in for the Prince's interest. Had he been as firm a friend as he was an implacable enemy, we should have seen instead of the 4,000 men who marched into England, an army of eighteen or twenty thousand men.[4]

It would be natural to suppose that the reward for such a chain of conspicuous and meritorious services as Forbes had rendered was no uncommon one. But this is very far from the truth. He received no reward, financial or honorific. Instead of getting even repayment of the large sums which he had generously and patriotically expended from his own slender resources in the cause of the Crown, he was treated with the utmost neglect. His intercession on behalf of certain of the rebels and his broad sympathy and lenity which wished to temper the penalties meted out to the guilty were looked on with contempt as mere vapourings of 'that old woman who talked to me about humanity'—words ascribed to Cumberland himself.

[1] *C.P.*, 339, and *M.C.P.*, v, pp. 141 and 143.
[2] *C.P.*, 340. [3] *M.C.P.*, v, p. 143.
[4] *Origins of the '45*, 1737-46, Second Series, p. 206. Scot. Histy. Socy.—Blaikie.

Interesting as showing Forbes's regret for the restricted patrimony he was leaving his son at his demise, is the letter from Mr. Will Forbes to his cousin, John, the Lord President's son.[1] The letter is dated Edinburgh, 17th March, 1748, and tells how the President expressed himself with regard to the losses, damages, and expenses contracted by himself and by his brother during the rebellions of 1715 and 1745. Both had been great losers in 1715. The President had been a vast loser in 1745. Not only did he spend great sums [2] himself without asking repayment of the money, but his factor Thomas Stewart had spent about three years' rent of his estate of Culloden in the rebellion and had incurred considerable debt otherwise. This was never discovered till after Stewart's death. For his own remissness in managing his finances, the President 'thought himself highly blamable'.[3] As if the base ingratitude which the Government showed him were not enough, history has allowed his name to be almost forgotten, except among her students. By a strange irony, too, his designation is remembered only by the name of the bloody and decisive battle fought on his estate. And he had been the 'saviour of his country'! He had proved, nevertheless, that in helping the distressed, the rewards had been 'in the doing' and in the love and gratitude of his fellow countrymen.

[1] *C.P.*, 350.
[2] Uncat. MS. in Nat. Liby.
[3] Uncat. MS. in Nat. Liby.

CHAPTER XVII

MORE ABOUT THE INDEPENDENT COMPANIES

To the task of raising the Independent Companies the Lord President had brought patience and hard work, and he watched over their interests with almost paternal care, regarding their behaviour in the field and their treatment by the authorities as a personal matter. Empowered to raise twenty companies, he had bestowed commissions enough to recruit eighteen of these, but only after the hundred men required for each company were enlisted. All this he had done in the manner 'that to me seemed most frugal and profitable to the public'.[1] They had rendered invaluable service, and that they did not do more was due to the delay in sending on proper equipment. Had the sloop with arms and money that Forbes had begged so often, arrived in time, the rebels, for example, could have been prevented from crossing Drumochter and later from taking the barracks of Ruthven.[2] As it was, they intercepted reinforcements from joining the rebels before these marched south into England, they distracted their forces when the Duke of Cumberland was advancing, and when the battle of Culloden was over, they were detailed (under Loudon) by the Duke to hunt down the rebels in their mountain fastnesses.[3] The order was that Loudon with the Argyllshire militia and the Independent Companies should march through the hills on right and left of Cumberland on his way to Fort Augustus, and so pursue the rebels.[4] So much for the general work of the companies. And now we come to their inner history.

Among the Culloden Manuscripts has been found a series of notes (undated) in the President's handwriting on the

[1] *C.P.*, 318. [2] *M.C.P.*, v, p. 2. [3] *C.P.*, 318.
[4] *London Gazette*, 3rd-6th May, 1746.

subject of the Independent Companies. These notes show how Forbes, bred to the law, and not to arms, yet foresaw with the understanding of an old campaigner the difficulties that might arise from jealousy, as well as from questions of seniority and priority. He was not content merely to raise the companies. The administrative mind was ever at work, and so he prepared for all contingencies.[1] His caution and thrift in bestowing the commissions are shown by the fact that he retained in his own hands the blank commissions required for the two companies, and offered them later to Cumberland for disposal.[2] His work did not cease once the rebellion was over, for he had much correspondence with MacLeod, Loudon, George Ross, Henry Fox (Secretary for War) to ensure that the officers and men were properly paid for their services.

There were two grievances to be redressed. First of all, the interruption of normal correspondence and the extraordinary marches the Lord President had been forced to make among the mountains had prevented him from forwarding to London the necessary list giving the names of the officers of the eighteen new Independent Companies and the dates of their commissions. The consequence was that the

> establishment of their pay cannot properly be made and this has been the cause why a stop has been put to the issuing money . . . so that they have in a great measure been subsisted on private credit.[3]

This shortcoming he had now rectified. He explained that it had been necessary to make use of his own money, so far as he could come at it, and then to borrow small sums from friends ' on my own notes, which I employed for the public service '.[4] Those who had advanced money when the situa-

[1] *M.C.P.*, iv, p. 129 and v, p. 87. [2] S.P. (Scot.) 36, Bundle No. 31, No. 19.

The eighteen Independent Companies were allotted as follows :

the Munros, 1	the MacLeods (of Skye, etc.), 4	the Macdonalds (of Sleat), 2
the Sutherlands, 2	Inverness, 1	the Mackenzies (Seaforth), 3 (of which the Lewes Company never reached Inverness)
the Grants, 1	the MacLeods (of Assynt), 1	
the Mackays, 2	(*M.C.P.*, v, p. 92.)	the Rosses, 1

[3] *M.C.P.*, v, p. 90. [4] *C.P.*, 317.

tion was desperate were now with justice demanding repayment. Almost cynically, he adds 'and I who cannot coin, and who never hitherto was dunned, find myself uneasy'.[1] The total sum due to those who had lent money was no more than £1,500. It was Forbes's earnest request now that this sum might be paid to his agent, George Ross, or be otherwise remitted to him.

The next difficulty was this. When submitting his List of Officers of the companies, Forbes had himself taken the date of their reaching Inverness as the time from which pay should be reckoned. MacLeod had pointed out to him, however, that his own four companies had been together for twenty days before they arrived at Inverness, and so, too, those of Macdonald and others.[2] Accordingly, on learning the true state of affairs, the Lord President immediately took steps to correct his original error. Realising that the officers had been put to great expense in assembling, equipping and entertaining their respective companies before they were brought to Inverness (lack of money and arms made Forbes keep them out of Inverness as long as possible), he frankly laid the case before the Secretary for War (Henry Fox).

> You seem to think that no consideration is due, and I on the other hand, am at present of opinion, that some, without determining what, is due, and I am confident you will weigh the motives which induce me to be of that opinion, without suspecting that I have anything in view other than justice and regard to His Majesty's Service should there be any occasions for levies of this kind hereafter which God forbid.[3]

To Fox's suggestion that levy money was unnecessary in the Highlands owing to the keenness of the clans to follow their chiefs, Forbes answered that while this was so, 'the companies were picked men',[4] and a douceur was probably a deciding factor in many cases in determining them to join. He gave a further example where, in recruiting, 'skill and industry as well as expense were necessary'. MacLeod of Geanzies was sent by Forbes to Assynt to secure a company

[1] *C.P.*, 531.
[2] *M.C.P.*, v, p. 106, p. 112, p. 141.
[3] *M.C.P.*, v, p. 116.
[4] *M.C.P.*, v, p. 117.

of men on the estate of Macdonald of Barrisdale, when the latter had already tried to enlist the men for the Pretender's cause. In justice, it would have been hard if no consideration had been given to MacLeod of Geanzies for all the expenses incurred in levying this company.[1] So desirous was Forbes of dealing justly by the officers of the Independent Companies that he referred the case to the Duke of Cumberland at Inverness before making out the certificate relating to the commissions. The Duke expressed his opinion that the commissions should be antedated a reasonable time before the actual date of arrival in Inverness. All this the President made clear to Fox, adding that he himself and Loudon had both

> called out, armed, and subsisted, at different times, several hundreds of Earl Sutherland, Lord Reay, Sir Alexander Macdonald, and MacLeod's men, in addition to the organised independent companies, and discharged them without any further payment, when the occasion for such service ceased.[2]

Of course, this method could not be followed with the men enlisted and dressed for the king's service.

As late as 16th December, 1746, and 13th January, 1747,[3] we see MacLeod and Forbes in correspondence on the same subject of the payment of the Independent Companies. The Secretary for War had just (16th December, 1746) prepared an account which he was expected to transmit that very night to the Lord President. This was to be accompanied by his opinion of what each captain of an Independent Company should receive for one or two musters. It would appear that the final decision reached by the 13th January, 1746, was to give thirty days' allowance to the companies, and other thirty days' allowance to the four MacLeod and two Macdonald companies, which were exceptional in that they had come from Skye. But before these extra sums could be paid, MacLeod, now in London, and actually in personal touch with the War Secretary, reported that a certificate would be required from the Lord President to Mr. Fox.[4]

[1] *M.C.P.*, v, p. 117.
[2] *M.C.P.*, v, p. 118.
[3] *M.C.P.*, v, pp. 141-142, and pp. 148-150.
[4] *M.C.P.*, v, p. 150.

According to George Ross, Forbes's agent for the Independent Companies, two months' subsistence for twenty companies was estimated at £4,290.[1] When it is remembered that the first commission was delivered on 23rd October, 1745, and the last of the eighteen issued on 2nd February, 1746, it is clear that several thousand pounds were involved.

Below is a

LIST OF OFFICERS OF THE INDEPENDENT COMPANIES RAISED IN THE NORTH; SPECIFYING THE DATES OF DELIVERING TO THEM THEIR COMMISSIONS, THEIR COMPANIES BEING THEN COMPLETE.

Captains.	Lieutenants.	Ensigns.	Dates of completing the Companies.
			1745.
George Monro, Esqr.	Adam Gordon.	Hugh Monro.	Oct. 23rd
Alexander Gun, Esqr.	John Gordon.	Keneth Sutherland	Do. 25th
Patrick Grant, Esqr.	William Grant.	James Grant.	Nov. 3rd
George Mackay, Esqr.	John Mackay.	James Mackay.	Nov. 4th
Peter Sutherland Esqr.	William Mackay.	John Mackay.	Nov. 8th
John MacLeod, Esqr.	Alexr. MacLeod.	John MacAskill.	Nov. 15th
Normand MacLeod of Waterstein, Esqr.	Donald McLeod.	John MacLeod.	Do. Do.
Normand MacLeod of Bernera, Esqr.	John Campbell.	John MacLeod.	Do. Do.
Donald MacDonald, Esqr.	William MacLeod.	Donald MacLeod	Do. Do.
William Macintosh, Esqr.	Keneth Mathison.	William Baillie	Nov. 18th
Hugh MacLeod, Esqr.	George Monro.	Roderick MacLeod.	Nov. 28th
Alexr. Mackenzie, Esqr.	John Mathison.	Simon Morchison.	Dec. 10
Colin Mackenzie of Hiltown, Esqr.	Alexr. Campbell.	John Mackrae.	Do. Do.
James MacDonald, Esqr.	Allan MacDonald.	James MacDonald	Dec. 31st
John MacDonald, Esqr.	Allan MacDonald.	Donald MacDonald.	Do. Do.
			1746.
Hugh Mackay, Esqr.	John Mackay.	Angus Mackay.	Janry. 6th
William Ross, Esqr.	Charles Ross.	David Ross.	Janry. 8th
Colin Mackenzie, Esqr.	Donald Mackattlay.	Kenneth Mackenzie.	Febry. 2nd

[1] Calendar of Treasury Books and Papers, 1745.

INVERNESS, 12*th May*, 1746.

I hereby certify, that, pursuant to the trust reposed in me by His Majesty, Commissions were by me delivered to the Officers of the Independent Companies above mentioned, on the days also mentioned; and that these Commissions were not delivered until their respective Companies were complete.

(Signed) DUN. FORBES.[1]

[1] *C.P.*, 318.

CHAPTER XVIII

THE HERITABLE JURISDICTION ACT (1747)

If Parliament did not give honour where honour was due, it did not fail to apply immediate remedies to prevent a recurrence of the outbreak. We have already referred to the laws against the bearing of arms and against the clan system in the Highlands. Another measure which engaged the attention of the legislators at this time was the enactment now called the Jurisdiction Act, 1747.[1] On this difficult but important topic Hill Burton in his *Life of Forbes* (p. 385) has only a few lines, regarding it as a highly technical subject of interest only to lawyers, and as of no general appeal. A somewhat fuller treatment is attempted here.

With the severe measures adopted to repress the Highlanders and to establish peace and order in the Kingdom, a blow had already been struck at Clanship. By a certain natural confusion, the Government conceived that the chiefs could be reduced by depriving them of their ruling powers, which, in error, the Government made synonymous with the Heritable Jurisdictions. As the Duke of Argyll succinctly puts it,

> The power of the chiefs of Clans was wholly independent of Charters or of Law. The Heritable Jurisdictions, on the contrary, were entirely founded on Charters and on Law. They were grants by the Crown of judicial power given to individual men, not because they were chiefs of Clans, but because they were the chartered owners of great territorial estates.[2]

Some account[3] of the nature of the jurisdictions to be abolished may not be out of place here. The sole example of a hereditary High Justiciary possessed by a subject in

[1] 20 Geo. II, Cap. 43.
[2] *Scotland, as it was and as it is*, p. 274.
[3] See Newcastle Papers, vol. 364.

Scotland belonged to the Argyll family. The Deputy of the Duke of Argyll could try

> all common matters high or low of which the High Court of Justiciary at Edinburgh can judge without being subject to the control of that court or to any other control whatever save the pardon which the Crown may grant to criminals condemned.

Apart from the unique instance of the House of Argyll, there existed in the Highlands three main types of Court, all under hereditary officials,—the sheriffs, the Lords of Regality, and the Barons. The very nature of the Highlands—their remoteness and the difficulty of keeping the clansmen in order—had compelled the Crown centuries earlier to delegate its power. It was the sheriffs, in particular, who were regarded as the king's officers to whom the execution of all government orders within the county was usually committed. Forbes endeavoured to explain the whole system in his *Some Considerations on the State of the Jurisdiction in Scotland*. He tells how the Crown had been obliged

> to commit sheriffships to powerful families, which in process of time became hereditary in them.

Because of the high power accruing from these posts, they were coveted by the great

> but as there might be more great men than one in one shire whom it was fit to humour or whose power it was perhaps on other considerations expedient to keep up, to oblige them, regalities were created.[1]

Now, while a Sheriff-ship became in time part of an inheritance passing from father to son, a knowledge of the law is not so communicable. The result was that for long it had been customary

> to divide the Sheriff's duties into non-legal and legal, the former being performed by the hereditary Sheriff who appointed a Sheriff-Depute to attend to the latter or judicial, functions of the post.[2]

[1] Laing MSS., vol. ii, Hist. MSS. Com. Reports, p. 377.

[2] *Green's Encyclopaedia of Scots Law*, ed. by J. Chisholm ; vol. xi (2nd ed., 1914) p. 96.

The Lord of Regality [1] also had the power of appointing his bailie as judge in his court, for dealing with nearly all civil causes, but with certain reservations in favour of the Court of Session, which had the right, in all cases, to hear appeals. Similarly, the Lord of Regality could by his bailie try all capital and criminal cases, and had the right to all the movables of the defenders. While the Sheriff of the county could legally judge persons within the Regalities, if these were summoned to his court, the Lord of Regality or his bailie had still power to recall the case to his own court, should he deem it desirable, and provided it was yet '*res integra*'. Even the Court of Justiciary and the Circuit Courts had not been exempt from this power of repledging exercised by the Lords of Regality.

As Forbes put it,[2]

> This jurisdiction was in many cases, privative, that is, attended with a power of repledging or calling back from the King's Court to be tried before the judge of the regality, any inhabitant of the regality that was accused before the King's Court.

From the Union (1707), however, the Court of Justiciary had without statutory authority assumed a power of reviewing sentences of Regality courts, a power exercised only by the Privy Council previous to 1707.

Besides these higher jurisdictions, there was, as we have said, another of a lower nature annexed to baronies. According to Forbes, its particular work was

> to hear and determine in all questions between master and tenant concerning rents, in all smaller civil questions between the inhabitants of the barony, and in all lesser offences and breaches of the peace.

[1] 'A Lord of Regality is defined as he who has the land whereof he is proprietor or superior erected with a Jurisdiction equal to the Justices in Criminal Causes, and to the Sheriff in Civil Causes, but a Lord of Regality lays higher fines than a Sheriff.' (S.P. (Scotland), II, Bundle 38, No. 66. Unsigned document found in March 1748.)

[2] 'Some Considerations on the State of the Jurisdiction in Scotland.'

The powers exercised were apparently much the same as those possessed by the Lords of Regality and differed perhaps more in degree than in kind.

As the proprietors of hereditary jurisdictions had certain power over the poor people within their territories, it was held by the promoters of this new measure that there was a

> very great difference between the security which the body of the Commons of England have from that which is enjoyed by the body of the Commons in Scotland.[1]

While it was true that appeals might lie from all the above courts, except that of Argyll, to the King's Court at Edinburgh, yet it was realised that the poor, especially in remote parts, could hope for little benefit from those appeals, when they had neither the time nor the money necessary to prosecute them.

The writer of the Account in the Newcastle Papers—no name appears on the document—had not taken it upon himself to find what influence these jurisdictions had had on the 'Forty-five rebellion, but he was certain that they had a share, in some instances, in promoting it. He was of opinion that the proposed changes

> would greatly affect the evil called Clanship, for, save in a few instances, that power is not very strong where the chief is not the heritor.[2]

By some, on the other hand, it was contended that these jurisdictions were no cause of the rebellion, and that, for instance, Lochiel and Keppoch had no regalities. To this, retort was made : by the fact that these regalities were ingredients in the powers of certain chiefs of the clans, they did

> conduce to the Rebellion by enabling the chiefs to carry their vassals into it. Moreover persons who had no clans and were not of the Highlands by the powers which their regalities and superiorities gave them, raised their vassals and drew them into the Rebellion, e.g. the Duke of Perth, and Lord Ogilvie.[3]

[1] Newcastle Papers, vol. 364.
[2] *Ibidem.*
[3] S.P. (Scot.), II, Bundle No. 38, No. 66.

It was this system we have briefly outlined that the new Jurisdiction Bill proposed to abolish. "The King's writ must run in the glens. An Afghanistan could no longer be tolerated within fifty miles of the modern Athens." [1]

The Lord Chancellor Hardwicke was the chief promoter of the measure. It was feebly opposed by the English Tories, but more strenuous objections were raised by Forbes and other prominent Scotsmen. As the Bill would abolish the power of the aristocracy while increasing that of the Crown, it was not to be wondered at that objection came from this quarter.

> In remedying the inconveniences that have arisen and may arise from the multiplicity and extent of heritable jurisdictions in Scotland, (and while) making satisfaction to proprietors thereof,[2]

the measure set up sheriff-substitutes appointed by the Government who would administer the law, in place of the local chief who had in the past held the power of life and limb over his clan. Such jurisdiction would thus be restored to the Crown, and the more effectual provision for the administration of justice throughout that part of the Kingdom, by the King's Courts and Judges there, would merely render the Union of the two kingdoms more complete.[3]

On the 5th August, 1746, the House of Lords instructed the Court of Session to draw up an account of these Heritable Jurisdictions and to

> prepare the draft of the Bill for remedying the inconveniences arising from the several kinds of Heritable Jurisdictions in . . . Scotland, and for making more effectual provision for the regular administration.

It was further ordered

> that the Lords of Session in Scotland do inquire and consider what Regalities and heritable Sheriffships are subsisting within

[1] Trevelyan, *History of England*, p. 538.

[2] Preamble to the Bill, S.P. (Scot.), II, Bundle No. 38, No. 67.

[3] S.P. (Scot.), II, Bundle No. 38, No. 66. Document unsigned : and dated March 1748.

> that part of Great Britain called Scotland ; what persons are now in possession thereof ; and which of such regalities were granted before the Act of the eleventh Parliament of King James II of Scotland (1455) etc.[1]

Hardwicke, on this occasion, spoke for about an hour. The motion ordering the draft of a Bill to be submitted by the Court of Session, and that requesting a report of the regalities, were both carried without any division,

> but without the least support from the Duke of Argyll,[2] who sat by in a corner silent, and complained of the headache.[3]

Argyll, however, seems to have voted for the Bill later on the 21st May, 1747.[4]

The Court of Session refused to carry out such an order, although suggestions were advanced, largely the work of the Lord President himself ; these were dated 9th January, 1747.[5]

Forbes has left us many long, and, it must be admitted, rather wearisome letters on this topic, his correspondents being chiefly the Lord Chancellor, Andrew Mitchell and Wm. Grant, the Lord Advocate. These show his power to state his case, and, not least, his determination to assert his point of view when his country's honour and interests seemed involved. Mitchell replied at equal length in the early months of 1747. Writing on the 21st February, he enclosed a copy of the Bill itself which had been lately brought into the House of Lords, and had been printed only the day before. The Lord Chancellor, it appears, had considered the remedy proposed by the Lords of Session inadequate to the evil with which they were attempting to deal. Indeed, he had argued that the alleged

> impossibility of determining who had the rights to Heritable Jurisdictions, was to him a convincing argument of the necessity of taking away these Jurisdictions.[6]

[1] *Parliamentary History*, vol. xiii, col. 1416.
[2] The Earl of Ilay of the earlier years.
[3] *Parliamentary History*, vol. xiv. [4] *M.C.P.*, v, pp. 182-3.
[5] *Parliamentary History*, vol. xiv, and *M.C.P.*, v, p. 177.
[6] *M.C.P.*, v, p. 153.

Hardwicke showed from their report that the judges of the Court of Session believed (1) that the King's Justice could not be administered without taking away the Heritable Jurisdictions; and (2) that these Jurisdictions might be abolished if the proprietors were compensated. The indefinable power which the Scottish Parliament had formerly reposed in the Privy Council of checking and curbing these jurisdictions, was proof enough of the danger which might arise from them, but the power of abrogating them had passed from the Scottish to the British Parliament at the Union. The Lord Chancellor made clear, too,

> that he did not bring in this Bill on account of the late rebellion, (for) that indeed was the occasion but not the cause.[1]

Mitchell concludes :

> I hope your Lordship will have leisure thoroughly to consider this affair, and as something will be probably done in Parliament you will give your assistance to render it as beneficial, or at least as little hurtful to the country as possible.[2]

Here was another burden put upon the shoulders of our eighteenth century Scottish Atlas, but there were other worries of a more insidious nature to be borne as well. Says Mitchell :

> I mentioned to you in a former that I believed a certain person had been at pains to give bad and false impressions of you, to a brother of yours. I am sorry to find by what I hear of that Gentleman's behaviour that my suspicion has proved too true. I hear that Gentleman sent to the person who had thus misrepresented you, a long paper in which all the alterations and emendations made by the new bill are contained and those of a certain party say, that my Lord Chancellor not only formed the bill, but also made his speech from that paper, all this I have from good authority, but my friendship with you has rendered me suspected, for I have not yet been able to obtain a sight of the paper.[3]

The hope expressed on the 21st February was repeated five days later when Mitchell added one material point

[1] *M.C.P.*, v, p. 154. [2] *Ibidem.* [3] *M.C.P.*, v, p. 157.

omitted from his report of Hardwicke's speech ; the latter had shown

> how desirable it was, that the laws of the two countries should not widely differ from each other.[1]

The speech had been received with great applause, and the prevalent opinion seemed to be that, once the Heritable Jurisdictions were abolished, England would have nothing to fear from Scotland. Mitchell himself believed Englishmen did not wish to do anything to the disadvantage of Scotland, but were ignorant as to the true situation in the sister country.

On the 3rd March, when Lord Advocate Grant visited the President in Edinburgh to receive instructions from him in the subject, he told him that the Bill might be far advanced before he (Grant) himself returned to London. Meantime, all other business was held up till Lovat's trial was over on Thursday, 19th March. On going south, Grant conferred with his brother lawyers, the Attorney- and the Solicitor-General, who referred him to the Lord Chancellor as being more conversant with the measure than anyone else. Grant, likewise, spent three hours on two separate days discussing it with the Duke of Argyll, and later, saw Mr. Pelham one Sunday morning for the same purpose.

> The chief instruments I had to use at these conferences were the opinions given by your Lordship to your brother Elchies, Arniston, and Tinwald, all of which very happily we had here in writing. I mean your Lordship's letter to my Lord Chancellor, which he gave me to read over to him last Saturday.[2]

The opinions expressed by the President were upon the inexpediency of curtailing the baron courts, and also upon the civil jurisdiction of the Circuit Courts and judges. The upshot was that the Lord Chancellor yielded on certain points, namely, to reserve the barons' jurisdictions in small causes and trespasses, and to restrict the civil jurisdiction of the Circuits much lower than the original quantum of £30. He then set to work to remodel the Bill.[3]

[1] *M.C.P.*, v, p. 155. [2] Laing MSS., ii. [3] Laing MSS., ii, p. 389.

Three weeks later (12th–14th March) Mitchell reported that

> the clause about the Baron Courts bids fair to make the whole bill miscarry, the compensation though ever so moderate will amount to an immense sum, and nobody will be pleased or think himself paid.

The President's other correspondent, Grant, continued to keep him informed regarding the various moves both in favour of, and against, the Bill about which Forbes had 'taken so much pains '.[1] By the 3rd April, 1747, he learned that the Chancellor was willing to restrict the trials by the Circuits to causes under £15, and a week later, that the provisions of the new Bill seemed better than those of the previous one. The new point evidently concerned the civil jurisdiction at the Circuit. Grant thanked Forbes for his help in the past, asked for further advice in the future, and reported the result of the unexpected debate and division in the House of Lords.

In spite of all this apparent diligence on the part of the Lord Advocate, Forbes was not entirely satisfied with his assiduity in getting the ear of authorities at headquarters. Since the Lord President was unable to state his objections personally, he needed as substitute a man with ' push and go ', and, apparently, in this quality Grant was to a certain extent, lacking. And, again, all the information received, while from two indisputably reliable sources, was still only second-hand. It was, therefore, with eagerness that the Lord President broke the seal bearing the crest of the Lord Chancellor himself. The letter was dated 23rd April, 1747, and in it, Hardwicke reviewed the situation. In acknowledgment and approval of the strong arguments put forward by Forbes with regard to the Baron Courts, he had made certain alterations in the plan to be found in the printed Bill in the Commons.[2] These alterations did not, however, meet all the objections Forbes had raised. This he made clear in a letter to the Lord Chancellor, dated 28th April, that is, some five days after Hardwicke's last epistle. Without circumlo-

[1] Laing MSS., ii, p. 386.

[2] Hardwicke Papers, 98, folio 162.

cution, he states his point of view. Only of the expediency of the Bill, not of the motives actuating the Lord Chancellor, has he doubts. Already, he explains, he has written much to the Lord Advocate on technical points, but as the latter seems not to have taken very active steps to state the objections raised, he offers, if Hardwicke cares, to send on copies. Meantime, he is convinced that the part of the Bill aiming at trying small civil causes at the Circuits will be dropped in Committee. He adjures Hardwicke to consider it well before it passes the House of Lords, even if it does pass the Committee.[1] He adds that there is a further objection among the people that they have a right to the opinion of the Court of Session upon every question of property, no matter how small it may be. They complain that a question of property may, by the new measure, be finally decided by the opinion of any two judges sent on circuit, in place of the present fifteen.

There is no doubt that Forbes's aim in writing Lord Hardwicke so frequently was, first, to give such observations as appeared to him to support the promoting of the Bill so far as it aimed at the public good ; and secondly, to obviate any inconveniences that might result to the good of the subject, but which had not been foreseen by the promoters in London, far from the scene of the Bill's operation.[2] With the great and primary object of the Bill, viz. to transfer to the king's courts and judges the administration of justice over the several districts and territories where the jurisdictions had hitherto held authority, Forbes was in complete agreement, save on one particular. He refers to

> the only thing that I apprehend ought to be altered in the first part of the Bill, and that is the article that takes away from the barons *all* jurisdiction except for recovering of his rents and except for the preservation of the peace at fairs, mercats, and for restraining coallers and salters, etc.[3]

He thought that the high criminal jurisdiction of barons ought to be abolished, but it seemed to him necessary

[1] Hardwicke Papers, 98, folio 196.
[2] Laing MSS., vol. ii, p. 371.
[3] Laing MSS., vol. ii, p. 371c.

to leave with the baron the power of judging in *petty trespasses* and claims for *petty debts* between the tenants, as well as for the recovering of his rents.

He re-stated, again at some length, (although in his opinion, 'succinctly'), the reasons in support of his view. He argued that if the baron's jurisdiction should be abolished, the injured party in such petty trespasses as the treading down of corn, or the eating up of grass, committed by a neighbour's cattle, or in assaults and batteries, would be without remedy. To go to the sheriff-court many miles away, and to fee solicitors, would be costly and beyond his means, and he would hesitate 'to sue for so little at such expense'. The consequences of all this, in Forbes's opinion, would be grudges and petty feuds in place of harmony, and also private revenges disturbing the public peace. He admitted the good result that would ensue from the establishment of Justices of the Peace, but till that was done, he thought it absolutely essential to leave with the baron the power of punishing injuries and of determining in small civil causes, limited to, say, 20, 30,'or 40 shillings. Thus, on Forbes's recommendation, the lower jurisdictions of the Baronial Courts or Baron-Baillie Courts, as they were called, were reserved

in civil cases affecting values up to 40 shillings and in all cases whatever for the recovery of 'rents, mails, and duties', arising out of charters, leases, and other instruments under which land was occupied.[1]

The Bill was adjudged a Money Bill, and was, therefore, introduced into the House of Commons on 7th April, 1747, and then passed. On the first reading, 99 voted for the Bill and 74 against it; another division took place on the 14th [2]

[1] Quoted from Clause 17 of the Act by Duke of Argyll in his *Scotland, as it was and as it is*, p. 277.

[2] Regarding the second reading on the 14th April, Horace Walpole has an interesting letter dated two days later: 'We have had a great and fine day in the House, on the second reading of the Bill for taking away the Heritable Jurisdictions in Scotland.' Having praised some of the speeches made for the Bill by Lyttelton; by the Solicitor-General (Mr. Murray); by Wm. Grant, the new Lord Advocate, and by Hume Campbell (especially), he records the result mentioned in the text and concludes with this tit-bit: 'Pitt was not there; the Duchess of Queensberry had ordered him to have the gout.' (*Lord Orford's Works*, vol. v, p. 27, quoted in Col. 43, *Parly. Histy.*, vol. xiv.)

when 233 were in favour of the measure and 102 against. After some petitions presented against the Bill, mainly on the principle of property and compensation, had been met satisfactorily, the third reading was taken, on the 14th May, when 137 voted for, and 53 against, the Bill.[1] So much for the passage of the Bill through the Commons. To Mitchell and MacLeod of MacLeod are we indebted for some account of its progress in the Lords.

Towards the end of May (22nd), Mitchell recounted to the Lord President the arguments advanced in favour of the Bill by the Duke of Argyll in the House of Lords the previous day (Thursday), in his two hours' speech.

> The Duke of Argyll made the most exotic speech I ever heard. Had I not been informed before that he was to speak for the bill, I should have thought from his facts and reasonings that he intended to vote against it.[2]

After stating that the Jurisdiction and power of the nobility had been useful in preserving the Constitution against the attempts of the Crown, ' he bestowed great encomiums on the law of England ', and gave a

> dreadful description . . . of Scottish policy and government, set in contrast to the wise policy and just laws of England.

Tweeddale, according to Mitchell, while speaking well for the Bill, had objected to the clause which empowered the Circuit to try civil causes. In the end, only sixteen had voted against the commitment. When the Bill was passed, not a single Scottish peer signed the Minority Protest, and only six English peers. MacLeod, writing[3] on 23rd May, gives a

[1] *Parly. Histy.*, vol. xiv. [2] *M.C.P.*, v, p. 182.

[3] ' Moray lost his maiden-head and really spoke well against it, by wh. (*sic*) Sutherland had nigh lost forty guineas, for Moray beated (*sic*) 20 guineas that he would speak and 20 that Sutherland would not speak, the money went to his heart and up he got, said he had several of these Jurisdictions wh. (*sic*) his family had got for their services to the Crown that he had no mind to part with them and therefore he was against committing the Bill.' (*M.C.P.*, v, p. 185.) The punctuation is MacLeod's.

similar account and adds an interesting sidelight. This Bill that was to the Scot at home a matter for serious thought, had developed into a species of game of chance to the men at the seat of action, and we learn that some of the Lords, inveterate gamblers at all times, found in the whole proceedings excellent opportunities to indulge in their favourite vice or pastime.[1]

We have seen from Mitchell's account that the amount of compensation demanded was likely to prove a bone of contention. The value asked earlier by the 160 claimants [2] for their Heritable Jurisdictions, had been as high as £582,990, but the Lord Advocate in writing to Newcastle on 19th November, 1747, gave hints of a probable reduction in these figures :

> I presume they will be considerably diminished in number, and greatly in value before the Court of Session shall come to make their report.[3]

The decision of the Court of Session arrived at early in 1748 proved Grant's surmise to have been correct. Claims for the several kinds of Heritable Jurisdictions were to be allowed to the value of £164,232 16s.,[4] a sum very much less than the half-million originally demanded.[5]

The Bill became law in 1748.

Very gradually, with the opening up of the Highlands, through Wade's roads, and transport, and trade, and with the breaking down of the clan system, the authority of the chiefs was diminished. Those who had acted both as leaders of armies and arbiters and administrators of justice, were now only Highland lairds. The Heritable Jurisdiction Act of 1748 left them shorn of their former powers. The private courts fell into desuetude, the King's law-officers penetrated

[1] *M.C.P.*, v, p. 185. [2] *Scots Mag.*, vol. ix, 1747, p. 553.

[3] S.P. (Scot.), II, Bundle No. 37, No. 28.

[4] Fraser Mackintosh, *Antiquarian Notes*, p. 258, says Compensation was allowed by the Court of Session to the value of £150,000.

[5] S.P. (Scot.), Bundle No. 38, No. 39. Grant to Newcastle, 8th March, 1748.

further afield, and at last the King's writ did 'run in the glens'.[1]

[1] The year 1747 saw the passing of another Bill having regard to certain incidents of Feudal Tenure which had grown up in Scotland. Certain 'Casualties'—or feudal incidents due by Feuars to their Superiors were commuted by Act of Parliament—(20 Geo. II, Cap. 50)—for a fixed feu-duty, mutually agreed upon or arrived at by valuation in the Court of Session. This Act but obtained for the 'Agricultural Tenants under lease the principle of certainty in obligations which the other clauses secured for the Proprietors under whom they held'. (*Argyll*, p. 279.) Services which were regarded as a part of rent were now delimited, and anything outwith those prescribed were illegal. As this is merely a restatement of the principle incorporated in the new leases drawn up in 1739 by Forbes for the tenants on the Argyll Estates, the Duke of Argyll in *Scotland, as it was and as it is* finds again at work in this enactment the enlightened mind of the Lord President.

CHAPTER XIX

THE LAST PHASE

The work performed in connection with the Heritable Jurisdiction Bill was Forbes's last piece of important public service; indeed, he did not live to see it become an Act of Parliament. With the exception of the period shortly after the Glasgow Malt Riots, when he was for a time seriously indisposed, he had enjoyed, on the whole, good health, despite hard work and hard drinking, and usually found in his frequent trips to the north, that exercise and his native air were his best tonics. Both of these failed him in 1747.

London saw Forbes for the last time towards the end of 1746. Shortly after his return home, his health became uncertain, a fact his old crony and medical adviser Dr. Clark was not slow to observe. It was decided to try the old cure—a journey, and so Forbes set off, this time not venturing north. On the 18th May, 1747, he wrote Will Forbes, his cousin, from Dumfries—at eight in the morning.

MY DEAR WILLIE,

I send you this short journal to satisfy your curiosity—though in a very small degree. Monday I lay at Linton, Tuesday at Moffat, Wednesday at this place, Thursday at Carlisle, Friday I returned hither, Saturday I rested, Sunday I preached, and this morning I am setting out for Kirkcudbright. Tell the Doctor, my journey has not hitherto answered his expectation or mine. In place of removing all complaints as journeying was wont to do . . . it has added just pains and penalties. . . . I am, however, a good dale easier than I was and am hopeful perseverance will do the business. . . . The road from Kirkcudbright, they say is very rugged, particularly for a chaise; if nothing cross happens, I may be at Ayr Thursday.[1]

[1] Eight Autograph Letters in Edinburgh University Library.

As the year went on, he could no longer resist the lure of the north. These glorious August days he spent at Bunchrew, enjoying its quiet and peace, free from company, and with

> nothing to talk of but the warm weather and too great a quantity of salmon.[1]

This quiet monotony was broken by a short trip into Ross-shire lasting seven or eight days, from which he returned somewhat improved in health. His active spirit began, therefore, to grow restless, and thoughts of Edinburgh and his work were urging him to resume his active life. Already signs of an early winter were showing—and as he looked across the Firth from Bunchrew, he saw the mountains of Ross tipped with snow. This pictorial touch appears in a brief letter to Will Forbes written on the 16th (September [2]). He says :

> The weather here begins to break. I see snow at a distance from my window and that leads me to thoughts of decamping, but I have not yet resolved on the time or the route of my journey.

About the beginning of November 1747[3] we find Forbes again resident in Edinburgh, and seriously ill, his malady clearly aggravated by worry and anxiety. Himself realising the gravity of his own case, he sent for Will Forbes, to whom he communicated a verbal message for his son John, not yet arrived home. In brief he explained how heavy had been his losses both at the 'Fifteen and 'Forty-five rebellions. Methodical to the last, he confided not only in his cousin but in another Will Forbes, Writer to the Signet. Both men with lawyer-like precision committed to writing all that was said,

[1] Eight Autograph Letters in Edinburgh University Library.

[2] The date, 16th is given, no month being mentioned, but as he refers to his recent circuit in Ross-shire we may conclude the date to be the 16th September.

[3] The last entry in the Acts of Sederunt with the signature of Forbes deals with claims in connection with Heritable Jurisdiction, and is dated 4th November, 1747.

in order to render John a verbatim account.[1] Not content with leaving these messages to be delivered by others, Forbes actually, with hand growing daily more feeble, managed himself to write to his son a short account of his financial difficulties.[2]

Meanwhile, his faithful servant John Hay never quitted his master's side. From the sick-room Hay wrote to the Lady of Kindeace (3rd December, 1747), to whose son, the President had acted as a father.

> I am sorry to acquaint you that my dear Lord and Master has been very ill since I wrote you last and continues so still. God grant my next give you better comfort. We expect the young Squire from London every day. . . . I am writing this in my Lord's Chamber while he is now slumbering. I have not had my clothes off since the 4th of last month.[3]

John Forbes, fortunately, arrived three days later, on Sunday, 6th December,[4] and heard from his father's 'own mouth, a very short time before he died',[5] his last message. At eight o'clock on Thursday morning, 10th December, 1747, after having been gravely ill some five weeks, Duncan Forbes passed away at 'his house in the Cowgate opposite to the foot of the Fish Market Close'.[6]

On none did the blow fall more heavily than on his faithful servitor. The following is the letter sent by him announcing the sad news to the President's sister, Grizel (Mrs. Ross of Kindeace):

> MADAM,
>
> The ever to be lamented, my dear Master, Lord President died this morning at eight of the clock and is to be interred in David Forbes's tomb and in his dear brother's grave; I have not words to express the grief that is among all the people here on account of his death—and as for myself, I believe I shall soon follow him. . . . I can write no more

[1] *C.P.*, 350.
[2] Quoted in Chapter XX, 'Letters and Friends, p. 339.
[3] *Kindeace Letters*, No. 24.
[4] *Kindeace Letters*, No. 25.
[5] *C.P.*, 350.
[6] MacPhail MSS. uncatalogued in Scottish Nat. Liby.

from grief but ever am the family of Culloden's and your affectionate servant,

JOHN HAY.[1]

Forbes's friends in London and in England generally were not unprepared for the sad news, for it had been known privately and from the newspapers that his growing weakness made recovery unlikely.[2]

On the very day the President died, Fletcher (Lord Milton) wrote to the Duke of Newcastle reporting the country's loss through Forbes's death and that of Mr. Craigie, one of the Barons of the Exchequer. Grant, the Lord Advocate, especially regretted (in a letter to Newcastle on the same date) the loss of so eminent a man, for he

> would have been of great use at that particular juncture for promoting and executing the system now happily begun for discouraging and by degrees extinguishing or suppressing the spirit of disaffection in this country.[3]

Scarcely was the President dead when the Earl of Lauderdale was recommending (22nd December, 1747) to Newcastle a new holder for either of the two posts—the judgeship of the Session, or the Baronry of the Exchequer in Scotland.[4] And the best recommendation in favour of the new candidate was

> You will find upon enquiring that he had the character from the late Lord President of being one of the best lawyers at the bar.[5]

Notice of the death of so distinguished a servant of the state was naturally taken in the newspapers and magazines of the period. *The Jacobite Journal*, No. 3, dated 19th December, 1747,[6] announces the recent death at Edinburgh of the Lord President of the Session,

[1] *Kindeace Letters*, No. 25.
[2] S.P. (Scot.), II, Bundle No. 35, No. 41, and *Penny London Post*, 9th December 1747.
[3] S.P. (Scot.), II, Bundle No. 35, No. 44.
[4] S.P. (Scot.), Bundle No. 35, No. 55.
[5] *Ibidem*.
[6] See Burney Collection, British Museum.

> a gentleman of great merit, and of an universal good character. He discharged all his social offices of life with the highest virtue; and his conduct in the late rebellion was full of honour, of duty to his King, and love to his country. Note, *we shall always praise merit, even in a Whig.*

So, too, *The Gentleman's Magazine*, vol. xvii, in its obituary notice, praised his

> great virtues and abilities and zeal for the present establishment, which distinguished him during the two rebellions in Scotland.[1]

So high was the esteem in which Forbes was held, that on his demise the Dean and the Faculty of Advocates entered into the following resolution :

> The Dean and Faculty of Advocates being deeply affected with the death of this great and good man, and eminent judge, Mr. Duncan Forbes of Culloden, who discharged the high trust reposed in him, as President of the Court of Session, with ability, candour, and dignity; artifice being his abhorrence, not supporting his opinion by subtle and fallacious arguments, justice, and not victory being his aim; patiently hearing causes without indecently interrupting, and using the bar with just regard and respect; a patron of learning and an encourager of every laudable scheme for promoting industry and virtue; a zealous lover and asserter of liberty; and steady and unshaken in his attachment to the present constitution, of which at all times he gave the strongest proofs, and of which very lately, the nation saw and felt the happy effects; in short, a man whose life may strictly be said to have been dedicated to the public good; and as such uncommon merit calls for a public mark of veneration; therefore, the Dean and Faculty of Advocates have resolved to attend his funeral as a body, in their gowns.[2]

[1] This takes no notice of the repelling of the invasion by the few Spanish troops who landed (1719) in the country of the Earl of Seaforth, and were joined by his clan. Says Sir Walter Scott: 'They were defeated at Glenshiel, ... in a great measure by the Munros, Rosses, and the other Whig clans, whom the influence of Duncan Forbes put into action.' (*Quarterly Review*, vol. xiv, p. 321, 1816.)

[2] *Edinburgh Courant*, 10th December, 1747, quoted by *Scots Magazine*, vol. ix, p. 553, 1747.

The respect paid to Forbes's memory by the Faculty was no empty compliment, for, in 1736, they had acted very differently on the death of another 'worthy senator, though the Lords of Session assisted on that occasion in their formalities'. (*Scots Magazine*, vol. ix, p. 555, 1747.) Well might the Glasgow Magistrates in June 1746 call him 'the brightest ornament at the Bar'. (*M.C.P.*, v, p. 94.)

The Penny Post for 21st–23rd December, 1747, after making reference to this unusual tribute, relates how the Honourable the Keeper of and the Writers to the Signet followed the example of their confrères ; and how the Lord Provost and the Magistrates and Council of the Scottish capital made a similar resolution to be present in their robes, having the sword and mace in mourning, carried before them. Accordingly, on the 13th December, about nine in the morning, the funeral procession marched from the Parliament close to the Lawnmarket. After the Lord Provost and magistrates had passed, the corpse was carried to the place of interment in Greyfriars cemetery,[1]

> the pall being supported by his brethren the Lords of Session, the Dean and Faculty, Keeper of and the Writers to the Signet following.

The burial took place

> in the presence of many thousands bewailing the loss of so great and useful a gentleman.[2]

Greyfriars cemetery still guards the remains of many of Scotland's noblest figures, and on cumbrous tombstones are inscribed panegyrics of their virtues and greatness. Expectant, we enter the graveyard to do reverence to this man whose passing countless hundreds mourned. Where is the tomb? In vain we search. No dumb cold marble marks the spot. We must enquire from the curator. He points out a rotting piece of wood, some twelve inches long, loosely stuck in the ground. It bears the number '51'. Here is the last resting-place of Duncan Forbes.

[1] Brown, *The Epitaphs and Monumental Inscriptions in Greyfriars Churchyard*, Edinburgh, 1867. Also MacPhail MSS. in Scot. Nat. Liby.

[2] Brown, *The Epitaphs*, etc.

CHAPTER XX

LETTERS AND FRIENDS

The volume of *Culloden Papers* covering the period 1625-1748 was published from the original documents in March 1815. Duff, the editor, made a selection only of the bulky and disorderly mass of MSS. which had accidentally come to his notice only three years before, and arranged them in chronological sequence. While these 345 letters were yet printing, another mass of documents, relative chiefly to the same period,—188 in number—was discovered. These were, therefore, joined as 'Addenda' to the volume then nearing completion. Between 1923 and 1931 appeared five volumes of *More Culloden Papers*, edited by Major Duncan Warrand, the great-grandson of the original editor, and covering the same period as Duff's volume of 1815. The originals of many of these, collected by both Duff and Warrand, together with numbers of others, hitherto unprinted, have recently come into the possession of the Scottish National Library. It is as well to state at the outset that the letters are more important as historical documents than as literature. Here are no rivals to the work of the great epistolary writers in English literature—Lamb, Gray, Cowper, and Stevenson. Nor do we find anything savouring of conscious and artistic depictment of persons or of things. On that account, perhaps, what we read is the more truthful. Art is absent and the advocacy of a cause too, and so we are left to interpret accounts which have not been already coloured, arranged, and interpreted. The letters are a repository of the crude facts and data which others must use as seems good to them if they would achieve historic truth, a source-book or literary quarry whence the historian must hew the stone for the building of his historical edifice. We are under a deep debt

of gratitude to both editors for the patience, diligence and skill with which they have performed their task. Following, for the most part, a chronological order, Major Warrand has yet succeeded in wisely arranging his material under subject headings, although, naturally, the headings 'Miscellaneous' or 'Fragments' are fairly frequent. Between the letters he has inserted comments, explanations and references making them more easy of comprehension. This fact is forcibly brought home to the reader when he is confronted with the actual originals of many of these letters and seeks to sift for new material among the bundles. Dull would he be of soul who could handle without a thrill these frail scraps of paper, some now almost indecipherable, and many of them penned by the hands of men great in their country's annals.

To one who would learn at a glance the many points that Forbes touched in contemporary life, and who would know the number of his friendships, we need only say, 'Look in the Contents of the *Culloden Papers* or in the Indexes of any of the later volumes.' His correspondents include the foremost men in Scotland in his day and many of the greatest names in England too, and the range of acquaintances is wide—from men, otherwise unknown to history, up to the Prime Minister himself. All ranks are here and all occupations. There are statesmen like Walpole, and two Dukes of Argyll; lawyers like Lord Hardwicke and Mr. Murray (later Lord Mansfield); and politicians like Newcastle. Simon Fraser, Lord Lovat, strangest of men, and MacLeod of MacLeod represent the Highlanders; Cope, Wade and Hawley are soldiers; diplomatists and civil servants are seen in Andrew Mitchell and Scrope and Delafaye; honest John Hossack and dutiful Mr. Baillie are types of his Inverness friends; Allan Ramsay and James Thomson, of his literary ones.

Forbes's extant correspondence extends from 17th November, 1704,[1] till the year of his death, a period of forty-three years. His letters are in his own hand and not transcribed by a secretary, and if these and the letters of his friends constitute a species of scrap album, they nevertheless unfold before us a

[1] Uncat. MS. in Nat. Liby., or *M.C.P.*, ii, p. 1.

magnificent panorama of eighteenth-century Scotland, and provide a reliable documentation of Forbes's life. As historical sources, for events political, social and economic, they are, then, a rich store-house for the first half of the eighteenth century, 'the abstracts and brief chronicles of the time.'

Like his correspondents, his subjects are multitudinous and of varying importance. Local history with sidelights on petty political intrigues of Inverness are here; public affairs of even national consequence are exemplified by the references to the Glasgow Malt Riots, to the Edinburgh brewers, to the Porteous mob, and to the two chief Jacobite rebellions, especially the 'Forty-five. The Revenues, the Manufactures, and the Records are all topics on which Forbes liked, only too well, to dilate. Theology, literature, contemporary customs, fashions, and modes of travelling, political and court gossip in London—all are presented for our perusal. While the 'Letters' are initially the documents of a Government official, yet many are occupied with private family matters;[1] some, with matrimonial proposals;[2] and others, with religious beliefs[3] and expositions. We have letters not merely written by the President, but those written to him. It is possible, therefore, to examine an event or a personality from different angles. Indeed, by this bipartite nature of the whole correspondence we are enabled to see Forbes's own character more clearly. At first glance it might be thought that one who was so busy writing these hundreds[4] of letters must have spent most of his time at the desk in his library far from affairs, but Forbes's workshop was neither the study nor yet the law-courts, but the world of men in which he played no inconspicuous and no ignoble part. We have here what we

[1] MSS. in Nat. Liby., Bundles XI and XIII, and *M.C.P.*, ii, pp. 27-33; and *Some Kindeace Letters*, ed. D. M. Rose.

[2] *C.P.*, 96, and *M.C.P.*, ii, pp. 162-3.

[3] MS. in Nat. Liby., Bundle XI, *M.C.P.*, ii, p. 28, and *M.C.P.*, iii, pp. 125-6.

[4] His bulky correspondence contradicts him flatly when he modestly writes to Sir Charles Erskine, Solicitor-General, in 1729: 'I am the worst correspondent in Christendom, especially when I have not the most agreeable things to say.' (Hist. MSS. Com. Report IV, Pt. I, p. 525.)

might regard as the log-book of the long and eventful voyage of Forbes's administrative career. It is true, of course, that the letters are of greater account as a source of Scottish rather than of British affairs ; and that they deal, on the whole, rather with local than with national happenings. Still, some hundreds are concerned with the 'Forty-five alone, and that surely was sufficiently national in its results. If the letters furnish only a series of vignettes or snapshots of his many correspondents, they afford a clear-limned, full-length portrait of Forbes himself and a full canvas of his busy world.

As a letter-writer Forbes is pre-eminently concerned with practical considerations. He might have said with Coleridge, 'I have neither the wit or the vanity of the Younger Pliny and do not write letters to my friends for the world.' There is neither time nor interest for literary artifices. He has a bit of news to communicate or an order to issue, upon receipt of which some subsequent line of action by his correspondent will be necessary ; then his letter must be clear and to the point. He has some request to make to an officer of state or noble lord on behalf of some friend or friend's friend ; then he couches his language in appropriate terms with enough of respect and yet with becoming dignity. In the midst of a busy life, he never forgot his family duties, and at the busiest seasons we find him writing to his brother John on personal affairs, or to his sister Grizzy on the education of her son.[1] With him the wily Simon Fraser can jest, and addressing him as 'My dear General', he can conclude 'Your corporal [or sometimes,—slave] Lovat'. The waggish Sir Alexander Macdonald of Sleat in his racy style can refer to his 'rib' and his 'nymph',[2] knowing that Duncan will appreciate his mild joke, for, is not a letter the reflection of the humorous character of the recipient as well as of the writer himself?

Since examples of the range of his correspondents have already been shown, it will be convenient to give some account of his friends and their interests. Foremost among these is his brother John, some thirteen years his senior, with

[1] *Some Kindeace Letters.* [2] *M.C.P.*, ii, p. 202.

whom he maintained a regular and dutiful correspondence.[1] The letters between the two brothers are full of affection, and examples are not lacking to show that each wrote the other at times of great business stress. Local politics of Inverness, of which John was for a time Provost, and Court and parliamentary news while John was an M.P. in London, are common topics. And the older brother was not above giving the younger what he regarded as seasonable advice on the taking of a suitable helpmeet on the death of his (John's) wife, Duncan having been by this time a widower for many years.

In 1734 John Forbes became seriously ill. Nothing would satisfy the dying man but a trip south, buoyed up as he was with the hope that the more skilful and experienced physicians in the capital might effect a cure or at least provide relief. For over six months he found in Stoneyhill a home, and it was here he died. On 23rd November, 1734, Duncan, torn between love of his brother and what he regarded as his duty, wrote that remarkable letter to Scrope from which we have elsewhere quoted freely.[2] He begged to be excused from parliamentary attendance, but if Sir Robert and his party required him, he promised at once 'to get a horseback'. Shortly after this John Forbes died (1734).

Of his seven sisters, Grizzy, Mrs. Ross of Kindeace, seems to have been the favourite, if we can judge by the bulk of correspondence that passed between them.[3] All seven were married to men of consequence in various parts of the north of Scotland, and so Forbes had the advantage of first-hand local information. On 12th February, 1737, Duncan Forbes wrote from London, consoling Mrs. Ross on the loss of her husband, and declaring

[1] MSS. in Nat. Liby., Bundle XI, and *M.C.P.*, iii, pp. 64, 71, 73, 74, 75, 82, 85, 90.

[2] Footnote, Chapter V, pp. 96 and 97.

[3] *M.C.P.*, iv, pp. 4 and 175, quoted from the Fraser-Mackintosh MSS., Register House, and *Some Kindeace Letters*.

Copies of these Kindeace letters written in a modern hand are contained in the uncatalogued Culloden letters in the National Library, Edinburgh.

As a tangible token of his brotherly regard, Duncan Forbes in 1712 presented to his sister a service of china with the Ross and Forbes arms, which was duly transmitted to her grandson Alexander.

it will be the duty of those that are related to your children to assist and advise you. My inclination will, from affection to you, lead me to do all I can.

In characteristic vein, we find him (11th September, 1741) discussing with Grizzy her son Duncan :[1]

As to Duncan . . . I can't frame any opinion or give any advice about him unless I were to know and in some degree to be acquainted with him.

Having instructed her to send for the boy, he continues :

I reckon it will be 2 or 3 weeks before the boy can be got hence and before that time I hope to get rid of most of the visitors that usually plague me.

The end of the following month finds him writing from Edinburgh : ' I am satisfied that it [=the school] is in very good order and that the boys are well taken care of.' This school at Dalkeith was only four miles from Edinburgh and two from Stoneyhill ' so that I can easily hear from him '. Exactly a month later, his shrewdness and understanding of schoolboy nature are reflected when he tells the lad's mother, naturally anxious as to her boy's welfare, that the young gentleman has arrived and

this morning I sent him into Edinburgh to satisfy his curiosity by seeing the town, that he may not be tempted to leave the school to gaze after fairlies. . . . There is a gentleman of my acquaintance who lives at Dalkeith who will keep an eye over him without seeming to do so.

There is surely a unique example of the pawky shrewdness, keen observation and unprejudiced judgment of the leading lawyer of his day in the letter in which he states that the boy is doing quite well, and behaves ' very well any time he is with me at Stoneyhill but I can form no judgment from thence as he will naturally be very much on his guard when in my company ' (No. 18). Letter No. 18 in ' Some Kindeace Letters ' is long and interesting as giving Culloden's

[1] *Some Kindeace Letters*, No. 6.

views on the education of a youth. In conclusion, he dissuades his sister from entering the boy on a legal career, as that would be very expensive (7th September, 1743, from Culloden). On 11th May, 1745, the proud uncle assures her that her son Duncan is 'turning out a swinging fellow'.

Among those of his own family between whom and Forbes letters passed, must be mentioned his own son John, afterwards sixth Laird of Culloden. His father spared neither expense nor effort to secure for the youth a liberal education, and watched with a keen paternal eye the progress made, not only in his studies but, strangely enough, in his prowess as a golfer! But the youth was yet in another sphere to prove 'the mettle of his pasture' and to be no unworthy sample of 'the rock from whence he was hewn'. Entrusted to the affectionate and dutiful care of Partick Murdoch, he travelled, as we have seen (Chap. V, p. 85), on the Continent where he spent at least four years, studying under his tutor or at some of the schools, as, for example, at the Academy in Geneva,[1] and visiting Venice, Rome and Paris.[2] On his return, his father allowed him considerable freedom 'to go out of town, come in or dispose himself for some months as should be most agreeable to him'.[3] Apparently the young man on the principle of 'get an inch and take an ell' interpreted this as permitting him a surreptitious visit to Paris. To make matters worse, he was the bearer of a letter to the proscribed Seaforth from Culloden's cousin Will Forbes. In the eyes of so loyal a subject as the Lord Advocate, this was unwise. To his friend, Dr. Clark, Duncan expressed his disapproval, and from the doctor, Cousin Will first learned of the fact. And so, he in turn wrote to the Lord Advocate in some perturbation regarding this 'freedom which your son, I was afraid, had taken too much at large and ventured out of the country which I dreaded you would be angry at'. His reasons for intrusting John with the Seaforth letter are interesting. Will Forbes was due to send a letter, and here, in John, he found a

[1] MS. in Nat. Liby., Bundle XI.
[2] MS. in Nat. Liby., Bundle XI, and *M.C.P.*, iii, pp. 101-2.
[3] MS. in Nat. Liby., Bundle XI.

bearer. As such, the delinquent, according to Will, ceased to look like a 'runaway' and incidentally would have the benefit of an older man's (Seaforth's) best advice.[1] Whether John received or followed the advice we cannot tell. Eventually, two years later (1738), he took up a commission in the Blues or The Royal Regiment of Horse Guards, of which his Grace the Duke of Argyll was Captain.

The bantering tone of some of the letters to young John appears to show a somewhat humorous outlook. For example, a correspondent writing to him from Edinburgh on 27th April, 1738, about the recent political appointments, says :

> You know that Lord Grange is secretary to the Prince and that the Duke of Queensbury etc. etc. are of the Bed-chamber ; but I think George Ross has made a better bargain, for though he is only lately named a gentleman of the Bed-chamber to Miss Kelly, a private lady, he gets £5,000 in hand and has a prospect of getting £10,000 more, and I doubt if any of the Prince's Bed-chamber men will make so much of it, as such.[2]

So was the marriage of George Ross to Miss Kelly announced by one young spark to another !

Known as 'Jock' to his familiar friends, among whom was Thomson, the poet,[3] he appears to have been what a thumbnail biography might have described colloquially as 'a decent sort', fond of spending money, and at times a cause of some worry to his father.[4] There was a certain refreshing boyishness in his character, which the following letter illustrates. Writing to Stewart, his father's factor, he says (May 1742) :

[1] MS. in Nat. Liby., Bundle XI.

[2] It is just possible that George Ross did not make so great a bargain after all, if we can judge by a letter from Fane to Duncan Forbes, dated 9th November, 1742. 'I did not till a few days ago know that George Ross had lost his wife, when I asked him for whom he was in mourning. I have not heard whether her father is living and what he has got by her, but if the stories told of her are true, he has not any loss by her going.' (Uncat. MS. in Nat. Liby., or *M.C.P.*, iii, p. 155.)

[3] MS. in Nat. Liby., Bundle XIII, or *M.C.P.*, iii, p. 116.

[4] MS. in Nat. Liby., Bundle XI.

DEAR HONEST THOMAS,

I am going to carry your son Sandy, to Flanders with me to fight the French. When I am a general, Sandy and Duncan St. Clair shall be captains—as I am on haste, dr. honest Thom, I wish you well while—

JOHN FORBES.[1]

Young Forbes was then thirty-three. The President's communications with his son seem to have been not unlike those passing between many other fathers and sons. On 3rd June, 1742, for example, Culloden writes from Edinburgh :[2]

MY DEAR JOHN,

As you desire in yours of the 20th of May I have given you credit on Mr George Midleton for £100 : which I understand you are to call for only from time to time, as you have use for it ; partly towards your expedition, and partly, if necessary, for your support in Flanders. I give this credit without hesitation at this time, because your marching is necessary, and your past economy may make it necessary for you ; but I cannot without injustice to you and to myself, omit to tell you, that I am not satisfied with the expense which you have lately drawn yourself and me into. I ordered your bills for £60 and £100 to be paid, without putting the question to yourself, how you came to outrun your pay so far, because I did not choose to shock you, after your purposes and declarations to me when we were last together ; but I took care to inform myself as well as I could at a distance, from some of my acquaintances, concerning the cause of that expense ; and I confess I have not received satisfaction. I do not incline to put you out of countenance by asking any questions on that subject, which is now over, at present ; but I must let you know, that, unless you regulate your expense better for the future, I shall be obliged, for your sake as well as my own, to draw in my hand, and to recall you from the trade you have chosen ; . . . My indulgence to you hitherto, Dear John, passes over all past failings ; but I expect much greater circumspection for the future . . . yet I hope I shall have no reason to be dissatisfied with your conduct as a man in point of courage, temper or care, in the trade to which you have taken.

[1] Uncat. MS. in Nat. Liby. [2] *C.P.*, 228.

It was even such another letter as this, many years before, that the President's own father wrote to his son 'Bumper' John.

Most illuminating as to young John's character and capabilities is a letter (19th January, 1742) to the President from Hugh Forbes, a fellow officer. He writes :

> As to your son, whom you are pleased to call my pupil, his greatest defect is a natural one, his conception is so slow, that it is difficult to make him understand even easy things and his memory so short that he presently forgets what he seemed to understand tolerably well. This insurmountable misfortune makes him very tenacious of any opinion which he has imagined a right (big tear in letter here) . . . I have had many arguments with him on this subject. (tear) . . . but they were so fixed that the whole creation could not move any of them. I advised him to enlarge his ideas and the other would follow of consequence.

Later in the letter the writer says :

> I was with him in London before Christmas for a few days and settled his year's account with the agent (for all my skill cannot make him understand numbers).

Discussing John's debts and pay, the writer concludes :

> I think he may and will very well live on his pay though I do not take him to be a good economist and yet he seems to like money. As to his schemes, I fancy his and mine are much the same, to do our duty as soldiers if called for, in anything else I doubt you must scheme for him. . . . But if you set him even with the world at this time, I dare venture to engage his pay will do for the future, barring unforeseen accidents. And if you pass over, what is only his misfortune, I believe you shall have no reason to complain of him.[1]

Young John was present with his regiment at the battles of Dettingen [2] and Fontenoy where his horse was shot under him. As a soldier, he acquitted himself with credit, but, as we shall see, without his services being recognised. His old tutor, by this time Rector of Stradishall in Suffolk, kept in

[1] Uncat. MS. in Nat. Liby.

[2] *M.C.P.*, iii, p. 207.

touch with him when he was soldiering,[1] and his reference that 'the President was very well a few weeks ago' must have pleased this 'very honest, plain, positive fellow'[2] whose letters from the front usually ended with an affectionate wish for his father's health.[3]

It says much for the Lord President that he never once took advantage of his position or acquaintanceship with those in high place to further the promotion of his own son. Nevertheless, we cannot help sympathising with John Forbes who knew so well his father's constant endeavours to promote the interests of outsiders. In a letter hitherto unpublished,[4] almost certainly to Andrew Mitchell, he speaks of the 'great difficulties' in his way, probably in the securing of a captaincy.

> It is more than probable as you very well observe, that His Royal Highness will be principally concerned in the disposal of this thing—and I shall do my utmost to have a proper introduction to him and to engage his protection—which I should not doubt of if my Father would write in my favour to Sir Ed. F. [=Sir Everard Fawkner]. As to the rank, that may be got over, without disobliging anybody. . . . If my Father had been selfish, I might have had a step two years ago, and though without the commission, I did duty of a captain through a very severe and dangerous winter campaign. In short, when any man's father serves the Government in as eminent and disinterested a manner as mine has done and the son shows as much willingness to do his duty to serve his country as I have shown, he shall have free leave to step over me. If my Father shows unwillingness to solicit for me, it may perhaps be that he thinks this a private ill-grounded conceit of my own. You may assure him of the contrary and that I act by the advice of prudent men—some of whom are themselves in the service.

In all probability it was in reply to this pathetic appeal that Mitchell wrote[5] expostulating with the Lord President.

> You have done an injury to Hercules, [=John Forbes] without intending it. Your motives of action are, to Ministers

[1] Uncat. MS. in Nat. Liby., Bundle XIII, or *M.C.P.*, iii, p. 201.
[2] Uncat. MS. in Nat. Liby., or *M.C.P.*, iii, p. 208.
[3] *M.C.P.*, iii, p. 207.
[4] Uncat. MS. in Nat. Liby., Bundle XIII.
[5] *C.P.*, 340.

of State, incomprehensible. Take this for an example, and be convinced ; A Gentleman that I can trust, but who is unknown to your Lop, told me, he happened to be by when your Son was spoke of to Mr Pelham ; and somebody said, he deserved a mark of the King's favour. Mr. P. said, if you had a son, sure you must know him best ; and, had he been fit for anything, would certainly have mentioned him, as he (Mr. P.) and you were upon so good a footing. 'Tis hard and unjust to poor Hercules, who will never be a discredit to any family ; and it is a pity that the father's virtue should be imputed to the Son for folly.[1]

Determined to act for his friend if the father's scruples precluded him, Mitchell introduced 'Hercules' to Mr. Pelham.

He received him very kindly, (he tells Forbes, Senr.), and made enquiries after you. He told him that General Hurk had warmly recommended him to the King and that he might depend on the first opportunity of being provided for.[2]

Great statesmen have proverbially short memories, and promotion never came the way of John Forbes. Although left comparatively poor, he was never heard to attach any blame to his father, who both at the 'Fifteen and the 'Forty-five rebellions had spent large sums 'which he had not adverted to, nor demanded payment of and for which he thought himself highly blamable'.[3] The following letter from the Lord President to his son[4] is worth quoting. The superscription is as follows :

Copy Letter, Lord President Duncan Forbes to his son John a short time before his death but unfortunately without date. Copied by his great-grandson, Duncan Forbes, 1837.

Dear John,

I am very sorry for you, the great charges and expenses I have been at in supporting His Majesty in the Rebellion have far exceeded the sum I thought it would have cost when I saw you last. I would advise you to go to London where I believe

[1] *C.P.*, 340.
[2] Uncat. MS. in Nat. Liby., Bundle XIII.
[3] Uncat. MS. in Nat. Liby., Bundle XIII, and *C.P.*, 350.
[4] Uncat. MS. in Nat. Liby., Bundle XIII.

I may have some friends yet. Mr Scrope, Mr Littleton and Mitchell are kind-hearted, affectionate men and they will tell the King that his faithful servant Duncan Forbes has left you a very poor man.—Farewell.—May the God of Heaven and Earth bless you !

DUNCAN FORBES.

The bond between father and son was a strong one, and honest, kind-hearted John Forbes, on his father's death, disappointed in his profession and burdened with an estate hopelessly crippled, left the army in 1749 and retired to Suffolk, there to live as frugally as possible. What more natural than that he should settle down near his old tutor, Dr. Murdoch ? Of the fact that he would prove a welcome neighbour he had had proof only a year before President Forbes died. On 10th August, 1747, Dr. Pat Murdoch had written, partly in the vein of the schoolmaster, giving good advice, and partly in that of a dearly loved friend. He says,[1]

Do not let late hours and the temptations of good company hurt you. You are a good spring but one violent jerk may make you fly—and then there's an end of me too. I have some right to insist that you take care of yourself and 'tis the dear hopes of enjoying you in the calm even of life that makes all these fatigues I go through, easy to me.

On his death-bed, the Lord President had said, ' My heart bleeds for poor John Steel. I recommend him to you.' [2] And so we find this kind-hearted son of a kind-hearted father writing in the most affectionate terms to ' Honest John Steel of Birkenbush ' [the address on the outside of the letter], his father's head servant (30th April, 1748 [3]), telling him about his London visit when he was seeking redress for his father's wrongs.

[1] Uncat. MS. in Nat. Liby., Bundle XIII.

[2] *C.P.*, Introduction, p. xxxviii.

[3] Uncat. MS. in Nat. Liby., Bundle XIII.

' Jupiter ' Carlyle of Inveresk gives us a little information about John Steel. He had been a professional singer, but, on the loss of his voice, was patronised by Duncan Forbes. For a time he kept a tavern at Loretto. A nephew of the Lord President, Hew Forbes, later Principal Clerk of Session, had, at the uncle's request, bought the house from Steel, and lived there. (Carlyle: *Autobiography*, p. 220.)

The vacation of Parliament occasioned most of my father's friends to be in the country when I first arrived there.

This morning by Mr Lyttleton's particular desire I waited upon him at his house. . . . He carried me immediately and introduced me to Mr Pelham. . . . Your petition about poor old Jamie St Clair and Donald the old cook, I hear with great pleasure and satisfaction. Give my kind and hearty service to Provost Hossack and tell him from me that old Jamie St Clair and the old cook must be kept in the same way that my father did keep them.

P.S. For God's sake, dear John, why do you think that I would ever grudge any little expense to beautify the hill or the garden, the loss of time in all those things is the loss of everything in the world. Pray to let it be done immediately.

This reverence for his father's memory he maintained to the end. As late as the year 1764, when he was a man of fifty-five, we find him sending instructions to his factor regarding a friend on tour in Scotland. He ends, 'and show him Bunchrew ; my father did so to those he loved.' [1] His dead father's services were rewarded by a pension upon the Scottish establishment of £400 a year from 5th July, 1753, the first payment to be made on 16th October, 1754.[2] On 2nd November, 1754, John Forbes acknowledged receipt of His Majesty's warrant for the pension.[3]

The personality of John Forbes is dwarfed by that of his illustrious father, but if he was no spectacular figure, he achieved much. Before his death, he had retrieved the family's fortunes and left to his son an unburdened inheritance.

As a bosom friend of young John, Thomson the poet had an easy entrée into the heart of John's father who, without doubt, was a better judge than his son of his literary merits. From an interesting group of letters [4] recounting the poet's

[1] *C.P.*, 360.

[2] Public Record Office ; Treasury Out Letter Book, (various), 71/253, quoted in *M.C.P.*, v, p. 197.

[3] *M.C.P.*, v, p. 197, quoting Newcastle Papers.
A holograph copy of this letter is among the Uncat. MSS. in the Nat. Liby., Edinburgh.

[4] *C.P.*, 355-365, or Uncat. MS. in Nat. Liby., for *C.P.*, 363.

death in August 1748, we see what a lovable and attractive personality was his.

Thomson was among those befriended by the President. A story regarding Forbes's patronage of the poet when the latter, still unknown to fame, paid a visit to London, appears in the *Scots Magazine* of 1802. According to this account, somewhat amusing to our modern ears, Thomson had his pocket picked, losing his handkerchief. This might not in itself be regarded as a serious loss, but then, the handkerchief was the repository of a few letters of recommendation.

> Smarting under this double misfortune, he found his way to the Lord Advocate, who was then attending his duty in Parliament. His Lordship kindly received the solitary, forlorn poet and introduced him to many valuable characters with whom he lived in great intimacy.

The kindness and patronage of the great man was amply repaid by Thomson in *The Seasons*,[1] where he writes :

> Thee, Forbes, too, whom every worth attends,
> As truth sincere, as weeping friendship kind—
> Thee, truly generous, and in silence great,
> The country feels thro' her reviving arts,
> Planned by thy wisdom, by thy soul informed ;
> And seldom has she felt a friend like thee.[2]

Allan Ramsay, author of *The Gentle Shepherd*, was another of Forbes's poetic friends. Writing on 15th April, 1736, Ramsay wishes

> I could light upon any opportunities wherein I might shew my readiness to serve and shew my gratitude for the regards that you have honoured me with. Will ye gie me something to do? Here I pass a sort of a half idle scrimp life tending a trifling trade that scarce affords me the needful. Had I not got a parcel of guineas from you and such as you who were

[1] Part of the First Edition of Thomson's *Summer ; a poem*, is among the many documents—legal, epistolary, printed and in manuscript—belonging to the Lord President which as recently as April 1932 came into the possession of the National Library of Scotland. The Bundle containing the poem is unnumbered.

[2] *Autumn* (ii, 944-949).

pleased to patronise my subscriptions, I would not have had a gray groat. I think shame (but why should I when I open my mind to one of your goodness) to hint that I want to have some small commission when it may happen to fall in your way to put me into it. Bookselling good for nothing, poetry that's failed me, or rather my admirers ceased to ferly.

Frae twenty-five to five and forty
My Muse was nowther sweer nor dorty.
My Pegasus wad break his tether
E'en at the wagging of a feather
And throw ideas scour like drift.
Then then my saul was in a low
That gart my rhymes sae raffan row
But eild and judgement 'gin to say
Leave off your sangs and learn to pray.

I hope to do something yet that may chance to pleasure, and if I still have a place in your indulgence I'll be

Your Lordship's humble happy servant,

ALLAN RAMSAY.[1]

It was possibly along with this letter that Ramsay sent to Forbes his graphic account of the first episode in the Porteous affair.[2]

Naturally, a man so fond as Forbes was of books and study, had friends with kindred tastes. Some, like Thomson and Ramsay, have left their mark on our literature ; others, like himself, though not creators were at least lovers of the 'treasures that in books are found'. Such was Alexander Strahan of Guernsey and Hampstead. On terms of intimacy with both brothers, in June 1732, he laments to the 'Dear Laird' (i.e. John Forbes) that although his family had been in town all the winter, they had

been so unlucky as to have had very little of my Lord Advocate's company he being generally in a hurry in town. We left Hampstead. . . . At length I have pitched upon Oxford as being a place of good air, and where I could meet with some

[1] Uncat. MS. in Nat. Liby., or *M.C.P.*, iii, pp. 115-116, or Eaglescarnie Papers, Histy. MSS. Com. Report, VIII, p. 312.

[2] Uncat. MS. in Nat. Liby., Bundle XI. See *M.C.P.*, iii, pp. 113-115.

company to converse with about books. The Advocate does not like the place.[1]

At times a literary friend could be learnedly jocular. In this connection it may be not inappropriate to refer to a couple of *jeux d'esprit* to be found in a long, unsigned and undated letter to Forbes ' probably by one Patrick Patterson ', and belonging to the period 1709-1725. It refers to the quarrel of the Ancients and the Moderns.

We had a post t'other day from Beötia which brings advice that Bentley lately arrived in Parnassus and went straight to Horace his lodging where he presented him a new edition of his works curiously bound and of a fine character telling him how much he [=Bentley] honoured him [=Horace] and that he was hopeful that the many aspersions some dubious wits had thrown upon him as a despiser of the ancients had made no impression upon a [man] of spirit [and] judgement, or if it had, the care he had taken publishing his [=Horace's] works he expected would vindicate him. . . . He desired that Horace would introduce him to kiss Apollo's hands as a virtuoso. Horace . . : in regard that editors are the steps of the ladder whereby authors descend to eternity [he] thought political to favour him and accordingly promised to introduce him tomorrow to Apollo. But a little before the ceremony his old antagonist Boyle dropt an English ballad ' To fickle Silvia ', with commentary on it. . . . Perhaps you will be curious to see that ballad. Take it as follows. I had a copy of it from a friend.[2]

The ballad begins ' Take pity, Silvia, charming fair ', and is followed by a commentary in the approved manner of editors. Fired by a desire, (or something more potent), to emulate the ballad writer, Forbes evidently tried his own hand at the art, for on the back of this strange letter appears a poem in his own handwriting ' To my Brown Barrel ', no doubt the prototype of the ' Little Brown Jug ' ! Can it be that the subject of the poem is itself the reason why the calligraphy is quite indecipherable ? [3]

[1] Uncat. MS. in Nat. Liby.
[2] Another Uncat. MS. in Nat. Liby.
[3] *Ibidem.*

Outside of his immediate family circle, there were several comrades with whom the President appears to have spent many a merry evening, perhaps after the manner of Mr. Pleydell, the famous advocate in Scott's *Guy Mannering*, who 'occasionally united the worship of Bacchus with that of Themis',[1] and who, after hours of hard drinking, could turn to the sober study of legal matters with a clear head. In Chapter II we have made reference to both Dr. Clark, a classical scholar and distinguished physician,[2] and Mr. McFarlane, Writer to the Signet and law agent to Lovat and Lochiel.[3] His correspondence with these men dates at least from 1713 and 1715 respectively [4] and seems to have been most intimate. The lengthy letter written by McFarlane on 21st April, 1715 shows, banteringly, the way in which many an evening had been passed by the cronies in conviviality,[5] and illustrates well one of the many sides of the future President's character. It begins :

> The jokes have been so scanty among us since you left the body disconsolate at your departure. . . . We drink several bumpers to the Phizes, to the Phizza, to the father, to the health of the night, and a drop less than a bumper to yourself, I say a drop less because of your presumption upon the fathership ; and wo's me, the disrespect was so great to your paternal authority, that the tappit hen—a bird as peculiar to you as the Eagle is to father Jupiter—was not allowed access among us notwithstanding of the earnest entreaties of many of your dutiful sons.

As a postscript to the same letter,[6] 'Phiz' Clark writes, with delightful irony :

[1] *Guy Mannering*, Note VII.

[2] An interesting letter (dated Edinburgh, 6th April, 1725) from Clark to Forbes at the British Coffee-house, London, outlines a regimen to be followed by the Lord Advocate and contains a prescription to be taken. The doctor seems to be sufficiently modern, that he recommends plenty of open-air exercise, riding over rough roads, for his patient, in preference to a 'bottle'. The letter is among the Uncat. MSS. in the Nat. Liby.

[3] Uncat. MS. in Nat. Liby. [4] *M.C.P.*, ii, pp. 34 and 71.

[5] Uncat. MS. in Nat. Liby., or *M.C.P.*, ii, p. 72.

[6] Hill Burton says (p. 295), erroneously, that this occurs in a letter written much about the same time.

RINGLEADER OF RACCABITES,

We have enjoyed such a physical peace of mind since we were delivered from thy usurped and tyrannical government that it is the constant prayer of the body, may the month of May last for ever.

It was indeed a boisterous family—that of the Phizzes—of which Duncan Forbes had the honour of acting as father. This letter of McFarlane's was but one of a series by which the friends kept in touch and perpetuated their little jokes about the tappit hen. 'Father' Duncan's letter of the 22nd crossed this one. He threatens :

When I take out my Coat Armorial as Duncan Father, the crest shall be a tappit hen, with all the Phyzzes like so many little chicks gathering under its wings, with the word 'Jack thowit a Toper'. Give my father's blessing to all my children, except that godless brat Clerky, to whom you may read my admonition, accompanying it with exhortation to resipiscence and obedience.[1]

Well might the worthy doctor pray in his postscript for the delay of his 'father's' return !

In 1727 and in 1730 other familiar letters passed between the doctor and Forbes, but by this time a seriousness is present, for Clark is seeking his friend's help for 'erecting an infirmary here [i.e. Edinburgh] for indigent sick people'.[2] (See Chap. V.) A letter of especial interest, for the light it sheds upon Forbes's friendships, is one, dated 22nd February, 1732, from Edinburgh.[3] This tells of the death of Colonel Francis Charteris, a monster who was one of Forbes's acquaintances. Most valuable in it is the revealing statement made by Charteris about Forbes, to whom and his son John he was bequeathing 'the life-rent of his house of Stoneyhill with some acres about it and £1,000 sterling (to your son)'.[4]

[1] Sheriff MacPhail MSS. in Nat. Liby.

[2] Uncat. MS. in Nat. Liby., and *M.C.P.*, iii, p. 37.

[3] *M.C.P.*, iii, p. 49.

[4] The bequest to Forbes of Stoneyhill is less strange when it is remembered that Charteris died a very rich man, with an income of £7,000 per annum in landed property, and a sum of £100,000 invested in other securities. (See E. Beresford Chancellor, *The Lives of the Rakes, Charteris and Duke of Wharton,*

Dr. Clark had some doubts as to how such a legacy would be received by Forbes,

> but what you will think of it since it comes out of a [letter torn] heap is more than I can tell, for he told me (in tal[king about] another affair) that your honesty was so whimsical that it was 45% above Don Quixote.[1]

A letter sent by Clark to Forbes in October 1735,[2] probably refers to one of Duncan's theological writings. The friendship with Dr. Clark was broken only by death. References and messages to him are frequent in a group of eight autograph letters written by the Lord President in 1747.[3]

Colonel Charteris, whose bequest has just been mentioned, was evidently, rightly or wrongly, regarded as a friend. Writing from Hampton Court (8th August, 1728) Scrope refers to 'your crony Charteris'.[4] Two years later, after his trial for a rape, Charteris forfeited his whole estate, but this was restored to him the next month,[5] and Forbes's hand would appear to have been at work in securing this outcome. 'I am frequently entertained,' the Lord Advocate writes to Scrope (11th August, 1730),

> with the strongest panegyrics imaginable of you by my worthy friend Colonel Charteris:[6] he swears nothing less than a divinity can forgive injuries so readily, and delight so much in doing good. He flatters me with imputing some part of your good nature to him to my intercession, and insists I should return you thanks.[7]

Ph. Allan, London, 1925.) The garden and orchard of Stoneyhill were 'enclosed by a gigantic buttressed wall, apparently of great age' (Paterson, *History of the Regality of Musselburgh*, 1857, p. 189), and the mulberry tree in one of the walks is thought to have been coeval with Shakespeare. The vegetables and fruit supplied by the gardens for Dalkeith Palace, between two and three hundred years ago, may still have been products in Forbes's day.

[1] *M.C.P.*, iii, p. 50.
[2] *M.C.P.*, iii, p. 111.
[3] MSS. in Edin. Univ. Library.
[4] *M.C.P.*, iii, p. 31.
[5] *C.P.*, 149.
[6] Among the uncatalogued MSS. (recently acquired) in the National Library of Scotland is one undated letter from Charteris to Forbes. It contains the following sentences:

> 'I wrote my wife and him [=a Mr. Craig] to make you an offer of my House and stables in London. It will give me a great pleasure that there is anything in my power for your service.'

[7] *C.P.*, 150.

Mention of so disreputable a character as Charteris naturally calls to mind that other strange member of Forbes's circle—Simon, Lord Lovat. To explain the intimacy between the Forbes brothers and Lovat is not easy. We can understand why this 'Mephistopheles of Scottish Gaeldom in the eighteenth century' sought the friendship of a man of such undeniable integrity as Duncan Forbes, securing thereby, at least the appearance of respectability, but to explain Duncan's partiality is a more difficult problem. The long-standing family association (Forbes's great-grandfather spent much of his youth at Castle Dounie) cannot entirely account for the life-long relations that existed between these two men so entirely unlike in character. Circumstances brought them into close contact, as we have seen, during the 'Fifteen rebellion, during Lovat's legal battle with the Fraserdale family,[1] and later, during the 'Forty-five. Correspondence between the two was frequent and often lengthy, and the letters were characteristic of each. An interesting example, written by Lovat to Forbes, is dated 25th April, 1716:

> Mon Cher Général,
>
> Je vous embrasse mille et mille fois très tendrement nous voilà en chemin le brave Baron [=Kilravock] et moy, nous ferons notre possible pour arriver la semaine prochaine à Londres, plut a Dieu que vous eussiez été avec nous, mais vous estes opinâtre mon cher Général. Cependant je croy que votre presence à Londre ferait plaisir et service à tous vos amis. Ayez la bonté de rendre homage et de faire mes compliments a my Lord prevast à M. Brent [=one of the commissioners of Customs] et à Mr et Mlle McFarlane, voilà mes connaissances à Edinbr. Adieu mon aimable Général. Aimez moy toujours puisque je vous aime plus que ma vie.
>
> Lovat.[2]

When Forbes was assisting him in his legal difficulties, we find him calling his 'dear General' in January 1717, 'generous and great in his soul above all the Dukes and Earls in Britain.'[3] It would appear, indeed, that both brothers had

[1] Uncat. MSS. in Nat. Liby., and *C.P.*, 77 and 372.
[2] *M.C.P.*, ii, p. 115.
[3] Uncat. MSS. in Nat. Liby., or *C.P.*, 92.

fallen under the subtle charm of which Fraser, with all his villainy, was undoubtedly possessed. A hint of danger to him, and immediately no effort is spared to render aid. Plain honest Bumper John, ' at a bottle in the British ',[1] with his friend Grant of Grant, hears a whisper of Lovat's threatened imprisonment and immediately he advises his advocate brother to ' put him [Lovat] upon his guard so as he may pass incognito to come hither with all possible haste '.[2] And in the troublous times of the 'Forty-five when did ever man show such patience, forbearance, and assiduity in persuasion, as the Lord President displayed towards the man who could use his own son, a mere youth, as a pawn in the game, and lie blatantly of his own loyalty? Returning thanks to the President for his advice, Lovat blames his son, the Master of Lovat, for the unfilial action of disobeying him and joining the rebels. He declares :

> I will be a most faithful friend and servant to your Lordship's family and person ; and who knows but Providence may give me an occasion to show the gratitude I owe to your Lordship, and to your worthy Father and Brother . . . and it is my belief that I will be still safe under the Protection of my Lord President, while he has the full power and command of the North of Scotland.[3]

That others also held this opinion is borne out by an undated letter in the National Library, to an unknown correspondent, but, clearly, written after Lovat's arrest by Lord Loudon (December 1745). The letter is worth quoting :

[1] The British Coffee-house was in Cockspur Street and was largely frequented by Scotsmen. *Vide* Chancellor, *The Eighteenth Century in London*, p. 136.

[2] Uncat MS. in Nat. Liby., or *M.C.P.*, ii, p. 170.

[3] Stowe MS. 154, State Letters, or Uncat. MS. in Nat. Liby., or *C.P.*, 287. Interesting in this connection is the evidence of Lovat's Secretary, Robert Fraser, who under examination at Whitehall, on 13th September, 1746, told of Lovat's having dictated letters to the President blaming the Master. On one occasion, the son entered the room when his father was so engaged and insisted on seeing the letter. When the young man found his father was laying all the blame on him, he exclaimed : ' By God, I will go to the President and discover the whole about it, and clear myself.' Fraser deponed that Loudon and Forbes continued to write to Lovat till such time as Lovat appeared to be publicly in the Rebellion, when they refused to correspond with him any longer. (S.P. 36, George II, Dom. Bundle No. 87.)

> There is one thing you may depend on. The Lord President wishes you well and will do you what service he can. My authority is good. A great pacquet with dispatches from all the great dons at Inverness which was intended to be sent by sea, by some mistake was given the Inverness post and opened at Perth. In a letter there from Major Mackenzie to his correspondent at London, he says Lord Lovat was taken here prisoner by Lord Loudon, much against the inclination of a certain old gentleman in the neighbourhood, who is too much trusted . . .

In the National Portrait Gallery, London, the portraits of Duncan Forbes and Simon Fraser hang side by side. The contrast is striking. Forbes's face has an air of serene nobility and straightforwardness, and beside him is his old associate, his brutish face wrinkled and lined, his gross body seated on a chair, the right hand uplifted and outspread, his left forefinger apparently counting off point by point. The artist, Hogarth, has caught him in the attitude of calculating his chances. In the end, he staked all—and lost. The Lord President, doubtless, knew the real character and history of Simon Fraser better than any other, as William Grant surmised when he wrote (9th April, 1747) announcing that Lovat ' made his exit with great constancy and decency '.[1]

Nothing in his life
Became him like the leaving it.

Dr. Clark's interest in the erection of an infirmary has already been mentioned. Associated with him in this good work was another friend of Duncan Forbes, George Drummond, a man of vision and enterprise and six times Lord Provost of Edinburgh. Even the University came under his eye, and it was mainly through his advice that five new professorships were added. With Duncan Forbes, he shared an interest in plans to improve both the fisheries and manufactures of Scotland, but the building of a really adequate infirmary seems to have been his favourite scheme. This materialised in 1738 when the foundation stone was laid.

[1] Laing MSS., vol. ii, p. 392.

A few of his letters to Duncan Forbes are preserved in the Culloden Chest in the National Library. He frequently makes use of numbers as cipher, and his clear, neat penmanship makes us draw unpleasant comparisons with our twentieth-century scrawls.

During a certain period in his life, Drummond was in pecuniary difficulties. To clear himself of these, he married a rich wife, his third. It is probable that during this time, he became the unconscious cause of what nearly approximated to a breach between his only too partial friend, Duncan Forbes, and the latter's beloved patron, the Duke of Argyll. Drummond appears to have borrowed £10,000, and for eight years failed to repay the money. The Duke pressed. Forbes hastened to lay before His Grace excuses for the delay in payment. His kind-hearted defence not meeting with the consideration he expected, he proved in a practical way his confidence in Drummond. To convince the Duke of his friend's rectitude, Forbes wrote :

> Since I cannot safely, in this method of distant correspondence, hope to offer arguments that shall convince your Grace, that I was in the right, I shall at least give you the most substantial proof that I think I was so ; for I shall forthwith do what I can to find the money and cause pay it up, to save my friend from ruin.[1] (29th August, 1723.)

This letter amazed the Duke and all the friends whose advice he sought on the matter. His reply shows a distinct jealousy of the place Drummond held in Forbes's affections, and perhaps His Grace's irritation increased the asperity of his remarks regarding the impecunious Drummond. He feels sure Duncan will in time see his mistake in his

> extreme passion for Mr Drummond ; who I confess I with pain see preferred to me. I take it . . . that he is in a few days to be pleased to part with the money that he has thought fit to retain eight years in his hands ; I desire to whosoever he sends the bills, he will condescend to confess having received the value out of the ten thousand pound or some such description.

[1] *C.P.*, 104.

That done, to please you, I shall not hurt him ; and to please myself, I shall never trust him.[1] (7th September, 1723.)

Drummond lived to justify his friend's trust, and Edinburgh benefited from his able administration.

From a very early time in his career, Forbes's worth was recognised by his superiors. John, the second Duke of Argyll and Greenwich, then the chief person in the Scottish administration, looked with favour upon him and appointed him steward of his estates in Scotland, a post for which Forbes refused to accept payment although he was only a rising young advocate, and might have made thereby a handsome income.[2] But the intercourse between the two was not official only, for the element of friendship entered as well into their relations.[3] Scotsmen in London seemed to regard the Duke as a living link with their native land and his approachableness took away any feeling of patronage. References to him and his brother Ilay are frequent in the regular correspondence between the two Forbes brothers. On 29th March, 1716, we find John writing from London :

I came safe to this place this afternoon and went immediately to the Duke of Argyll's who received me most kindly. Ilay was there, and after an hour's discourse with his Grace, complaining of the barbarous treatment he had met with from the Squadrone, he concluded with a great deal of cheerfulness, ' Now that Grant and you are come, I shall very soon get the better of them. Therefore, come to-morrow at nine o'clock and I shall introduce you both to the King and Prince.' He was pleased to ask very kindly for you.[4]

When midsummer (1716) brought the crash, and the Duke and his brother were discharged from the king's service, civil and military ('disgracie [*sic*] et hors de leurs employs', as Lovat declares),[5] the two Forbeses remained loyal and friendly.[6] In

[1] *C.P.*, 105.

[2] A ' Disposition and Assignation ' of John, Duke of Argyll to Mr. John MacLeod, dated 1st July, 1724, is endorsed in Forbes's calligraphy, ' Revised by D. F., Edinburgh.' This document, extending to ten closely written foolscap pages, is among the recently acquired uncatalogued MSS. in the Nat. Liby.

[3] MacGill, *Balnagown Documents*.

[4] Uncat. MS. in Nat. Liby.

[5] *M.C.P.*, ii, p. 125.

[6] *M.C.P.*, ii, p. 124.

July 1721 Argyll made Forbes an offer of the Ayr District of Burghs. There is modesty about the reply of the young advocate, then a man of thirty-six.

> The choice your Grace has been pleased to make of me to represent your Borrow, I take to be a very uncommon mark of your favour. . . . My fears, and a more familiar acquaintance I have with myself than anybody else has, tell me that I shall not answer the expectations your Grace may have of my service in Parliament. However, since I am thoroughly satisfied that the same friendship which moved you to entertain those expectations will incline you to make allowances for my failures, I submit to your Grace's resolutions.

The following year (1722), however, Forbes was elected for the Inverness District of Burghs.

Except for the threatened quarrel in 1723, the friendship grew with the years. From London, 19th April, 1728, Duncan writes his brother:

> I am just now going out to the Duke of Argyll's to enjoy a few days the recess that the Easter holidays give us.[1]

In time, Forbes's services became more and more indispensable and of these, the Duke was nothing if not appreciative.

> My sincerity (he writes) I think you cannot doubt when you consider that I know not what to do without you. I return you, my dear Duncan, ten thousand thanks for all the trouble you gave yourself in my affairs and heartily wish I could be of as much service to you.[2]

Forbes was a recognised authority, and when some three years later the Duke successfully appealed to the House of Lords (6th May, 1732), in his lawsuit with the Earl of Breadalbane and other creditors of Archibald Campbell of Breadalbane, he chose as counsel Forbes and Philip Yorke (later first Earl of Hardwicke).[3]

[1] *C.P.*, 385.

[2] Uncat. MS. in Nat. Liby.

[3] 'Parliament Book, 40,' recently acquired by the National Library. This large book, (17 in. by 10½ in.) belonged to Forbes himself and bears the name 'D. Forbes' on the title page in his own hand. It contains, without any attention to chronology, various new cases in which the Lord President

The transacting of this case was in the nature of his usual professional duties, but the routine work of the Argyll estates called for more than mere theoretical knowledge, and to this the Lord President brought tact and understanding, as well as business acumen. The islands under the Duke's sway were at times particularly difficult to manage, as the following petition from the tenants of Morinish, Mull, will show (1737).

> Our severe usage here last year by Argyll his factor has scared us very much from adhering to our offers made to your Lordship when in this island last year ; our grievances is that the factor would not allow us to sell our cattle to the best advantage . . . which is partly the reason why there is so much of Argyll's rents yet unpaid, therefore we want to know by whose orders this severe treatment came upon us, and if we be not relieved from such oppression we shall never sign our tacks on stamped paper until we have reason to believe that we shall not be dealt with after this manner for the future.[1]

The Lord President himself visited the islands this same year, probably to investigate personally the causes of the grievances and to pour oil on the troubled waters. Proof of this visit is contained in a ' Memorial ' of the period, ' soon after 1737 probably ' which gives the rents of Mull and of Tiree. It runs :

> In the year 1737 the Lord President went to these islands with power from his Grace to let the lands, and by the lets then made the rents payable out of Mull amount to £789 6s. 7d., and out of Tiree to £536 9s. 10d., both sterling. . . . Tacks were made out in consequence of this let and signed by my

had been concerned as counsel or as judge. The decision of the Court of Session is written in Forbes's handwriting, and the comment ' affirmed ' or ' reversed ' appears in those appealed to the House of Lords. In addition to the 1,000 pages of printed documents showing the case of the appellants and of the respondents in each instance, are numerous manuscripts, notably in connection with the affairs of Patrick Haldane and with the Porteous mob.

[1] ' Petition, 1737, from the tenants at Morinish.' Uncat. MS. in Nat. Liby., where we find also a ' Roll of Resting Rents of Mull for the year 1736, having regard to Morinish and Aross ' and dated 16th August, 1737. Another Petition from John Morr, alias Johnston, concerning grievances in Kintyre, is dated 1741.

> Lord President as having commission from His Grace to that effect, and sent to the country to be signed by the tenants.[1]

In answer to a definite request,[2] Forbes forwarded a report to Argyll as the result of his investigations in Tiree and received (25th March, 1738) His Grace's grateful thanks for his 'constant concern and anxious care'.[3]

In the same year MacLeod of MacLeod writes from Dunvegan to his friend and contemporary,[4] young John,

> I envy you at present for nothing so much as the opportunities you have of hearing the Duke of Argyll and your Father's conversation. Though the drovers are broke I'd give a score of cows for your place.[5]

MacLeod wrote in a similar strain to the President himself on 30th June, 1740.

> I envy no sort of thing about you at present but the happiness that some folks will have through their acquaintance with you of hearing the Duke of Argyll clatter now and then.[6]

This friendship between Forbes and the Duke was evidently a well-recognised fact, for the Duchess of Gordon ends a letter to the President (12th December, 1738) :

> I beg when you write to your friend the Duke of Argyll that you'll make my compliments to his Grace, the Duchess and all the young ladies.[7]

[1] Uncat. MS. in Nat. Liby.
Another of these MSS.—without date and without a heading—is a letter concerning the Argyll estates and written by one Alex. MacMillan to Forbes. The letter itself refers to the exchange of a piece of land for a part on the Argyll estate on which the writer had been born. The proposed transaction was (from internal evidence) clearly to take place shortly before March 1736. (Bundle XI, Nat. Liby.) In October of this and of the following year, and also in 1739, we find similar topics discussed by the Duke in letters to Forbes. (Uncat. MSS. in Nat. Liby., also *C.P.*, 179.)
Writing to the Lord President in 1737, Lord Dupplin hopes the death of Wm. Drummond will not 'put an end to the transaction depending between the Duke of Argyll and me for the loan of 10,000. I have wrote to Mr A. Hay, Advocate, who is one of my trustees to wait upon your Lordship and transact that affair with you.' (Uncat. MS. in Nat. Liby.)

[2] *C.P.*, 179.

[3] *C.P.*, 186.

[4] MacLeod was born in 1706 ; Young John Forbes was born in 1709.

[5] Uncat. MS. in Nat. Liby., or *M.C.P.*, iii, p. 134.

[6] *M.C.P.*, iii, p. 143.

[7] *M.C.P.*, iii, p. 135.

Again, in January 1742, we find the (thirteenth) Earl of Morton acknowledging the honour the President has done him ' by writing to Your Great Friend in favour of my bill '.[1]

Such was the reliance placed on Forbes, that, on the death of Commissar Campbell, into his hands were given the keys of the Argyll Charter Chest and of the room where they were lodged. As the family documents had not been kept in the most exact order, the President advised the Duke

> to look out for a place where they might be secure from accidents, particularly from fire, and at the same time . . . to be cautious that no over curious eyes or nimble fingers came over them.[2]

So impressed was Duke John with these representations,

> that he immediately got from the manager, possession of a room in Herriot's Hospital into which all the writings that had been in the Commissar's possession were turned over by the lawyer, except such as were for present use and might be in the hands of his agent ; and because it might, on many occasions when his Grace was not in Scotland, be necessary to resort to the charter chest to fetch from thence some writing wanted to maintain his defence in any action brought against him, or to support his claim in any suit brought by him, the keys were left in my [i.e. Forbes's] hands with directions when any writing was wanted, either to go myself or, if I could not, to send some friend of mine in whom I trusted alongst with Mr Dundas, notwithstanding the good confidence which I think the Duke justly had in him, to fetch it from thence, Mr Dundas serving a receipt for it.[3]

This course was followed until the Duke's death.

An anonymous letter to the Lord President dated 24th May, 1743, is clearly about the Duke of Argyll's last illness. The writer, in distress at the Duke's poor state of health and consequent low spirits, sends Forbes the prescription of the medicine he has been using, apparently in vain, for five months. He begs Forbes to show it, *sub rosa*, to his next door neighbour (? Dr. Clark). The letter continues :

[1] *M.C.P.*, iii, p. 148. [2] Uncat. MS. in Nat. Liby. [3] *Ibidem.*

and then I beg the man in the world [=Forbes] your friend [=Argyll] has the best opinion of will write a second time to him [=Argyll], but . . . let the letter come under my cover and only desire me to deliver it and to ask some answer.[1]

On 4th October, 1743, Argyll died in Surrey, but even this did not terminate Forbes's good offices to his family. The family business was amicably settled on his advice and that of a colleague. 'I wish', he writes from Stoneyhill, 29th October, 1743:

nothing with greater earnestness than to have it in my power to show my gratitude to him, whose friendship was the greatest and best relished honour of my life, by doing service to what I look upon as his remains, My Lady Duchess and her children.[2]

A fortnight later (17th November, 1743), he informed Ilay that he had custody of the family papers.

. . . As now your Grace may have occasion for the writings . . . I take it to be my duty to let you know that they are in my hands, that you may give directions how they are to be disposed of.[3]

On 29th November, the new Duke (formerly Earl of Ilay) acknowledged this communication and thanked Forbes for his many kindnesses to his brother as well as to himself and requested him to arbitrate between him and the Duchess on any questions that might arise as to the succession. 'No man knows so well his [i.e. the late Duke's] intention as yourself, and whatever that was, I shall think right.'[4]

It is difficult to estimate what was the exact relationship that existed between Ilay (now Archibald, third Duke of Argyll) and Forbes. In the early years, the tone of their correspondence is that of warm friendship.[5] In their letters, they occasionally used a private cipher, referring to mutual acquaintances or well-known people by letter and figures, and the code was known to only a select few, of whom George

[1] *M.C.P.*, iii, p. 157.
[2] *M.C.P.*, iii, p. 161.
[3] Uncat. MS. in Nat. Liby. This letter is referred to in *M.C.P.*, iii, p. 161, but is not given.
[4] *M.C.P.*, iii, p. 161.
[5] e.g. *M.C.P.*, ii, p. 236.

Drummond was one. When the tongues of all Edinburgh were wagging about the shooting of Captain Cayley by Mrs. MacFarlane in the beginning of October 1716,[1] Duncan Forbes, it will be remembered,[2] appealed to Ilay on her behalf.

The first sign of a rift in the lute is in 1725. In that year Forbes had been appointed Lord Advocate, the Duke of Roxburghe was removed from office as Secretary of State, and Scotland was in reality, if not in name, governed by two men, Forbes and Ilay. During the Malt Riots, there was clearly difference of opinion between them,[3] and the breach grew gradually wider. As we have already hinted, jealousy seems to have been at the root of the matter, Ilay resenting the growing power of the Lord Advocate. The flames of resentment would seem, too, to have been fanned by Brodie, the 'beast', 'that ungrateful fool' who had been 'the only occasion of all our jars in the north', as Lovat wrote (9th February, 1733).[4] While the bickering and petty squabbles about the Highland elections in the following years were going on, the same Lord Lyon openly referred to the hostility existing between his patron, Ilay, and his quondam friend, Duncan Forbes.[5] After the Porteous affair, a feeling of resentment rankled in the hearts of many Scots, and a patriotic party, led by the Duke of Argyll, made great headway. Earl Ilay sided with the Government. Walpole quarrelled with the Duke (but retained friendly relations with his brother) and therefore, in the 1741 election, the Argathelians, including Forbes, were against our first British Prime Minister. These political and family divisions no doubt increased the hostility already so apparent between Forbes and the Earl.

Perhaps time again was a remedy and both learned to give and take. Although in August 1745 Ilay thought it prudent to return from Rosneath to Edinburgh, while Forbes considered it a matter of duty to leave Edinburgh for the storm-

[1] Uncat. MS. in Nat. Liby.
[2] See Chap. II.
[3] See Chapter IV.
[4] *C.P.*, 169.
[5] Uncat. MS. in Nat. Liby., or *M.C.P.*, iii, pp. 91-96.

centre in the north, we read nothing of recriminations. And in January 1746, Ilay, as we still prefer to call him (to avoid confusion with his brother), recommended the President's friend, Mr. Corse, to the Law Chair at Glasgow University, as Forbes desired,

> and that, in prejudice of a friend of my own. . . . I was glad to have this opportunity of obeying your commands and the more so that I owed it to you.[1]

Among Forbes's friendships, that with Norman MacLeod of Dunvegan is of particular importance. A contemporary of the President's son, he seems to have been intimate with father and son alike.[2] Evidence of their acquaintance dates from as early as 1730.[3] In 1732 (19th December) MacLeod expressed in a letter to John Forbes his vexation at the large amount of brandy that was 'run over Skye and neighbourhood' to the injury of the Ferintosh whisky trade of the Forbes family. He continues :

> and to shew my good inclination for the quick sale of Ferintosh, procure in the meantime a warrant from the Commissioner of the Customs to me and whom I appoint to seize vessels in the contraband goods anywhere about Skye or Glenelg : and I'll warrant you an effectual stop shall be put to that mischievous trade.[4]

Forbes was friendly with MacLeod, not only for friendship's sake, but because he could 'look into the seeds of time' and see the possible advantages to the Government of this leading Highlander's loyalty and the great danger of his hostility. The wisdom of his point of view was amply borne out by the history of the rebellion of 1745. When MacLeod and Sir Alexander Macdonald were suspected in 1739 of instigating natives of Skye to go to America,[5] the former knew only too well the President's anxiety for them both, and in a letter expressed himself as pained to think this interest must be

[1] *C.P.*, 526. [2] Uncat. MS. in Nat. Liby., or *M.C.P.*, iii, p. 133.
[3] *C.P.*, 153, and *M.C.P.*, iii, pp. 54 and 64, or Uncat. MS. in Nat. Liby.
[4] See Mackenzie, *History of the MacLeods*, p. 123.
[5] *C.P.*, 195.

adding to Forbes's other worries.[1] Only six months later, affairs of state gave way before affairs matrimonial in MacLeod's correspondence, for he sought Forbes's advice on his domestic arrangements. He was separated from his wife.[2] As a result of consulting with this eighteenth-century Scottish Solomon, he decided to invite her home again, 'meaning' as he writes,

> to do all in my power to make this place as agreeable to her as possible.

He consequently instructs Forbes 'so you may with freedom give her your advice to come home'.[3]

By 1st May, 1742, MacLeod was the M.P. for Inverness-shire and was still 'unalterably' Forbes's friend[4] and reserving some of his London gossip 'for a chat at meeting which I long for'.[5]

That the friendship of the two men, so disparate in age, was of great national importance is seen in the letter which MacLeod wrote in his own name and that of Sir Alexander Macdonald to the Lord President on 3rd August, 1745, the day after receiving Forbes's of the 25th July. It begins :

> My dearest Lord,
>
> To my no small surprise, it is certain that the Pretended Prince of Wales is come on the coast of South Uist and Barra, and has since been hovering on parts of the coast of the mainland that lies betwixt the point of Ardnamurchan and Glenelg ; he has but one ship, of which he is aboard ; she mounts about 16 or 18 guns. He has about thirty Irish or French officers with him, and one Sheridan, who is called his Governor. The Duke of Atholl's brother is the only man of any sort of note (that once belonged to this country) that I can hear of that's alongst with him. His view, I need not tell you, was to raise

[1] Uncat. MS. in Nat. Liby., or *M.C.P.*, iii, p. 141.

[2] MacLeod married Janet, youngest daughter of Sir Donald Macdonald of Sleat. Because of her husband's infidelity she left him. Her death took place shortly after her return. The fact that MacLeod thereafter married his paramour has given colour to the suspicions held by some regarding his wife's untimely end. (*History of Skye*, by Alex. Nicolson.)

[3] *M.C.P.*, iii, p. 142.

[4] *Ibidem*, p. 153.

[5] Uncat. MS. in Nat. Liby., or *M.C.P.*, iii, p. 152.

all the Highlands to assist him, etc. Sir Alexander Macdonald and I, not only gave no sort of countenance to these people, but we used all the interests we had with our neighbours to follow the same prudent method ; and I am persuaded we have done it with that success, that not one man of any consequence benorth the Grampians will give any sort of assistance to this mad rebellious attempt.[1]

During the campaign, MacLeod received full instruction from the President ; e.g. at Elgin (13th December, 1745).[2] After the outbreak, their friendship continued, and a letter from MacLeod, then in London, dated 18th December, 1746,[3] asks Forbes's influence on behalf of Rev. Mr. Neil MacLeod who had been his chaplain in his expedition eastward, had

preached sound doctrine, and really was both zealous and serviceable.

Like all Highlanders, Forbes and his friend were intensely interested in the fate of Lord Lovat, and MacLeod, still in the metropolis, sent a first-hand account of the trial.[4] The name of the 'Laird' (MacLeod) has been held in opprobrium by many owing to his dealings with Lovat during the early part of the rebellion. We have seen how, by a seeming compliance with Lovat's wishes, he won from him a promise to do as he and Sir Alexander Macdonald decided to do. They had already guaranteed their loyalty to King George. MacLeod regarded his own conduct as 'so mean that I believe I shall never forgive myself'[5] but of this, he was assured that his 'intentions were for the best', namely to keep the Clan Fraser at home. It is a nice point how far his deceit is blameworthy.

With Sir Alexander Macdonald of Sleat and his wife Lady Margaret, the Lord President was also on terms of friendship[6] by 1739, but it is to the period of the 'Forty-five that their greatest intimacy belongs. Letters of 3rd and 11th August,

[1] *C.P.*, 246.
[2] *C.P.*, 338.
[3] *M.C.P.*, iv, p. 84.
[4] *C.P.*, 511, 513, 518.
[5] *C.P.*, 344.
[6] *M.C.P.*, iii, p. 141.

1745,[1] both pledge him, as well as MacLeod of Dunvegan, to the Government. Sir Alexander wrote regularly at this time to the Lord President,[2] particularly as he was prevented from leaving home owing to the state of his wife's health. His sense of humour never deserted him even when torn with anxiety about both domestic and political affairs and so he could reassure Forbes of his loyalty and report (16th October; 1745), ' My rib is still on foot '.[3] When she presented him with ' a nymph ',[4] as he phrased it to Forbes on 30th November, 1745, the same day, with an unusual versatility of expression, he announced the happy event in these terms to his crony, MacLeod :

> . . . I travel on Monday, Margaret having yesterday morning set me and her daughter at liberty.[5]

He had, on occasion, perforce, to cudgel his brains and call in the aid of his facility in expressing himself. On 31st October, 1745, he wrote two letters from Mugstot, one a fake or colourless letter to be exhibited by the messenger if he were searched by the enemy,[6] the second, one containing intelligence for the eye of the President only.[7]

As a gallant upholder of the Government, Sir Alexander seems to have become a favourite with Cumberland,[8] but we need not repeat how well he played his part in the 'Forty-five,[9] how his family were, perhaps inadvertently, concerned with the escape of Prince Charlie,[10] how eloquently he defended his kind-hearted factor, Kingsburgh, nor how keenly the Lord President and MacLeod felt the untimely death (23rd November, 1746) of ' one of the best of men and most dear friend '.[11]

It is not possible here to deal in detail with others who might be numbered in Forbes's circle of intimates. Brief

[1] *C.P.*, 246 and 250.
[2] *M.C.P.*, iv, pp. 74, 88 ; *C.P.*, 453.
[3] *M.C.P.*, iv, p. 88.
[4] *M.C.P.*, iv, p. 154.
[5] *M.C.P.*, iv, p. 156.
[6] Uncat. MS. in Nat. Liby., or *M.C.P.*, iv, p. 124.
[7] *M.C.P.*, iv, p. 125.
[8] *M.C.P.*, v, p. 108.
[9] e.g. *M.C.P.*, iv, pp. 175 and 182 ; *M.C.P.*, v, pp. 72 and 79.
[10] *C.P.*, 336.
[11] *M.C.P.*, iv, p. 142.

references, therefore, must suffice. With Andrew Mitchell (later Sir Andrew), who was Under Secretary to Lord Tweeddale, Secretary of State for Scotland, and who was, later, British Ambassador at the Court of Frederick the Great of Prussia, he maintained a friendly correspondence from 1738 till his death.[1] It was Mitchell's aid that Forbes sought when he was striving to develop his schemes for the improving of the revenues, and Mitchell regarded Forbes's advice as having the 'weight of paternal authority, acquired not by usurpation but from affection',[2] and when the news of the attack on Culloden House percolated through to the Government Offices in London, Mitchell wrote in a lengthy epistle (19th November, 1745) :

> I need not tell you what concern this gave me in particular, because, in general, everybody that wished well to the present establishment appeared affected with the news, and the loss of you was considered as the loss of the Northern part of Scotland.[3]

Mitchell's tribute, contained in a letter (20th April, 1742) to the Lord President, is worthy of quotation.

> Your Lordship's letter of the 1st inst. gave me real joy ; as you said in it several kind things of me and to me. I do assure you, that nothing pleases me so much as the approbation of those I love and esteem ; and to deserve your Lordship's, is my particular ambition. I have ever thought my acquaintance with your Lordship one of the happiest incidents of my life, and I think I have felt myself the better man for it. When I reflect on the justice that mankind in general do to your character, I cannot help thinking better of them than I am sometimes inclined to do ; I cannot help believing they have still some gratitude left, and some sense of virtue.[4]

The deep trust of Mitchell in his fellow-countryman is manifest when he unbosoms himself and asks Forbes's advice as to his future career, 'as you have been my oracle'.[5]

Occupying as he did an important executive post in Scot-

[1] *M.C.P.*, iii, p. 132.
[2] Uncat. MS. in Nat. Liby. ; *M.C.P.*, iii, p. 196.
[3] *C.P.*, 297. [4] *C.P.*, 227. [5] *C.P.*, 532.

land, both as Lord Advocate (1725-37) and as Lord President (1737-47), Forbes was naturally acquainted with the different Commanders-in-chief. His relations with Wade and Cope were close on official grounds, but there seems to have grown up a degree of friendliness and mutual appreciation between them and himself. Wade began his new roads in 1725, and certainly by that year the Lord Advocate and the General were working together. They had both attended the Court of Inquiry in Glasgow in July 1725, to investigate the Riot at Shawfield House consequent upon the malt tax.[1] On 11th September, 1730, Forbes, writing from Perth, records a visit to Wade's roads,[2] and three years later the General expresses a hope that Forbes would pass his way at the Tay Bridge as he was journeying to Edinburgh.[3] The relations, then, did not continue merely during their official contact in Scotland. At the end of 1742, having been unable to help a friend of the President's to secure a certain post, Wade assured him :

> Had what you desired been in my power to have obtained, I should have had more pleasure in serving or obliging you than any man who inhabits between London and John o' Groats.[4]

When every allowance is made for the tone of such letters, it is not too much to say that Wade was sincerely appreciative of the Lord President's worth and friendship.[5]

Cope was among Forbes's acquaintances in the last years of his life. They first met in 1744 when Cope was appointed (18th February) Commander-in-chief in Scotland. Their correspondence is chiefly of the year 1745 and deals almost entirely with military operations and intelligence. When it was necessary for Cope to issue orders for Loudon's regiment on 14th August, 1745, he at once put the troops under the command of the Lord President,[6] thus showing his sound judgment in his first step in countering the rebels. Forbes remained loyal to Cope after his misfortune[7] and was a

[1] *C.P.*, 375.
[2] *M.C.P.*, iii, p. 41.
[3] *M.C.P.*, iii, p. 100.
[4] *C.P.*, 389.
[5] Uncat. MS. in Nat. Liby., or *M.C.P.*, iii, pp. 211 and 214.
[6] *C.P.*, 251.
[7] *C.P.*, 324.

witness at the Court of Inquiry on the conduct of the unlucky general. The result of this five days' inquiry was a declaration of Cope's innocence and a decision that he was worthy of praise.[1]

With such an eminent legalist as Lord Hardwicke, Lord Chancellor, Forbes was on friendly terms, and while the correspondence extant between them (1738-45) is entirely on official matters of the Courts and the Records,[2] there is no room for doubt as to their mutual regard. Hardwicke's desire that Forbes should again visit London to see his old friends is evidently genuine.[3]

Among his friends who rose to fame was William Murray, Solicitor-General (1741) and later, Earl of Mansfield. Their acquaintanceship occupied the years 1735-45,[4] and we know that Murray thought highly of Forbes, both for his worth as a man and for his professional ability.[5] Murray was one of those to whom the Lord President wrote (1743) at great length to further his scheme for the development of the manufactures and the revenues.[6]

Among Forbes's political and legal friends and correspondents may be mentioned Arthur Onslow, the greatest Speaker of the eighteenth century ;[7] the Duke of Newcastle, Secretary of State[8] as early as 1725 and until 1746 and responsible for Scottish affairs over several years ; and John Hay, fourth Marquis of Tweeddale, Secretary of State for Scotland, 1742-46.[9]

[1] 'Report of the Proceedings and Opinion of the Board of Officers on their examination into the conduct, behaviour, and proceedings of Lieut.-General Sir John Cope, K.C.B.,' p. 4 ff.

[2] *C.P.*, 181, 193, 194, 197, 242. [3] *C.P.*, 212. [4] *C.P.*, 217.

[5] *C.P.*, 185, 202, 210, 213, Uncat. MS. in Nat. Liby. or *C.P.*, 214, *C.P.*, 217.

[6] Uncat. MS. in Nat. Liby., or *M.C.P.*, iii, p. 186.

[7] *C.P.*, 174 ; *M.C.P.*, iii, p. 27 and MS. in Nat. Liby., or *M.C.P.*, iii, p. 118.

[8] *C.P.*, 121, 126, 127, 140, 141, 206, 269, 308, 330, 383, 528 ; *M.C.P.*, iii, pp. 8, 12, 14, 106, etc., and MSS. in Nat. Liby.

[9] *C.P.*, 220 ; Uncat. MS. in Nat. Liby., or *C.P.*, 221 ; *C.P.*, 222, 229, 230, 231, 233, 234 ; Uncat. MS. in Nat. Liby., or *C.P.*, 235 ; *C.P.*, 247, 253, 265, 293, 392, 393, 394, 395, 396, 418, 435, 442, 447 ; Uncat. MSS. in Nat. Liby., or *C.P.*, 456 ; *C.P.*, 457, 460, 462, 519 ; Uncat. MS. in Nat. Liby., or *M.C.P.*, iii, p. 170 ; and *M.C.P.*, iii, pp. 171, 178, 192 ; Uncat. MS. in Nat. Liby., or *M.C.P.*, iii, p. 195.

Walpole, too, was numbered among his correspondents. Apart from the anonymous letter written in 1716,[1] letters passed between them in 1725, 1729 and 1732,[2] and for many years, in Forbes, the great statesman found a loyal supporter, conscientious to a fault [3] and without his price.

Of the permanent members of the Civil Service with whom Forbes corresponded through almost the whole of his official career, John Scrope of Wormsley, Joint Secretary of the Treasury from 1725-1745,[4] and Charles Delafaye, Secretary to the Lords Justices [5] from 1725-1730, stand out ; indeed, Scrope was not the mere Government official but a genuine friend to whom on many an occasion the Lord President unbosomed himself and by sharing his worries, and voicing his grievances, lessened them.

The two chief letter-writers among Forbes's Inverness friends were Provost John Hossack,[6] and the Rev. Robert Baillie, (obiit 1726).[7]

During the rebellion of 'Forty-five, the Lord President worked in close conjunction with John, fourth Earl of Loudon, whose regiment was in the early part of the outbreak under Forbes's express orders. The two seem to have worked in perfect harmony, and the fact that they shared many adventurous experiences during the campaign [8] accounts for the scarcity of letters between them.

[1] Uncat. MS. in Nat. Liby., or *C.P.*, 82.

[2] *C.P.*, 124, 145 ; Uncat. MS. in Nat. Liby., or *M.C.P.*, ii, p. 130 ; and pp. 131, 321, 322 ; Uncat. MS. in Nat. Liby., or *M.C.P.*, iii, p. 52 ; also pp. 26, 47, 56, 104.

[3] Uncat. MS. in Nat. Liby., or *M.C.P.*, iii, p. 103.

[4] *C.P.*, 110, 111, 123, 150, 152, 161, 170, 173, 177, 187, 218, 382, 501, 531 ; *M.C.P.*, ii, pp. 245, 297, 304, 320, 321, 330 ; *M.C.P.*, iii, pp. 9, 12, 30, 31, 40, 44, 61, or Uncat. MS. in Nat. Liby. ; *M.C.P.*, iii, pp. 80, 103, or Uncat. MS. in Nat. Liby. ; *M.C.P.*, iii, p. 150, or Uncat. MS. in Nat. Liby. ; *M.C.P.*, iii, pp. 154, 229, 234, and Uncat. MSS. in Nat. Liby., or *M.C.P.*, iii, pp. 168, 170, 171, 178.

[5] *C.P.*, 112, 113, 114, 120, 122, 133, 160, 376, 377, 378, 379, 380 ; *M.C.P.*, ii, pp. 243, 265, 293, 295, 300, 302, 314, 315, 325 ; *M.C.P.*, iii, pp. 8, 9, 14, 41.

[6] *C.P.*, 530 ; MS. in Nat. Liby., or *M.C.P.*, ii, pp. 99 and 104 ; Uncat. MS. in Nat. Liby., or *M.C.P.*, iv, p. 1 ; and *M.C.P.*, iv, pp. 27 and 189.

[7] *C.P.*, 60, 55, 57, 66, although *C.P.*, 55 and 57 are without doubt erroneously assigned by the original editor (of *Culloden Papers*) to the correspondence with John Forbes ; *M.C.P.*, ii, pp. 99, 102, 202.

[8] *M.C.P.*, iv, pp. 56, 78, 98, 102, 193 ; and *C.P.*, 505.

Sutherland,[1] Cromarty,[2] Reay,[3] Grant,[4] Fortrose,[5] are some of the Highland notables to whom the Lord President frequently wrote; but his correspondents were not all at home in these islands, for Governor Trelawney wrote him (in answer to a letter of July 1739) from Jamaica[6] on 29th August, 1740, and that General Oglethorpe[7] who took the two Wesleys to Georgia in 1736, and later, their friend Whitefield, wrote from Frederica in Georgia on 21st February, 1740.[8] Among those who communicated with him in friendly fashion at one season or another were Lord Belhaven,[9] Earl of Queensberry,[10] Mr. Henry Home, later Lord Kames,[11] and the Earl of Stair.

While ladies are not numerous among his friends,—we have already mentioned his mother and his sister Grizzy, Mrs. Ross of Kindeace,—there are several interesting personalities, without whose mention this account would be incomplete. He appears to have had a genuine regard for that tragic, romantic figure, Mrs. MacFarlane, the 'Phyzza' among her husband's friends, Mrs. Brodie (wife of Brodie of Brodie) and her daughter,[12] for Lady Margaret Macdonald 'and her Infantry'[13] as he humorously termed her young family in a lengthy letter to her husband on the military situation,[14] and for the Duchess of Gordon.[15]

These, then, are some of the recipients of Forbes's letters. If the letters themselves do not rank high as epistolary

[1] *C.P.*, 438, 439, or Uncat. MS. in Nat. Liby., 445, 470, 479, 480, 523, or Uncat. MS. in Nat. Liby., 524.

[2] *C.P.*, 283, 451, 454, 455.

[3] *C.P.*, 316, 431, 450, 469, 495.

[4] Uncat. MS. in Nat. Liby., or *M.C.P.*, ii, p. 132.

[5] *C.P.*, 258, 463, 466, or Uncat. MS. in Nat. Liby., 468, 482, 484, 494, 499, 515, 516.

[6] *C.P.*, 205. [7] *C.P.*, 196.

[8] Forbes seconded Lord Limerick in the House of Commons (7th March, 1737), when he presented his 'petition for money (£20,000) to carry on the settlement of Georgia'. This having met with no opposition, it was referred to the Committee of Ways and Means. (Hist. MSS. Com. Report; *Diary of Earl of Egmont*, vol. ii, pp. 363-4.)

[9] *C.P.*, 85. [10] *C.P.*, 203.

[11] *C.P.*, 162. [12] *C.P.*, 171 and 172. [13] *M.C.P.*, iv, p. 198.

[14] *C.P.*, 335; *M.C.P.*, iv, pp. 13, 156 and 198. [15] *M.C.P.*, iv, p. 27.

literature, at least they are natural, easy, and businesslike. If frequently faulty in punctuation, they are yet vigorous, and inspired by excellent good sense. If lacking in wit, they are never scurrilous, nor do they in an age that was not delicate in taste, deal in scandal or unsavoury anecdote.

CHAPTER XXI

FORBES AS LAIRD

The House of Culloden and that of Bunchrew were the sole houses of note in the Inverness district when Captain Burt visited that town sometime after 1730. Built of stone, and consisting of many rooms, including a very spacious hall, Culloden House had good gardens and stood in the midst of a plantation of trees. The 'Parks' adjoining the house were extensive and the whole surface was covered with

> heather without any trees; but some of it has been lately sown with the seed of firs, which are now grown about a foot and a half high, but are hardly to be seen for the heath.[1]

Hares were plentiful and became an annoyance by cropping the tender tops of the young firs, and so spoiling their regular growth.[2]

Bunchrew House was a 'good old building but not so large as the other'.[3] It had a wood nearby where the brushwood and the springs invited

> the woodcocks, which, in the season, are generally there in great numbers, and render it the best spot for cockshooting that ever I knew.[4]

A great lover of country life, Forbes, in this age of squires, naturally devoted some of his attention to improving his own estates in the north. Nor was he content merely to leave the local men to manage his affairs. Tom Stewart was his factor at Culloden, in the true connotation of the word, and to him the Lord President frequently wrote giving detailed instructions. With what relief must he have diverted his mind from the worries of the law and the troubles of his 'poor country'

[1] Burt, *Letters from the N. of Scotland*, i, p. 25.
[2] *Ibidem*, p. 258. [3] *Ibidem*, p. 259. [4] *Ibidem*.

to the delights of Bunchrew, Culloden and Ferintosh! Squireship was a healthy if expensive hobby, but Forbes was never a good financier so far as his own means were concerned. We quote some characteristic passages from Forbes's letters to Tom Stewart at Culloden. In October 1735 he writes :

> Dear Tom,
>
> Charles Stewart and James Johnstone . . . go North to look after the oakwood of Ferintosh. They will call upon you. You will be as kind to them as you can, and shew them the way to Ferintosh where the Chamberlains will take care of them.[1]

Meanwhile their solicitous master visualised the improvements made. To see these carried out gave added zest to his visits to his northern home, as the planning of them pleased him when the old Parliament House did not claim his attendance. The picture of an addition to his garden was a pleasing thought in the dull November day in 1735 when he sent Stewart directions about the planting of firs and birch trees in 'such parts of the great enclosure in the moor as are not coming up'.[2] He proceeds (23rd November, 1735) :

> The new garden to be stuck with planting where not now planted as much as possible. The allors in the S.W. corner to be cut down but carefully so as to not hurt the undergrowth, each tree to be pruned up to the top, before it is felled. To be laid flat each in their proper row, any new shoots of ash that are in the way to be first pulled up and the roots being pruned, to be planted out in pits deep and well made, either in the new garden or to the westward of the firs, to the northwards of the avenue. The allors when cut to be piled together without the garden door till the value of them can be discovered. To be stripped of the bark or left on it as men of skill to be consulted with, shall say is best for them, and the bark of it shall be

[1] MS. in Nat. Liby of Scotland, Bundle XIX.
This letter bears the seal of Duncan Forbes ; it has the crest of the Forbes family, a boar's head in each of three divisions of a shield, surmounted by a soaring eagle. Above the bird are the words 'Spernit humum.'

[2] Uncat. MS. in Nat. Liby.

stripped to be put to that use, if any, which they shall say it's fit for. It being my intention that if a reasonable value cannot be had for those allors they shall be converted into burn wood for the use of the family. To save all the branches and brush to be made up into faggots for firing. But none of them to be used till I return.[1]

Mr. Johnston is similarly instructed—the handwriting is not Forbes's, but the directions are clearly written to his dictation—

to save all the good earth taken out of the ditch and now lying on the edge of it, and to add it to the other earth that is already removed. To fill up the new road by the side of the ditch with small stones and gravel.

Following this, in Forbes's own hand and in other ink, is the notice :

Mr Johnston to go now and then to Bunchrew to direct the mixing the lime with the earth taken out of the ditches and the grounds whence it is to be layered and then manured.[2]

Detail, this, worthy of his contemporary Defoe!

It is as the canny Scot that we see Forbes in his next epistle to Tom Stewart, written a week later (Edinburgh, 28th November, 1735).

Tom,

. . . I am glad to hear you have made so good despatch with the fence for the new ground intended to be added to the garden. Tell Sandy Thomson that I shall soon send him the plan I intended should be followed upon the measures which you have transmitted from him.[3]

Shrewdness and justice are the two outstanding characteristics of the remainder of the letter. Some of his tenants have fallen into arrears in their payment of rent, and the factor, in reporting this to the Lord Advocate, has proposed the exaction of only half the sum due. Hear Forbes's reply :

Though I should perhaps be satisfied with receiving half at this time, yet I should think it very imprudent to let them think

[1] Uncat. M.S. in Nat. Liby.
[2] Uncat. MS. in Nat. Liby.
[3] *Ibidem*, Bundle XI.

> that I did not look for the whole—at least as much as they respectively are able to pay. I do not mean by this mean[s] that I would have them really distressed, but as their circumstances may vary, and some may be able to pay the whole, whereas others may not be able to answer the half, I would have each believe, that, according as to his ability, he would be entitled to my favour as to the acceptance of boll for boll.

And on a new topic he concludes :

> The last post brought me a complaint from some of the fellows that were employed in working at the ditch that you have wronged them by refusing to pay them a penny per day. Let me know how their case stands.[1]

To Forbes, company, whether in Edinburgh or in the north, meant as a natural concomitant, hard-drinking. Wherever he went, he gathered round him boon companions although frequently he would willingly have dispensed with their attentions, especially during the recess. It was probably after some hilarious night with the Inverness magistrates that he presented to them their first hats. Tradition has it that the ceremony took place after dinner at Bunchrew. These hats he had purchased in the capital to replace the old blue bonnets. So highly were they prized, that the councillors kept them at home under lock and key except on council days, when the City Fathers appeared, wearing them with due pomp and circumstance. Hitherto, Inverness had been distinguished by only four wearers of hats—the two ministers, the provost, and the sheriff ![2]

When relieved of his cronies, Forbes loved his adventures as a gentleman farmer[3] for they were real adventures in contentment. How he loved playing the part ! When a man of fifty-six, he writes Will Forbes on 19th September, 1741 :[4]

[1] Uncat. MS. in Nat. Liby., Bundle XI.

[2] Carruthers, *Highland Note-Book*, p. 77.

[3] Mr. Compton MacKenzie, unfriendly critic as he is, says : 'His [i.e. Forbes's] best admired attempts to solve the problem of the Highlands seem to have been the suggestion that the Highlanders should be enlisted to fight in England's wars of aggression, and his own agricultural experiments on the fertile land of Bunchrew.' (*Prince Charlie*, p. 54.)

[4] MS. in Edinburgh University Library.

> I am much better than when I left you. . . . I am busy removing mountains, inclosing grounds, making walks through a wood, carrying dung, cutting down corn etc., and if my friends would be so good as to abate of their kindness to me, there is reason to hope that I should return to you with much the same stock of health as usual. We have no great reason to complain of the harvest weather.

The barony of Ferintosh extended to several thousand acres. As we have seen earlier, certain tax-exemption rights had been granted to the father of Duncan Forbes, and the estate was therefore regarded as a sort of delectable land, and one on which the tenants prospered. As a result of the thriving distilleries, the value of the lands themselves was continually increasing, for the farms were enabled to carry a greater stock of cattle than they could otherwise have done, and so manure was greatly increased. Originally, the Right of Exemption had been let at a joint rent along with the lands by the Lord President's father, and his two sons continued the same method. The tenants did not limit themselves to the distilling of the Ferintosh-grown grain, but imported it as well, for the same purpose. Strangely enough, the Lord President showed less of business acumen in the management of his own lands there than he did upon the huge Argyll estates. His residence at a distance and the pressure of his multifarious other duties partly explain this remissness.

Much of the estate was 'still unimproved muir ground' in 1785, and only one-third of it had been settled. Nevertheless, the privilege of exemption from excise had

> induced no less than 288 families to settle on the muir and to improve part of it into arable land,

yielding a rent of £173 7s. 8d. sterling.[1] In this year the old privilege was lost. Arthur Forbes, grandson of the Lord President, claimed as compensation £32,683. In his Memorial to the Government he made some astounding statements:

> The Lord President spent in the service of the Government during the Rebellion of 1745 above £20,000, besides the loss

[1] Uncat. MS. in Nat. Liby., Bundle XIX.

he sustained by the destruction of his Household[1] furniture, horses, cattle, sheep, etc., so that this Right of Exemption (from Excise) is all that the family has for above £30,000 sterling spent in the service of Government, which, including the interest incurred upon it, amounts to a sum far exceeding any compensation the Memorialist expects.[2]

The Court of Exchequer at Edinburgh (30th December, 1785) allowed him as compensation only £21,580.[3]

The products of Ferintosh were well known to Burns both as an exciseman and as a seasoned and discriminating consumer. He bemoans the loss of the Forbes privileges in characteristic lines in 'Scotch Drink':

Thee Ferintosh! Oh, sadly lost!
Scotland lament frae coast to coast!
Now colic grips, and barkin' hoast,
May kill us a';
For loyal Forbes' charter'd boast,
Is ta'en awa'!

[1] Prince Charlie stayed in Culloden House for the three nights immediately before the battle. He slept in the 'massive, mahogany tester bedstead with beautifully carved foot pillars' in the President's room. In 1897 the bed was sold for £750. (*Purchasers' Catalogue of the Valuable Contents of Culloden House which were sold by auction on 21st July, 1897.*) This *Catalogue* contains an engraving of Culloden House as it stood in 1746.

[2] Uncat. MS. in Nat. Liby., Bundle XIX.

This declaration is made by Arthur Forbes (1785) from notes or jottings found in the family repositories, and follows immediately after a statement of the expenses (£3,500) incurred in the service of Government, and the losses sustained at Ferintosh by the original grantee, and of the expenses (£2,700) incurred by Bumper John in 1708, 1715 and 1719.

[3] Uncat. MS. in Nat. Liby.

CHAPTER XXII

CHARACTER AND WORK: AN APPRECIATION

DUNCANO FORBES DE CULLODEN
SUPREMAE IN CIVILIBUS CURIAE PRAESIDI,
JUDICI INTEGERRIMO,
CIVI OPTIMO,
PRISCAE VIRTUTIS VIRO,
FACULTAS JURIDICA LIBENS POSUIT,
ANNO POST OBITUM QUINTO,
C.N. MDCCLII

So reads the inscription on the striking portrait statue of Forbes in the Parliament House in Edinburgh, and it is not often that an epitaph recounts with such truth and lack of exaggeration the virtues of its subject.

While it is not the fashion at present for a historical personage to be a hero to his biographer, it is no extravagance to regard Forbes as the greatest Scotsman of the first half of the eighteenth century. The character of a man is best seen in his actions, in the words he speaks and writes, and in the way that other men react to his influence and personality. In the foregoing narrative the Lord President's deeds have been allowed to speak for themselves, but it may be not inappropriate to attempt here an estimate of the man and his work, and to use for illustration such facts as did not lend themselves to statement in the earlier chapters.

Forbes's character has nothing of complexity in it. His qualities lie open for all to see. There is, therefore, no psychological puzzle awaiting solution. Rich in episodes, his life has yet little of romantic glamour despite his concern

with the suppression of two rebellions, and the course of two famous riots. There is nothing of mystery and nothing of intrigue,—political or amorous,—that so often constitute the stock in trade of the modern biographer.

Of Forbes's appearance we have the evidence of some contemporary portraits,[1] and of the magnificent marble statue by Roubiliac [2] in the Parliament House. The face is long, the forehead lofty, the features strong, yet delicately cut; the eyes keen but kindly; the mouth wide and sensitive; the nose large, of the Roman type, and well shaped. The whole expression is frank, and grave without severity. In the portraits, the eyes are blue-grey, and the complexion ruddy. The cast of countenance is modern; the general impression is one of openness and strength.[3] The suggestion of height conveyed by the Roubiliac statue is amply confirmed [4] by a remark of the Lord Advocate's in a letter to Forbes (then one of his Deputes) on 3rd March, 1716 :

[1] Jeremiah Davison (1695-1750?) has a three-quarter seated portrait in the Hall of the Faculty of Advocates, Parliament House, Edinburgh. This portrait was engraved by Faber in 1748. Redgrave (*Dictionary of Artists*, 1878) says Davison's portrait was used by Roubiliac as the main guide for his beautiful statue. Davison's portrait also formed the original of the portrait in the National Portrait Gallery (Room X), London, which bears the subscription: 'Distinguished as a judge, a patriot, and a theologian.' A water-colour drawing appears in the Edinburgh Gallery and is signed 'Jas. Campbell, Fecit. Anno Domini, 1746. Elg(in), Nov. 20, 1746'.

[2] The choice of Roubiliac (1695-1762)—the Phidias of the age, according to Lord Chesterfield,—for the Forbes monument was probably due to his successful execution seven years before of the famous Westminster Abbey statue of Forbes's late friend, the Duke of Argyll. The Forbes monument is said to have cost £800. Despite the Lord President's generous action in starting the subscription fund for the defence of the Jacobite prisoners after the 'Fifteen rebellion, the Jacobites appear to have resented the erection of this statue. Indeed, there was much controversy in the English and Scottish magazines of the time. A plaster model of the head and shoulders of the statue is in the possession of Major Warrand, Forbes's descendant. (Esdaile, *Life and Works of Roubiliac*, p. 96, and the same writer, in Turberville's *Johnson's England*, vol. ii, cap. 17.)

[3] *Scottish Portraits*, by J. L. Caw, vol. i.

[4] Of course, the remark proves more than mere physical height! In the 'Memoirs' of the *Life of Duncan Forbes*, pp. 73-4, published the year after his death, he is described as about six feet high, very straight and genteel in body, and much inclined to slenderness; face smooth and majestic; forehead large and graceful; nose high; eyes blue and full of sweetness, 'and though very quick, yet rather grave than sparkling. . . . The moment he appeared in public he challenged admiration and esteem'.



DUNCAN FORBES
From the statue by Roubiliac

> I ha'n't yet seen Culloden [i.e. John Forbes] but he and I will mind your honour in a deep glass proportioned to your length, and sprightly wisdom.[1]

Ramsay of Ochtertyre saw him a few weeks before his death, and was struck with his figure, of which, he says, the statue in the Parliament House gives a good representation. The long, narrow, emaciated face, with the deep lines under the eyes, and the sunken cheeks, suggests something of the privations of the last campaign. Even the delicate right hand outstretched in an appeasing or placating mood is altogether characteristic.

The Lord President's public career is of such interest that the temptation to gloss over his domestic virtues is great. He is a man first, and a lawyer afterwards, and in his make-up is a strong love of home and his ain folk. We see him a young lawyer of five-and-twenty in Edinburgh readily undertaking a commission from his sister-in-law regarding a velvet hood and gloves. These, her well-meaning, good-natured husband ' ever bought her yet were useless as to her because of their littleness '.[2] That, too, is in character, for who could picture Bumper John as a successful shopper save in one class of goods? But Duncan added to his good-nature and approachableness the accuracy and care in detail of the lawyer, and we may be sure, before purchase, he had found out from the lady the size required.

After his marriage, Forbes does not forget those reared under the same roof-tree, and his interest is active. He takes Grizzy's son under his wing, he feels his great-nephew, young Pitcalnie's defection in the 'Forty-five as a personal matter, and it is to his Uncle Duncan that Captain John Munro appeals, on behalf of his sister married to a ' brutish ' and ' monstrous ' husband, for a ' share in that protection you so generously give the rest of mankind '.[3] His sense of justice, and perhaps a desire to keep his brother's name blameless and his reputation sweet, even after death, caused him to repay a sum of £3,010 sterling borrowed by Bumper John

[1] *C.P.*, 58.
[2] Uncat. MS. in Nat. Liby., or *M.C.P.*, ii, p. 27.
[3] *M.C.P.*, iii, p. 210.

from Alexander Strahan of Hampstead in 1731.[1] This same generosity, tempered, when money is concerned, with a soupçon of unwillingness, from the fear no doubt of spoiling an only son, is meted out to young John. Direct and straight in his rebuke when the budding soldier outruns his income, he yet credits £100 to the lad for emergencies, and pays his bills for £60 and £100.[2]

A psychologist without knowing the term, the anxious father deems it wise 'to keep him out of the most corrupt corner of the world' till habits and mind are 'grown somewhat firmer by age'.[3] The series of logical searching questions which the tutor is invited to answer are themselves the issue of parental anxiety for the boy's welfare, wedded to worldly wisdom. 'Character before learning' is his maxim.

In the wider circle of friends and acquaintances Forbes shows this same kindliness and disposition to help. 'Nec sibi, sed toti.' He has none of 'the cold severity of office'. Forbes, indeed, is the type of man the stranger stops in the street to enquire directions from, knowing intuitively he will get no rebuff. Instances of his helping others are everywhere seen throughout the foregoing chapters, and show how, amidst his multifarious official activities, his personal assistance was sought in affairs both public and private.

The demands made upon him were numerous, of many kinds, and from all sorts of people. General Wightman sent him, on one occasion, a narrative of his movements in the north, especially in the Seaforth country, in March 1716, following the rising of the previous year. He concludes :

> I must let you know a misfortune that has happened to a friend of mine in Edinburgh which I must heartily desire your friendship and assistance and in doing the poor girl what service you can will I assure you never be forgot by me. Captain Hammond the bearer will tell you the whole story, concerning that rascal the Kirk treasurer and what has happened to Poor Kitty. I don't doubt but you will find some humour in the Captain. . . . He was a great favourite of Sir Richard Steele

[1] Uncat. MS. in Nat. Liby.
[2] *C.P.*, 165.
[3] *C.P.*, 228.

who has often told me his friend Captain Hammond had some springs of comic humour . . . rare to be found.[1]

We must leave imagination to fill in the gaps in this tragic tale, but since, as a contemporary phrased it once in a personal letter to Forbes, ' compassion is a strong ingredient in your composition,' [2] in the President, frail Kitty surely found no harsh judge.

And so in spite of his own affirmation that his ' way and that of the way of ladies lie very far wide of each other ' [3], we find this busy man of law, famed in the Courts for getting through business, appealed to, as to a friend in need by a woman of entirely different type, namely, the almost hysterical Duchess of Gordon. If the Lord President brought pity, persistence, and determination to the securing for her of a pension, then to the reading of her prolix and extravagant letters he must needs have had the patience of Job. She consults her ' very good Lord and friend ' regarding some trivial domestic upheaval in her household. One of her younger sons has apparently given cause for displeasure by his ungracious conduct. But let her tell her own story.

> Till he had been at Kelly for 14 days, he always behaved with dutifulness to me, and affectionately to his sisters, and when he pleased was very mannerly to everybody. . . . But when we came to South Dundee, the first compliment he made to one of his sisters was ' What have I to do with your damned handkerchief? Keep it to yourself.' [4]

The Duchess begs for help, and is ' exceedingly impatient for an hour's discourse when it can be had, without inconvenience '.[5] Doubtless his Lordship was lucky if the longed for discourse terminated with the hour. From rendering such services Forbes would at another time find himself called

[1] This letter is not included in *More Culloden Papers*, but the postscript to it appears on p. 128 of *M.C.P.*, ii, where Warrand erroneously says that the letter itself is missing. Uncat. MS. in Nat. Liby.

[2] Uncat. MS. in Nat. Liby., Bundle XI.

[3] *M.C.P.*, iii, p. 140.

[4] Uncat. MS. in Nat. Liby., or *M.C.P.*, iii, p. 136.

[5] *Ibidem.*

upon by the Earl of Strathmore to give advice regarding financial economies, or again, to defend his friend Drummond to the Duke of Argyll and that, as we have seen (see Chapter on 'Letters and Friends'), at the risk of offending His Grace.

We remember how Forbes in 1731 offered £2,000 to augment Lovat's £6,000 and so secure a final settlement with Fraserdale's family ;[1] we remember, too, the duplicity of that same so-called friend. Whether Lovat was a party or not to the attack by the Frasers on Culloden House in 1745 is of no importance. What does interest us is the marvellous trust, toleration, and Christian charity displayed by the man who had just been so badly used by his neighbours. Nor does his humour desert him. To Lovat he writes (19th October, 1745) :

> The people [i.e. the raiders] loitered at Essich for some hours to taste my mutton in day-light, and by these means were all known ; but let them do no more harm, and I freely forgive them. . . . And if they do not send the tenant back his cattle, I must pay for them. The poor fellow that was wounded in the foot showed so much resolution, that, without asking him any questions, I caused dress his wounds and sent him to the place he chose to be at, with a protection for himself and his landlord.[2]

Surely the story of the Good Samaritan enacted against this Scottish eighteenth-century background !

A true man of feeling, perhaps the Lord President was over-sensitive for one so much in the public eye. In the early days of the 'Forty-five, he writes to George Ross :

> I am so monstrously tired with writing that the only other thing I can submit to the trouble of writing about, is poor John Innes, who writes me word from London, that his misfortunes this campaign have not left him a groat ; and begs some supply. Remittance is impossible, and my purse is pretty well drained ; let him, however, have somewhat to keep the bones green, and put on a coat and I shall pay you.[3]

This altruism is carried to an inordinate degree. Mrs. Jellyby's duty as a parent was 'all made over to the public

[1] *C.P.*, 154. [2] *C.P.*, 280. [3] *C.P.*, 504.

and Africa'. While Duncan Forbes did not neglect his son, and his duty was not *all* made over to the public and Scotland, so lofty were his principles that, although ever ready to help others he did nothing as we have seen (see Chapter on 'Letters and Friends') to advance the fortunes of his own son. As late as 1747 (27th September, 1747), a couple of months before the death of the Lord President, the Earl of Morton wrote the Duke of Newcastle requesting that young Forbes might be appointed to the Governorship (then vacant) of Inverness Castle. He continues :

> I'm sure I may say his father did more to curb the rebellion than any one Scotchman ; perhaps I should not be far wrong if I said than all Scotchmen put together, but his delicacy is such in what concerns himself or his family that possibly he may not apply in behalf of his son.[1]

Only too correctly had Morton judged the character of the Lord President.

'It is the glory of a man to pass by an offence,' says Solomon, and in his dealings with Brodie of Brodie, surely Forbes had that glory. He refers on one occasion to 'the maxims I have laid down to myself for the government of my life'.[2] Was this one? The years brought reconciliation between the two men and the Lyon ceased to roar. When Brodie wrote a few months before the death of the Lord President admitting his fault, we know his old friend had passed by the offence.

> My Lord, I do assure you upon my honour that when I reflect upon my former ingratitude to your Lordship it is the most disagreeable idea that can possibly present itself to my view and makes me detest myself.[3]

This kindliness is not the soft easy-going virtue of the man blest with good nature and a good digestion. In Forbes,

[1] *M.C.P.*, v, p. 191. [2] *C.P.*, 172.

[3] The letter appears in *C.P.*, 346, but the long paragraph containing this regret is omitted. So, too, is the endorsement referring to it : 'The Lyon's letter acknowledging his ingratitude to my father.' The actual (uncatalogued) MS. in the Nat. Liby. of Scotland has this vital paragraph deleted by a few strokes of the pen, and above it is written, possibly in the hand of the first editor of the *Culloden Papers*, 'Not to be printed.' *M.C.P.*, v, p. 169.

when occasion demands, courage has to be linked with this gentleness of heart, and he fights for leniency to the poor Jacobite prisoners when leniency is unpopular and out of fashion. A man prematurely old, and broken in fortunes, he faces the dangers and discomforts of a long journey to London to keep an eye on his country's interests after the upheaval of the 'Forty-five, and who more ready than he to plead for some misguided fellow-countryman, so recently his enemy at least in name? Indeed, we know he could be 'plaguy stubborn'[1], as Cockburn said, and tenacious of purpose, despite his 'humane and generous temper',[2] epithets applied to him by Lord Hardwicke.

All this is an aspect of his tolerant outlook. Himself a staunch Presbyterian, a Commissioner for Inverness at the Assembly of the Church of Scotland, he appoints an Episcopalian clergyman as tutor to his only son. Himself the essence of honesty, he maintains this virtue while including amongst his intimate acquaintances a man with so dubious a character as that of Colonel Francis Charteris, in whose make-up was neither honesty nor honour. We are said to admire that in others which we ourselves lack. Nor did this strange acquaintanceship point to any hidden unsavoury Mr. Hyde side to the character of our Dr. Jekyll. In all his voluminous correspondence, preserved without any thought of its publication, is discernible no trace of stain that could bring shame either to his own memory or to that of his family and friends.

It is because he was so methodical that these letters have been preserved, and with these, his Accounts, detailed with all the care an old retainer (John Hay) would expend on a beloved master's affairs :

May 20, 1746. To a pair of stockings for Fergus Ferguson - - - - - - -	0	1	4
To blew lyning for his coat and vestcoat which the Taylor forgot - - - - - -	0	1	0
To a black ribband for your Lop's stock - -	0	0	4[3]

[1] *C.P.*, 54. [2] *C.P.*, 212. [3] *M.C.P.*, v, p. 67.

Extant, too, is the account of Medicines,[1] etc., supplied to Forbes by Alexander Munro, Surgeon-Apothecary at Edinburgh, from 1724 to 1747.[2] This debt became part of young John's inheritance, hardly a remunerative one, and he had to pay after his father's death an account of £179 15s. 5½d., for aids (extending over some twenty-four years) to keep him alive! Does this long-drawn-out account point to bad business methods on the part of the apothecary or on that of his client? Strangely enough, we find [3] that a certain Bailie John Stuart, a magistrate and merchant of Inverness, failed in 1722 to recover from Bumper John a bill for £25 due in respect of some of his well-known claret. Nearly twenty years later (1740) this sum remained still unpaid, and the worthy bailie found similar difficulty in securing payment from John's successor, the Lord President. It is not easy to reconcile this with what we learn of Forbes from other sources. We are not seeking for excuses for him when we say that long credits in those days were common, nor, on the other hand, have we reason to doubt the veracity of Forbes himself. He says (13th May, 1746), speaking of the money he had borrowed for the Government,[4] that he 'never hitherto was dunned' and therefore finds himself 'uneasy'.

It is worth observing that the outstanding bill was for claret, and Bailie Stuart found in Duncan Forbes a particularly good customer. His wine bill was always a heavy one, and so the finger of scorn has been pointed at him as the king of topers. In this he was merely a man of his time, and following the social habits of the period. Referring to Addison, Macaulay writes:

> Of any other statesman or writer of Queen Anne's reign we should no more think of saying that he sometimes took too much wine, than that he wore a long wig and a sword.

[1] No doubt this detailed list of medicines would convey much to a physician as to Forbes's state of health at different periods, and as to the maladies to which he was prone. An actual prescription sent to Forbes by his friend and physician Dr. John Clark, together with the regimen to be followed, is also illuminating as to his health. (Uncat. MS. in Nat. Liby.)

[2] Uncat. MS. in Nat. Liby., or *M.C.P.*, v, App. II.

[3] Mackay's *Sidelights of Highland History*, p. 195.

[4] *C.P.*, 531.

There is no denying the fact that Forbes frequently did take 'too much wine', and in this he found a close imitator in Dundas,[1] his successor in the Presidency, although the other acknowledged Forbes as his pattern in more vital matters.

> In obedience to several good lessons I have got from your Lordship, I will so far try to imitate you as that I am resolved to do my duty as far as in me lies.[2]

Forbes was fond of telling this story against himself, and 'with the utmost good humour'.

> One night he was so overcome at table when dining with some ladies that they carried him to bed.

When telling the tale

> he from a greatness of soul, avoided naming of them for . . . they were women of the best character.[3]

Claret was the common beverage, and the cheap price—about 1s. 6d. a bottle in 1717—further encouraged the drink habit.[4] The family accounts show, in one instance, for nine months' housekeeping, that

> the wine alone cost a sum which, at the present [= 1815] price of that article would amount to upwards of £2,000 sterling.[5]

One of Forbes's accounts to John Hossack & Co., Inverness, for the period 17th August–13th October, 1730, is chiefly for claret and cherry [*sic*] and amounts to £72 9s. 7½d.[6] The accounts of Bumper John settled by Duncan on his brother's death show frequent entries for aqua vitae and 'waters'.[7]

[1] At Arniston House, the country residence of Lord President Dundas, the annual consumption of claret in 1750 was 16 hogsheads.

[2] *C.P.*, 509.

[3] *Memoirs of the Life of Rt. Hon. Duncan Forbes, Esq.*, p. 17 (1748).

[4] Cramond, *On Scots Drink*.

[5] *C.P.*, Introduction, p. xxii.
It is interesting to find Forbes 'buying Scottish' in 1736 when he orders a present of a hogshead of claret from H. Clerk in Edinburgh to be sent to London. As the vintage was not old enough he makes due remonstrance with the spirit merchant. (Uncat. MS. in Nat. Liby., Bundle XI.)

[6] Uncat. MS. in Nat. Liby.

[7] MS. in Nat. Liby., Bundle XIX.

In his earlier years, his love of company and the demands of hospitality led to this convivial excess. 'His many personal friends [were] of all denominations'[1] and loved to 'crack a bottle and a joke with him'. Of necessity his health suffered.[2] When Hew Dalrymple (28th August, 1732) wrote begging him to desist from his riotous ways and so please his friends,[3] he was merely voicing advice that Forbes could have given himself. In a letter from Culloden House to Mr. Lindsay, M.P., referring to the possibility of a reprieve for Porteous, he says rather scornfully :

> Whilst I am writing, the nonsense of about half a score of fools who wait to get drunk at dinner, mars the connection of this scrawl.[4]

His very popularity militated against all attempts at moderation. Even when he had gone north in 1744, after a particularly busy season in Edinburgh, he was unable to get the quietness that his health required. He confides to his sister Grizzy (10th May, 1744):

> The worst of it [is] that the civility of my neighbours will not permit me to get what I came for, that is health or to do my small affairs. . . . I never desire to let the day of my departure be known because it subjects me to a run of importuance from my neighbours who are willing to plague me with taking leave.[5]

In brief, hard drinking sapped his health, and his wealth, but apparently neither his efficiency nor his disposition to hard work.

A more serious allegation against the Lord President's moral character is made by MacKenzie in his *History of the MacKenzies*, page 417. He records that George MacKenzie of Gruinard 'married secondly Elizabeth, a natural daughter of President Forbes of Culloden'. No supporting authority is quoted. On the other hand, the available evidence would seem to point to John Forbes as the father of this Elizabeth. There is little doubt that at least after the death of his wife

[1] *C.P.*, 185. [2] *M.C.P.*, iii, p. 155. [3] *C.P.*, 163.
[4] Eaglescarnie Papers in Hist. MSS. Com. Reports, VIII, p. 312.
[5] *M.C.P.*, iv, p. 4; Fraser-Mackintosh MSS., H.M. Register House.

who left him childless, he (John) was on intimate terms with some fair unknown. Nor did he re-marry. In more than one letter he refers to some one as 'my dear wyffe'.[1] We know, too, that about the year 1730 when he was a man of fifty-seven, he was paying for the education of three children who attended the little school kept by Daniel Clark near that gem of beauty on the coast of Wester Ross, Gruinard. Two of the children, sons of Gruinard, and, as we hold, grandchildren of John Forbes, appear in the account for school-fees as 'entered' at school 18th June, 1730, and continuing till June 1736, the third child as from 11th July, 1732, till June 1736. The document reads :

> Accomp the Laird of Culloden to Mr. D. Clark, school fees for Gruinard's two sons and his nephew, 1736.

The concluding entry runs :

> June, 1730. Received of the above by the hands of Mr John Clark from the late Culloden . . . 5/-.[2]

The Lord President was no lady's man, and a liaison with some fair Rosamund is on the face of it unlikely.

Few indeed are the criticisms that may be levelled against Duncan Forbes with justice. He is said to have been

> conscious of his merit and . . . therefore pleased with popular applause but never servilely courted it.[3]

Indeed, when he considered duty called upon him to follow a certain line of action, popular applause was the last idea in his mind. And so he made his tirade against tea-drinking, a 'villainous practice', and perhaps we smile in a superior way at his heat. He had his foibles, like other men. We find him during the 'Forty-five deliberately persuading the Mackintosh to send a misleading letter to Cluny Macpherson and, so dominating was his personality, even dictating the words, knowing their lying purport. At least we can defend the motives behind this action. Mackintosh's tenants had to be

[1] Uncat. MS. in Nat. Liby., or *M.C.P.*, iii, p. 77.
[2] *M.C.P.*, iii, pp. 120-121.
[3] *Scots Magazine*, 1747.

protected from raiding bands of Jacobites, and if their chief was known as a declared follower of King James VIII, they became immune from attack. In short, it was a stratagem of war.

We have described Forbes as a man first, and a lawyer afterwards, and yet it was his many fine qualities as a man that made him pre-eminently great in his profession. Possessed of a well-stored, penetrating, and impartial mind,[1] and with a sound knowledge of the law, especially Civil Law,[2] Forbes was a man whose interests touched life at many points. His prodigious industry, his moral integrity, his wide human sympathies, that fairness which manifests itself throughout his career, 'the nicest discernment'[3] were personal qualities which served him, whether as pleader or as judge. Quick to see the line of argument along which his case should be developed, or to perceive the flaws on the other side, he proved himself a powerful counsel. He had, moreover, the gift of speech. 'In the eloquence of the bar', says Kames, 'Forbes outshone all his contemporaries.'[4]

During his long Lord Advocacy, comparatively few prosecutions took place, for his maxim was 'better twenty guilty persons should escape, than one inoffensive man should suffer'.[5] His first experience at the time of the Glasgow Malt Riots in 1725 may have caused him to pursue such a policy which agreed so well with his own tolerant and kindly disposition.

When he took his seat on the Bench, eloquence gave place to patience, and this as well as his native dignity, and his speedy discharge of legal business, won for the Supreme

[1] *M.C.P.*, v, p. 94.

[2] *Scots Magazine*, vol. ix (1747), p. 533, quoting *Edinburgh Courant* of the day of his death.

[3] *Edinburgh Courant*, 10th December, 1747, quoted in *Scots Magazine*, vol. ix, 1747, p. 553.

[4] *Memoirs of the Life and Writings of Lord Kames*, vol. i, p. 33.
Kames tells us that much of his information about Forbes was obtained from his father and from Ramsay of Ochtertyre.
The Scots Magazine, vol. ix, p. 553, 1747, says, 'he never prostituted that masculine and persuasive eloquence of which he was so great a master, to promote a bad cause.'

[5] See Brunton and Haig, p. 511.

Court of Scotland a high reputation. The decisions of the Court when cases were appealed to the House of Lords were now received with the utmost respect and were accorded a weight not formerly given them.

His legal practice was extensive. Occasional criminal prosecutions and frequent appeal cases from the Court of Session took him to London.[1] There he appears to have made a striking impression upon judges and audience alike. The result of all this was to constitute him an eighteenth-century Lord MacMillan. His income at the English courts was at least equal to that derived from his extensive practice in Edinburgh.[2]

All this brought him into touch with some of the foremost men of his time. One of Forbes's prime aims was 'to habituate the people to the equal and regular control of the laws'.[3] By the public he was held in such high confidence that he was often called upon to act as arbiter in difficult and important cases. For example, when MacLeod of MacLeod and Sir James Campbell of Auchinbreck, submitted their succession dispute to James Graham of Airth, and Robert Craigie, Advocates, mutually elected, they chose Forbes, the Lord Advocate, as oversman in case of variance (December 1732).[4] Similarly, Mr. Alexander Ochterlony sought a favour at Forbes's hands in May 1738, when he asked him 'if you will be so good to be umpire' between the Lord Advocate and Mr. Craigie in case of their differing in their attempt to settle his brother's lawsuit by arbitration.[5]

On these occasions his opinion was invariably received with the respect and deference due to an oracle, and his decision

[1] *Edinburgh Review*, February-June 1816, p. 107, and *Scots Magazine*, vol. 64, p. 654, 1802.

[2] *Ibidem*.

[3] So says the same writer (Lord Cockburn?) in the *Edinburgh Review*, and he declares that the Lord Advocate was the only individual to whom Thomas Rawlinson, an Englishman engaged in a mining venture in Glengarry, ever thought of applying for protection when two of his servants had been murdered by the natives there. (*Edinburgh Review*, vol. 26, p. 107, 1816.)

[4] Edinburgh City Chambers, Bundle 142, No. 61, Rack IV, Div. 154.

[5] Uncat. MS. in Nat. Liby.

implicitly acquiesced in as a result of his deep penetration and unbiassed judgement.

So states his biographer in the *Scots Magazine*, vol. 64, p. 654, (1802), who claims to have communicated with a few of Forbes's surviving contemporaries. His style as a judge was impressive, and his speech refined. Long contact with Parliament and the English courts had tended to soften the broadness of his north country accent, and we are told his voice, in his later days, when it had lost some of its early vigour, was 'peculiarly melodious'.[1]

On the death of Forbes, Elchies remarks in his 'Note-Book':

> . . . And as before his time I never saw that office supplied either with so much dignity or so much to the satisfaction of the country, as while he enjoyed it, which was little more than 10 years, so I do not expect ever to see it so well supplied again.[2]

Elchies was not alone in this opinion. In a letter to Lord Stormont, 23rd February, 1785, Lord Monboddo, himself an advocate at the Scottish bar, and later a judge on the Scottish Bench, stated :

> I have had the good fortune to be known and esteemed by the greatest judge that has been in Scotland in our time, I mean President Forbes ; and by Lord Mansfield, the greatest judge in England.[3]

Of Forbes, as of the great Scaevola, it may be said that he was 'ingenio et justitia praestantissimus, inter jurisperitos eloquentissimus, inter oratores jurisperitissimus'.

And how did our man-of-law spend his leisure time? It was his custom to take a friend or two with him to Stoneyhill, 'the only day of the week in which our nasty business allows

[1] *Scots Magazine*, vol. 64, p. 654 *et sqq.*, 1802.

[2] *Decisions of the Court of Session from* 1733-1754, collected and digested into the form of a Dictionary, by Pat. Grant, of Elchies, Esq., one of the Senators of the College of Justice, ed. from original MS. by Wm. Maxwell Morison, Esq., Advocate, vol. i, App. II (1813), Edinburgh.

[3] Second Report on the MSS. of Lord Monboddo, p. 674 (*a*). Hist. MSS. Com., Sixth Report.

us to be happy with our friends '.[1] Lovat gives us a picture of one of these happy evenings at Beaufort when he was the host (May 1745), and the Lord President one of the guests.

> They drank heavily[2] . . . and they were extraordinarily merry and good company. They made two pipers play several tunes round about the tables with which they were extremely satisfied and they went from this very joyful and very pleased, and I caused my two pipers play to them till they were out of sight.[3]

If Forbes did not find it convenient to provide music for his week-end party, when in the south, he may have invited them to join him in a quiet game of chess[4] or a more strenuous one of golf. This we do know, that he was an enthusiastic player, even playing on the sands of Leith when the Links were covered with snow. He was the first Captain of the Gentlemen Golfers (1744), and although the date of the inauguration is much older than this, it is in this year that there appeared the first of a regular series of minutes. It bears the signature of the Lord President Forbes of Culloden. The Lord Provost and Magistrates and Council of Edinburgh on 7th March, 1744, acceded to the request of the Gentlemen Golfers and authorised the expenditure of £15 on the purchase of a Silver Club to be played for by the Club annually. The first competition with Forbes and other eleven took place on Monday, 2nd April. Surgeon Rattray's 'skill' triumphed, as it did again in the following year, Forbes and the other eleven testifying in the club minute.[5]

Thomas Mathison (1720-1760), an Edinburgh writer who later became minister of Brechin, refers in his heroi-comical

[1] Laing MSS. in Edin. Univ. Library, or Laing MSS., vol. ii, p. 351, in Hist. MSS. Com. Reports.

[2] 'To crack the nut' was a cant phrase in the President's circle for 'to drink a bumper' in the name of friendship and good company. The present writer has seen the actual nut, now in the possession of Major Warrand, the erudite editor of *More Culloden Papers*.

[3] Laing MSS. in Edin. Univ. Library, or Laing MSS., vol. ii, p. 308.

[4] Uncat. MS. in Nat. Liby., Bundle 234/149.

[5] Clark's *Golf*, p. 42.

poem 'The Goff', first published in Edinburgh in 1743, to the prowess of many public men of the time.

> North from Edina eight furlongs and more
> Lies that fam'd field, on Fortha's sounding shore.
> Here Caledonian chiefs for health resort
> Confirm their sinews by the manly sport.
> Macdonald and unmatch'd Dalrymple ply
> Their pond'rous weapons, and the green defy :
> Rattray for skill, and Crosse for strength renown'd,
> Stuart and Leslie beat the sandy ground.
>
> . . . . . .
>
> Yea, here great Forbes, patron of the just,
> The dread of villains and the goodman's trust,
> When spent with toils in serving human kind,
> His body recreates, and unbends his mind.[1]

And Fate called upon him, as we have seen, to have much to do with different types of 'pond'rous weapons', and those, not used in sport. Although Forbes's whole professional training and practice and his own natural disposition were such as made him, in maturity, averse from military affairs, yet it is one of the ironies of History that his greatest work was done in conjunction with the armed forces of the Crown, in 1715 when he defended Culloden House and Inverness itself, and pre-eminently in 1745-46 during the great Jacobite rebellion. Forbes's military skill had been recognised by Sir John Cope,[2] but, as it is the fashion only to scoff at the unfortunate commander after his defeat at Prestonpans, this may be no great praise in the judgment of some. In any case, Cope's surmise in 1744 [3] that his friend's 'genius is not wholly confined to the long robe' was justified, and Lovat's 'Mon cher Général' was not all mere badinage.

Circumstances enforced this interest in military affairs and

[1] Quoted by Clark, *Golf*, pp. 18-20.
Clark (p. 20, footnote) states that the names, left blank in the original edition of the poem, were obtained from the Record Book of the Honourable The Edinburgh Company of Golfers (or 'The Coy. of Gentlemen Golfers') of which they were all members.

[2] *C.P.*, 399.

[3] Uncat. MS. in Nat. Liby., or *M.C.P.*, iii, p. 211.

the army, but the Senior Service, too, seems to have claimed some of his time. Extant in the Lord President's handwriting is an interesting document addressed to the Lords Commissioners of the Admiralty, and headed : 'Memorial concerning the Navigation of the Western Isles to the Northwards of Scotland and North Coast of Ireland.'[1] While the memorial is undated, it is possible from internal evidence to assign it to the period after 1727. The subject is one that Forbes would naturally deal with during his Lord Advocacy or his Lord Presidency. The gulf or channel between the western coast of Scotland and the Western Isles ('commonly called the Long Island'), and the north coast of Ireland is, he declares, exceedingly dangerous for navigation, because of the multitude of islands and promontories, the variety of tides and currents and their excessive rapidity, and because of

> the total ignorance which all people are under of those tides and currents, and of the bearing of the isles and promontories, they being all erroneously left out in every map or chart that hitherto have been published.

Those seas and harbours have not only been useless to Great Britain but have been highly prejudicial to its commerce because of the losses that have attended ships being forced into them, but were they well navigated and laid out, besides preventing casual losses, several considerable advantages would ensue. He believes that merchant shipping would be much safer if vessels were able to enter confidently by the opening between the north coast of Ireland and the south end of the Long Island, or to the southward by the opening between Britain [*sic*] and Ireland. He even suggests the stationing of a few cruisers at these two inlets to complete the security in time of war, for his plan of having these seas carefully surveyed is not in the interests of commerce only. Here is one of his chief gains if the survey were carried out :

> Should there be occasion to send any of His Majesty's ships-of-war into these parts to suppress any future insurrection

[1] Uncat. MS. in Nat. Liby., Bundle XIII.

amongst the Highlands or to prevent any foreign invasion, as there was in the reign of King William and in the beginning of the reign of His late Majesty, single ships or squadrons might proceed with safety which could not formerly nor cannot at present be done.

Just as Forbes retained a real zest for his work by regular exercise riding on rough tracks, or golfing on the links of Leith, varied by unsought adventures when Mars was in the ascendant, so he kept his mind alert by mental excursions into the fields of philosophy [1] and religion. It is said that the study of theology has a peculiar fascination for the Scots mind, and in the case of Forbes, the Scot of his day, the syllogism, with a premise—'All Scots are born theologians'—follows to its logical conclusion. In his early years, his mother's influence had been not without effect upon him, and the strong Presbyterian leanings of his family were not absent from his own outlook. He was a great admirer of the writings of St. Paul [2] and of the Book of Job.[3]

A keen student of Hebrew, in his early manhood, he was attracted by the theological doctrines of the Rev. J. Hutchinson, the propounder of the New Theology of the eighteenth century. Forbes's writings in this sphere are really in exposition of this system, which seems to have specially interested men skilled in the Hebrew tongue. A mind so acute as that of Coleridge was not above studying these exegetical writings although it must be admitted his strictures on the President's theology are severe. If these writings are not notable for their originality, they are at least the sincere expression of the religious creed of one who was not content merely to accept the popular beliefs and to follow the crowd. In the British Museum are two small volumes containing the collected works of Forbes with, as frontispiece, an original portrait of the author. They contain three treatises—(1) Thoughts on Religion, Natural and Revealed; (2) A Letter to a Bishop, concerning some Important Discoveries in Philosophy and

[1] Hailes's *Catalogue* (1798), Add. Notes, p. 31.

[2] *Memoirs*, p. 39.

[3] According to tradition, a favourite passage was Job, Chapter 29, v. 7 ff.

Theology ; and (3) Reflections on the Sources of Credulity. More interesting than Forbes's own views are the marginalia and the holograph notes—some in ink and others in pencil—of Coleridge, written on the flyleaves at the end of the respective volumes. We read at the end of volume ii, evidently in connection with Forbes's remarks on the Trinity (p. 154) :

> It surprises me that so truly good and sensible a man as Duncan Forbes should make such a childish objection to the words Trinity and Person. In the name of common sense, is there any advantage that the word ' what ' or ' somewhat ' can have over the word ' Person ' ? A somewhat that is named the Father, and that is not the same as the Son or Holy Ghost, (nay, according to Forbes, having distinct attributes which I do not believe to be the Catholic or Scriptural Faith with the one necessary exception of Self-origination) is God ; but a somewhat, called the Son, that is not the same as the Father or Holy Ghost, is God ; and that a somewhat, characterised as the Holy Ghost, that is not the same as the Father or as the Son, is God ; and that these three ' whats ' are nevertheless but one God.
>
> What is this but an expression of the words, Trinity of Distinction, and Unity of Godhead ? And what does ' Person ' mean, but an intelligent, moral ' what ' ?
>
> S. T. C.

Under the date August 1817, Coleridge in volume i addresses the man from whom he had borrowed the book :

> Dear Sir,
>
> It is much to be regretted that so good and wise a man as Duncan Forbes was, and so calm and solid reasoner, should not have explained himself more at large, concerning the position (p. 99) that by the Light of Nature men might have learned the benignity and mercifulness of the God of Nature, but could not have deduced that he would pardon the Sinner sincerely and effectively penitent—*μετανοοῦντα*. Doubtless, he had weighty grounds for this affirmation, of the importance of which he himself seems to have been fully sensible.

Excusing himself for disfiguring the leaf of his friend's book, Coleridge expresses his agreement with one of Forbes's assertions, while doubting the other, viz.

that by the Light of Nature, as contradistinguished from all Revelation, man could have learnt any of the moral attributes of God.

It does not seem that much profit is to be gained by a discussion here of the actual value of Forbes's religious works. The present writer is content to regard his Sketch of the Hutchinsonian System as (in Coleridge's words) 'a *model*[1] of its kind, in clearness and candour, in sobriety of judgement and——' [stops].

Forbes would appear to have been on terms of some intimacy with the Rev. John Hutchinson whose system he studied so closely, for on the demise of the latter, another of his 'zealous disciples', one W. Gardner, wrote to the President, 16th September, 1737 :[2]

> He told me when he lay ill that if you lived, as you had a general idea of what was to come, we should have it.

And he continues :

> If your Lordship has no formal commission about his papers, I must humbly entreat you to interpose and to use your endeavours that they may be preserved and published.[3]

By this time, of course, Forbes's own exegesis on Hutchinson's theology had already appeared in 1732 and in 1735.[4] An interesting contemporary comment on his theological writings is contained in a letter from Bishop Warburton to Dr. Hurd :

> I cannot omit recommending to you the late Lord President's posthumous work on 'Incredulity'; it is a *little jewel*. I knew and venerated the man, one of the greatest that ever Scotland bred, as a judge, a patriot, and a Christian.[5]

[1] This word in underlined by Coleridge.

[2] Hill Burton's date 1837 is obviously a misprint.

[3] *M.C.P.*, iii, p. 125.

[4] In his library was included a small volume entitled *The Life of Faith*, the margin of every page of which bore his remarks and criticisms. (*Sketches of Highland Families*, by John McLean, Inverness, 1895.)

[5] See *Life of Lord Kames*, Supplement, p. 5, by Lord Woodhouselee.

Fantastic as may have been these theories and flights in the realms of metaphysics, Forbes remained always the practical Christian. He was a 'punctual attender' upon public worship every Sabbath day, and during the summer he came from Stoneyhill in his chaise to the church, and reproved such Lords as did not attend.[1]

To the end, Duncan Forbes remained the student. He kept a running account with Gavin Hamilton, the Edinburgh bookseller, from whose accounts we can learn much of the type of book read by his noted customer. A bill for the year 1742 contains an assorted list. We quote a few items: Sibbald's *Miscellany*, *History of Georgia*, *Divine Legation of Moses* (3 vols.), and 'To binding *The Life of Ciceron*'. The following year his purchases include Hebrew Grammars and *Regia via Hebraiandi*, *Grammatica Arabia*, Young's *Night Thoughts* (Part III), a book on Astronomy, and some Latin works including Virgil and Scaliger. The bill is receipted for £2 18s. 1d. and the Virgil is to go to a new account.[2] Clark and Cunningham's Latin notes and Logan's notes on Horace were other volumes that claimed his attention. In the Uncatalogued Culloden MSS. in the National Library of Scotland is a tetrameter translation of Horace's *Ode* (I, 19) beginning 'Mater saeva Cupidinum'. This undated document is in Forbes's handwriting and is almost certainly his own composition.

Both his social bent and his literary interests would take him to Button's or other of the coffee-houses where the various clubs held their frequent meetings to hear Addison or other literary dictators of the time. The Lord President is said to have been a member of the Literary Club adorned by Swift and Pope.[3][4] There can be little doubt that in the essays of Addison and Steele, both brothers Forbes found diversion, and at least some leisure hours were spent in the company of Sir Roger. When Duncan had collected enough *Spectators*

[1] *Memoirs*, p. 56.

[2] Uncat. MS. in Nat. Liby.

[3] See J. Cameron Lees, *History of Inverness*, p. 286.

[4] Pope refers to the President's friend, George Ross: 'Rise, honest Muse, and sing the man of Ross.'

to make a presentable bundle, these were sent north to John. We find him writing from Edinburgh in January 1713 : 'I come to tell you that your *Spectators* shall be sent to-day,' and then he adds a somewhat amusing conditional clause, 'if the fellow will carry them.'[1] His interest in belles-lettres was genuine and not due to mere kind-heartedness towards writers in distress. In 1719 a fragment of a ballad, '*Hardy-knute*,' alleged to have been discovered in an old vault in Dunfermline, came into the hands of Forbes and Sir Gilbert Elliot, the Lord Justice-Clerk. They had it printed at their own expense, as they believed the ballad to be of intrinsic merit as well as of some antiquity. Included in 1724 in Allan Ramsay's *Evergreen*, *Scots Poems wrote by the Ingenious before 1600*, it was some years later discovered to be the work of Lady Wardlaw.[2]

A faithful servant of the State in the routine of government, with something of the high seriousness of one of Plutarch's Roman heroes, in his devotion to public duty, Forbes stands out pre-eminent in many spheres. A Crown lawyer in stirring times ; the chief judge in the Supreme Court of Scotland and with a reputation for even-handed justice ;[3] a reformer of the procedure of the Courts ; a re-organiser of the Records of his country ; a nurse of her industries and of her revenues ; a Member of Parliament who once at least eloquently stood forth in defiance of party ; a Maecenas among literary men and himself a student of Oriental languages and of theology ; the artificer of victory and the saviour of his country in the hour of distress ; and the adviser in the scheme of reconstruction, thereafter ; in these manifold capacities, Forbes played his part nobly in the nation's history.

His true greatness lies not in any one sphere. His powers

[1] Uncat. MS. in Nat. Liby.

[2] See Graham, *Scots Men of Letters of the Eighteenth Century*.

[3] When the Lord President, in the face of Cumberland's harsh measures, ventured to suggest to the Duke the need for some regard being had to 'the laws of the country', he was answered : 'The laws of the country ! My lord, I'll make a brigade give laws, by God ! ' (Chambers's *Jacobite Memoirs*, pp. 333-4).

have something of the home-spun qualities of that material produced in his own spinning schools. Character was his great achievement. Like Chamfort, he had sought 'honour not honours'. We might say that his life is the epic of the commonplace, not of the grand or heroic in dramatic events. He is an instance where the historian may pay tribute to the memory of a noble name and so in part compensate for the neglect of past generations. The career of Duncan Forbes is that of a great Scotsman whom his countrymen may look on with gratitude, and whom all men may contemplate with respect and admiration. *Nec sibi, sed toti mundo.*

APPENDIX

Letter from Cluny Macpherson to the Hon. Duncan Forbes, Lord President of the Court of Session

DALCHUNNIE,
30th August, 1745.

MY LORD,

I make no question but you have heard of my misfortune. It happened thus. In term of General Cope's orders I waited of him Monday last (26th Aug.) on his march over Drimochter and Tuesday (27th) near to Ruthven, where he and Lord Loundon allowed me to return home that night, conveen my men, and sett out Thursday, the 29th for Inverness.

I had near my number ready to march as ordered, tho' severalls of them were not my attested men, but upon Wednesday (28th) by 5 in the afternoon gote private account and I thought certain that the Highlanders had altered their root of Correy-arrack and designed march down the side of Lochness and intercept the General before he crossed the water of Nairn, whereof I that moment informed the General per express. This account in a few hours rang thorrow the country and was thoroughly credited, and I am now persuaded they actually designed it, if they had not been informed the troops were to continue some days at Ruthven which according to themselves was the only thing hurried them over Corryarrick Wednesday morning (28th) to attack them in this country and thereupon stopped all communication from that airt to us.

Nor were they informed of General Cope's march from Ruthven till they were near Garvamore late, and then finding the Armie had marched and that I was yet at Cluny (which indeed was fact and no apprehension of their approach) immediately ordered off a part of 6 score of men and seized me between 9 and 10 of the clock that night in my own house, dreading no danger. Those that were conveened of my company at my own desire dispersed and continued so, except these as were related to or had any connection with our neighbourhood. They joined the

Highlanders and I have still their attestations, they would not be above 9 or 10 in number. They carrie me prisoner along and does not seem inclined on any terms I'll yield [to] dispense with me.

They insisted violently threatening all military execution for this countrie's joining them, but they at all hazards refused. They were partly determined pursue and attack General Cope wherever they could come up with him, but at a council of war it carried,* they march south on all expedition, where (believe themselves) they'll be without loss of time and strongly assisted. And indeed they have need, for they scarcely come up to 2000, and many of them but very indifferently armed. Lochiel makes very near 800 and Cappoch about 240. Of Apine's men commanded by Ardsheil, 240. 400 and upwards of Glengarrie's men (including Glenmoriston) commanded by Glengarrie's second son. Young Clanranald is here with (200 ?).

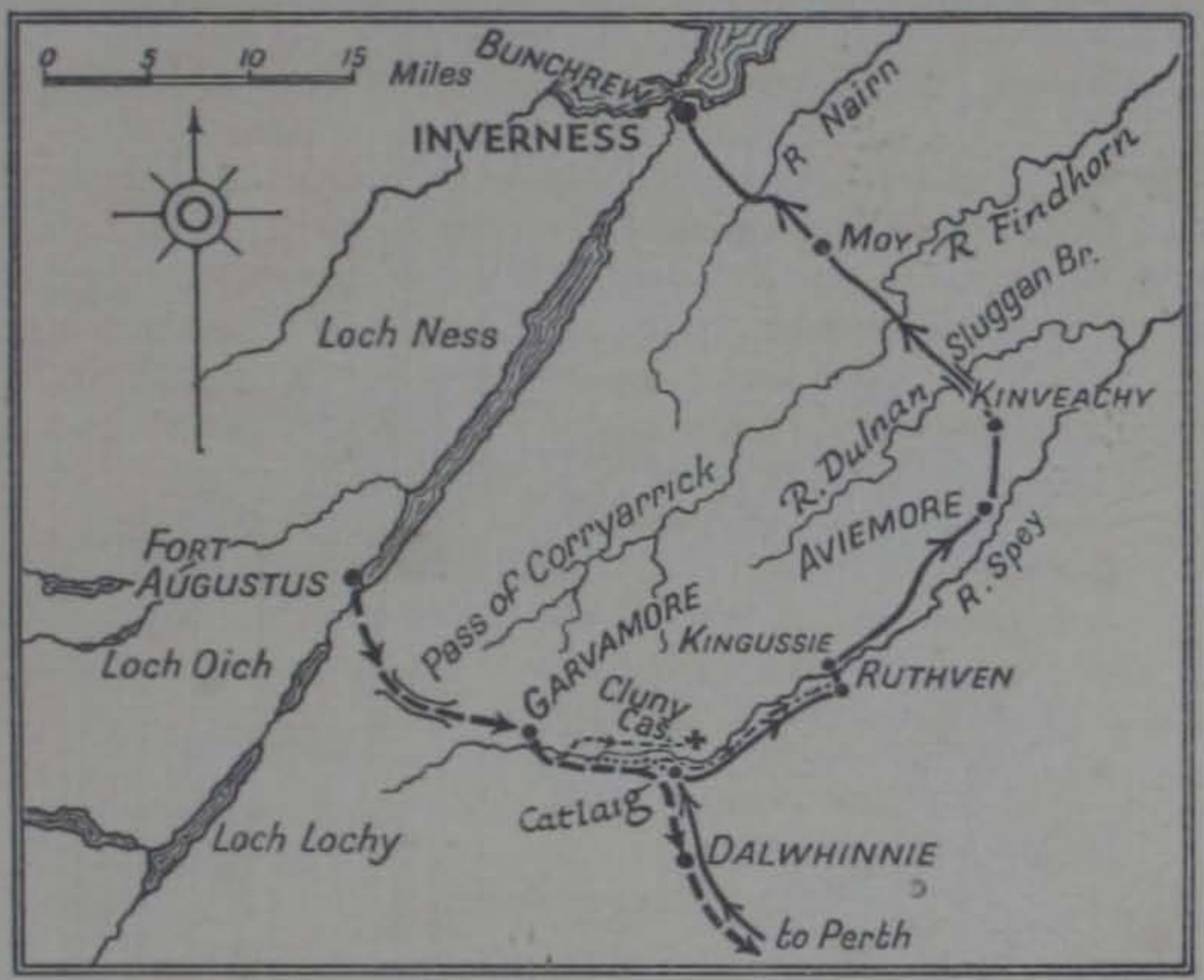
I would continue correspondence with your Lop. though it be now attended with more difficulty because of distance and my situation, which I hope you'll intimate to General Cope and my Lord Loundon as your Lordship shall see [is] seasonable. It was not in my power to write sooner as I was still kept hurried and in company. The Highlanders are to be this night at Dalnacardach.

I am with great regard,
My Lord,
Your Lordship's most obedient humble servant,
C. MACPHERSON.

DALCHUNNIE
30th August 1745 afternoon.

(Part of a collection of manuscripts deposited by the Committee of the Tweeddale Physical and Antiquarian Society, in the National Library of Scotland, 1933.)

MAP SHOWING ROUTES FOLLOWED BY PRINCE CHARLES AND SIR JOHN COPE AT THE END OF AUGUST, 1745.



Key :

— — → = Route followed by the main body of the Prince's army marching up Corryarrick on 27th August [1] or on 28th August,[2] and proceeding south.

——————→ = Route followed by main body of Cope's army on 27th, 28th, and 29th August, after leaving Dalwhinnie,[3] and proceeding to Inverness.

— - — - → = Route followed by Prince's detachment of 100 Camerons in apprehending Cluny,[4] and by another detachment of 200 in attacking barracks at Ruthven [5] on 28th/29th August.

. . . . → = Route followed by part of Cope's baggage, two companies of foot, and camp colours for four miles *in direction of* Fort Augustus to deceive the clansmen, 27th August.[6]

[1] Home : *History of the Rebellion*, p. 60.
[2] Lockhart Papers, ii, p. 443.
[3] Home : *History of the Rebellion*, p. 63, and Lockhart Papers, ii, p. 484.
[4] Lockhart Papers, ii, p. 443, and Appendix of this book.
[5] Culloden Papers, p. 391, No. 426, and Lockhart, *loc. cit.*
[6] Lockhart Papers, ii, p. 485.

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