

NOTE.

It was stated in the first edition of a book by Mr. A. R. Wallace, recently published ('Land Nationalisation,' Trübner, 1882), that Mr. Sellar was acquitted because the landlord influence was too strong. It was also stated that he was dismissed from his post of factor. In a later edition of his book Mr. Wallace has voluntarily withdrawn these assertions; but as they were circulated for some time, it is necessary here to take notice of them, lest hereafter some one should quote them as uncontradicted statements.

First, as regards the former of Mr. Wallace's assertions, namely, that as to landlord influence being too strong. It is to be remarked that Mr. Wallace produced no evidence whatever of the exercise of such influence on the jury. He did not even state how he supposed it was exercised. In point of fact he found the result of the trial to be a difficulty in his way, and he drew from his imagination the theory of landlord influence, without having the slightest ground for his assertion. The jury is described by the press at the time as being a most respectable jury; they were drawn from various parts of the north of Scotland,¹ and were of various avocations. And it is only necessary to examine the evidence to see that no jury could have come to any other conclusion than that to which the jury who tried the indictment against Mr. Sellar came.

Second, as to Mr. Wallace's other assertion, namely, that Mr. Sellar was dismissed from his post, the writer is in a position to state that it is not true. The trial took place in April 1816. Mr. Sellar retained his factorship till November 1818, at which time he resigned it, as he had meanwhile succeeded to a considerable property on the death of his father, and had, besides, taken large farms, which thenceforth required his undivided attention. Moreover, the writer can state from his own knowledge that Mr. Sellar retained the confidence and esteem of the Marquis and Marchioness of Stafford to the end of their respective lives.

¹ There were no persons from Sutherland or Caithness on the jury, because, in consequence of the difficulties of communication from the want of roads and bridges, the inhabitants of these counties were exempt from serving on juries at Inverness till 1819.

compensation of the tenants from their holdings, he, at the same time, made the following statement: 'Of the humanity, and even the self-sacrificing liberality, with which the operation was conducted throughout the county of Sutherland, which has been historically associated with the system—in whatever dust the turmoil of controversy may have once clouded the question, there can now' (in 1847) 'be no doubt. Wherever else cruelty or selfishness may have shown themselves, the world is now possessed of full and conclusive evidence that the Sutherland clearings were conducted with as much forbearance as intelligence.' In another article (October 1857) the writer, Mr. Alexander Russell, declared the removal of the tenantry to have been a necessity, if they were to be rescued from ever-increasing poverty and wretchedness.

Mr. Patrick Sellar died in 1851, and subsequently to his death, his family were not aware of any publication appearing during the following thirty years which assailed his reputation. But it seems that in the year 1856, some residents of Greenock reissued MacLeod's letters. This reissue bears, it is believed, the name of no publisher, it was not entered at Stationers' Hall, and is not to be found in any of the public libraries of England or Scotland, and its existence was unknown to Mr. Sellar's family.

During the past twelve months, upwards of thirty years after Mr. Sellar's death, and nearly seventy years after the events which gave rise to the Trial, all the old allegations have been reproduced in connection with the Celtic revival now in progress, and the land agitation which is going on. Mr. Mackenzie, of Inverness, the editor of the Celtic magazine of that town, has republished MacLeod's letters *in extenso*, and Mr. Alfred Russell Wallace, and Professor J. Stuart Blackie have reproduced the most startling and sensational portions of them.

These gentlemen have been addressed, and asked to justify their respective publications. With Mr. Mackenzie it was believed that little parley need take place. In his answer to the letter addressed to him, he carefully avoided any expression of opinion as to the truth of MacLeod's assertions respecting Mr. Sellar, saying only that MacLeod's book was corroborated by other writers. It may, however, be confidently asserted that so far as it relates to Mr. Sellar at least, it is corroborated by no book, and by no testimony.¹ He says, again, that Mr. Sellar was acquitted of the 'specific' acts charged against him, as if there were other acts with which he might be charged. But up to the present date there have been no acts charged against him except those in the indictment, which are identical with MacLeod's charges. Nor can it be understood on what principle Mr. Mackenzie feels himself justified in reproducing as a true statement of facts, the 'specific' charges of which he admits Mr. Sellar was acquitted. The correspondence with Mr. Mackenzie will be found at page lxix. of Appendix.

Besides republishing MacLeod's letters, Mr. Mackenzie has just (April, 1883) published a reprint of the Trial, to which he has appended a preface of studied unfairness and deception. He of course repeats the usual tale of disappointed partisans,—that the judge was partial; and he insinuates that the jury was biased. He even makes it a subject for observation, that the jurymen, besides being persons of a certain position, were nearly all magistrates

¹ It appears from a footnote by Mr. Mackenzie, appended to one of MacLeod's letters, that the writers who, he considers, corroborate MacLeod are General Stewart of Garth, Mr. Hugh Miller and Professor Blackie. What exact meaning Mr. Mackenzie wishes to convey by the word 'corroborate' it is impossible to say; but it is certain that these writers do not corroborate MacLeod, in the sense of confirming, by evidence of their own or of others, the truth of any one of MacLeod's sensational tales, or of imparting in any other manner authenticity to his narrative.

and Justices of the Peace, and that being such they would be especially susceptible to the appeal, of the counsel for the defence, in favour of law and order. All that may be passed by ; but when he accuses the judge of doing with reference to MacKid¹ what he says no judge of the present day would do, it becomes important to examine what the judge actually did.

Till not many years ago, it was the law of the land that no one interested pecuniarily in a case could give evidence in it. Nor, at the time of the Trial, could any one do so against whom agency could be proved, or 'malice or partial counsel' of a grave character. When, then, a witness was tendered for examination who was supposed to come within any of these categories, it was competent for the other side to show that his evidence was not admissible, and with that object the witness himself, as well as other witnesses, might be examined,— 'in initialibus,' as it was called in the Scotch courts. When MacKid was tendered as a witness for the Crown, for the purpose of proving a purely technical point— proved otherwise during the Trial—Mr. Sellar's counsel objected to him as having evinced 'malice or partial counsel, or both.' Upon this challenge MacKid and other witnesses were examined, and documents were put in ; and the Judge after hearing the evidence pronounced the following interlocutor :

Lord Pitmilly having heard the evidence in support of the objection, and having likewise heard the Counsel for the parties on the import thereof, repels the objection, and allows the evidence of Robert M'Kid to be taken *cum nota*, recommending it, however, to the Advocate-Depute to pass from the evidence of the witness in the circumstances of the case.

¹ See Appendix, p. xxv. and following pages, or report of the objections taken at the Trial to MacKid's evidence, and for report of the proceedings with reference to those objections.

The whole proceeding was in due form, and appears to have been in every respect unobjectionable. Mr. Mackenzie omits to mention that other witnesses besides MacKid were similarly challenged at the Trial. It was the common practice at the time.

He makes also the technical complaint, which, if just, would be trivial, that the Judge permitted the reading to the jury of letters, as to previous reputation, of three gentlemen unable to attend from illness. This proceeding on the part of the Judge would likewise appear to have been consistent with the practice of that period; for it is stated in Lord Robertson's Report (Appendix, p. xlvii.) that such letters, 'although not regular evidence, were usually received in the practice of the Criminal Court in relation to points of character.'

Then Mr. Mackenzie prints in italics (as if he was calling attention to something very important) the plea put forward for the defence, that 'the ejectments were done in due order of law and under the warrants of the proper judge issued on regular process.' Mr. Mackenzie wishes his readers to believe that Mr. Sellar was acquitted on this purely technical ground.

It was necessary in point of law to put in this technical defence; but Mr. Mackenzie knows that that was not, and could not have been, the ground on which Mr. Sellar was acquitted. Mr. Sellar was acquitted because the whole of the accusations against him broke down in substance and in fact, when brought to the test of legal investigation.

Next Mr. Mackenzie states that the witnesses for the defence were 'almost to a man Mr. Sellar's servants on the Sutherland Estate.'¹ There is palpable inaccuracy in this description of these witnesses; but passing that over, Mr.

¹ There was only one of Mr. Sellar's servants, a shepherd, examined at the Trial.

Mackenzie knows that Mr. Sellar was relieved of every charge against him for personal injury, except the charge of Chisholm, by the inability of the witnesses for the prosecution to allege anything against him at the Trial; while, as regards Chisholm's charge, the evidence was overwhelmingly in Mr. Sellar's favour; Chisholm's own evidence being absolutely worthless, for he perjured himself in a manner to destroy his credibility as a witness.

To add prejudice to his statements, Mr. Mackenzie observes that most of the witnesses for the defence had been engaged in setting fire to the people's houses. Mr. Mackenzie knows that this statement is untrue, as shown by the evidence of the witnesses for the prosecution alone, without reference to that of the witnesses for the defence. He cannot point to a single house that any witness alleged was burned, except the house, or the timber of the house of Chisholm, under the circumstances already narrated.

The spirit of Mr. Mackenzie's proceedings, with reference to the charges he makes against Mr. Sellar, may be inferred from the specimen afforded by the preceding examination of the few sentences forming the preface to his reprint of the Report of the Trial.

Mr. Wallace's publication¹ has been already referred to. On the attention of that gentleman being called to the statements contained in it respecting Mr. Sellar, he at once admitted that some at least of them were inaccurate. He added that he had no knowledge of there being any descendants of Mr. Patrick Sellar living to whom his observations would give pain, and he proceeded of his own accord to issue a later edition of his work, in which all reference to Mr. Sellar by name or otherwise was eliminated. MacLeod's allegations, however, were sub-

¹ *Land Nationalisation*, by Alfred Russell Wallace, 1882.

stantially retained in that later edition, but without the names of any agents being mentioned.

The mere elimination of Mr. Sellar's name was not the object which his family had in view. They believed and believe those allegations of MacLeod, which Mr. Wallace has reproduced, to be absolutely untrue, and what they had and have at heart is to demonstrate their untruth. They laid before Mr. Wallace the evidence given at the trial, disproving them in every particular, and he was appealed to, to admit that they were untrue.

A lengthened correspondence, which will be found in the Appendix, followed with Mr. Wallace, but it was found to be impossible to induce him to say that the acts of criminal inhumanity which he alleged, and which if committed were necessarily the acts of Mr. Sellar, were not committed. He indeed admitted fully that Mr. Sellar had been legally exculpated by the verdict and the 'balance of evidence' taken, and he also admitted that many of MacLeod's 'details' might be inaccurate; but though he was solicited to state what, in his opinion, were those inaccurate details, he gave no reply, and he continues to put the whole forward in his book as unquestioned facts.

At the close of the correspondence, after reading the report of the trial, he states, while, as before mentioned, he does not question the verdict on the evidence presented to the jury, that he has evidence, in MacLeod's narrative, which was not presented to this jury, and on this so-called evidence he relies for the justification of the allegations he makes. The evidence in MacLeod's narrative consists entirely of MacLeod's bare and unsupported assertions. So that it comes practically to this, that the truth of MacLeod's allegations reproduced by Mr. Wallace being the question under discussion, he, by an ingenious process, quotes MacLeod's assertions as proof of the truth of MacLeod's allegations. He cites nothing else in corro-

boration of them, and it may be safely asserted, looking to the nature and scope of the evidence given at the trial, that it is beyond the power of Mr. Wallace, or of anyone, to corroborate them.

MacLeod's assertions are not supplemental to, and consistent with, the evidence given at the trial. They are in direct antagonism with it. It was pointed out to Mr. Wallace that he could not believe both : that either the evidence given at the trial or MacLeod's narrative was false, and that he must choose between them. He was in vain asked whether he seriously thought that the uncorroborated statements of a man made five-and-twenty years after the events, not made under oath or subject to cross-examination, were to weigh for a moment against the mass of evidence given, at the time, in a court of justice. To these considerations Mr. Wallace made no reply.

It is only necessary to define the position which Mr. Wallace takes up to demonstrate its complete unsoundness. It was proved at the trial, to the satisfaction of the jury, and with the expressed concurrence of the judge—and it was proved conclusively, as a reference to the evidence will show—that the allegation was untrue which charged that the house of Chisholm was set fire to, while a decrepit old woman was lying in it, who, according to the allegation, was removed from it amidst the flames and while the blankets were on fire in which she was wrapped. Yet Mr. Wallace, on no better ground than the bare assertion of MacLeod, repeats, as an unquestioned fact, the statement that an act of this monstrous character was perpetrated, and adds not one word to warn his readers that it was disbelieved by the jury and the judge.

It was stated under oath at the trial by the sheriff's officer that Mr. Sellar, before leaving for the south, told him that the dwelling-house of Donald MacBeath was to

remain, and Hugh MacBeath, the son, a witness for the prosecution, who unroofed the byre, stated that the roof, where his father was lying, was not removed. Yet Mr. Wallace alleges that Donald MacBeath, an infirm and bed-ridden old man, had his house unroofed over him, and was left to die exposed to wind and rain.

Three witnesses swore that they saw Donald Munro on the day before and on the day of his eviction, and that he was then well, Donald Munro himself not being called. Mr. Wallace, however, on MacLeod's authority, states that Donald Munro was turned out of doors while lying ill of fever, and, in the face of the evidence just quoted, he adheres to that statement.

Twelve residents of the locality were produced at the trial as witnesses for the prosecution, not one of whom alleged that any house was set fire to, except in the case of Chisholm; no one alleged that his furniture or other personal effects, or the effects of his neighbours, were injured or destroyed; and the witnesses for the defence swore that strict instructions were given them not to hurt anything belonging to the people, and that, in fact, neither furniture nor anything else belonging to them was destroyed or injured. Yet Mr. Wallace puts forward, as an unquestioned statement of fact, the allegation that gangs of men went about burning and destroying all before them, houses, furniture, and everything else, amidst scenes of horror which beggared all description.

It is desired to speak of Mr. Wallace without one word of disrespect; but it is self-evident that to argue, in the hope of convincing him, with one whose ideas as to the value of evidence, with respect to matters of fact, are such as the preceding narrative has shown, was a hopeless task, and it was with a sense of relief that his last letter was received, containing no fresh proposition which demanded a reply, and closing the correspondence.

The allegations put forward by Professor Blackie are contained in a book of his entitled, 'Altavona, Fact and Fiction,' and are substantially the same as those contained in Mr. Wallace's book. At the instance of his publisher, he, too, struck the name of Mr. Sellar out of the second edition of his book, referring to him only as the 'person charged with the crime.' He withdrew certain vituperative epithets, and he made one or two minor changes, but he, like Mr. Wallace, retained MacLeod's allegations in the later edition of his book substantially as originally published.

It is needless to repeat, in answer to Professor Blackie's statements, the arguments used with reference to the allegations of Mr. Wallace; the allegations, of which he makes himself the mouthpiece, being practically identical with those of Mr. Wallace. But Professor Blackie's 'treatment of the case,' as he calls his statements respecting the matters under discussion, requires special mention.

In the preface to his book he expresses his detestation of one-sided views, and his desire to appreciate his adversaries' point of view; and, with reference to the transactions connected with the 'clearances,' he professes, when entering on the discussion of them, that he will judge them with perfect impartiality. When, however, he proceeds to carry this perfect impartiality into practice, it will hardly be credited that, while putting forward every charge that was ever made against Mr. Sellar, and while relating as 'facts' the incredible tales of MacLeod, he cites not one iota of the evidence produced at the trial, or any circumstance, of a character favourable to Mr. Sellar, except the fact of his acquittal; and even in making this necessary admission, he seems to take pains, especially in the earlier edition of his book, to minimise the effect of it.

When his attention was called to this deviation from

his praiseworthy principles, he actually referred to a passage he had quoted from Mr. Loch's book, as if it afforded counter-evidence to MacLeod. But the passage from Mr. Loch's book quoted by him had no bearing whatever on the question under discussion,—namely, the manner in which the 'clearances' were carried out. It dealt exclusively with the policy of the 'clearances;' and it is literally the fact, all these protestations of Professor Blackie notwithstanding, that he puts forward every allegation ever made against Mr. Sellar, and cites not one particle of the overwhelming evidence in his favour.

But though this mode of treating the subject is sufficiently misleading, more remains of a character even more conducive to a wrong impression being created in the minds of his readers. The reason he assigns for bringing the Sutherland 'clearances' to the notice of the public is that the 'facts' connected with them 'were brought before a court of justice, and were besides largely commented on, in perfectly reliable published documents.' It was to be expected, under these circumstances and after this introduction, that the 'facts brought out in court' would be submitted to his readers. So far, however, from this being done, it is the case that Professor Blackie never once quotes any portion of what 'was brought out in court,' and that of the 'perfectly reliable documents' of which he speaks the only publication from which he quotes is the unvarnished publication of Donald McLeod. On proceeding to quote from that publication the allegations contained in it, he first called them 'the facts as they took place;' in his later edition he speaks of them as 'the facts stated by MacLeod under excited feelings.' Are these facts of MacLeod the same as the facts 'brought out in a court of justice'? The implication is that they are the same, and that they are therefore to be entirely depended on. No reader of Pro-