ARE THERE TWO EARLS OF MAR?

An article appeared under the above title in part xii of the 'Collectanea Genealogica,' and has been considered worthy of a reprint, in company with another attack upon Lyon, King of Arms, by Mr. Foster. The impression produced upon me by the article on "Mar" is, that the author, Mr. J. H. Round, has recently studied the question for the first time; and while he refrains from discussing the resolution of 1875 on its merits—deterred, perhaps, by modesty—he considers that the sequence of events happening since 1875 offers a fair opportunity for attacking the honesty and intellectual capacity of those who have since supported the heir general.

More than twenty closely-printed pages are devoted to proving that there cannot be two Earls of Mar, and to ridiculing those who assert that there can. It is impossible to conceive a greater waste of industry, paper, pen, ink, and printing expenses. No human being supposes that there are two Earls of Mar in fact; but the question, not apprehended by Mr. Round, is—whether it is possible to support the *legal fiction* of two earldoms, in order to do justice in a case where great injustice is alleged to have been done?

In the opinion of the late Earl of Crawford and of a very powerful phalanx of lawyers, supported by a public opinion

expressed in all classes of society, the resolution of 1875 was erroneous. But it cannot be in terms reversed. Is there any remedy?

Now, whatever the Lords may have meant by the resolution (and there is not much doubt as to that), they expressed themselves in an unusual manner, and by limiting their resolution to an earldom created (as they say) in 1565, they have not touched the ancient earldom. Therefore, those who consider that the question was very insufficiently considered by persons who, whatever their reputation in other branches of law, were not at the time the peers best able to deal with it, fasten upon this technical point in order to justify a reconsideration of the merits. Nor can it be said that, if the House of Lords take such a course, they in any way do wrong. For, surely, the remedy of injustice is a higher and nobler duty than a mere assertion of *non possumus*.

I assert then, in opposition to Mr. Round, that a man is not a fool who says it is conceivable that Queen Mary, while actually restoring an ancient dignity to its rightful possessor, may have done something else at the same time which amounted to a legal creation of a modern peerage. Though, even in this case, it is extraordinary that she should take back lands limited to a man and his *heirs male*, and give them to a man and his *heirs*, if the dignity they were intended to support (or restore) was not to have the altered limitation.

A man, I say, can honestly and wisely make such an assertion: and, for the purpose of doing justice, it is a very proper assertion to make.

There is only one passage in Mr. Round's article to which I will further refer: "That an existing earldom should have been created before 1014, is sufficiently amusing to any one who has the slightest acquaintance with history." This mode of writing, arrogating to the writer a lofty and supercilious contempt for his opponents, is one which Mr. Round would do well to avoid. Too much of it appears, to the injury of good argument, in the writings of Mr. Foster and of many genealogists. So far as I am concerned, I see nothing amusing in the proposition. I *believe* that the Earl of Mar, or rather the Maormar of Mar, was summoned to the battle of Clontarf. I *believe* that his son obeyed the summons, proceeding (as I think) from the Celtic head of his house; and I see no impossibility in the Maormar being now represented by an heir.

Mr. Round appears to belong to the class of those who, using such expressions as "*peerage earldom*," differ from the opinion, held by many heralds and genealogists, that a feudal *dignity* is not quite the same thing as a modern *peerage*—that, in fact, it is a greater thing—and that the law which determines the descent of the greater honour ought to control the law affecting the less.

W. A. LINDSAY, *Portcullis*.

ARE THERE TWO EARLS OF MAR?

Viewed as a reply to my article on this question, Mr. Lindsay's strangely random observations would call for no notice from my pen. As, however, instead of combating my conclusions, he has completely, though no doubt unintentionally, misrepresented both my position and my aims, it is only right that the readers of the GENEALOGIST should be placed in possession of the facts.

Mr. Lindsay asserts that "it is impossible to conceive a greater waste of industry, paper, pen, ink, and printing expenses" than to prove "that there cannot be two Earls of Mar," as "no human being supposes that there are two Earls of Mar in fact" (*vide* p. 60). I reply that the Kings of Arms for Scotland and Ireland are, to the best of my belief, human beings, and that Ulster, writing avowedly with the authority of Lyon at his back, recognises "that there are two Earls of Mar in fact," and inserts both of them annually in his *Peerage*. It is not to be wondered at that, when such is the case, it should be similarly recognised by lesser lights, or that it should be widely believed by the general public "that there are two Earls of Mar in fact."

The avowed object of my own article was to set before the public, as clearly as was in my power, the true bearing of the Lords' decision (quite irrespective of its merits), and to shew that the honest acceptance of that decision was irreconcilable with the recognition of two Earls of Mar. I readily admit the perfect consistency of those who, rejecting that decision as wrong and of no account, hold that the Earldom of Mar is vested in Mr. Goodeve-Erskine. My quarrel is with those who would persuade the public that the honest acceptance of the Lords' decision is reconcilable with the recognition of Mr. Goodeve-Erskine as holding the "ancient" Earldom of Mar, by which they mean the only Earldom, the Earldom on the Union Roll. I contend that this position can only be established by the *dis*honest acceptance of the Lords' decision, by misrepresenting the intent of the resolution, and by reducing it, in my own words, "to unmeaning and unintelligible nonsense."

Mr. Lindsay, I am surprised to find, is now compelled to admit, though with an ill-grace, the very point for which I contended. He confesses that "there is not much doubt as to 'what' the Lords may have meant by the resolution," and that it is only by quibbling over a "technical point," or, to use a homely expression, by "making believe a great deal," that it is possible to set up "the *legal fiction* of two Earldoms." Now, if Mr. Lindsay admits this, namely, that the resolution unquestionably means one thing, and that it can only be made to mean the other by avowedly wresting it from the sense it was intended by its framers to bear, he admits my contention that this ingenious "fiction" is incompatible with the *honest* acceptance of the Lords' decision. This, indeed, is obvious from the fact, which my critic does not attempt to meet, that its supporters, *as I have shown*, can only prove their case by "a flagrant *suppressio veri*."

I accept his irritation at having to make this confession as the most flattering testimony to the success of my "attack," for it proves that I have effectually torn the mask from the "ancient Earldom" quibble, and have shaken down that house of cards, on which so many hands have long been toiling, just as it was beginning to create the desired impression

of solidity. Henceforth it will be impossible to conceal from the public that the co-existence of two Earldoms is only a "legal fiction," started "in order to justify a reconsideration of the merits," and that they are not called upon to accept Mr. Goodeve-Erskine as "Earl of Mar in fact," as, hitherto, they notoriously have been.

The House of Lords, moreover, will be warned in time that they are virtually called upon, as this phrase shows, to try the case over again, in the hope that they may stultify their former decision by pronouncing that the Earldom of Mar is vested in Mr. Goodeve-Erskine, and that the dignity to which, by their resolution, Lord Kellie had "made out his claim" was not "the Earldom of Mar" at all, but a 'bogus' Earldom, or, as Mr. Goodeve-Erskine and his supporters express it—"a new Mar title not on the Union Roll"—"a newly-discovered Earldom"—"a creation unknown to Scottish law and Scottish history."

Lastly, I observe that Mr. Lindsay, out of my article, has selected for criticism this one remark:—

> That an existing "Earldom" should have been "created" before 1014 is sufficiently amusing to any one who has the slightest acquaintance with history.

As my critic highly resents this remark, I emphatically repeat that such glaring anachronisms, such ludicrous travesties of history, are distinctly mischievous and misleading, and deserve to be mercilessly satirised. Is Mr. Lindsay prepared to produce any mention of an "*Earldom* of Mar" as even existing at that period, and will he reveal to us the form of "creation" in use "before the era of genuine history"? Till he has done so, I shall denounce the formal entry "*creation*, before 1014" as an imposture on a credulous public. "So far as I am concerned," says my critic, "I see nothing 'amusing' in the proposition." I am very sorry to hear it is so, but really I cannot be held responsible for Mr. Lindsay's deficiency in the sense of humour.

J. H. ROUND.

Having been favoured with an opportunity of reading Mr. Round's reply to my few words of criticism upon an article of his, and thinking it obviously undesirable to postpone for another three months my inevitable rejoinder, I beg leave to submit it now.

It is not, of course, very easy for counsel to write freely about an honest or dishonest acceptance of a decision of the House of Lords, but I will do my best to explain to those who are oppressed by the doubts and difficulties which envelop Mr. Round's mind on this subject, how the question presents itself to those who believe in the existence of an ancient Earldom of Mar.

It is conceded that the Earl of Kellie has been admitted to an Earldom of Mar which was created in 1565, but it is contended that this is *not* the Earldom of that name known previously to the peerage of Scotland, but a dignity which was first discovered in 1875. It is, of course, quite possible that when Queen Mary restored the ancient Earldom she may have done some further act which, in the opinion of the Committee of Privileges, granted or created a new dignity simultaneously with the restoration of the old one; and although those whose views I am

defending think that this inference on the part of the Committee was mistaken, they are ready to admit it out of deference to the Court which asserted it. But if Mr. Round imagines that the most ancient peerage in the kingdom is to be treated by heralds, genealogists, and antiquaries as extinct, because the members of a small Committee of the House of Lords stated this as their opinion—that opinion not being any part of the resolution—he is very much mistaken. I do not for one moment wish to say that my friends are necessarily right, and their opponents wrong; but the question requires a more authoritative decision, pronounced by judges of known information in this kind of law, before it can be regarded as settled.

I do not know whether Mr. Round has read the evidence. Very few critics have. But I say, without fear of being challenged, that, whatever the true result of the evidence, it at least establishes the existence of a general belief of all the restored Earls, of the family while under attainder, of the Court of Session in Scotland, and of statesmen—that the ancient Earldom of Mar did exist. A hesitating opinion of about ten printed lines on the part of Lord Cairns, and two lengthy Judgments on the part of Lords Chelmsford and Redesdale, which contradict each other both as to the facts and the inferences to be drawn from the facts, are hardly sufficient to outweigh the view taken by the great Lord Hailes and by a whole host of antiquaries and others of the highest possible repute. The decision as to the Earldom of Mar, if final, is a complete reversal of that applying to the Earldom of Sutherland; when the same arguments adopted by the then heir male (as by the Earl of Kellie) were rejected—just as the two decisions on the Earldoms of Wilts and Devon are incompatible. No tribunal has ever spoken in so opposite a manner as the Committee of Privileges of the House of Lords, and this is particularly the case in relation to Scotch Peerage claims. If the dispute be merely one between two claimants, the public is content whether the decision is right or wrong; but when it is proposed to extinguish a dignity of the grandest historical importance, the question is of much greater interest and requires more attention than the Earldom of Mar received in 1875.

In answer to Mr. Round's concluding paragraph, I say, emphatically, that the Maormar of ancient Celtic Scotland was as truly a peer as the dukes and earls of Saxon England. If the latter had left heirs there would be no absurdity in an existing English Earldom dating from before the Conquest, and such a fact does not appear incredible, or its assertion amusing, when it relates to Scotland.

Whether Mr. Round will be able to discover any "misrepresentation," "ill-grace," or "irritation," in the above remarks, I know not; but my Scottish "deficiency in the sense of humour" makes it very difficult for me to perceive the utility of such epithets as applied to a legal opponent. I can, however, notwithstanding that inability, cordially congratulate Mr. Round on the pleasure he has derived from his attack, resulting in the shaking down of a "bogus" Earldom as if it were a "pack of cards," and opening the eyes of the House of Lords to an insidious attempt against its authority, which, but for his assistance, that House would not have been able to "unmask" or detect.

W. A. LINDSAY, *Portcullis.*