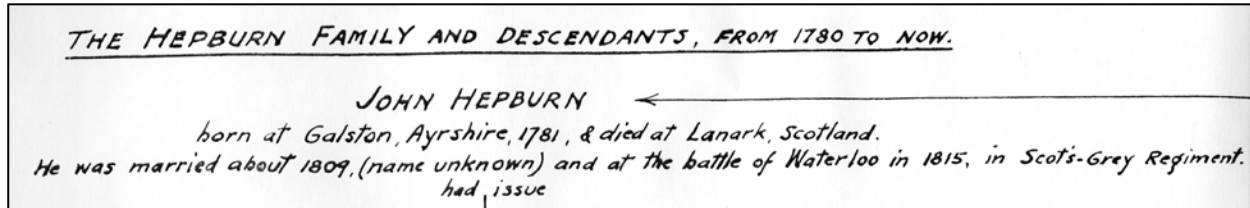


John Hepburn – Lanark Jailer– 1781- 18??

by David Williams, www.MyKidsAncestor.com

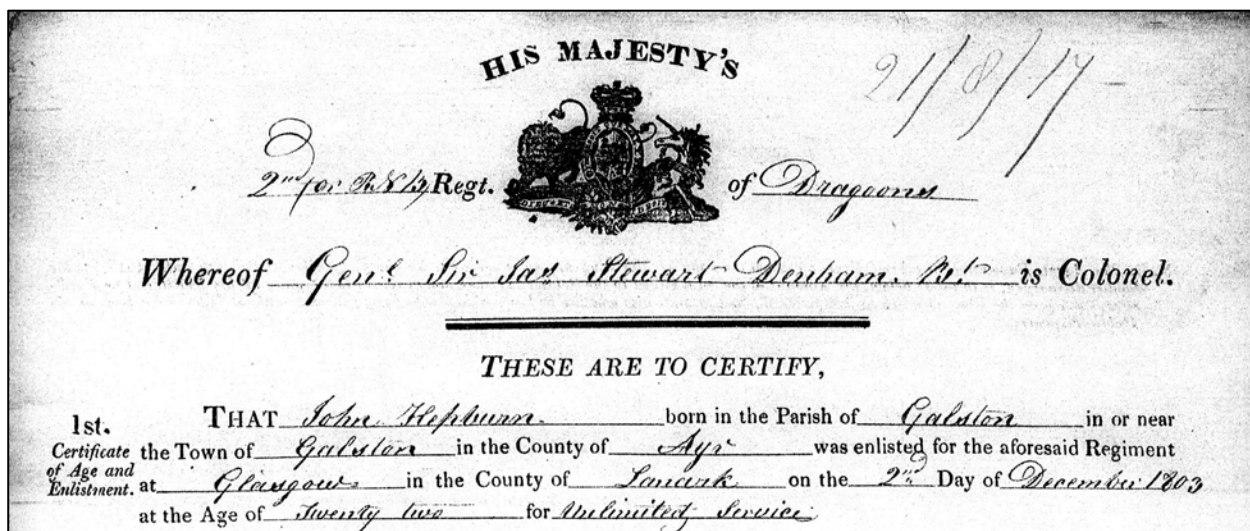
The Hepburn family tree created by James T. Hepburn begins with the following:



James also provided some written notes in 1962 which read;

“The first name on the Hepburn list, and the oldest known to the writer (J.T.O.H.) by hearsay. He was in the British Army, in the Scots Grey Cavalry Regiment at the Battle of Waterloo, in 1815, and later lived at Lanark, Scotland, where he was employed at the Lanark courthouse, possibly as Sheriff, and the Lanark Police Department. Details are vague but a relative, David Hepburn, possibly a Brother of John, was also known to be there. The writer's grandfather, James Hepburn of Biggar told me that his father, the above John, was born in 1781 at Galston in Ayershire, and was descended from the 4th Earl of Bothwell, but details of the immediate ancestors are missing.”

My initial research on John led me on a hunt through the Internet and various local libraries looking for all things related to the Battle of Waterloo and the Royal Scots Greys Regiment. Although I learned a lot of history, the only bit of evidence on John was related to his discharge in 1817. A copy of John's discharge papers were eventually obtained from the UK Archives in Kew, England (ref: WO 97/63/113). A portion of this large document is reproduced below. The document confirmed his year of birth and his 15 years of service in the Scots Greys.



In researching the family connections at Biggar, Scotland I corresponded with Brian Lambie, a local historian. He was not old enough to know the Hepburn family but he did know members of the Gilchrist family including Sir Andrew James Gilchrist, a well known British diplomat and a Hepburn cousin. Brian made mention of a number of family artifacts including a grandfather clock that was donated to the Lanark Museum in the Burgh of Lanark. While visiting Scotland in 2004 I stopped at the Lanark Museum and took some pictures of the clock. The museum listed John as the Governor of the Lanark prison which is the same title shown on his son James' death registration.

Details on the James HEPBURN death register are:

James HEPBURN, Contractor (Widower of Jane PENNIE)
 8 Nov 1897 at 9.00 am, Brier Cottage, Biggar
 Male, Age 85
 Parents, John HEPBURN, Prison Governor (deceased) and - HEPBURN, maiden surname DOUGHTY (deceased)
 Apoplexy 3 1/2 days, as Cert. by John Crawford MBCM
 (Informant) John HEPBURN, son, 18 Melville Street, Pollokshields, Glasgow
 12 Nov 1897 At Biggar, A. Smail, Registrar

During the week I was in Lanark, I did some research at the Lanark Library on nearby Hope Street, trying to find out more about John. In the local history section of the library I was able to locate a fair bit of information on with the help of the librarian that manages that section. The town council records had numerous mentions of John Hepburn who was first hired in 1830 as the town jailer. In 1833 he was given additional duties as an Officer of the Burgh, which was essentially a ceremonial role. That turned out to be a bad year for John as he was dismissed for allowing a prisoner to escape. John was assaulted and badly beaten by friends of the escapee which may explain why he was reinstated later that year. The story is also recorded in a self-published book, found at the library, entitled 'Elsender from the Hulks' written by James Alexander. Elsender was the nickname given to James Somerville, the prisoner who was released from the jail. An extract from this story that mentions John Hepburn is attached, as is a photograph of the wording in the minutes of the petition that John successfully submitted to the Council of the Burgh of Lanark seeking to be reinstated.

The Lanark Council minutes show John as being appointed each year up until 1836 when it is assumed that he took the job of Governor of the new county prison built in 1835. There are records of the prison were located in the Lanark library but more research time is required to examine them. The prison was located in the County Buildings on Hope Street in the block just north of the library. It is assumed that John and his family resided at the prison in the Governors house.



John Hepburn's Family

Grandfather Hepburn, on his family tree, shows John the Jailer as having four children, James, John and two daughters. His wife's name was not known to grandfather but my research turned up the name Doughty on son James' death registration and the website for the General Registry Office for Scotland (GROS), Scotland's People, lists two births to the parents John Hepburn and Christian Doughtie. Christian is believed to have been Irish as they were married in 1809 when the Scots Greys regiment was in Dublin.

Subsequent research shows John and Christian to have had a family of seven or possibly eight as follows:

i) James (1811-1897)

The oldest son James was born in 1811 at Manchester according to census records, which is consistent with the Scots Grey Regiment moving there the year before from Dublin. James was a baker and a railway contractor who lived in Biggar, Lanarkshire. He was, for a period of time, the chief magistrate (mayor) of Biggar.

ii) John (181X-)

Nothing has been found on the second son, John, other than grandfather's mention that he had one child, also named John, who emigrated to New Zealand.

iii) Andrew Balfour (1815-1884)

Andrew was born 24 Dec 1815 at Linlithgow, West Lothian, Scotland to John Hepburn, 2nd Royal N.B. Dragoons and Christian Doughty, per the parish records. One might wonder if Andrew's middle name might be from an ancestral family but it is more likely that it acknowledges Major-General Robert Balfour who was a Lt. Col. with the 2nd Dragoons when John joined in 1803. Andrew married Elizabeth Burnside in Lanark in 1835. They had four children before moving to England where Andrew had a few scrapes with the law. Nothing serious but he seems to have been a bit of a rabble rouser. He died in a London poorhouse in 1884.

iv) Unknown

The oldest daughter, per J.T. Hepburn's records, married a tobacco merchant named Storey, lived in Greenock and may have had children but we have not found any proof. This may have been Mary who perhaps remarried or perhaps grandfather got her married name wrong.

v) Janet (1821-1879)

Janet was born at Galston, 14 Aug 1821, where John was born and possibly where his parents still lived. She married James Wolfe in 1848 in Leith, Midlothian, Scotland and they emigrated to Australia in the 1870's perhaps to join son John who moved there earlier. Janet and James had five children.

vi) Christina (1826-1894)

The 1841 census for Biggar lists a 15 year old Christina Hepburn living with son James' family but does not provide a family relationship. Fifty years later, the 1891 census finds her back at Biggar as Christina Preston, keeping house for her brother

James. She had married Alexander Preston in 1847 and had 7 children while living in St. Cuthberts, Edinburgh.

vii) Thomas Gillespie (1829-)

The Old Parish Record (OPR) for Lanark, Lanarkshire has Thomas born 12 Jan 1829. No other record has been found of Thomas.

viii) Mary (1830-)

The Old Parish Record (OPR) for Lanark, Lanarkshire has her born 7 April 1830. Mary married Thomas Strange, a cavalry man in the Scots Greys (2nd Dragoon Guards) in Leith in 1848. She is in military barracks in the 1851 census in Gate Fulford, Yorkshire, England with no mention of children. No further information has been found.

Further Research

John Hepburn has not been found on any of the regimental listings of those who served at Waterloo. Only six of the ten troops in the regiment were sent to Waterloo so it is possible that he was in England at the time, although he was definitely in the 2nd Dragoon Guards or Scots Greys as they were more often known.

The marriage registration of John and Christian has not been located. It is feared that it may no longer exist due to the destruction of many Irish records during the Troubles. It may also be difficult to find if they were married by a military chaplain. The marriage records would hopefully confirm conclusions about John's parents.

There has not been any documentation found on the deaths of John or Christina. He died prior to the start of formal national registration in 1855 according to the various marriage registrations of his daughters. The family is not in Lanark in the 1841 census. It is presumed that both had died by that time. There may be information on his death in the prison records in the Lanark library.

An extract from a self-published book by James Alexander entitled 'Elsender from the Hulks'.

James is a descendant of James Somerville, subject of the book.

CHAPTER TWO

By the time James was in his early twenties, he had formed a relationship with Marion Somerville, the daughter of William and Elizabeth Somerville, tenant farmers of Backshot Farm, Forth.

Marion had been born in 1813 and was the youngest of 9 children. One brother, Robert, was her elder by five years and figures largely in our story. The other Somerville children were Thomas, born in 1797; Nicholas (female), born 1798 and who later married Robert Alexander, James' eldest brother; Grizzel born 1801; John born 1804; William born 1806; Janet 1810 and another William, born in 1815 after the first one had died.

James and Marion's first daughter, Elizabeth, was born in March 1832. This union was what was termed an 'irregular marriages', an old-established practice peculiar to Scotland where, under Scots Law, a couple could form a marriage without formalities or ceremony. Such arrangements were so widespread that it had led to the call in 1834 for a change in the laws of marriage in Scotland: 'For as far as the Law stands a declaration of the parties before two witnesses constitute a marriage'. A prior attempt by the Marriage Act 1754 and later in 1836 also failed to stop these.

The eminent 17th century Scottish judge, Lord Neaves, sitting in judgement on McAdam V. Walter pronounced in verse on the notes of the case his comments on the legality of such marriages.

This maxim itself might content ye
that marriage is made by consent
provided its done de praesenti
and marriage is really what's meant
suppose that young Jock and Jenny
say, we two are husband and wife
the witnesses needn't be many
they are instantly buckled for life

Suppose the man only has spoken
that woman just given a nod
they are spliced by the very same token
till one of them under the sod
though her words could be bolder and blunter
the want of them isn't a flaw
for nutu signisque logunter
is good consistorial law.

The act of James' 'irregular marriage' may have led to the wrangle in execution of his father's will through a Summons of Multi-Poining raised by his twin brother William after old William's death. He had married his late wife's sister, Janet on 8th July 1831, after having a Contract of Marriage drawn up a week earlier to safeguard the children from his previous marriage. Janet had acted as his housekeeper since her sister's death. A child, Robert, born to her on 3rd March 1835 died in infancy.

During James' early life, legislation listing over 200 offences empowered the existing law enforcement agencies to bring to courts activities such as poaching which for centuries had rarely (in Scotland) been regarded as serious crimes. These were now to be regarded as unwarranted excesses of popular custom.

Whilst earlier generations were simply fined when caught poaching, in 1829 in the reign of George IV, an Act was passed 'for the more effectual prevention of persons going at night for the destruction of game'.

Three or more persons banding together for the purpose of killing game could find themselves not just facing a jail sentence but at the Court's discretion be transported for seven or fourteen years. Such legislative savagery was at the very least ironic coming from a Monarch so obese, in which gargantuan state James Gillray made an engraving entitled 'A Voluptuary Under The Horrors of Digestion'.

Ironically the common form of rabbit poaching had, by the measures instituted, been so successful in preventing the necessary cull to keep their numbers under control, that in just over 120 years time the rabbit population had grown to such pestilential proportions that Myxamotosis disease was introduced to reduce a good food source which by denial to past generations had to be drastically reduced.

With the rise in unemployment of the time, crime was the only alternative for survival available to such victims of the economy. Much dialogue was expended in circles of responsibility, Scotland was being held up as an example for penal reform in England.

One Mr. Brebner, the Governor of Glasgow Bridewell prison, was freely quoted as having the answer to fall prisons and economies of reducing prison financing: "Scottish crime would be annihilated if the courts imposed 12 or 18 months on offenders".

Mr. Brebner, due to his cost-cutting exercise, had reduced the per prisoner expenditure to 10.25d per week. Money was earned through work by each prisoner, their wages off-setting the total cost of food, clothing, healthcare, heating and lighting. The difference in surplus between income from the prisoners' labour and cost of keep was to be divided amongst the prisoners, which would be useful on release for re-habilitation purposes.

The desire to use this money to buy illicit tobacco and booze was to be severely discouraged. "The Glasgow Herald", anxious to extol such Scottish enlightenment, printed this article on 14th October 1833:

"The expense of the food of each prisoner is only 2 1/2d per day, while in England it is generally two or three times as much. In Northumberland, the most economically managed county, where prices are similar to Glasgow, the regular per day cost is 4d, 60% higher than under Mr. Brebner's management. The total expense to the public purse of 2,075 prisoners sent to Glasgow Bridewell in one year is only £275. A result which other public institutions should take lesson from economy is not the most important feature. It was is the institution under his charge that Mr. Brebner introduced such innovations that Philadelphia and other U.S. penitentiaries now boast."

On Thursday, 6th January 1831, on a farm called 'Hole of Kilcadzow' belonging to Sir Charles MacDonald Lockhart of Lee, the gamekeeper John Kirkup found two men shooting at a hare. When

he challenged them and seized John Orrock, James Alexander was about to aim a blow to his head but the gamekeeper lifted a stick to ward him off. He obviously knew James as he called out:

"Alexander - would you do so?"

James hesitated and said: God, no John, but you know I am over if I'm taken".

James then called out to Orrock (who was striking the gamekeeper) to "give over", which he did.

Kirkup, being unarmed, was obliged to let them go. He immediately afterwards heard a shot and a squeal of a hare. No blows were given by James, only Orrock struck Kirkup several blows to the face.

The fact that Kirkup knew James prior to this incident is not proof of James' earlier poaching habits. Before moving to Forth his father, William, had been tenant at Wellhead on the Cleghom Estate also belonging to the Lockhart family, where he carried on his trade as gunsmith and Kirkup would be well acquainted with the Alexander's in the course of his job as gamekeeper to the Estate.

The incident was also witnessed by John Martin, a road-surface man from Kilcadzow. Both James and Orrock wore white moleskin clothes and there was a statement from William Grossart, a teacher aged 54 at Kilcadzow, living in New Mains who recognised James' voice, having known James from infancy.

At the ensuing trial James was, on Kirkup's evidence, cleared of the charge of assault, but guilty of killing game without a licence and fined £20 or four months' imprisonment.

John Orrock was found guilty of assault and killing game without a licence. He had had a previous conviction for assault in December 1829 on a man called Girdwood, for which he had been tried at the Criminal Court of Lanark on 24th February 1830 and imprisoned at the Tollbooth in Glasgow for six months.

On Thursday afternoon, the 26th January 1833, James and his twin brother William and Robert "Torrels" (meaning thick set) Fisher, an unemployed weaver, were caught poaching by the gamekeeper John Dodds on the Corehouse Estate on the Kirkfieldbank side of the River Clyde.

Acting on a complaint, the Lord Advocate and Sheriff of Lanarkshire singly issued instructions for their arrest. Within weeks Fisher was in custody and after interrogation taken to Glasgow Prison where, at the Circuit Court of Judiciary in April, he was found guilty.

James, keeping well out of the way, was not arrested until 4th May 1833 by John 'Messenger' Currie at Ravenstruther, where he sat down on the road and no amount of threats and persuasion could get him on his feet and walk the two miles to Lanark. A coach had to be hired and James was conveyed back to Lanark in style. Such form of transport had to be paid for by Currie himself, and after interrogation James was locked up for the night before being transferred to Glasgow the next morning.

Robert Somerville, James' brother-in-law, hearing of this, organised a rescue with some of their cronies. When James was brought out of the jail an attempt was made to free him, and James was only bundled into the coach after an almighty struggle.

Immediately after the coach got underway, Somerville a servant at Mousemill and instigator of the rescue attempt, attacked John Hepburn the jailer, causing him considerable bodily harm and fear for his life. This would have possibly resulted in a future murder charge for Somerville had not Thomas Paul, a junior Member in a Law Practice in Lanark, attacked and distracting him from causing further serious injury to Hepburn.

This rescue attempt had been carefully arranged and the likes had never been seen in Lanark before.

The Law Officers, having earlier been tipped-off about this rescue attempt, had taken the necessary steps and Sheriff Daniel Vere had ensured adequate reinforcements in the shape of Stephen Grey, the Procurator Fiscal, his staff and others who were backed up by the local magistrates. This was the first of Grey's experiences with James.

Somerville, after this failed attempt at rescue, vanished from the locality but turned up three weeks later on 29 May 1833 at Forth. He vented his feelings on William Martin, a farm servant known as a police informer, who was working for Thomas Weir at Mid Forth. It was believed he had tipped off the authorities about the plan to free James. After repeatedly punching Martin and then throwing him into a well nearly drowning him, Somerville disappeared again. Thomas Weir who had tried to defend his employee was also struck in the face.

When Martin realised his "cover was blown" his contract with Thomas Weir was somehow changed so that he could move to Moorfoot Farm in the parish of Carstairs as a safety measure. However, Martin refused to attend as a witness when Somerville was tried for the assault.

Somerville's nickname was 'Sack' and, as sobriquets were usually most apt, implied someone of low intelligence - in modern parlance "as thick as two short planks". James' popularity was the main reason for the local attempt to obtain his release. Elshender, as he was known, was the ancient Scottish form of Alexander. His exploits as a poacher and popularity with the ladies were also enhanced by the fact that he shared his forbidden bounty with others. A later newspaper account described him as a modern day Rob Roy.

At Glasgow James was again convicted of killing game without a licence, fined £20 (equaling £548 in today's money) or four months in jail. His father (for once) having failed to put up the money, James commenced his sentence.

By early August 1833 James had had enough of the strictures imposed by being in jail and had purloined a chisel with help of his Lanark cronies and broke several stones in the window of his cell. On the following night he removed the window and gained access to the main building. John Hepburn, the jailer, was unlucky enough to be entering the door from the High Street, when he encountered James. In the ensuing struggle Hepburn was struck down and James was free again.

John Hepburn, the last keeper of the old jail, combined his duties with those of a town-officer, executing warrants of the Magistrates, carrying a halberd before them, and keeping the peace of the town. He was a man of physical power and above the average height, and had been in the army,

serving with the Scots Greys at Waterloo, when they had captured one of Napoleon's Eagles. He was a terror to evil-doers in the town, as John Currie, better known as Messenger Currie, was throughout the Upper Ward.

The old Lanark Jail (known as the Tollbooth) was a tall, narrow and gloomy building which ran alongside a causeway that had no facilities for exercising the inmates. Because, prior to 1834, there had been no County Prison in Lanark, other than the cells of the Tollbooth, sentences longer than six months were a rare occurrence.

However the punishment that this so-called confinement meted out was rather farcical, since the prisoners were generally allowed to indulge in unlimited freedoms.

It was easy enough to talk with friends through an open grating and receive baskets of food, drink and tobacco by lowering an empty container from the window of their cells. It was also possible to indulge in other bodily needs by taking advantage of the company offered by visiting prostitutes.

In previous centuries it was common practice in smaller jails, such as Lanark Tollbooth, for the jailer to receive no salary at all. This is not to say that there wasn't a shortage of takers, especially when the incumbent could receive his salary from fees paid by the prisoners themselves who were subject to such charges for me food and straw for bedding to lye on the cold damp floor as their jailer might apply.

However in 1830, jailers received £20 a year and their part tune assistants £5. Constables were volunteers who had to be of good character and habit. They were paid 4/- a year plus an annual free dinner in recognition of their services by the council. Their duties were to patrol the streets, clear vagrants from within the town and ensure that public houses only catered for visitors on Sundays. Street patrols operated from 10pm Saturday to 6am Sunday.

James and Somerville had managed to regain contact with each other through mutual friends and had been lying low for two months when an informant contacted the authorities that the duo intended attending a Ball which was to take place at Forth on the night of 4th October 1833. John Currie, a future long serving Chief Criminal Officer for Lanark, planned their recapture with suitable and plentiful backup.

Unknown to Currie, he wasn't the only one to have an informant. James good friend in Lanark, Tom "Killy Breeze" (swift runner) MacLachlan, ran eight miles to the Forth, having got wind of Currie's intentions. MacLachlan beat the Lawmen, despite their advantage of coach and horses, in time to warn James of their arrival.

Running was a great pastime locally. The Red Hose Race at Carnwath had been held annually since 1508, a condition of tenure of lands by James IV to Lord John Somerville that a pair of red stockings, or hose, be presented to the winner of the race or forfeit their land. The race was held in August and there was great competition.

James and Somerville, having armed themselves, hid in a plantation on the Lanark Road and peppered the passing coach with bird shot. As a result, the posse comprising John Currie, James Brown, Robert McFeggan, John Newbigging, John Cannon John Fraser, John McArthur and Arthur Paton were wounded in the head, shoulders and had their hats and clothes perforated. They had to return to Lanark smarting with indignity from the effects of the pellets fired at them.

(end of extract)

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of John Hepburn late Keeper of the Jail
of Lanark and one of the ordinary officers
of the Burgh

Humblly Sheweth

That in consequence of the investigation lately
made into the circumstances attending the escape of James
Alexander from Jail. your Honours the Magistrates were
pleased to suspend the Petitioner from his office of Jailor and
Town officer

The Petitioner readily admits that his conduct upon the
occasion alluded to, was improper and inconsistent with the due
discharge of his duty as Jailor - and he most sincerely regrets
that a want of precaution on his part, and of that vigilance
which ought most especially to be attended to by a person
holding such a situation should have been followed by an
occurrence so unfortunate as the escape of a prisoner. He is
hopeful however that on a consideration of his conduct since
his appointment down to the period in question, and of his uni-
form sobriety and former attention to the duties of his office,
and that the present is the first and only occasion on which
he can be charged with either disobedience of instructions or ne-
glect of duty - your Honours may be induced ^{his} thus expressing
his contrition and solemnly engaging in future to perform with
strictness and vigilance and attention the whole duties of the
situations, to restore him again to the office of Jailor and Town
officer

May it therefore please your Honours to take
the Petitioners case into your favourable con-
sideration and to restore him to the above
situations

And your Petitioner shall ever pray
(signed) John Hepburn