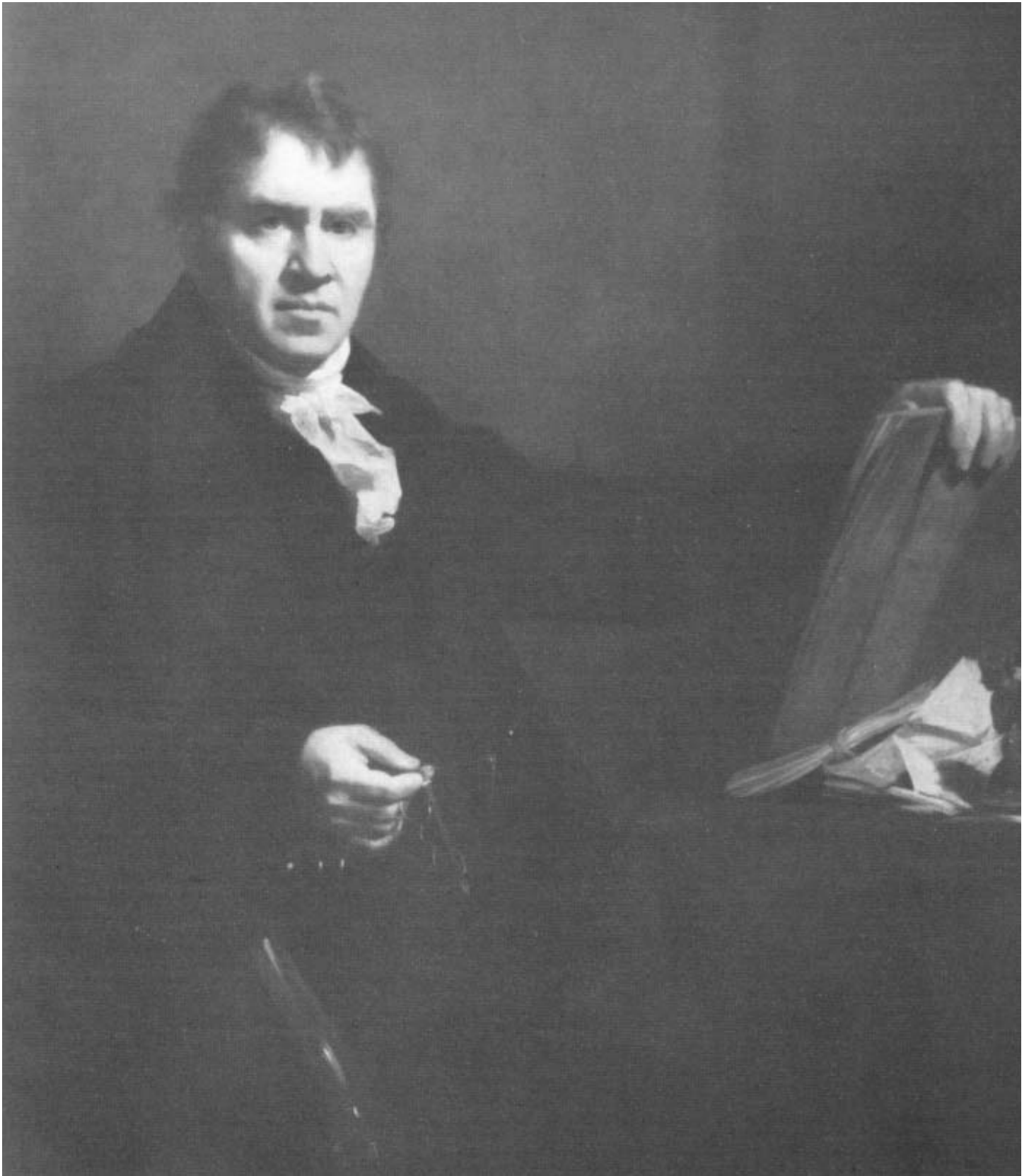


THE FIERY YOUNG ADVOCATE - JOHN CLERK



John Clerk's portrait by Sir Henry Raeburn

The Trial of Deacon Brodie

This is a brief story about some remarkable incidents that occurred in that extraordinary Scottish trial - the Trial of Deacon Brodie, which took place in Edinburgh in August 1788.

The story comes from the book, *Trial of Deacon Brodie*, which contains the transcript of the complete trial which was published in 1906 in the series "Notable Scottish Trials".

But the story I want to tell you is less about the notorious Deacon Brodie. It is more about an outrageous Scottish judge and his amazing and unlikely tangle with a young lawyer. At the time of the trial John Clerk was an unknown advocate. If he was unknown before the trial he was certainly extremely famous after it.

And the judge? Well he was the infamous Lord Braxfield.

The Trial of Deacon Brodie attracted considerable attention at the time. This was because of the importance and status of Brodie. He was the son of a writer to the signet (that's a Scottish lawyer) in Edinburgh. Brodie was a highly successful businessman - he was a wright and a cabinetmaker. By the year 1735 he had been made a Burgess, and in 1763 he was elected to the Town Council of Edinburgh as Deacon of the Incorporation of Wrights. And now, here was this important man on trial for his life as a common burglar!

Robert Louis Stevenson wrote a

play about him - *Deacon Brodie, or the Double Life* which was published in 1892. He also wrote, of course the famous novel *Dr Jekyll and Mr Hyde* and the idea for this story was suggested by Brodie's own double life - a respectable business man of high standing by day and, as I have said, a common burglar by night.

Another of Stevenson's best novels is *Weir of Hermiston*. This story is based upon the character of Scotland's most notorious judge - Robert MacQueen - Lord Braxfield - Scotland's own "hanging judge". It is one of those strange coincidences that Lord Braxfield was the senior of the five judges that sat at the Deacon Brodie trial. In fact he was at that time the leading judge in Scotland - The Lord Justice-Clerk.

I ought to say a little more about Lord Braxfield. He was outrageous. He was a bully. He spoke in old Scots and would poke fun at anyone who would try to stand on their dignity. There are many tales of his terrible behaviour. Listen to this description of him in the book *Some Old Scots Judges* by W. Forbes Gray, published in London by Constable and Company Ltd in 1914

He came dangerously near being destitute of principle and character. Unscrupulous, tyrannical, coarse, dissipated, illiterate, he was morally almost featureless. He had a hard heart, a tainted mind, a cross-grained, domineering nature, and an uncouth exterior. A noble aspiration or a lofty motive he was incapable of appreciating. Without faith, without hope, without charity, he moved continually in a world

of sordid interests and ignoble purposes.

He was further described in appearance as "strong built and dark, with rough eyebrows, powerful eyes, threatening lips, and a low growling voice, he was like a formidable blacksmith."

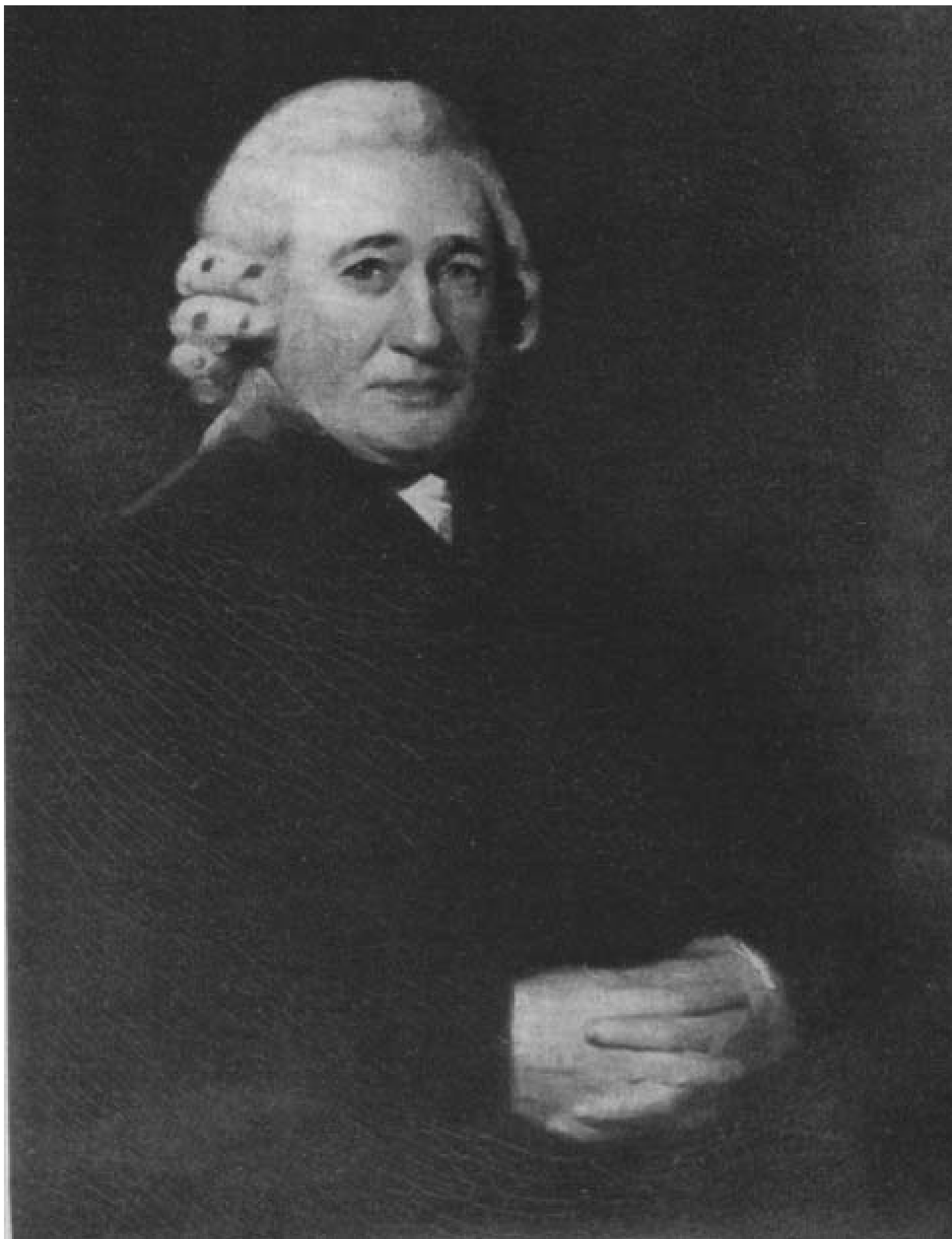
But, despite these detractions he was an expert lawyer. While he has been heavily criticized for his treatment of prisoners on trial for sedition in the 1790s, nevertheless he, more than almost any other person, squashed the importation into Scotland of the terror which was to ravish France through its Revolution.

During the sedition trials at that time one of the prisoners, Gerrald, made the remark that all great men had been reformers, even our Saviour Himself. To which Braxfield snorted: "Muckle He made o' that; He was hangit."

Another example of his unique manners relates to his personal life. He decided he would like to marry as his second wife the daughter of Robert Ord, Lord Chief Baron of the Exchequer of Scotland. So, he called upon her and announced his intention. "Lizzy, I am looking for a wife, and I thought you just the person that would suit me. Let me have your answer, off or on, the morn, and nae mair about it."

So, this is the bully that our youthful defence advocate, John Clerk, had to face in court.

Very briefly the trial arose following a series of daring night-time burglaries. Thefts included jew-



Portrait of Lord Braxfield by Sir Henry Raeburn

ellery and even a mace. The specific burglary for which this trial took place was for the break in and robbery of the Excise Office in Edinburgh. There were four people initially arrested for this crime. Except for Deacon Brodie himself, the others were of a much lower class in society and in fact were nothing more than cheap petty criminals. They were:

***George Smith** - a hawker or grocer from Berkshire in England (this was the man that John Clerk had to defend).

***Andrew Ainslie** - a sometime shoemaker in Edinburgh

***John Brown/alias Humphry Moore** - a convicted English sharper and thief.

The last person - Brown, alias Moore, had been sentenced in England to transportation and had escaped and made his way to Scotland.

Both Deacon Brodie and the grocer George Smith were put on trial for the robbery of the Excise Office and the evidence against them was largely provided by their fellow burglars - Ainslie and Brown. These two were offered a pardon if they gave evidence against Brodie and Smith.

Prior to the trial the men had been gamblers and met frequently to play (and cheat) at dice and cards. They also gambled heavily at cock-fights. It is claimed that Deacon Brodie's losses at gaming caused him to turn to robbery.

Deacon Brodie, because of his position in society and his comparative wealth was well represented for his defence at his trial by none

other than the Dean of Faculty himself - the Hon. Henry Erskine.

On the other hand, poor old George Smith had to rely on an unknown and very green lawyer for his defence - John Clerk!

It is said that John Clerk drank a bottle of claret before commencing his address in this famous trial. Whether or not this was to provide him with the required Dutch courage it is difficult to say. One can only marvel at the way he took on the might of the five judges present, including the awesome, and terrifying, Lord Braxfield.

John Clerk's minor role was as Counsel for the Pannel [viz: the accused] George Smith. It was thought to be a minor role because Smith had already given a signed confession, although he subsequently renounced it and decided to plead not guilty.

So it was that John Clerk, in a packed courtroom, full of claret and an endeavour to give a strong defence, despite the evidence of a signed confession, stood up to address the jury. What follows is an extract from his extraordinary performance in the trial records.



The first meeting of George Smith and Deacon Brodie
(after Kay)

**Address to the Jury by John
Clerk - Defending George
Smith**

Gentlemen of the jury, it is now my duty to state the evidence to you for the pannel, Mr. Smith, and I shall trouble you with a very few observations only.

My unfortunate client is a very poor man; and although he was in a situation, before he was apprehended on suspicion of this crime, to support himself and his family upon the produce of his industry in his trade as a grocer, he has, in consequence of this unlucky affair, been reduced to absolute beggary, so that he has not been able to make those extraordinary exertions either in procuring evidence or counsel, which the more opulent prisoner [Deacon Brodie] has done. He is an Englishman, a stranger in this country, and in great straits for his life, and whatever is favourable in his character or conduct is unknown; while, on the other hand, everything that tended to blacken his character and fix guilt upon him has been brought forward. He has no one to say a good word for him, as that great villain, John Brown alias Humphry Moore, has, who, you will remember, was so highly complimented by their Lordships when he left that box. But, I, as his most inexperienced and imperfect counsel, will try and do the best I can for the poor man.

THE LORD JUSTICE-CLERK
[Lord Braxfield]-Be short and concise, sir, at this time of the morning.

MR. CLERK - Pray, your Lordship, let me proceed.

LORD BRAXFIELD - Well then, proceed, young man.

MR. CLERK - It is easy to account from this cause, gentlemen, for what my Lord Advocate observed concerning the obscurity of my client's history before the robbery of the Excise Office; and I imagine that no argument against him can be drawn from it. I know that I speak to a jury who will lay nothing into the scale against him that does not arise from the evidence which has been adduced.

My Lord Advocate has told you, gentlemen, that the guilt of my unfortunate client is so clear as to admit of no doubt, and it is in consequence of that opinion, I sup-

pose, that his Lordship has made so few observations upon it. I cannot, however, yield my assent to this proposition; and I shall endeavour to show you, on the contrary, gentlemen, from a statement of such parts of the proof as affect my client, that the fair and legal evidence against him is incomplete and will not warrant a verdict for the Crown.

The evidence may be reduced to three distinct branches - his own declarations, which have been read; the direct evidence of the witnesses adduced for the prosecutor to the commission of the crime; and the real evidence of circumstances.



With regard to the declarations, the Lord Advocate has told you, gentlemen, that they contain a variety of particulars which have not been read, and have been omitted by the consent of the pannel; and from this, his Lordship observed, an inference might be drawn that the declarations contain many more particulars little to the credit of the pannel. Gentlemen, an inference more candid, or at least more charitable, might, in my opinion, be deduced from the circumstance. It is easy to conceive the state of mind in which the pannel must have been when apprehended. Connected with those infamous men who were supposed to have committed the crime, a partner in their most dissolute scenes, no wonder, gentlemen, that he was struck with terror when seized upon an accusation of being joined in their guilt.

After having resisted for some time the impressions arising from his confinement, his panic most naturally increased almost to a delirium; a fit of temporary frenzy, an insanity, seized him, and he accused himself of an atrocious crime as the only means of safety. But this accusation is rejected by his cooler judgment, and accordingly he pleaded not guilty at this bar. In accusing himself in such a manner, the greater variety of crimes he laid to his own charge, the greater is the improbability of their being true.

But, at all events, gentlemen, it is sufficiently known and acknowledged, and it was even admitted - at least, it was not denied by the Lord Advocate himself - that the extrajudicial declaration of a pannel is not legal evidence against

him. It is undoubtedly a circumstance in evidence, but not of weight to convict unless it be adminicled by other proof. This will be admitted, on all hands, to be the law of Scotland, and I shall make no comment on it.

If, therefore, it is shown to your satisfaction that the parole and circumstantiate evidence is either contradictory, inconsistent, or incredible, you will lay very little stress on the extrajudicial confessions of the prisoner.

And this leads me to the second branch of the evidence, or the attempt at a direct proof of the accession of the pannel, Smith, to the crime charged.

The first witness . . . whose deposition affects the pannel Smith, is M'Lean, Mr. Drysdale's waiter. I need not enter into the particulars of his evidence, since all of you must recollect that he could say nothing more than that Smith bought a ticket in the mail-coach for his wife; gave him in payment a five-pound bank-note, battered on the back, and received the change. It does not appear from whence the pannel had the note which he gave to M'Lean, nor whether it was among the money which was stolen from the Excise Office or not.

John Clerk, Mr. Drysdale's cashier, could not even say so much as M'Lean. It does not appear from either of these depositions whether the paper on the table was that which was presented to them or not, as the Court determined that it is not properly described in the indictment, and on that account it cannot be used in evidence against

the pannel.

I may therefore leave these witnesses, gentlemen; and I am persuaded that none of you will think that they said anything which militates against my client in the smallest degree.

Grahame Campbell, the witness, was examined as to a variety of particulars, but her whole deposition, in so far as it regards the pannel Smith, amounts to no more than that he was in company with Brodie, Ainslie, and Brown that evening on which the Excise Office was broken into; that they supped together, ate herrings or a fowl, whilst she was in a back cellar; and upon her coming out of this back cellar the company had left the house, and Smith, her master, had likewise gone out; but there is no evidence of their having gone out together, and although they had, it does not follow that they went to the Excise Office together.

It would be very hard if a man should be suspected of a robbery merely because he leaves his house about the time that the robbery is committed, and in this case there is little more; for it was by no means extraordinary that Brown and Ainslie should be with Mr. Brodie in Mr. Smith's house that night, as they were there every night, always playing at cards and dice, and amusing themselves in company together.

And further, gentlemen, although they had not been drawn together by constant habits and the love of similar amusements, a good reason was given why Brown and Ainslie were constantly at the house of

Smith. You were informed that these two men dined and supped there every day, that is, were day boarders in his house.

Putting all this together, I may dismiss this witness with the same observation which I applied to the former ones. As far as I understand her evidence, she said nothing which has a tendency to criminate my client.

I come next to the testimony of Ainslie and Brown. Gentlemen, you have heard a variety of objections stated to the admissibility of their evidence all of which has been overruled by the Court. But notwithstanding the judgment of their Lordships, I must adhere to these objections and maintain that they ought not to have been admitted as witnesses. Gentlemen, I think a great deal of most improper evidence has been received in this case for the Crown.

LORD BRAXFIELD - Do you say that, sir, after the judgment which the Court has pronounced? That, sir, is a most improper observation to address at the outset to the jury.

LORD STONEFIELD - It is a positive reflection on the Court.

LORD HAILES - It is a flat accusation that we have admitted improper evidence.

LORD ESKGROVE - I never heard the like of this from any young counsel at the beginning of his career at this bar.

LORD BRAXFIELD - With these admonitions, go on, sir; proceed, sir.

MR. CLERK - Aweel, my Lords, if I go on, I beg to assail at the outset the evidence of these two corbies or infernal scoundrels, Ainslie and Brown.

LORD BRAXFIELD - Take care, sir, what you say.

MR. CLERK - Yes, my Lords, I say that they are both most infamous characters. Gentlemen [of the jury], you should discard such vagabonds, and not rely on their evidence in any way; and if you knock out the vile brains of their evidence in this case, there is nothing else remaining on which you can convict my poor client, except his own very candid declarations which I have already explained to you. Gentlemen, these nefarious witnesses Ainslie and Brown, should have stood at this bar this night in place of my client, who was happy in his domestic privacy with his poor, honest, inoffending wife, whom you this day saw and my heart bleeds for her. [*Here there was some applause from the audience which was at once suppressed.*] Gentlemen, Ainslie contradicts himself, and Brown is not to be believed. With respect to this said Mr. John Brown alias Humphry Moore, you had it out of his own mouth that he was a convicted felon in England, and I say to you that no convicted felon ought, by the good and glorious law of Scotland, to be received as a witness in this or any other case in the British dominions. [*Great applause from the audience.*]

MACERS - Silence in Court.

LORD BRAXFIELD - Mr. Clerk, please restrict your reflections. The

Court have admitted the witness.

MR. CLERK - Yes, my Lords, I know that very well, but your Lordships should not have admitted him, and of that the jury will now judge.

LORD BRAXFIELD - This is most indecent behaviour. You cannot be allowed to speak to the admissibility; to the credibility you may.

LORD STONEFIELD - This young man is again attacking the Court.

MR. CLERK - No, my Lords, I am not attacking the Court; I am attacking that villain of a witness, who, I tell your Lordships, is not worth his value in hemp.

LORD BRAXFIELD - The Court, sir, have already solemnly decided, as you know, on the objections raised by the Dean of Faculty, that in law the objections to these witnesses should be repelled, and they were repelled accordingly; therefore you should have nothing more to say to us on that point.

THE DEAN OF FACULTY [The Hon. Henry Erskine.] - If it will satisfy Mr Clerk, I can assure him that I will plead on this point to the jury, waiving all objections to the admissibility, which it may be rather irregular to plead after the decision of the Court.

LORD BRAXFIELD - Dean of Faculty, I know you will attempt nothing that is improper.

MR. CLERK - But, my Lords, the jury are to judge of the law as well as the facts.

LORD BRAXFIELD - Sir, I tell you that the jury have nothing to do with the law, but to take it *simpliciter* from me.

MR. CLERK - That I deny.
[Consternation in Court.]

LORD HAILES - Sir, will you deny the authority of this High Court?

MR. CLERK - Gentlemen of the jury, notwithstanding of this interruption, I beg to tell you, with all confidence and all respect, that you are the judges of the law as well as the facts. You are the judges of the whole case.

LORD BRAXFIELD - You are talking nonsense, sir.

MR. CLERK - My Lord, you had better not snub me in this way. I never mean to speak nonsense.

LORD BRAXFIELD - Proceed-gang on, sir.

MR. CLERK - Gentlemen, I was telling you that this infernal witness was convicted of felony in England, and how dare he come here to be received as a witness in this case?

THE LORD ADVOCATE
[Ilay Campbell] - He has, as I have shown you, received His Majesty's free pardon.

MR. CLERK - Yes, I see; but, gentlemen of the jury, I ask you, on your oaths, can His Majesty make a tainted scoundrel an honest man?

[Great applause in Court.]

LORD BRAXFIELD - Macers, clear the Court if there is any more unruly din.

THE LORD ADVOCATE [interposing and addressing Mr. Clerk] Sir, permit me to say, after this interruption, that the prerogative of mercy is the brighter jewel in His Majesty's Crown.

MR. CLERK - I hope His Majesty's Crown will never be contaminated by any villains around it.
[Sensation in Court.]

LORD BRAXFIELD [to the Lord Advocate]-Do you want his words noted down?

THE LORD ADVOCATE - Oh no, my Lord, not exactly yet. My young friend will soon cool in his effervescence for his client.

LORD BRAXFIELD [to Mr. Clerk] - Go on, young man.

MR. CLERK - Gentlemen of the jury, I was just saying to you, when this outbreak on the bench occurred, that you were the judges of the law and of the facts in this case.

LORD BRAXFIELD - We cannot tolerate this, sir. It is an indignity to this High Court - a very gross indignity, deserving of the severest reprobation.

MR. CLERK - My Lords, I know that your Lordships have determined this question; but the jury have not. They are judges both of fact and of the law, and are not bound by your Lordships' determination, unless it agrees with their own opinion. Unless I am allowed

to speak to the jury in this manner, I am determined not to speak a word more. I am willing to sit down if your Lordships command me.

[Here Mr. Clerk sat down.]

LORD BRAXFIELD - Go on, sir; go on to the length of your tether.

[Mr. Clerk then rose and resumed his address.]

Yes, gentlemen, I stand up here as an independent Scottish advocate, and I tell you, a jury of my countrymen, that you are the judges of the law as well as of the facts.

LORD BRAXFIELD - Beware of what you are about, sir.

[Here Mr. Clerk again sat down.]

LORD BRAXFIELD - Are you done, sir, with your speech?

MR. CLERK - No, my Lord, I am not.

LORD BRAXFIELD - Then go on, sir, at your peril.

LORD HAILES - You had better go on, Mr. Clerk. Do go on.

MR. CLERK - This has been too often repeated. I have met with no politeness from the Court. You have interrupted me, you have snubbed me rather too often, my Lord, in the line of my defence. I maintain that the jury are judges of the law as well as of the facts; and I am positively resolved that I will proceed no further unless I am allowed to speak in my own way.

LORD BRAXFIELD - Then we

must now call upon the Dean of Faculty to proceed with his address for the prisoner Brodie, which the Court will hear with the greatest attention.

[Here the learned Dean shook his head, as if declining to do so.]

Very well. The Court will proceed now and discharge its duty.

Braxfield was then about to address the jury in his final charge, when Mr Clerk started to his feet and shook his fist at the bench. "Hang my client if you daur, my Lord, without hearing me in his defence!"

This remarkable outburst created a great sensation in Court. The judges retired to the robing-room to hold a consultation; but on their returning to Court, the Lord Justice-Clerk Lord Braxfield asked Mr. Clerk to proceed with his speech, which he did without further interruption.

Well! Despite the best efforts of the defence both Smith and Brodie went to the gallows! It is a curious fact in this very curious case that the scaffold from which they were hanged was designed and built some years before by Deacon Brodie.

And what of John Clerk. Well he was - as Lord Braxfield said - talking nonsense when he told the jury they were judges of the law as well of the facts of the case. However, this case made young John Clerk and he went on to become the most successful lawyer in Scotland earning not less than 5,000 pounds a year for the next 20 years.

Eventually he became a judge himself under the title Lord Eldin. His portrait, painted by his contemporary Sir Henry Raeburn, hangs in the Scottish National Portrait Gallery in Edinburgh. John Clerk glares down upon anyone who examines his face.

BIOGRAPHY:

ROBERT MACQUEEN, Lord Braxfield (1722-1799), eldest son of John Macqueen of Braxfield, Lanarkshire, sometime Sheriff-Substitute of the Upper Ward of that county, by his wife, Helen, daughter of John Hamilton of Gilkerseleugh, Lanarkshire, was born on 4th May, 1722. He was educated at the Grammar School of Lanark, and thereafter attended a law course at the University of Edinburgh, with the view of becoming a Writer to the Signet. He was apprenticed to Thomas Gouldie, W.S., Edinburgh, but finally decided to try his fortune at the bar, and, after the usual trials, was, on 14th February, 1744, admitted a member of the Faculty of Advocates. He was employed as one of the counsel for the Crown in the many intricate feudal questions respecting the forfeited estates which arose out of the Rising of 1745. He quickly gained the reputation of being the best feudal lawyer in Scotland, and is said to have received greater emoluments from his practise than any counsel before his time.

On the death of George Brown of Coalston, Macqueen was elevated to the bench on 13th December, 1776, and assumed the title of Lord Braxfield. He was also appointed a Lord Commissioner of

Justiciary on 1st March, 1780, on the resignation of Alexander Boswell of Auchinleck. In the same year was published an anonymous "Letter to Robert Macqueen, Lord Braxfield, on his Promotion to be one of the Judges of the High Court of Justiciary". This pamphlet, which points out the common failings of Scottish criminal judges, is attributed by Lord Cockburn to James Boswell, the elder ("Circuit Journeys," 1889, p. 322).

On 15th January, 1788, Braxfield was appointed Lord Justice-Clerk, in succession to Thomas Miller of Barskimming, promoted to the Presidency of the Court of Session. He held that important office during a very interesting and critical period; and presided at the trials of Muir, Palmer, Margarot, and others, who were indicted for sedition in 1793-4, in the course of which he let fall from the bench the obiter dictum "I never likit the French a' my days, but now I hate them." "In these," says Lord Cockburn, "he was the Jeffreys of Scotland. He, as the head of the Court, and the only very powerful man it contained, was the real director of its proceedings." ("Memorials of his Time," 1856, p. 116).

The conduct of Braxfield during these memorable trials has been freely censured in recent times as having been marked by great and unnecessary severity; but, the truth is, he was extremely well fitted for the crisis in which he was called on to perform so conspicuous a part, for by the bold and fearless front he assumed, he contributed not a little to curb the lawless spirit that was abroad, and which threat-

THE TRIAL.

WEDNESDAY, 27TH AUGUST, 1788.

The Court met at Nine o'clock.

Judges Present—

THE LORD JUSTICE-CLERK (*Lord Braxfield*).
LORD HAILES. LORD STONEFIELD.
LORD ESKGROVE. LORD SWINTON.

Counsel for the Crown—

THE LORD ADVOCATE (*Ilay Campbell*).
THE SOLICITOR-GENERAL (*Robert Dundas*).
WILLIAM TAIT and JAMES WOLFE MURRAY, Esqs.,
Advocates-Depute.

Agent—

Mr. ROBERT DUNDAS, Clerk to the Signet.

Counsel for the Pannel William Brodie—

THE DEAN OF FACULTY (*Hon. Henry Erskine*).
ALEXANDER WIGHT and CHARLES HAY, Esqs., *Advocates.*

Agents—

Mr. ROBERT DONALDSON, W.S., and Mr. ALEXANDER PATERSON,
Writer, Edinburgh.

Counsel for the Pannel George Smith—

JOHN CLERK and ROBERT HAMILTON, Esqs., *Advocates.*

Agent—

Mr. ÆNEAS MORRISON, Writer, Edinburgh.

ened a repetition of that reign of terror and anarchy which so fearfully devastated France. As an instance of his great nerve, it is recorded that after the trials were over, which was generally about midnight, he always walked home to his house in George Square alone and unprotected, though he constantly commented openly on the conduct of the Radicals, and more than once observed in public, "They would a' be muckle the better o' being hangit!"

After a laborious and very useful life, Braxfield died at his residence, No. 28 George Square, Edinburgh, on 30th May, 1799, in the seventy-eighth year of his age, and was buried at Lanark on 5th June following. Before taking up his residence in George Square, Braxfield lived for many years in Covenant Close. He was twice married. By his first wife, Mary Agnew, niece of Sir Andrew Agnew, he had two sons and two daughters; by his second wife, Elizabeth, daughter of Lord Chief Baron Ord, he had no children.

Braxfield was the last of the Scottish judges who rigidly adhered to the old "braid Scots." "Ha ye ony counsel, man?" said he to Margarot, when placed at the bar. "Dae ye want tae ha ony appintit?" "No," replied Margarot; "I only want an interpreter to make me understand what your Lordship says,!" "Strong built and dark, with rough eyebrows, powerful eyes, threatening lips, and a low, growling voice, he was like a formidable blacksmith. His accent and his dialect were exaggerated Scotch; his language, like his thoughts, short, strong, and conclusive" (Cockburn, "Memorials of

his Time," 1856, p. 113).

"Despising the growing improvement of manners, he shocked the feelings even of an age which, with more of the formality, had far less of the substance of decorum than our own. Thousands of his sayings have been preserved, and the staple of them is indecency, which he succeeded in making many people enjoy, or, at least, endure, by hearty laughter, energy of manner, and rough humour"

He domineered over the prisoners, the counsel, and his colleagues alike. Devoid of even a pretence to judicial decorum, he delighted while on the bench in the broadest jests and the most insulting taunts, "over which he would chuckle the more from observing that correct people were shocked. Yet this was not from cruelty, for which he was too strong and too jovial, but from cherished coarseness". Gerald, at his trial, ventured to say that Christianity was an innovation, and that all great men had been reformers, "even our Saviour Himself." "Muckle He made o' that," chuckled Braxfield; "He was hangit". On another occasion he remarked to an eloquent culprit at the bar, "Ye're a vera clever chiel, man, but ye wad be nane the waur o' a hangin'". (*Lockhart's "Life of Scott," 1845, p. 425*).

Of Braxfield's grim humour in its unprofessional aspect only a few samples are now tolerable. Among these, however, is the following:- When a butler gave up his place because his mistress was always scolding him, "Lord!" exclaimed his master, ye've little tae complain o'; be thankfu' ye're no mar-rriet till her."

"Out of the bar or off the bench," says Stevenson, "he was a convivial man, a lover of wine, and one who shone peculiarly at tavern meetings." When Lord Newton, then Charles Hay, was one morning pleading before him, after a night of hard drinking - the opposing counsel being in the like case - Braxfield observed, "Gentlemen ye maun just pack up yer papers and gang hame; the tane o' ye's riftin' punch, and the ither's belchin' claret; there'll be nae guid got oot o' ye the day!" (*"Kay's Portraits," 1877*)

A portrait of Braxfield by Sir Henry Raeburn was exhibited at the Raeburn Exhibition at Edinburgh in 1876, a description of which is given by R. L. Stevenson in his essay, "Some Portraits by Raeburn" ("Virginibus Puerisque," 1881). Braxfield was, as everyone knows, the prototype of Stevenson's *Weir of Hermiston*, originally intended to be named *The Justice-Clerk*, and of which the author wrote to Charles Baxter, on 1st December, 1892, "Mind you I expect *The Justice-Clerk* to be my masterpiece. My Braxfield is already a thing of beauty and a joy for ever, and, so far as he has gone, far my best character." (*Letters to his Family and Friends, 1899*) - a judgment which the literary world has unanimously sustained.

[This extract from the Trial of Deacon Brodie was put together and presented to the Scottish Studies Foundation's "Oor Club" in Toronto, as a speech, by the former Chairman of the Foundation, Alan McKenzie, FSA Scot. - Sept 2004.]