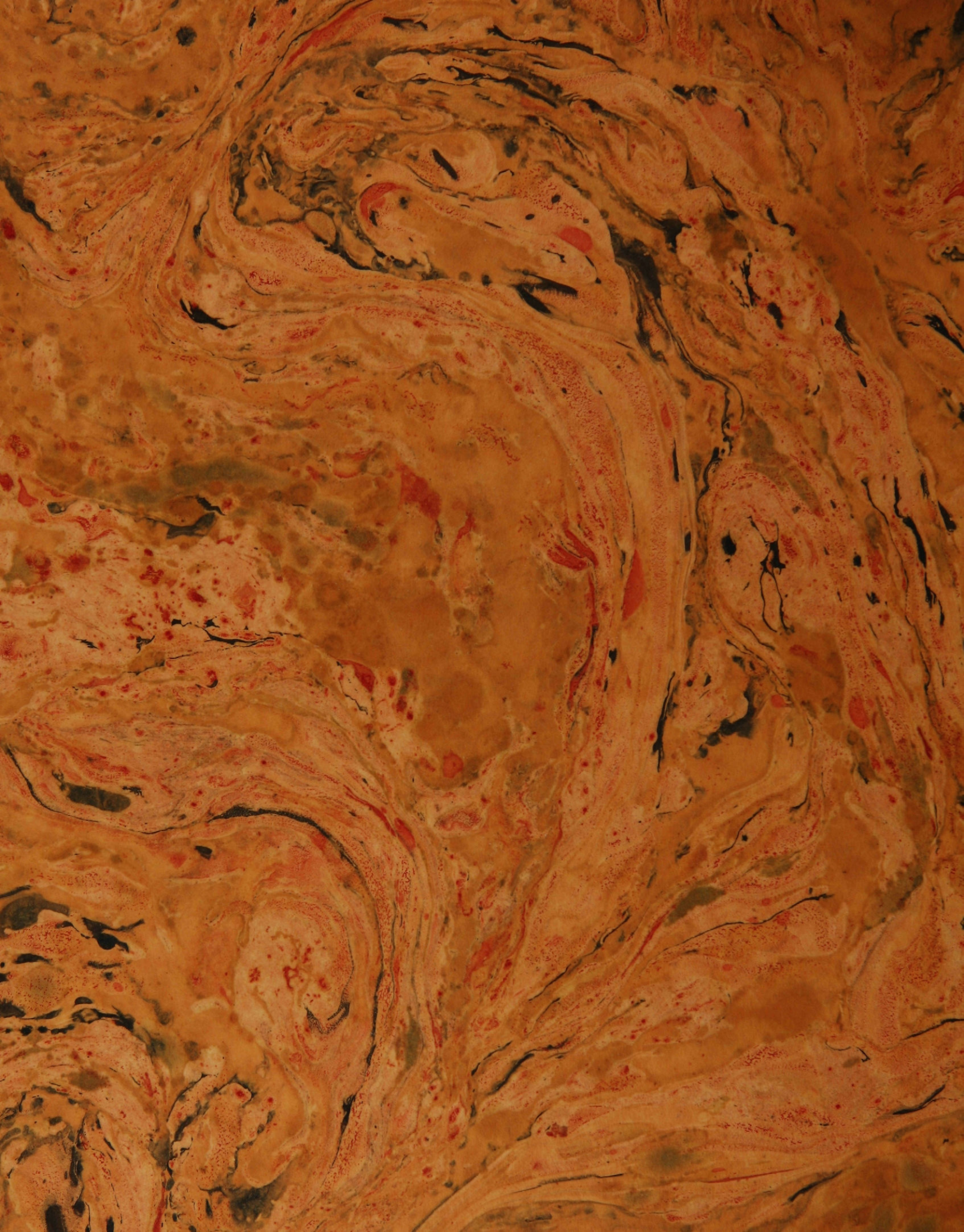


THE CASE  
OF  
ALEXANDER  
EARL AND VISCOUNT OF STIRLING



**THE CASE**

OF

**ALEXANDER, EARL AND VISCOUNT OF STIRLING,**

VISCOUNT CANADA, LORD ALEXANDER OF TULLIBODIE,

PREMIER BARONET OF NOVA-SCOTIA,

*&c. &c. &c.*

460. Henrys - Alexander

THE CASE

ALEXANDER FARLAND AND TIMOTHY W. FARLAND

PLAINTIFFS

VERSUS

THE STATE

113

2 pedigrees (one folding)

# THE CASE

OF

**ALEXANDER, EARL AND VISCOUNT OF STIRLING,**

VISCOUNT CANADA, LORD ALEXANDER OF TULLIBODIE,

PREMIER BARONET OF NOVA-SCOTIA,

*&c. &c. &c.*



## C A S E,

&c. &c.

SIR WILLIAM ALEXANDER, of Menstrie, knight, Master of Requests to king James the 6th of Scotland (1st of England) was, in 1625, created premier Baronet of Nova Scotia, on the first institution of that Order, to hold the said degree of honour to him and his heirs whatsoever. In 1630 he was created Lord Alexander of Tullibodie and Viscount of Stirling, to him and his heirs male bearing the name and arms of Alexander.

Baronet of  
Nova Scotia  
to Heirs Ge-  
neral.

Baron and  
Viscount to  
Heirs Male  
General.

In 1633 he was further advanced to the dignity of Earl of Stirling and Viscount Canada, with the same limitation to his heirs male bearing the name and arms of Alexander.

Earl of Stir-  
ling, &c. to  
Heirs Male  
General.

After this, the Earl having become extremely dejected by the death of three of his sons, and witnessing the declining state of health of two of the survivors, was afraid that his Titles and Estates, as well those he had by ancestral inheritance, as those he held by grant from the Crown, by failure of issue male of his own body, might pass to some collateral branch of his family; for these, and other, considerations, he was

Charter of  
Creation de  
Novo-Da-  
mus, with  
special limi-  
tations.

induced to make a resignation of his Titles and Estates, aforesaid, to the King (according to the custom and prevailing law of Scotland). Whereupon, His Majesty, by his royal Charter, or Letters Patent of Novo-Damus, under the Great Seal of Scotland, dated 7th December, 1639, was pleased to re-grant them (i. e. Titles and Estates) to the Earl, and to "*the heirs male of his bodye, which failing, to the eldest heirs female without division, of the last of such heirs male hereafter succeeding to the titles, honours, and dignities aforesaid; and to the heirs male to be procreated of the bodys of such heirs female respectively bearing the sirname and armes of y<sup>e</sup> familye of Alexander, which they shall be holden and obliged to assume: which all failing, to the nearest legitimate heirs whatsoever of the said William Earl of Stirling, with precedency from the 14th June, 1633.*"

Vide Pedi-  
gree.

The Earl did not long survive this new grant, and re-limitation of his Family Titles, &c. but died in February, 1640. He had issue seven Sons, named in the Pedigree, whereof William, Viscount Canada, the eldest, died before him in March 1638, having left an only son, William, and three daughters, which

William, 2d  
Earl.

William, 2d Earl of Stirling, having succeeded his grandfather, survived him but a short time, deceasing about May 1640, when, dying unmarried, the Titles devolved upon his Uncle Henry, who was his father's next surviving brother, and heir male. This

Henry, 3d  
Earl.

Henry, 3d Earl of Stirling, died about 1644, having had issue an only son, Henry, who succeeded to his honors: the said

Henry, 4th  
Earl.

Henry, 4th Earl of Stirling, died in 1690, having had four sons,



whereof William, Robert, and Peter, the three youngest, died without issue before 1730, and the eldest,

Henry, became the 5th Earl. He died the 4th December, 1739, without issue; by which event, the whole of the male line of the three eldest sons of William, 1st Earl of Stirling having failed, the course of succession became vested in the Rev. John Alexander, grandson and heir male of John Alexander, the 4th son of William the 1st Earl of Stirling, which John had gone to Ireland, and was for some time settled in the county of Londonderry.

Henry, 5th  
Earl.

Vide Pedit-  
gree, an-  
nexed.

The Rev. John Alexander, second cousin and heir male to Henry the preceding Earl, was born in the north of Ireland in 1686, and at the period of becoming heir male representative of his noble family, was Minister of the Scotch Presbyterian Church in Plunket Street, Dublin, having been brought up in the religion of his Scottish ancestors; his income hence arising, added to his private fortune, was, without being considerable, sufficient to enable him to live in a genteel and respectable manner, and even to be occasionally the benefactor to the poor. But when the right of succession to the family honours fell upon him, he found that the Estates in Scotland, which by the Charter of Novo-Damus were limited to the same course of heirs, produced too inconsiderable a revenue to enable him to support his high Dignity, and that the Property acquired in England by the marriage of Henry the 3d Earl with the heiress of Sir Peter Vanlore, and which he ought also to have inherited under a Deed of Settlement (hereafter cited) had been taken possession of by the families into which the sisters of his cousin, the deceased Earl Henry, had intermarried; he, therefore, chose, instead of immediately and publicly

John, 6th  
Earl, de  
jure.

assuming his rank, to allow it for the present to remain dormant, though among his friends and intimate acquaintance, he was well known and reputed as 6th Earl of Stirling. The very short time he super-lived the last Earl, (only three years and eleven months) was not long enough to enable him to prosecute with effect those legal proceedings which were necessary to be adopted to obtain possession of his ancestral Estates in Scotland, or of the settled ones in England. His exertions, however, were unabated, and about the middle of the year 1743, having collected every proof, with the evidence of Royal Charters, Wills, and other Documents, adequate to establish the clearness of his Right, he was preparing openly to avow his Rank, when illness, and death, deprived his Family of their Protector, and cast all his Affairs into confusion. He died the 1st of November, 1743. At this crisis his Children, two sons and two daughters, were all in minority, the eldest son not eight years old. The widow, thus left with four infants and only a small fortune, determined to leave Ireland, and retire to her native country, England: and being a woman of good sense, but destitute of ambition, she hastily gave directions to stay all proceedings for recovery of the Estates, that she might not incur any more legal expences, which, under existing circumstances, could not be afforded out of a limited income. Still, though she was regardless of family honours, she generously made every possible pecuniary sacrifice, to give her children the advantages of education; the private causes, however, which have hitherto prevailed to continue dormant the various Rights of this Family, would be too prolix to recite, and, as it is the descent which is principally under consideration, it may be expedient to proceed therewith.

John, 7th  
Earl, de  
jure.

John, eldest son and heir of the Rev. John Alexander, the 6th Earl *de*

*jure*, like his father, was a learned and distinguished Presbyterian Clergyman, but died suddenly, unmarried, the 29th of December, 1765, being then only in the 30th year of his age.

Benjamin Alexander, the 2d son, by the death of his elder brother without issue, was his heir, and consequently the next Earl, *de jure*, of his family. He was rising into eminence as a Physician, and, had he lived a few years longer, would most likely have taken up the honours which had descended to him: but, from over exertion in study, he was taken ill, and died the 18th of April, 1768, two years and four months only after his elder brother. Being unmarried, with him terminated the whole of the male issue descended of the body of William the 1st Earl of Stirling, and thereupon his two sisters were his co-heirs: but as, under the Charter of Novo-Damus, the special limitation of the descent of the honours was “*To the eldest heirs female, without division of the last of such heirs male hereafter succeeding to the Titles, &c.*” the right of succession to the Earldom, &c. devolved entire upon Mary Alexander, the eldest of the aforesaid two sisters.

Benjamin,  
8th Earl,  
*de jure*.

Mary Countess of Stirling, *de jure*, died unmarried in April 1794, when her only and surviving sister, Hannah, the wife of William Humphrys, of the Larches, in the County of Warwick, Esquire, became her heir, and sole heir general to her Brothers John and Benjamin, the two last heirs male in succession to the title and dignity of Earl of Stirling; the said

Mary  
Countess of  
Stirling, *de jure*.

Hannah Countess of Stirling, *de jure*, died 12th Sept. 1814, leaving

Hannah  
Countess of  
Stirling, *de jure*.

Alexander Humphrys, Esquire, her only son and heir, who, in consequence of his descent, and by reason of the restrictive clause contained

in the Charter of the Earldom *de Novo-damus*, viz. “ *To the heirs male to be procreated of the bodys of such heirs female respectively, bearing the surname and armes of ye familye of Alexander, which they shall be holden and obliged to assume,*” &c. has taken the surname of Alexander, under his Majesty’s Royal Licence, dated from the Court at Carlton-House the 8th March, 1824, which has been duly registered in the College of Arms, and Gazetted accordingly, and in conformity thereto.

Alexander,  
9th Earl,  
*de jure.*

The limitations, therefore, of the aforesaid Charter, under which the family Honors are restricted to descend, having all concentrated in the same person, it is considered that he is the heir of nomination and designation, and as such entitled to be Earl of Stirling, &c., with all the rank, rights, &c. &c. &c. appertaining to the said peerage, name, and dignity.

It may not be here irrelevant to observe, that, in consequence of the title not having been assumed by the family to which it had (as before stated) most unequivocally descended, one William Alexander, an officer in the British Army, claimed the same, and presented a petition to his Majesty, setting forth the Patent of the 14th of June, 1633, by which William the first Earl was so created, with limitation to his heirs male general; and representing that, by the failure of issue male of the body of the said Earl, (which he assumed to be the case from the dormancy of the right heir, namely, John the seventh Earl *de jure*). He was the heir male of succession, being descended from John Alexander, the Uncle of William the first Earl. This petition was referred to the Lords on the 2d of May, 1760; and a second petition, in the same words, was referred again to the Lords the 14th April, 1761: but, in March 1762, the Lords’ Committees rejected his pretensions.

He afterwards retired to America, where he was one of the generals of Congress against the British arms. He died at Albany in North America in 1783. This claim is the more noticeable, because the claimant feigned ignorance of the Charter of *Novo-damus* (before cited), at the same time that he had, by some extraordinary chicanery, possessed himself of a copy of it, with many important documents, evidences, and vouchers, belonging to the Rev. John Alexander (the sixth Earl *de jure*), all which had been in the custody of that Earl's widow after her return to England. These important papers have lately been discovered in America, and are now restored to their just and lawful owner, the grandson and heir of the said Rev. John Alexander, the sixth Earl, as aforesaid.

Having thus recited the descent of the Earldom, it remains to remark,

1st, Upon the Scotch property, which was made descendable with the entailed honors: this comprehended, among other lands, the ancient patrimonial Barony of Menstrie, of which the first Earl of Stirling was the eighth Baron by descent; and this property was augmented by divers charters of grants from King Charles the First, of the Baronies of Largis, Tullibodie, Tullicultrie, Gartmore, Stirling, &c. &c., all which were surrendered to the king, and regranted and confirmed by the Charter of *Novo-damus*, dated 7th December, 1639.

2ndly, With regard to the English estates, they were in the counties of Berks, Bucks, Surrey, and elsewhere; these were after-acquired estates, by the marriage of Henry, third Earl of Stirling, with the daughter and heiress of Sir Peter Vanlore, and were, by a deed of settlement of the said Earl, thus limited to attend upon the inheritance of his

family honors, viz. “ *To the heirs male of his body, whom failing to the heirs male of the bodies of his brothers John, Charles, and James, successively, whom all failing, to the eldest surviving heir female of the last of such heirs male on whom the family honors shall have devolved, and to her heirs for ever.*”

By the Pedigree attached, and the preceding statement, it has been shown, that all heirs male of the body of the third Earl failed in the person of Henry the fifth Earl, by whose death S. P. the rights of succession in remainder ought to have passed, with the immediate possession of the entailed estates, to the Rev. John Alexander, grandson and heir of John, the first remainder man in the deed of settlement just cited: but the said Rev. John Alexander, as already observed in the former part of this case, was kept out of them by the families into which the sisters of Henry the fifth Earl had intermarried.

Your opinion is therefore requested.

Whether, taking it for granted that the extinction of the issue male of the body of William first Earl of Stirling, and the descent of the present person's own line (as set forth in the pedigree) can be proved, and which he is fully prepared to prove, by the adequate evidence of parochial registers, wills, deeds, and other legal documents and vouchers, he has a right to consider himself entitled to the inheritance of the peerage honours contained in the Charter of Novo-damus, dated 7th December, 1639?

*Copy of Mr. Brougham's Opinion.*

“ Supposing the Charter of *Novo-damus* to be produced as herein  
 “ set forth, and that there was no subsequent surrender, and that this  
 “ pedigree can be proved, I think the claimant is entitled to the honours,  
 “ as heir male of the body of the heir female of the first grantee's last  
 “ surviving heir male of his body.

“ H. BROUGHAM,

“ Lincoln's-Inn.

“ *April 16, 1825.*”

*Copy of Mr. Bolland's Opinion.*

“ If the extinction of the issue male of the body of William first  
 “ Earl of Stirling, and the descent of the present claimant's own line,  
 “ as set forth in the pedigree, can be proved, I am of opinion he is  
 “ entitled to the inheritance of the peerage honors contained in the  
 “ Charter of *Novo-damus* of the 7th of December, 1639.

“ WILLIAM BOLLAND,

“ Inner Temple.

“ *April 28, 1825.*”



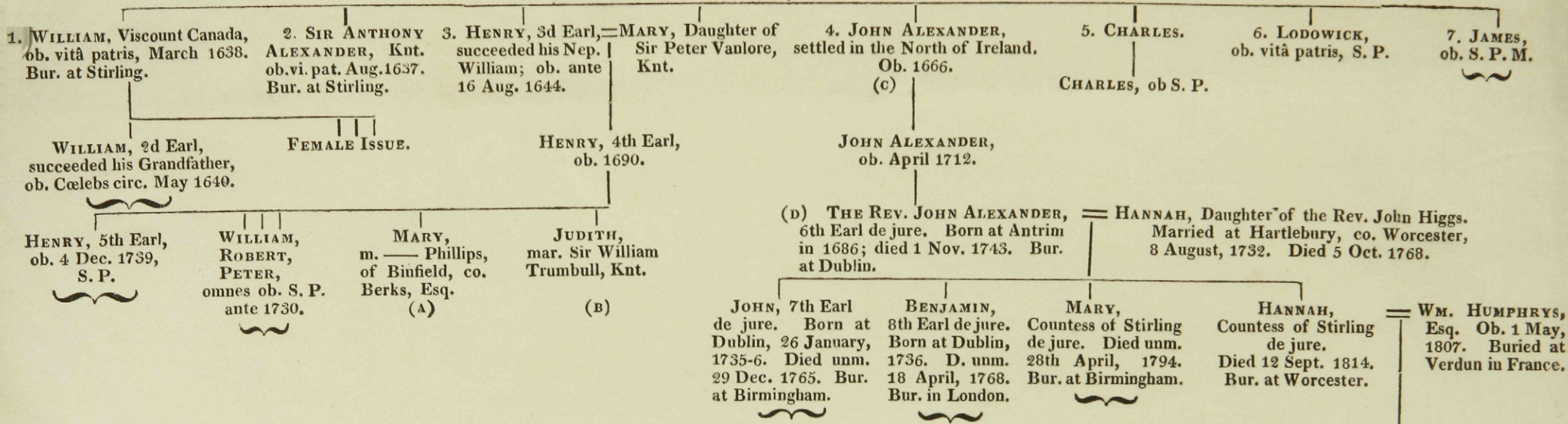


# PEDIGREE.

SIR WILLIAM ALEXANDER, FIRST EARL OF STIRLING, &c. &c. &c.

By Charter of Novo-damus, 7 Dec. 1639, limited "to hold to himself and the heirs male of his body, which failing, to the eldest heirs female, without division of the last of such heirs male hereafter succeeding to the Titles, Honors, and Dignities, aforesaid, and to the heirs male to be procreated of the bodys of such heirs female respectively, bearing the surname and armes of Alexander, which they shall be holden and obliged to assume, &c." Ob. Feb. 1640. Bur. at Stirling.

*This deed is  
Believed to  
be a forgery*



(A and B.) These Ladies were sisters, and coheirs at common law to their brother Henry, the fifth Earl. They both had issue, which, upon the death of the Earl, their uncle, took his estates, and kept them against the heir male of entail, the Rev. John Alexander, the next succeeding Earl de jure.

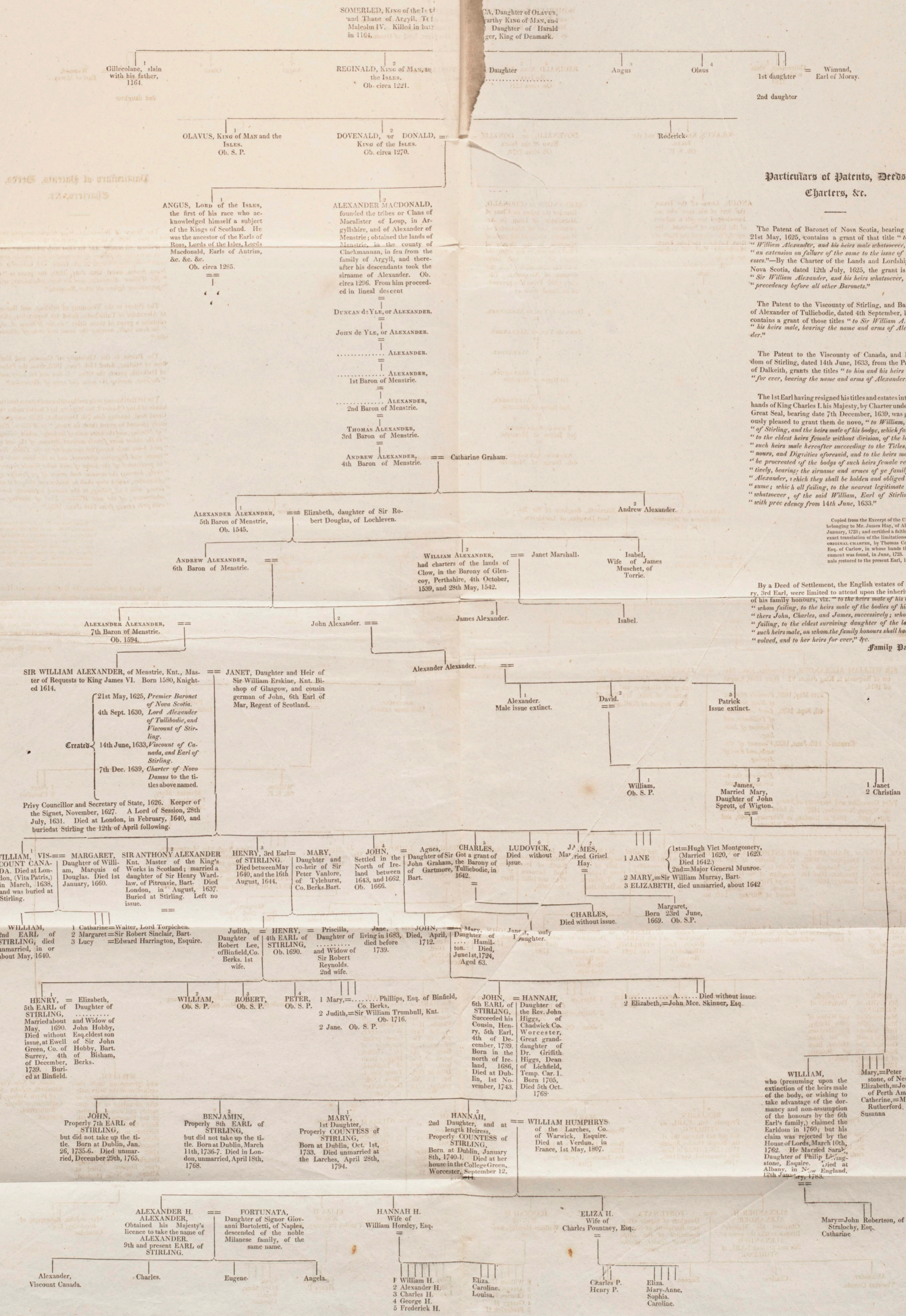
(c.) This John Alexander was first remainder man in the Settlement of his brother Henry, the third Earl.

(D) Upon the failure of issue male in the person of Henry, the fifth Earl, this John was not only the immediate heir to the Earldom, but was the first and next heir male to the remainder mentioned in the Deed of Settlement, by which his great uncle Henry, the third Earl, entailed his English estates to attend upon the inheritance of his honours.

ALEXANDER HUMPHRYS ALEXANDER,  
only son and heir. Took the name of Alexander by His Majesty's royal licence, March 1824.  
(9th Earl of Stirling de jure.)

N.B. The proofs of the Baptisms, Marriages, and Burials, of the above persons, though not here particularised, are all collected, and forthcoming when wanted.

# PEDIGREE OF THE FAMILY OF ALEXANDER, EARLS OF STIRLING.



## Particulars of Patents, Deeds, Charters, &c.

The Patent of Baronet of Nova Scotia, bearing date 21st May, 1625, contains a grant of that title "to Sir William Alexander, and his heirs male whatsoever, with an extension on failure of the same to the issue of his issue."—By the Charter of the Lands and Lordship of Nova Scotia, dated 12th July, 1625, the grant is "to Sir William Alexander, and his heirs whatsoever, with precedence before all other Baronets."

The Patent to the Viscounty of Stirling, and Barony of Alexander of Tullichodrie, dated 4th September, 1630, contains a grant of those titles "to Sir William A. and his heirs male, bearing the name and arms of Alexander."

The Patent to the Viscounty of Canada, and Earldom of Stirling, dated 14th June, 1633, from the Palace of Dalkeith, grants the titles "to him and his heirs male for ever, bearing the name and arms of Alexander."

The 1st Earl has resigned his titles and estates into the hands of King Charles I. his Majesty, by Charter under the Great Seal, bearing date 7th December, 1639, was graciously pleased to grant them de novo, "to William, Earl of Stirling, and the heirs male of his body, which failing, to the eldest heirs female without division, of the last of such heirs male hereafter succeeding to the Titles, Honours, and Dignities aforesaid, and to the heirs male to be proceeded of the body of such heirs female respectively, bearing the surname and arms of ye family of Alexander, which they shall be holden and obliged to assume; which all failing, to the nearest legitimate heirs whatsoever, of the said William, Earl of Stirling,—with precedence from 14th June, 1633."

Copied from the Excerpt of the Charter, belonging to Mr. James Hay, of Alloa, in January, 1723; and certified a faithful and exact translation of the limitations in the ORIGINAL CHARTER, by Thomas Comyers, Esq. of Carlow, in whose hands that document was found, in June, 1723. Originals restored to the present Earl, 1825.

By a Deed of Settlement, the English estates of Henry, 3rd Earl, were limited to attend upon the inheritance of his family honours, viz. "to the heirs male of his body, whom failing, to the heirs male of the bodies of his brothers John, Charles, and James, successively, whom all failing, to the eldest surviving daughter of the last of such heirs male, on whom the family honours shall have devolved, and to her heirs for ever," &c.

Family Papers.





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460. Humphrys-Alexander.

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